

<b>IDENTIFICATION CODE</b>
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<b>POL19-102</b>
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**TITLE: POLICY REGARDING JUDICIAL RECORDS**

<b>EFFECTIVE DATE</b>	<b>REQUIRED AUTHORIZATION</b>	<b>MONITORING COORDINATOR</b>
February 2, 2015	Administrator	Human Resources Service

**ROADMAP**

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## 1. OBJECTIVES

The purpose of this policy is to:

- Ensure the security and integrity of minor students by ensuring that persons who would be required to work with minor students or be regularly in contact with them have no criminal record relevant to the functions that could be assigned to them within the School Board, in accordance with the *Education Act* (CQLR, c. I-13.3);
- Protect the basic rights of people whose criminal record has been verified, as set out in the Charter of Human Rights and Freedoms (CQLR, c. C-12).

## 2. SCOPE

This Policy and its legal provisions regarding criminal record checks apply to all persons who would be required to work with minor students or be regularly in contact with them. These persons include salaried employees, volunteers, adult students and trainees.

Each of these individuals must complete a criminal records check under the following circumstances:

- Before hiring;
- During employment and for all persons who work with minor students or who are regularly in contact with them;
- If there is reasonable doubt;
- Following any change to their criminal record;
- During the execution of a contract for services (third-party agreements).

## 3. LEGAL FRAMEWORK

- Education Act (CQLR, c. I-13.3);
- Act respecting Access to documents held by public bodies (CQLR, c. A-2.1);
- Criminal Records Act (RSC, 1985, c. C-47);
- Charter of Human Rights and Freedoms (CQLR, c. C-12);
- Civil Code of Québec (LRQ, 1991, c. 64);
- Executive Power Act (CQLR, c. E-18);
- Youth Criminal Justice Act (S.C., 2002, c. 1);
- Policies and by-laws of the School Board;
- Current collective agreements.

## 4. VALUES

Given that the safety and preservation of the integrity of students is its foremost concern, the School Board's responsibility to its clients requires it to ensure that those persons who are in contact with minor students demonstrate past and present behaviour and conduct compatible with the school environment and the values of the Commission.

The relationship between a criminal record and the position held or liable to be held by the person in question shall be assessed in the context of the type of relationship that person has with minor students (direct, frequent, etc.) and the level of the students' vulnerability (age, handicap, social maladjustments or learning disabilities, etc.). In addition, the level of authority over students, the inherent responsibility level of the position and the fact that the position

constitutes a social model will have a concrete influence on the assessment that will be made on the record in question.

Moreover, the prejudice that may be caused the students and the danger for their safety and integrity will be the focus of the assessment on the relationship between a criminal record and the position held or liable to be held by the person in question.

As such, the premeditation of the act resulting in the criminal record and the context wherein the infraction was committed (for example, victim being a child or another vulnerable person) will be determining factors regarding the relationship to be established between the criminal record and the position of the individual.

Lastly, the behaviour and conduct adopted by those working among children must be compatible with the policies, regulations, codes of conduct and values promoted by the Commission and its schools. Examples that will be thoroughly assessed include records of violence, drugs or psychoactive substances.

## 5. GENERAL PROVISIONS

The Commission will verify criminal records in accordance with the current policy and the procedures set out for its application.

## 6. USE OF CRIMINAL BACKGROUND INFORMATION AND CONFIDENTIALITY MEASURES

Information on criminal records cannot be collected, used, transmitted or stored unless for statutory purposes. Consequently, this information is only accessible and available for use by those persons named in the agreement concluded with the police department and those authorized by their duties.

These persons must have previously signed an agreement to respect the objectives mentioned in the first clause, as per section 258.2 of the *Education Act* (CQLR, c. I-13.3).

These persons agree to respect the confidential character of the personal information, by adhering to all confidentiality measures.

## 7. ROLES AND RESPONSIBILITIES

### 7.1 Administrator

- 7.1.1 Means the person responsible and their replacement;
- 7.1.2 Conducts criminal record checks of individuals, or designates another person to do so;
- 7.1.3 Appoints the members of the review committee;
- 7.1.4 Supports the application of this Policy and its inherent procedures.

### 7.2 Human Resources Service

- 7.2.1 Ensures that those persons concerned receive the necessary information regarding criminal record checks via specified means of communication;
- 7.2.2 Coordinates and supports the application of the resulting policy and procedures in collaboration with those responsible;
- 7.2.3 Receives updates from the administrator or the review committee, as required, and conducts the necessary follow-up;
- 7.2.4 Adopts the necessary measures in accordance with the delegation of powers

and in accordance with the provisions of current collective agreements;

- 7.2.5 Informs the minister when a person holding a teaching license cannot be hired or keep their job because of the existence of a link between their records and the duties performed or about to be performed.

### **7.3 Administrative service, school and center**

- 7.3.1 Informs the person in charge of the name of any person that is required in the capacity of volunteer, adult student, trainee, contractor, etc., and who is or may be in contact with students;
- 7.3.2 Supports Human Resources in the application and dissemination of the present policy and resulting procedures.

### **7.4 Person in charge**

- 7.4.1 Collects criminal record forms;
- 7.4.2 Verifies the identity of the person who signed the form, their signature, first and last name and date of birth;
- 7.4.3 Ensures data remains confidential;
- 7.4.4 Forwards information to the person designated by the police so that they can conduct a police investigation, and receives the results of this verification;
- 7.4.5 Upon receipt of relevant documents from the person designated by the police, conducts an analysis of the case as per established procedures;
- 7.4.6 Receives comments from the person in question and meets them, as required;
- 7.4.7 Issues an opinion on the possibility of a link between the file records of a person and their duties;
- 7.4.8 Forwards the file of a person who requests a second evaluation to the review committee;
- 7.4.9 Provides required information and issues relevant notices to persons under review;
- 7.4.10 Forwards these notices to the HR department, as per established procedures.

### **7.5 Review committee**

- 7.5.1 Establishes its operating guidelines;
- 7.5.2 Analyzes cases submitted by the person in charge, based on information contained in the file;
- 7.5.3 Forwards a recommendation to the HR management, indicating the supporting points, as per established procedures.

## **8. VERIFICATION OF CRIMINAL RECORDS**

### **8.1 At hiring**

- 8.1.1 Each person seeking employment with the Commission must complete the criminal record check form set out by the person in charge.
- 8.1.2 Any offer of employment or inclusion on a list to fill available positions is conditional to the absence of a criminal record having a relationship with the job for which the candidate applied. Any false declaration on the criminal record check form may result in termination or removal from the standby list.

### **8.2 In the process of employment or for those on a standby list**

- 8.2.1 At any time, the School Board may verify whether a person in its employ or on

the standby list has a criminal record in relation to their duties with the Commission. Upon request, this person shall submit a criminal record form;

8.2.2 In the event there is reason to believe that a criminal record exists, the School Board must ask the employee or the individual on the standby list to submit a criminal record form, within 10 days of the request;

8.2.3 Any person working with minor students at the School Board or in regular contact with them must inform the School Board of any changes to their criminal record within 10 days of being requested, regardless of whether they have already submitted a criminal record form.

### **8.3 Volunteers**

8.3.1 Any person volunteering on a regular basis with minor students at the School Board must complete the criminal record check form set out by the person in charge;

8.3.2 At any time, the School Board may verify whether a person offering volunteer services has a criminal record in relation to their duties with the Commission. Upon request, this person shall submit a criminal record form to the School Board;

8.3.3 In the event there is reason to believe that a criminal record exists, the School Board must ask the person offering volunteer services to submit a criminal record form, within 10 days of the request;

8.3.4 Any person volunteering with minor students at the School Board or in regular contact with them must inform the School Board of any changes to their criminal record within 10 days of being requested, regardless of whether they have already submitted a criminal record form.

### **8.4 Persons working with minor students in the capacity of service contractor or following a third-party agreement**

8.4.1 Policy regulations outlined apply to all persons working at a facility of the School Board under the terms of a service contract or agreement that they or their employer signed with the School Board, notably for services including school transportation, courier, cafeteria, maintenance, supervision, security or the provision of social services, or under a contract within the framework of the powers conferred upon the governing board as per section 90 of the *Education Act*, CQLR c. I-13.3.

8.4.2 This person's employer shall submit a criminal record check form to the Commission, set out by the person in charge.

8.4.3 The contract or agreement concluded with the business or hiring agency shall include a clause pertaining to the verification of valid criminal records throughout the duration of this contract or agreement.

### **8.5 Adult students**

The regulations set out in this policy apply to any adult student in contact with minor students. The latter will have to complete a criminal record form to be eligible for adult education.

## 9. CASE ANALYSIS AND DECISION

Absence of criminal record

When a check reveals no past criminal record, the School Board may hire or retain the person whose record was checked.

### **Evidence of a criminal record**

In the event a case revealing a criminal record is presented to the School Board, the person in charge conducts a preliminary analysis in order to establish whether this criminal record may have a bearing on the duties. If no relationship is found, the Commission may hire or retain the person whose record was checked.

Otherwise, the person in charge informs the individual in writing that their case will be reviewed, and that they may submit any comments they feel relevant within ten days before a decision is made. The person in charge then analyzes the case by examining the particular circumstances and taking into account the nature of the criminal record and its relationship with the job (nature of the tasks). This analysis is based on the absolute necessity to reconcile the protection of minor students and respect for the basic rights of those working among them. Each case must be individually assessed before a decision is made, and no automatic decision must be made.

In the case of a pending accusation considered relevant to the position held, the School Board may suspend the person in question or take other steps in conformity with that person's work conditions.

Once the review has been completed, the person in charge issues a notice. If it is favourable to the person in question, it is forwarded directly to the School Board so that a decision can be made. When the notice states that the person in question has a criminal record related to the job, the individual is informed directly. This notice lists the points the review focussed on, and makes mention of the possibility of requesting a second review of the case by the review committee, and having the individual present an explanation in front of the committee within ten days. If the person does not respond to this notice, the person in charge forwards the notice to the School Board so that it may render a decision.

When the person concerned requests a second review of the case by the review committee, the person in charge forwards the case to this committee. The review committee then assesses the relationship between the criminal record and the individual's job duties or potential duties. The person in charge does not participate in the review committee's discussions, but may be called upon to answer questions, and must also be the go-between for the review committee and the person under review. Once the case analysis has been completed, the review committee issues a notice to the School Board, whether favourable or not regarding the person under review.

Following receipt of the notice from the person in charge or the review committee, the person in charge of making a decision on behalf of the School Board reviews the results of this notice and makes one of the following decisions:

- Accepts the candidate and authorizes the offer of employment with or without conditions;
- Rejects the candidate;
- Retains the employee on staff, with or without conditions;
- Temporarily suspends a person awaiting trial;

- accepts the adult student's eligibility in the presence of a minor student;
- Terminates employment.

## 10. RIGHTS AND RESPONSIBILITIES OF THE PERSON SUBJECTED TO A CRIMINAL RECORD CHECK

The person subject to the criminal record check:

- 10.1 Agrees to declare any criminal record, as defined in clause 258.1 of the Act;
- 10.2 At the Commission's request, completes the criminal record check form within the established timeframe and includes an official ID document, when required (art. 261.0.1 to 261.0.3 of the Act);
- 10.3 Agrees, within 10 days of being notified of a change in their criminal record, to inform the school board of that change, regardless of whether they have already filed a declaration concerning their criminal record, as defined in article 261.0.4 of the Act;
- 10.4 Agrees to collaborate with the School Board throughout the criminal record verification process;

In addition, the person subjected to the criminal record check has the right to:

- 10.5 Be informed of the results of this verification;
- 10.6 Know when a decision will be made, understand the subject and reasons that moved the organization to make this decision and, as required, be made aware of the grievances that may be brought against them;
- 10.7 Be informed of the date a decision will be made and the delay they have to submit their observations;
- 10.8 To introduce any new information that may shed light on the issue and have an influence on the decision (such as a pardon request);
- 10.9 To be judged impartially and without prejudice.

## 11. DEFINITIONS

**Pending charge:** Charge brought in front of a legal or administrative court that has not yet received a decision.

**Criminal records:** List of infractions for which an individual has been deemed guilty and which comprises their criminal record.

Criminal records included in the Education Act (article 258.1) include the following:

1. a conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence;
2. a charge still pending for a criminal or penal offence committed in Canada or elsewhere; and
3. a court order subsisting against a person in Canada or elsewhere.

**Commission:** Commission scolaire du Littoral

**Police force:** Sûreté du Québec

**Privacy statement:** Statement by which an individual agrees, during the course of his duties, not



to collect, use or conserve criminal record data for purposes other than those prescribed by law.

**Conviction for an offence that has been pardoned:** It is not necessary to indicate a criminal record that has received a pardon. All individuals who wish to obtain information regarding requests for pardon may consult the Parole Board of Canada's website at: [www.npb-cnrc.gc.ca](http://www.npb-cnrc.gc.ca).

**Criminal offence:** Offence designated by federal legislation to sanction the most serious crimes that affect the basic rights of society. Some examples of criminal acts that provide for such offences include: the *Criminal Code* and the *Controlled Drugs and Substances Act*.

**Penal offence:** Offence designated by federal or provincial legislation to sanction behaviour that contravenes public welfare. For example, the *Employment Insurance Act* and the *Canadian Environmental Protection Act* include penal infractions created by federal legislation; the *Highway Safety Code* and the *Youth Protection Act* include penal infractions created by provincial legislation. This type of infraction may also result from the exercise of powers assigned to municipal authorities, such as an offence included in a municipal by-law.

**Act:** Education Act (CQLR, c. I-13.3).

**MELS:** The Ministère de l'Éducation, du Loisir et du Sport.

**Mandatory orders:** Decision of a judge that requires a person to adhere to certain imposed conditions. It could be a commitment under article 810 and seq. of the Criminal Code, a probation order, a mandatory driving prohibition order, a prohibition order for firearms, an order for restitution or a restraining order prohibiting contact with those under 14 years of age or frequenting areas where they might be encountered. This list is not exhaustive. Under the Criminal Code, discharge is considered a court order.

**Person in charge:** Individual designated by the Commission and charged with the application of the agreement concluded between the Commission and the police force (agreement allowing the Commission to avail itself to Quebec's police services to verify criminal records). The name of the person in charge is indicated in the previously mentioned agreement.

**In-charge replacement:** Individual designated by the Commission and authorized to replace the individual responsible for the application of the agreement concluded between the Commission and the police force in the event the person in charge is unable to perform their duty. The name of the in-charge replacement is also indicated in the previously mentioned agreement.

**Authorized person:** Individual whose duties and responsibilities lead him to use criminal record data and who has signed a privacy statement.

**Holder of a teaching license:** Individual holding a teaching permit, a teaching diploma, a provisional teaching authorization or a teaching degree (Regulation Respecting Teaching Licences, I-13.3, r.0.0002.1).

## 12. **Effective date**

This Policy shall enter into force on the day of its adoption.