

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 Criminal History Record Information (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., Identogo web site address, Provider Identification Number].

II. Access to CHRI

All CHRI is subject to strict state and federal rules and regulations in addition to Massachusetts Criminal Offender Record Information (CORI) laws and regulations. CHRI cannot be shared with any unauthorized entity for any purpose, including subsequent hiring determinations.

Upon receiving the national criminal history check results for a given employee, WPS shall disseminate those results to only the following recipients:

- (a) the employee, in a confidential and secure manner, pursuant to the standards for providing CORI information under 803 CMR 2.13, upon the employee's request
- (b) the Department of Elementary and Secondary Education, if reporting to the Commissioner is required pursuant to section X below

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, shall be 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 sections below on the 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 WPS 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 locked file cabinet/locked office within the WPS Human Resource Office.

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 Westford Public Schools.

V. CHRI Training

An informed review of a criminal record requires training. Accordingly, all personnel authorized to receive and/or review CHRI at Westford Public Schools will review and become familiar with the educational and relevant training materials regarding Statewide Applicant Fingerprint Identification Services (SAFIS) and CHRI laws and regulations made available by the appropriate agencies, including the DCJIS.

VI. Determining Suitability

Determination of suitability is the determination of whether or not the information discovered in the CHRI check disqualifies an individual from WPS employment or any other designation being considered. A favorable determination of suitability does not require the WPS to provide an applicant a job offer nor to confer any other sought status. A determination of suitability only designates that individual as eligible for such status.

In the event that negative information is obtained through the CHRI check, the administration will use this data as a single factor in determining the suitability of an individual for employment or other designation being considered. An applicant will continue to be considered for employment and an employee will not be automatically disqualified from an existing job.

In determining an individual's suitability, the Westford Public Schools will consider the following factors to determine if the individual poses any safety risk for students, staff, or school community. The WPS will not use the withholding of employment or other sought status as an additional punitive measure if an

individual has met the penalties imposed by the judicial system for any criminal activity on record. The WPS will consider 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
- c. The suitability determination (either "suitable" or "unsuitable")
- d. Rationale for any "unsuitable" rating

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 WPS conducted a suitability determination.

VII. Relying on Previous Suitability Determination.

Reliance on a Favorable Suitability Determination

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

- 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
- c. Either:
 - i. 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
 - ii. 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.

Documentation of Reliance on a Previous Favorable Suitability Determination:

In any instance where WPS relies on a suitability determination made by another school employer or by the Department of Elementary and Secondary Education, WPS shall retain the following documentation:

- 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).

VIII. Adverse Decisions Based on CHRI

If inclined to make an adverse decision based on an individual's CHRI, Westford 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. If a reasonable time is not identified in writing at the time that the individual has been notified of a negative finding in his/her record, then the default time period shall be 14 days.

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 Westford 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, Westford 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. Westford 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 Westford 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), Westford Public Schools shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether Westford 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.

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