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**MEMORANDUM**

TO: THOMAS SCOTT, M.A.S.S.

FROM: LONG & DIPIETRO, LLP

DATE: MARCH 24, 2017

RE: INQUIRIES REGARDING APPLICATIONS FOR EMPLOYMENT AND

DESTRUCTION OF STUDENT RECORDS

**I. InTRODUCTION**

This memorandum is in response to your March 23, 2017 email inquiry to Mike Long regarding the following issues. Please contact us with any questions.

**II. ISSUES**

A. Can an employee application include a question asking if the applicant has been convicted of a crime?

B. Under Massachusetts regulations, how long must a school / district hold a student record before they can dispose?

**II. SUMMARY OF APPLICABLE REGULATIONS**

1. **Employer inquiry regarding convictions upon application for employment**

**Initial Written Application:**

An employer’s initial application for employment generally cannot inquire as to whether the applicant has been convicted of a crime. Two exceptions apply: (1) if federal or state law or a regulation states that the applicant would be disqualified from the particular position because of the conviction; or (2) if federal or state law or a regulation imposes an obligation on the employer not to hire an applicant who has been convicted of a particular crime. See G.L. c. 151B, § 4(9 ½).

**Interview:**

Employers may ask about convictions for felonies or recent, serious misdemeanors in interviews, however. Please see the attached chart, codified in MCAD regulation 804 CMR 3.02, for more specific details regarding what is and is not permissible for employers to ask.

1. **Retention and Destruction of Student Records**

**Retention/Destruction Timeframes for Transcript vs. Temporary Record**

Massachusetts student records regulations set forth student record retention/destruction requirements. Under 603 CMR 23.06(1) and (3), a district must retain each student’s *transcript* for a minimum of sixty (60) years following his/her graduation, transfer or withdrawal from the school system, and must destroy each student’s *temporary record* no later than seven (7) years after the student transfers, graduates or withdraws from the school system. Written notice to the eligible student (age 14 or in 9th grade) and his/her parent (regardless of the student’s age, unless the student is 18 and bars parent access) of the approximate date of destruction of the temporary record and their right to receive the information must be made at the time of the student’s transfer, graduation, or withdrawal.

603 CMR 23.02 defines a “student record” as consisting of both a transcript and a temporary record.

**Regulatory Definition of Transcript**

A “transcript” is defined as containing “administrative records that constitute the minimum data necessary to reflect the student’s educational progress and to operate the educational system. These data shall be limited to the name, address, and phone number of the student; his/her birth date; name, address, and phone number of the parent or guardian; course titles, grades (or the equivalent when grades are not applicable), course credit, highest grade level completed, and the year completed, and highest performance level achieved on all MCAS tests required for the competency determination.”

**Regulatory Definition of Temporary Record**

A “temporary record” is defined as consisting of “all the information in the student record which is not contained in the transcript. This information clearly shall be of importance to the educational process. Such information may include standardized test results, class rank (when applicable), extracurricular activities, and evaluations by teachers, counselors, and other school staff.” Student health records are considered to be part of the temporary record.

**Periodic Review/Destruction Requirement Relative to Temporary Record**

Under 603 23.06(2), during the time a student is enrolled in a school, the principal or designee must “periodically review and destroy misleading, outdated, or irrelevant information contained in the temporary record provided that the eligible student [age 14 or in 9th grade] and his /her parent [regardless of the student’s age, unless the student is 18 and bars parent access] are notified in writing and are given the opportunity to receive the information or a copy of it prior to its destruction.”

**Test Score Removal Requirement**

Under 603 CMR 23.06(4), in accordance with G.L. c. 71, § 87, the score of any “group intelligence test” administered to a student must be removed from a student’s record at the end of the school year in which the test was administered.

**Additional Retention Requirements Relative to Portions of Student Records Impacting Financial Reporting or Audits**

Under 605 CMR 10.05(1), a district must retain any records of financial data submitted to the Department of Education End-of-Year Financial Report for seven (7) years from that school year, and must retain any records “containing data involved in any claim or expenditure which has been questioned by a state or financial audit” until “final resolution of any audit questions. Under 603 CMR 10.05(6), student records other than “program rosters and tuition payment records,” as described in 603 CMR 10.05(2) and (4), shall be maintained and disposed of in accordance with 603 CMR 23.00.