

Q: What laws govern school employment background checks?

A: Michigan Compiled Laws 380.1230 through 380.1230g. These are available online at <http://www.legislature.mi.gov/> or <http://www.michiganlegislature.org>. Nationally, see the Adam Walsh Act, the National Child Protection Act, and the Volunteers for Children Act.

Q: When should our employees/contractors submit fingerprints?

A: Upon offer of employment. Schools cannot legally run a fingerprint check on all potential candidates, only the candidate offered employment. Schools are required to conduct fingerprints on potential contracted employees in the same manner as any other school employment hire. Schools can run an ICHAT search on candidates as a preliminary check.

Q: What agencies, or who, is considered an Authorized Recipient?

A: An Authorized Recipient is an agency that is legally authorized by law (state or federal) to receive a criminal history background check response from the FBI and the MSP. For example, a school district is an authorized recipient.

Q: If a contracting agency is not an authorized recipient, who gets the background check result (response)?

A: The Authorized Recipient, in other words, is the agency (the school) required to run the check in the first place would receive and retain the background check result (CHRI response) from the MSP.

Q: I am a principal at a public school academy and an employee of a management company for our school. If my management company cannot receive CHRI responses, can I receive them?

A: If you work in the academy as the day to day administrator and have undergone a fingerprint based background check as a school employee, you are authorized to receive the criminal history responses on behalf of the public school academy and make the hiring decisions. Keep in mind that the criminal history responses shall be maintained at the public school academy, and kept secure from unauthorized personnel. The responses, or any details of the responses, cannot be shared with the management company, verbally or in writing.

Q: If I am a contractor, and schools are willing to establish a Security and Management Control Outsourcing Standard for Non-Channelers, can we (the contractor) run CHRI checks for the school?

A: No. As a contractor, requirements for gaining access to CHRI require additional steps during the approval access process by the FBI compared to schools. One of those steps is that the State of Michigan has a law that requires private entities (contractor) employees to have CHRI fingerprint background checks. Currently no such law exists.

Q: If a contractor can't receive CHRI responses, then basically my school can't work with them. How can this work?

A: Contractors provide other benefits other than reviewing and determining CHRI responses. They can still provide all the other duties as originally. However, when it comes to the CHRI check, they'll need to provide a process to the individual based on your school's preference. Schools are encouraged to use what is called a "red light/green light" letter. This letter will identify to the contractor if the individual is cleared to work in your school or not.

Q: What is a "red light/green light" letter?

A: Agencies can disclose the fact of passing or failing a background check even if they cannot share the actual responses. While you cannot give any details, you can say that a background check was completed and nothing was found making this person ineligible for employment in Michigan schools at of this date. You cannot explicitly say that a criminal history check was run, but you can say that they were found eligible under MCL 380.1230 and MCL 380.1230a. An example "red light/green light" letter "Affidavit for Assignment," is available at the following link: www.michigan.gov/cjicats (NCJA Forms and Templates)

Q: When and who do I provide this "red light/green light" letter?

A: Once the applicant has been sent for fingerprinting the contractor can provide the “Affidavit for Assignment,” you as the school may obtain the affidavit from the Security & Access website, or you can use a similarly created “red light/green light” letter for use. The school will complete the applicant’s full name, DOB, and position offered. Once the school has received and reviewed the response, a school representative will complete the affidavit with your agency’s employment decision and return to the contractor for their records.

Q: How does the “Affidavit for Assignment” work if the individual is working in more than one school?

A: As the contractor will have this document on file, the contractor can share the affidavit with another school where the individual will also be placed. By doing so this provides the new school with the original schools contact information that acquired the original fingerprint response. The new school can then request a copy of the CHRI response from the previously employing school entity. Therefore, allowing the individual to not have to be re-fingerprinted.

Q: I’m a contractor and the schools I currently contract with are willing to abide by the Security & Management Outsourcing Standard (OS) for NonChannelers. If we establish and incorporate all that is required per the OS, can I receive the CHRI responses?

A: No. The OS is specifically written and provides guidance for the appropriate working relationships between an entity and contractor. Per the OS any contractor having access to CHRI shall complete a CHRI background check prior to gaining access to CHRI. As no law exists explicitly mandating checks for such purpose receipt of CHRI by a contractor is not permissible.

Q: The contractor our school was working with conducted all the fingerprinting of the employee(s). I understand as the school I will be completing the fingerprint background check on contracted employees, but what about the contracted employees already working? Are schools required to have a copy of those fingerprint response from the contractor?

A: Yes. Contractors’ will be working to provide copies of said background check responses to each school a contracted employee is currently working at by December 31, 2013. Agencies are encouraged to communicate with their respective contracting entities to determine responses needed. If your agency has not communicated with the contractor, you are encouraged to do so. After this date any and all records held by the contractor will be returned and/or destroyed. The MSP will ensure no copies are maintained by the contractor.

Q: Does the contracting agency have a responsibility in regards to any previous background check results (responses) they have on file?

A: Yes, the contracting agency must return this result (response) to the authorized recipient that should have received it originally. If determination of the authorized agency cannot be made, the response should be destroyed.

Q: What is “secondary dissemination”?

A: Giving the criminal history response to anyone else. Unless explicitly authorized by law, this is generally illegal. Sharing with other schools is allowed per The Revised School Code guidance MCL 380.1230a(11) 7 (12), and an employee for which the record pertains. You must log any secondary dissemination (date shared, disseminated record, requesting agency/whom the response was shared with, method of sharing, and agency personnel that shared the CHRI).

Q: If the ISD, RESA, RESD, or ESA runs after school programs facilitated through the local school districts and an SE fingerprint is completed on those employees, can the local school district share the response with a contracting agency?

A: No, fingerprint responses for any reason cannot be shared with an unauthorized entity (private contractor).

Q: Can responses be shared with parochial schools, private schools, or charter schools?

A: Yes. A K-12 school is able to share with other K-12 schools under the background check legislation.

Q: If we are an ISD that used to be the holder of prints for subs in our six local districts, and these people are not employed directly in our district, should we still have the prints or should they only be with the local district(s) that subs work for?

A: This is to your agency's discretion. The law states the response can be shared from school to school, even if obtained from an agency other than the original recipient, so long as it has been verified the applicant was continuously working in a school.

Q: Can one school agency complete a fingerprint background check on a substitute teacher and then share with other schools so as not to impose additional fingerprinting fees for the applicant?

A: Yes, one authorized agency may run the check and then share the response with other K-12 schools, so long as the individual for whom the response pertains agrees in writing to share the response and has not had a separation in service.

Q: Can my school share fingerprint background check responses with our student teachers' college or University?

A: No. There is not a sharing provision in the law for the National Child Protection Act (CPE/CPV) checks, and School Employment (SE) checks can only be shared with other K-12 schools for school employment purposes. You cannot even confirm that the record was clean. You can, however, send a "red light/green light" letter indicating that this person was/was not eligible for school employment as of [date]. You can even say that the person had nothing that would exclude him/her from working under MCL 380.1230a.

Q: My school employee is requesting a copy of their fingerprint criminal history background check response; can I give it to them?

A: Yes, as of 2010 the state and federal portion of the criminal history background check response may be shared with the individual, should the agency choose to, it is not a requirement. If sharing, please mark it with "COPY" and note it in your secondary dissemination log. It is recommended however, to only share a response if the individual is requesting it for correction or challenging purposes. Many times an individual may request a copy of their previously received criminal history response in order to circumvent another fingerprinting process. Under no circumstances should you accept a response shared through an employee, rather than a school; beyond not meeting your legal requirement, it provides an opportunity for individuals to alter the record(s).

Q: Can I have interns or student teachers fingerprinted under School Employment (SE) so that I can receive rapback?

A: No. However, if you are offering them a paid position (i.e. they have enough hours to legally substitute for their mentoring teacher), then you are required by law to run them under SE. However, as a school, volunteers and student teachers can be requested to complete fingerprint background check under the National Child Protection Act-Child Protection Volunteer (CPV).

Q: Can our intern or student teacher re-use the CPE/CPV response rather than being fingerprinted again under SE?

A: No. Criminal history responses cannot be re-used across laws or fingerprinting reasons, both by statute and because different laws have different behind-the-scenes handling processes.

Q: We ran a CPV check on a college student who had been volunteering with our school. He will soon be student teaching with us. Can we use the previous CPV response rather than re-fingerprinting?

A: Yes. CPV is the proper law/fingerprinting reason for a volunteer and student teachers who volunteers at a school. No state law exists that explicitly requires fingerprint-based background checks of student teachers, so it is at your school's discretion what you accept/require. Should the individual become an employee of the school, the school is required by law to run a SE fingerprint check.

Q: If the National Child Protection Act (CPE/CPV) is not required by law, and I do not have a requiring state law for fingerprinting, what other background check options are there?

A: An agency may run name based criminal history background checks through ICHAT for a State of Michigan check. For non-publics, and non-profit organizations, a fee-waived ICHAT check is available.

To find out eligibility please contact the Michigan State Police, ICHAT Coordinator at MSP-CRD-APPLHELP@michigan.gov.

Q: What if a college or university also runs a school?

A: While they are doing business under the name of the elementary or secondary school administration, you may treat them as any other K-12 school and share the response. For example, Hillsdale College runs Hillsdale Academy and you can share SE responses with them for school employment purposes. If one of your teachers needs a check for a course s/he is taking at Hillsdale College, that is not acting as a school administration, so you cannot share (and the shared SE response would probably not fulfill the requirement there anyway).

Q: Do students also working for a school need to be background checked?

A: Yes, but a different kind. Per MCL 380.1230 (13), students enrolled in an education program are exempt; for current students up to age 19 and special education students up to age 26, run an ICHAT instead of completing a fingerprint background check. The law does not specify that it must be a student *of your school*, just that s/he still be enrolled as a pupil.

Q: What does "NO DATA RECEIVED" mean?

A: The MSP does not always know the final outcome of an arrest. It may not have been reported or at least not in a way that could be successfully matched with the original arrest. It is possible that no charges were filed or that the case was dismissed. It is also possible that there was a conviction. You may wish to ask an employee to provide documentation on what happened in that case; if you/they provide it to the MSP (see "corrections" above), the criminal history can be updated to prevent this from happening in the future.

Q: What do I do if I receive a criminal history for someone I have never heard of?

A: It's always best to wait a few days or contact any related agencies or departments that sends you contract employees in case you are about to receive notice of this new person. Destroy it and record doing so as follows. When destroying the message (delete or shred), log the date received and destroyed, the TCN and name on the background check, who received the history, who destroyed it, and how. Apologies for the inconvenience, but this is a rare case that needs an audit trail.

Q: How do I update our contact information or e-mail address?

A: Please e-mail MSP-CRD-APPLHELP@michigan.gov and include your agency ID. If you do not have a user agreement (RI-087) on file yet, please use that. Fill it in, sign it, fax or scan it, and solve two problems at once.

Q: Are there any other forms needed from the MSP?

A: The forms needed at this time are the User Agreement (RI-087) and the Local Agency Security Officer Appointment Form (CJIS-016). Please complete and return to the MSP, if your agency has not already done so. Additional resources are available at the following link: www.michigan.gov/cjicats

Q: If I complete a fingerprint background check on an individual but then our school decides not to hire the individual, can I destroy the CHRI?

A: Prior to destroying any employee records it is recommended to confirm with your legal advisor. Also, if you requested fingerprints on an individual, whether they worked only one day or not, your agency is required to provide the two pieces of supporting documentation: Position Description & Consent.