CAMBRIDGE PUBLIC SCHOOLS

159 THORNDIKE STREET, CAMBRIDGE, MASSACHUSETTS 02141



August 2, 2016

TO THE HONORABLE MEMBERS OF THE SCHOOL COMMITTEE:

Revisions to Policy Governing Fingerprint-Based Criminal History Record Information (CHRI)

Checks Made for Non-Criminal Justice Purposes

Recommendation:

That the School Committee approve the revisions to the Policy

Governing Fingerprint-Based Criminal History Record Information (CHRI) Checks Made for Non-Criminal Justice

Purposes as detailed in the attached document.

This is a first reading of this proposed policy revision.

Description:

The revisions to the Policy Governing Fingerprint-Based Criminal History Record Information (CHRI) Checks Made for Non-Criminal Justice Purposes that are detailed in the attached document are being made in order to bring the language of the policy into alignment with revisions made by the Department of Criminal Justice Information Services (DCJIS) in its model policy for the Statewide Applicant Fingerprint Identification Services (SAFIS) model Criminal History Record Information (CHRI) Policy for Non-Criminal Justice Entities, which applies

to all Massachusetts pre-k to grade 12 public schools.

Supporting data:

Policy Governing Fingerprint-Based Criminal History Record Information (CHRI) Checks Made for Non-Criminal Justice

Purposes

Respectfully submitted,

Kenneth N. Salim, Ed.D. Superintendent of Schools

File: ADDA-1

CAMBRIDGE 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 and are in addition to the Criminal Offender Record Information (CORI) checks that the school district conducts pursuant to its Criminal Offender Record Information Policy and state law regarding conducting CORI checks on current and prospective employees, contracted service providers, volunteers and school transportation providers and other individuals who may have direct and unmonitored contact with children.

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., IdentoGo website address, Provider Identification Number (Provider ID).

The Superintendent may, as appropriate, also obtain a fingerprint-based state and national criminal history record check for any volunteer, subcontractors or laborers commissioned by the School Committee, Cambridge Public Schools or employed by the City to perform work on school grounds, who may have direct and unmonitored contact with children.

Direct and unmonitored contact with children is defined in the regulations promulgated by the Massachusetts Department of Elementary and Secondary Education as contact with a student when no other employee who has received a suitability determination by the school district is present. Contact refers to any contact with a student that provides the individual with opportunity for physical touch or personal communication.

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 records cannot be shared with any unauthorized other entitiesy for any purpose, with the exception of the limited information contained in the "Determination of Suitability" that may be shared with other school districts, as defined below, including subsequent hirring determinations. All receiving entities are subject to audit by the Massachusetts Department of Criminal Justice Information Services (DCIIS) 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 with federal and state crimesinally for the willful, 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 in accordance with applicable law. Administrative, technical, and physical safeguards, which are in compliance with the most recent FBI CJIS Security Policy, have been implemented to ensure the security and confidentiality of CHRI. 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.

VII. Relying on Previous Suitability Determination.

The school district may obtain and relay on a favorable \underline{S} suitability $\underline{d}\underline{D}$ etermination from a prior employer if the following criteria are met:

The sSuitability dDetermination was made within the last seven years; and

The individual has not resided outside of Massachusetts for any period longer than three years since the $s\underline{S}$ uitability \underline{dD} etermination was made to the employer's knowledge; 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/her employment for school employers, based on the employment history information provided by the individual. For

If the individual works as a substitute employee, the individual is still deemed suitable for employment by the school employer who made the 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.

VIII. Adverse Decisions Based on CHRI

If inclined to make an adverse decision based on an individual's CHRI, the <u>Cambridge Public Schools school</u> 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 the Cambridge Public Schoolsis CHRI Policy;
- Provide the individual the opportunity to complete or challenge the accuracy of his/her CHRI with the appropriate agency or agencies; and
- Provide the individual with information on the process for updating, changing, or correcting CHRLas generally provided by the DCIIS.

A final adverse decision based on an individual's CHRI will not be made until the individual has been afforded a reasonable period of time depending on the particular circumstances, which in most instances will not exceed fifteen (15) days and at a maximum will not exceed thirty (30) days to correct or complete the CHRI. <u>During this period</u>, the individual may not be actively employed by the Cambridge Public Schools.

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.

IX. Local Agency Security Officer

The Cambridge Public Schools, as a non-criminal justice agency (NCJA) that receives CHRI, is required to designate a Local Agency Security Officer (LASO). An individual designated as a LASO is:

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In addition to the above, the LASO shall notify the DCJIS of the termination of any individual authorized to access CHRI who is also a SAFIS-R User. This notification shall be made immediately upon the termination of the user and shall be accomplished by emailing a SAFIS-R User Designation Form with the "Remove" checkbox checked to the DCJIS SAFIS Unit at safis@state.ma.us.

Authorized Personnel Transfer

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Any individual with access to CHRI who has been reassigned or transferred shall have his/her access reviewed by the LASO to ensure access is still appropriate. If continued access is determined to be inappropriate, the LASO shall immediately suspend access following the steps below:

- a. The LASO will review access to CHRI;
- b. The review will be initiated when the LASO is notified of the reassignment or transfer.
- c. The timeframe for disconnection of CHRI access will be completed no longer than twenty-four hours after the LASO received notification of the reassignment or transfer.
- d. The LASO will ensure that if the individual possesses any keys/access cards/access codes to files and office in which physical CHRI media is stored that such keys/access cards are turned in to the
 - c. The LASO will ensure that if the individual had access to electronic CHRI media, that the individual's email account, passwords or access codes to any electronic CHRI system of records is disabled and terminated.

In addition to the above, the LASO shall notify the DCJIS of the transfer of any individual authorized to access CHRI who is also a SAFIS-R User and for whom it is determined that CHRI access is no longer appropriate. This notification shall be made immediately upon the termination of the user and shall be accomplished by emailing a SAFIS-R User Designation Form with the "Remove" checkbox checked to the DCJIS SAFIS Unit at safis@state.ma.us.

Sanctions

Persons found non-compliant with state or federal laws, the current FBI CJIS Security Policy, DCJIS policies or regulations, or other applicable rules or regulations, including the Cambridge Public Schools Information Security Policy, will be formally disciplined. Discipline can include, but may not be limited to, counseling, the reassignment of CHRI responsibilities, dismissal, civil penalties or prosecution. Discipline will be based on the severity of the infraction and the discretion of the Cambridge Public Schools and/or the CSO of the MSP.

When an individual is sanctioned for such non-compliance, the LASO shall notify the DCJIS CSO in writing of the infraction(s) and of the discipline imposed within five (5) business days. Additionally, if the discipline imposed includes denying access to CHRI and the individual is also a SAFIS-R User for whom it is determined that CHRI access is no longer appropriate, this notification shall be made immediately upon the termination of the user and shall be accomplished by emailing a SAFIS-R User Designation Form with the "Remove" checkbox checked to the DCJIS SAFIS Unit at safis@state.ma.us.

XI. Media Protection

All media containing CHRI is to be protected and secured at all times. The following is established and to be implemented to ensure the appropriate security, handling, transporting and storing of CHRI media in all its forms.

Media Storage and Access

Electronic and physical CHRI media shall be securely stored within physically secured locations or controlled areas. Access to such media is restricted to authorized personnel only and shall be secured at all times when not in use or under the supervision of an authorized individual.

Physical CHRI media:

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Disposal of Physical Media

Once physical CHRI media (paper/hard copies) is determined to be no longer needed by the Cambridge Public Schools, it shall be destroyed and disposed of appropriately. Physical CHRI media shall be destroyed by shredding or cross cut shredding. The Cambridge Public Schools will ensure such destruction is witnessed or carried out by Authorized Personnel:

The specific steps of how disposal of physical CHRI media will occur are as follows:

- a The LASO or authorized personnel as designated by the LASO shall witness or conduct disposal.
- b. Physical CHRI media shall be destroyed by shredding or cross cut shredding.
- c. Once an employment decision is complete and any report of CHRI results to the Commissioner of the Massachusetts Department of Elementary and Secondary Education, if applicable, has occurred, the physical CHRI media shall be destroyed in accordance with applicable law.

XII. Controlled Area

As required by DCJIS and FBI regulations and policies, controls have been established and implemented in order to ensure a physically secured location for CHRI media. The Cambridge Public Schools has designated Human Resources as a controlled area for the purpose of day to day access and storage of CHRI.

In addition, the following security controls are in place:

- a. Access is limited to the controlled area during CHRI processing times to authorized personnel approved by the agency to access or view CHRI.
- b. CHRI will be locked and secured to prevent unauthorized access to the extent possible when unattended.
- c. Information system devices and documents containing CHRI will be positioned in such a way as to prevent access or viewing by unauthorized individuals.
- d. Appropriate encryption has been implemented for electronic storage of CHRI.

Reporting to Commissioner of Elementary and Secondary Education

Pursuant to M.G. L. c. 71, § 387+R and 603 CMR 51.07, if the Cambridge 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 Cambridge Public Schools shall report such decision or action to the Commissioner of Elementary and Secondary Education in writing within thirty (30) days of the employer action or educator resignation. The report shall be in a form requested by the Massachusetts Department of Elementary and Secondary Education and shall include the reason for the action or resignation as well as a copy of the national criminal history record check results. The Cambridge 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. c. 71, § 3874R and 603 CMR 51.07, if the Cambridge 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 Cambridge Public Schools shall report to the Commissioner in writing within thirty (30) days of the discovery, regardless of whether the Cambridge Public Schools retains or hires the educator as an employee. The report must include a copy of the national criminal history 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 national criminal history record check results to the employee or applicant.

Adopted: June 17, 2014

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Comment [mm3]: This tracks the language of the regulation regarding retention/destruction of

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