

# Frequently Asked Questions for Program Administrators and Reviewers New Background Record Check Requirements starting October 1, 2018

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There are two major policy changes starting October 1, 2018, as follows:

1. Changes to Disqualifying Offenses and New Mandatory Disqualifications: There are changes to which offenses, if found in a background record check, constitute a disqualification for the candidate. These changes are outlined in the new **Tables of Disqualifying Offenses**. The Tables of Disqualifying Offenses apply to any offense returned from the Massachusetts Criminal Offender Record Information (CORI), Sex Offender Registry Information (SORI), or fingerprint check. The Tables of Disqualifying Offenses will also include new Mandatory Disqualifications.

If a BRC candidate has an offense on their CORI, SORI or fingerprint check that EEC has categorized and confirmed is a mandatory disqualification, the candidate will automatically be found not suitable for hire. A confirmed mandatory disqualification resulting in a not suitable determination will not be subject to review or appeal.

If a background record check identifies a confirmed mandatory disqualification for a current employee or affiliated individual -- regardless of when the offense occurred -- the program must terminate the candidate’s employment or affiliation within 14 calendar days of notification. In some cases, EEC will require the candidate’s employment be terminated sooner than 14 calendar days of notifications.

1. Fingerprint Checks Required for New License or License Renewal: To obtain or renew a program license or approval, a program must confirm that all program staff and affiliated individuals currently subject to background record checks have completed a fingerprint-based check within the past three years. EEC Licensors will work with programs prior to their renewal to ensure compliance with this requirement. The program’s license will remain in a pending status until the EEC Licensor is able to certify that all program staff and affiliated individuals have undergone a fingerprint check.

In addition to the requirement and regulation changes effective October 1, 2018, 4 key terms are changing on October 1, 2018 that are relevant to BRC checks:

1. Reviewers will now be referred to as “**BRC Program Administrators**”
2. Unsupervised contact with children will now be referred to as “**Unsupervised Access to Children**”
3. Applicants will now be referred to as “**Candidates**”
4. Table of CORI Offenses will now be referred to as “**Table of Disqualifying Offenses**”
5. **What program types are impacted by the new BRC requirements?**

Mandatory disqualifications will apply only to EEC-licensed or approved child care programs and individuals on October 1, 2018. This category includes family child care providers, household members and persons regularly on the premises of family child care homes, family child care assistants, informal caregivers, group child care programs, school aged child care programs, and any individuals who have unsupervised access to children in EEC licensed or approved programs. Mandatory disqualifications will be treated as presumptive disqualifications for staff at residential programs and placement agencies at this time.

Beginning on October 1, 2018, any program seeking to obtain or renew a license or approval must confirm that all program staff and affiliated individuals currently subject to a BRC have completed a fingerprint-based scan within the past three years. This is required under existing state law and is consistent with new federal mandates under the Child Care Development Block Grant (CCDBG) Act.

1. **Which individuals in an EEC-licensed or approved program are required to be fingerprinted in order for a program to obtain or renew a license or approval?**

A licensee candidate seeking to obtain or renew an EEC license or approval must confirm that the candidate and all persons present in the program with the potential for unsupervised access to children (including household members and persons regularly on the premises in family child care programs) have completed a fingerprint check through EEC within the past three years. A final suitability determination from EEC on the fingerprint result is only required for program licensees. A suitability determination is not required to obtain or renew a license, certificate or approval; however, each individual must have successfully completed a fingerprint scan at an approved IdentoGO® fingerprinting location.

1. **After October 1, 2018, are programs still expected to conduct discretionary or presumptive reviews of candidates?**

After October 1, 2018, group and school age child care programs, residential programs, and placement agencies will continue conducting discretionary and presumptive reviews of disqualifications found in CORI checks and DCF checks. EEC’s BRC Unit will continue to conduct discretionary or presumptive reviews of all disqualifications found in fingerprint checks and SORI checks for these programs. As was the case prior to October 1, 2018, EEC may continue to require information from the candidate during its fingerprint review that has already been reviewed by program staff because the criminal information appears on both records; EEC, however, is prohibited by federal law from disclosing fingerprint information to programs. EEC will be responsible for reviewing mandatory and mandatory pending disqualifications found in a CORI, SORI or fingerprint check for all new and renewal candidates with unsupervised access to children in a program.

1. **If a candidate’s BRC is in process on October 1, and there is a disqualifying offense, should the BRC Program Administrator use the new Table of Disqualifying Offenses or the old Table of CORI Offenses when conducting the discretionary and presumptive review?**

On October 1, 2018, EEC will continue reviewing all BRC results for current and prospective family child care programs, their household members and persons regularly on the premises, and any assistants, as well as informal caregivers for whom EEC presently runs a BRC. EEC will also continue to review all SORI and fingerprint results for all program types.

When BRC Program Administrators for group and school age child care programs, residential programs, and placement agencies receive a CORI result on a current or prospective candidate, the record will be returned with a dated cover sheet. If the date on the cover sheet is October 1, 2018 or later, you need to use EEC’s new [Tables of Disqualifying Offenses](https://www.mass.gov/lists/new-background-record-check-policies#new-background-record-check-(brc)-policies:-disqualifications-). If the date is September 30, 2018 or earlier, you would use the old [Table of CORI Offenses](https://www.mass.gov/files/documents/2018/09/11/606-cmr-14.18%20old%20table%20of%20CORI%20offenses.pdf). You will review the offenses on the record and their dispositions (Conviction, Non Conviction, Delinquent, Non Delinquent, Pending) and determine how to categorize the record. Based on this categorization, you will determine if you are conducting a presumptive review or a discretionary review of the candidate. Any offense found on “Addendum A” under the Discretionary Table of Disqualifying Offenses must be reviewed by the group, school age, residential program or placement agency as a discretionary offense.

DCF reviews will remain unchanged from the current process. You will receive the DCF summary and you must send back the cover sheet to obtain the redacted DCF report. Once you receive the redacted DCF report, you can move forward with the discretionary review. After you complete the discretionary review, you must create a written rationale and return the CORI cover sheet to EEC.

For residential programs and placement agencies, all mandatory disqualifications must be reviewed by the programs as if they are presumptive disqualifications.

For group and school age child care programs, you should only receive records that show a presumptive or discretionary finding. If you receive a record that you believe has a mandatory disqualification according to EEC’s [Table of Disqualifying Offenses – Mandatory Disqualifications](https://www.mass.gov/doc/brc-policy-table-of-disqualifying-offenses-mandatory-disqualifications-effective-10118/download), please contact a member of EEC’s BRC Unit at 617-988-7841.

1. **How can I differentiate between a mandatory, mandatory pending, presumptive and discretionary disqualification?**
* If a candidate has a CONVICTION or DELINQUENT disposition in an EEC background record check, for any charge listed on EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications*, it will be considered a mandatory disqualification. EEC will review the results of all BRCs on child care candidates that include an offense that is listed in EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications*.
* If a residential or placement candidate has an OPEN, PENDING, CONVICTION, or DELINQUENT disposition on a charge listed in EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications*, their record will be considered a Presumptive Disqualifying background.
* If a candidate has a PENDING or OPEN charge found during an EEC background record check, for any charge listed on EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications*, their record will be considered a pending mandatory disqualification. EEC will send out a pending mandatory letter to the candidate and will determine the candidate’s suitability.
* A candidate is considered to have a presumptive disqualification if they have a NON CONVICTION or NON DELINQUENT disposition on a charge listed in EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications* **OR** a PENDING, OPEN, CONVICITON, or DELINQUENT disposition on a charge in EEC’s *Table of Disqualifying Offenses - Presumptive Disqualifications*.
* A candidate has a discretionary disqualifying background if they have a NON CONVICTION or NON DELINQUENT disposition on a charge listed in EEC’s *Table of Disqualifying Offenses - Presumptive Disqualifications* **OR** any disposition for any charge listed in EEC’s *Table of Disqualifying Offenses - Discretionary Disqualifications*, including any charges in *Addendum A*.
1. **What is the difference between a presumptive review and a discretionary review?**

If the offense and disposition on the record show that an offense is a presumptive disqualification, that candidate needs to obtain a letter from a **Criminal Justice Official** or **Mental Health Professional** (defined in our regulations). This letter needs to state that the candidate does not pose a risk of harm to the children in the program. After you have received this letter, you may move forward with a discretionary review.

A discretionary review is an assessment of whether an individual’s BRC poses a risk of harm to children served by the program. The assessment is made by applying the discretionary factors within EEC’s regulations.

1. **Is there a time frame to consider when looking at offenses or supports on a candidate’s record?**

No, all offenses and supports are taken into consideration, regardless of how much time has passed since the offense or support. This includes juvenile and sealed records. However, when conducting a discretionary review, the BRC Program Administrator is to use the factors within EEC BRC regulations to make a determination.

1. **Which offenses are “mandatory disqualifications”?**

Please see EEC’s [Table of Disqualifying Offenses – Mandatory Disqualifications](https://www.mass.gov/doc/brc-policy-table-of-disqualifying-offenses-mandatory-disqualifications-effective-10118/download) for the list of offenses that are classified as mandatory disqualifications in an EEC background record check. Under the federal CCDBG law, EEC is required to apply mandatory disqualifications to all existing or prospective child care candidates or affiliated individuals in EEC licensed, approved, or funded child care programs. In the new BRC requirements that begins on October 1, 2018, EEC will apply mandatory disqualifications to existing or prospective candidates in EEC-licensed child care programs who are subject to a background record check.

1. **Do mandatory disqualifications apply to candidates in residential programs or at placement agencies?**

If a candidate in a residential program or placement agency has an offense on a CORI, SORI, or fingerprint check that is listed in EEC’s *Table of Disqualifying Offenses – Mandatory Disqualifications*, the offense must be treated as if it were a presumptive offense, and EEC’s requirements for presumptive reviews would apply.

1. **Do programs need to be aware of the new mandatory disqualifications?**

EEC will handle all background record check results that include a mandatory disqualifying offense. EEC has made the *Table of Disqualifying Offenses – Mandatory Disqualifications* available so that programs and their staff are aware of the offenses that will automatically disqualify a current or prospective candidate from working in an EEC-licensed or funded child care program. If you receive a record that you believe has a mandatory disqualification per EEC’s *Table of Disqualifying Offenses – Mandatory Disqualifications*, please contact a member of EEC’s BRC Unit at 617-988-7841.

1. **Do programs need to terminate candidates who they know to have a conviction or delinquent disposition for any charge listed on EEC’s *Table of Disqualifying Offenses - Mandatory Disqualifications*, if the candidate is not due for a BRC renewal at the time the employer learns this information?**

Programs are not required to terminate candidates if they become aware of a conviction or delinquent disposition for any charge listed on EEC’s *Table of Disqualifying Offenses- Mandatory Disqualifications*. Mandatory disqualifications will not apply to existing candidates until they are re-run for a BRC or are having their BRC renewed. Candidates processed for a background record check after October 1, 2018, will be disqualified through EEC’s BRC process if they have a mandatory disqualification.

If EEC is alerted that a candidate has a conviction or delinquent disposition on their record dated after the date of their last background record check, the background record check must be re-run under EEC’s regulations. Refer to Question 17 of this document for a list of reasons a candidate would need to be re-run.

1. **What appeal rights does a child care candidate have if they have a mandatory disqualification?**

Federal law does not provide appeal rights for a mandatory disqualification. Candidates are, however, permitted to dispute the **accuracy** of their record. EEC will notify the individual that there is a mandatory disqualification in their background record check, and that they may dispute the accuracy of the information (meaning that the results of the BRC are wrong and it is not a conviction for the crime) with the relevant reporting agency (e.g., the Sex Offender Registry Board). If the candidate is unable to dispute the accuracy of the record, then EEC will find them not suitable for hire. If the candidate currently works at, or is affiliated with a program, the program must terminate their employment or affiliation within 14 calendar days of notification, unless EEC informs them to remove the candidate sooner.

1. **How do I know if a fingerprint check has been completed on a candidate within the past three years?**

You can find a fingerprint date on the BRC Manager or you can use a copy of the candidate’s receipt from IdentoGo®.

1. **On October 1, 2018, must all child care candidates in EEC-licensed programs (including janitors and cooks) -- regardless of their potential for unsupervised access to children -- complete a background record check?**

No, only those individuals present in an EEC-licensed program with the potential for unsupervised access to children (including household members and persons regularly on the premises in family child care homes) must complete a background record check. Licensed programs must ensure that all individuals in their program who have the potential for unsupervised access to children have their background record check renewed on time, and that any prospective candidates who have the potential for unsupervised access to children, and any new household members in family child care homes and individuals regularly on the premises of child care homes, complete a background record check.

1. **Do Volunteers or Third-Party Individuals (such as ABA therapists, etc.) need to complete a background record check?**

Any individual assisting in an unsupervised capacity on a regular basis and any infrequent visitors assisting in an unsupervised capacity would need to complete a background record check. If the volunteer or third-party individual does not have the potential for unsupervised access to the children in the program they would not need to complete a background record check.

1. **How often must background record checks be completed?**

Background record checks must be run once every three years unless EEC requires that a candidate be re-run sooner. EEC will require someone to be re-run sooner for the following reasons:

1. A candidate moved outside of Massachusetts since the last EEC BRC was completed and had a break in employment or affiliation of thirty days or longer;
2. When it has been revealed by the candidate, or through a reliable source, that new criminal charges have been brought against the candidate, there has been a child welfare investigation involving the candidate, or the candidate has been required to be registered or classified as a sex offender in Massachusetts or any other state or territory;
3. Candidates who have a break of one year or more from being affiliated with an EEC Program;
4. When EEC or the BRC Program Administrator has discovered that the candidate has false, misleading or incomplete information on file;
5. Candidates who may be involved in any investigation; or
6. For purposes of resolving a candidate’s pending criminal charge, sex offender status or child welfare information.
7. **Who do I contact if I have questions about what new requirements apply to my program on October 1, 2018?**

You can send an email to EECBRCupdates@mass.gov with any questions regarding these changes. We will continue to post updates on our website about upcoming changes as they will continue to be phased in over the next two years.