

# WEYMOUTH PUBLIC SCHOOLS



111 Middle Street 🐾 Weymouth MA 02189 🐾 781-335-1460 (P) 🐾 781-335-8777 (F)

## {SAFIS MODEL CHRI POLICY FOR NON-CRIMINAL JUSTICE ENTITIES }

### WEYMOUTH PUBLIC SCHOOLS

#### POLICY GOVERNING

#### **FINGERPRINT-BASED CRIMINAL HISTORY RECORD INFORMATION (CHRI) CHECKS MADE FOR NON-CRIMINAL JUSTICE PURPOSES**

Fingerprint-based state and national criminal history record checks for non-criminal justice purposes may be conducted as authorized by applicable federal authority and/or state statute for licensing, employment purposes, and/or other instances as directed by the Superintendent.

#### **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., Authorized fingerprint vendor, vendor's website address, and district provider identification number)

At the discretion of the superintendent or designee, the Weymouth Public Schools may require fingerprint-based criminal record history information on chaperones of overnight field trips and other individuals who may have direct and unmonitored contact with children.

#### **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 a secure location within the Department of Human Resources at central administration.

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 Weymouth Public Schools.

#### **V. CHRI Training**

An informed review of a criminal record requires training. Accordingly, all Weymouth Public Schools personnel 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.

#### **VI. Determining Suitability**

In determining an individual's suitability, the Weymouth Public Schools will consider, but not be limited by the following factors:

- Age of the applicant at the time of the offense and conviction;
- Degree of satisfaction of any parole or probation conditions;
- Conviction and/or completion of the sentence;
- Seriousness and specific circumstances of the offense;
- The nature and gravity of the crime and the underlying conduct;
- Relationship of the criminal act to the nature of work to be performed;
- The number of offenses;

- The nature of the work to be performed or position to be held or sought;
- The date of the offenses and dispositions thereof;
- The time that has passed since the offense;
- Any relevant evidence of rehabilitation or lack thereof; and
- Whether the applicant has pending charges

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.

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

When an individual for whom a school employer or the Department of Elementary and Secondary Education has made a suitability determination applies to work for a school employer, the school employer may obtain and may rely on a favorable suitability determination, if the following criteria are met:

- The suitability determination was made within the last seven years; and
- The individual has not resided outside Massachusetts for any period longer than three years since the suitability determination was made; and either
- 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
- 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. 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.

Documentation of Reliance on a Previous Favorable Suitability Determination. In any instance where a school employer relies on a suitability determination made by another school employer or by the Department of Elementary and Secondary Education, the relying school employer shall retain the following documentation:

- A copy of the documentation received from the school employer or agency that made the relied-upon suitability determination, and;

- Documentation establishing that the individual met the criteria of 603 CMR 51.06(3)(a), (b), and either (c) or (d) as defined above, and;
- The Weymouth Public Schools may choose to perform a new national criminal history check on an individual rather than rely on a previous favorable suitability determination. The Weymouth Public Schools shall bear the cost of such new check.

Documentation of Reliance of Previous Unsuitability: If a previous school employer's documentation demonstrates the employee was deemed "unsuitable" for employment, the Weymouth Public Schools shall require a new national criminal history check at the individual's expense.

### **VIII. Adverse Decisions Based on CHRI**

If inclined to make an adverse decision based on an individual's CHRI, Weymouth 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 to correct or complete the CHRI.

### **IX. 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.

#### **X. Reporting to Commissioner of Elementary and Secondary Education**

Pursuant to M.G.L. ch 71, § 71R and 603 CMR 51.07, if the Weymouth 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, the Weymouth 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. The Weymouth 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 the Weymouth 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), the Weymouth Public Schools shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether the Weymouth 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.

**Legal References:** M.G.L. c. 6, §§ 167-178; M.G.L c. 71, §38R; M.G.L c. 71, § 71R; Title 28 C.F.R. 20.33(b); Title 28, U.S.C, § 534.; 42 U.S.C. § 16962; Pub. L. 92-544; 603 CMR 7.15(8)(a); 603 CMR 51.06(3); 603 CMR 51.07; 603 CMR 51.07(1); 603 CMR 51.07(2); 803 CMR §§ 2.00