

MAYNARD

PUBLIC SCHOOLS

School Committee Policy:

#403

BACKGROUND CHECKS (FINGERPRINTING)

It shall be the policy of the Maynard Public Schools to obtain all available Federal and State background information through both SAFIS (Statewide Applicant Fingerprint Identification Services) and CORI (Criminal Offender Record Information), as allowed by law, of all employees and prospective employees of the school department including any individual who regularly provides school related transportation (including van drivers) to children. Any fees associated with such background checks shall be the responsibility of the individual.

In accordance with 603 CMR 51.00 regulations, an employee shall be defined as “an individual working, applying to work, in a Massachusetts public or private school. Employees shall include any substitute employee, apprentice, intern, or student teacher, or individuals in similar positions.” A subcontractor is defined as “an individual not employed by the school employer but commissioned by the school committee or school, or employed by the city or town, or employed by a non-school employer under contract or lease with the school, school district, city, or town to perform work on school grounds with students. Such individuals may be the employees of a contractor or vendor hired by a school, or may be independent contractors or service providers hired by a school or may be performing services on school grounds under a contract or lease with the school, school district, city, or town.” A volunteer is defined as “an individual who performs a service for a school employer on an unpaid basis, who is not an apprentice, intern, or student teacher.”

The School Committee will require that student teachers be required to submit to a federal background check through SAFIS in addition to the already required CORI if they have direct and unmonitored contact with children. Any fees associated with such background checks shall be the responsibility of the individual.

The Superintendent, Human Resources, or their certified designees shall periodically, but not less than every three years, obtain all available Criminal Offender Record Information from the criminal history systems board on all employees, individuals who regularly provide school related transportation to children, including taxicab company employees, and volunteers who may have direct and unmonitored contact with children, during their term of employment or volunteer service.

The Superintendent, Principal or their certified designees may also have access to Criminal Offender Record Information and/or Statewide Applicant Fingerprint Identification Services for any subcontractor or laborer who performs work on school grounds, and who may have

direct and unmonitored contact with children, and shall notify them of this requirement and comply with the appropriate provisions of this policy.

Pursuant to Massachusetts Regulation 603 CMR 51.00 “Direct and unmonitored contact with children shall mean contact with students when no other employee, for whom the employer has made a suitability determination pursuant to 603 CMR 51.00 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 potential for direct and unmonitored contact with children if he or she has only the potential for incidental unsupervised contact in commonly used areas of the school grounds.”

If an individual is required to submit to a SAFIS or CORI 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 for SAFIS or personal information for CORI. In addition, the applicant or employee will be provided with all information needed to successfully register for a fingerprinting appointment.

In accordance with state law, all current and prospective employees, volunteers, and persons regularly providing school related transportation to children of the school district shall sign a request form authorizing receipt by the district of all available federal and state background check data from the criminal history systems board. In the event that an individual has questions concerning the signing of the request form, he/she may meet with the Superintendent; however, failure to sign the C.O.R.I. request form may result in a referral to local counsel for appropriate action. Completed request forms must be kept in secure files.

The School Committee, Superintendent, or their designees certified to obtain information under this policy, shall prohibit the dissemination of school information for any purpose other than to further the protection of school children. All federal and state background records will be kept in a locked cabinet, separate from personnel files in the Business Office. SAFIS and CORI results are not subject to the public records law.

When no longer needed, criminal record information and any suitability determinations will be destroyed by shredding paper copies and/or by deleting all electronic copies from the electronic storage location, including any backup copies or files. CORI data may be retained for not more than three years. SAFIS data may be retained for not more than the life employment or volunteer duties.

All background check information is subject to strict state and federal laws, rules, and regulations. Criminal history information 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, the FBI, and the Executive Office of Public Safety & Security. Failure to comply with such rules and regulations could lead to sanctions. Federal law prohibits the exchange of records and information and could be 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 criminal history information.

Access to CORI or SAFIS material must be restricted to those individuals certified to receive such information. In the case of prospective employees or volunteers, CORI or SAFIS 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.

Criminal history record information shall only be stored for extended periods when needed for the integrity and/or utility of an individual's personnel file. Administrative, technical, and physical safeguards, which comply with laws, rules, and regulations, have been implemented to ensure the security and confidentiality of information. Each individual involved in the handling of such information is to familiarize himself/herself with these safeguards. In addition to the above, each individual involved in the handling of such information will strictly adhere to the protections of this policy on the storage, retention, and destruction of such information. SAFIS and CORI results are not subject to the public records law.

The hiring authority, subject to applicable law, reserves the exclusive right concerning any employment decision made pursuant to Chapter 385 of the Acts of 2002. The employer may consider the following factors when reviewing a federal or state background check: the type and nature of the offense; the date of the offense and whether the individual has been subsequently arrested, as well as any other factors the employer deems relevant. Unless otherwise provided by law, a criminal record will not automatically disqualify an applicant. Rather, determinations of suitability based on CORI or SAFIS checks will be made consistent with this policy and any applicable law or regulations.

For SAFIS results, a record of suitability determination will be retained. The following information will be included in the determination – the name, date of birth of the applicant; the date on which the school employer received the national criminal history check results; and the suitability determination (either "unsuitable" or "suitable"). 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.

If a criminal record is received from the Criminal History Systems Board (CHSB), the Superintendent will closely compare the record provided by CHSB with the information on the C.O.R.I. request form and any other identifying information provided by the applicant, to ensure the record relates to the applicant.

If the district is inclined to make an adverse decision based on the results of any federal or state background check, the applicant will be notified immediately. The applicant shall be provided with a copy of the criminal record and the district's Background Check policy, advised of the part(s) of the record that make the individual unsuitable for the position or license, and given an opportunity to dispute the accuracy and relevance of the CORI or SAFIS record.

The Superintendent shall ensure that on the application for employment and/or volunteer form there shall be a statement that as a condition of employment or volunteer service the school district is required by law to obtain Criminal Offender Record Information for any employee, individual who regularly provides school related transportation, or volunteer who may have direct and unmonitored contact with children. Current employees, person is regularly

providing school related transportation, and volunteers shall be informed in writing by the Superintendent prior to the periodic obtaining of their Criminal Offender Record Information.

The Superintendent shall amend employment applications to include questions concerning criminal records which the Massachusetts Commission against Discrimination has determined may be legally asked of prospective employees. Any employment application, which seeks information concerning prior arrests or convictions of the applicant, shall include the following statement: "An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances, or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of service which did not result in a complaint transferred to the superior court for criminal prosecution."

If the Superintendent is inclined to make an adverse decision based on an individual's criminal record, the school district will take the following steps prior to making a final adverse determination:

Provide the individual with a copy of his/her record used in making the adverse decision;

Provide the individual with a copy of this policy;

Provide the individual with the opportunity to complete or challenge the accuracy of his/her record; and

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

A final adverse decision based on an individual's criminal record will not be made until the individual has been afforded a reasonable time, depending on the particular circumstances but not more than 30 days, to correct, or complete the criminal record.

Pursuant to state law and regulation, if the 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 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 background checks. The school district shall notify the employee or applicant that it has made a report pursuant to the regulations to the Commissioner.

Pursuant to state law and regulation, if the 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 licensure action pursuant to the regulation, the school district shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether the school district 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 regulation to the Commissioner and shall also send a copy of the criminal record check results to the employee or applicant.

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 with special education schools and other providers to require a signed statement that the provider has met all the legal requirements of the state where it is located relative to criminal background checks for employees and others having direct and unmonitored contact with children.

As soon as possible after the district obtains the certification from the criminal history systems board to receive CORI and/or SAFIS.data, the Superintendent shall obtain such data for any person then providing volunteer service, as a condition of continued service.

Approved: 8/21/14

Legal Ref.: M.G.L.71:38R, 151B, 276, §.100A, St.2002, c.385
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

SOURCE: MASC 2014
