

## **A Study of Public School Systems' Hiring Practices Relating to the Use of Criminal Background Checks**

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Across the nation public school administrators are becoming more sensitive to and concerned about their legal duties to students regarding the misconduct of school employees, including criminal activities, which occurs as a result of the close working relationship with students. A flood of publicity created by the exposure of increased numbers of school personnel with criminal histories, particularly those with child sexual abuse convictions has caused state legislators to rethink, and in many situations to initiate legislation for the first time to control the hiring practices of public school systems. Existing in a society which has become highly transient over the last quarter of a century, school systems can no longer rely solely on written applications and personal interviews in screening and selecting employees, particularly those who will be working in close proximity to unsuspecting students. Closer scrutiny of applications and personal histories of employees must be considered.

Under the legal doctrine of respondeat superior, school systems have been held liable only for the conduct of employees acting within the scope of their employment. Criminal activity is not within the scope of a teachers employment, and school systems have generally not been found liable for such acts under this theory. However, more and more state courts are finding school systems liable under some form of negligent administration, from failure to properly investigate applicants' backgrounds before hiring to a failure to properly supervise those applicants who are hired by school systems.

The school administrator is caught on the horns of a dilemma. On one horn is the fact that in the last decade developments in anti-discrimination, privacy, and defamation law have placed constraints on school employers as they seek information about applicants to fill sensitive positions in the schools, including teachers, school counselors, special education teachers, physical education teachers, coaches, and even volunteers. On the other horn is the looming threat of lawsuits charging school administrators and school systems with negligent hiring and retaining personnel with criminal backgrounds who commit the same crimes against students of which they previously had been convicted. This dilemma demands that school systems do a more thorough job in screening applicants and supervising employees.

In an effort to ascertain the extent state legislators have dealt with the issue of hiring practices of school systems, particularly the procedures used in screening the applicants' criminal backgrounds, the existence, or lack thereof, of statutes regulating criminal background checks of school personnel were studied. The office of state attorney general or legal counsel for the state board of education was contacted in all 50 states and asked to provide the authors with a copy of their state statutes dealing with criminal background checks for public school personnel.

In a survey of all 50 states, it was found that 34 states had statutory regulations pertaining to criminal background checks of public school personnel (Table 1). At the time of the survey in late 1993, 16 states did not have statutes regarding criminal background checks of school personnel, although three states, Arkansas, Indiana, and Wisconsin, had pending legislation (Table 2). The state of New York did not have such a statute but the city of New York, which educates more than 50 percent of the students in the state, did have the authority for conducting criminal background checks of school applicants. The statutes in the 34 states were categorized as mandatory, those requiring school systems to conduct background checks; or permissive, those which only authorize school system to conduct background checks with the applicant's approval. Twenty-five mandated that criminal background checks be done either at the certification stage, prior to hiring, or after hiring. Ten were categorized as permissive (Table 3). In 29 of the 34 states, the statutes were applicable to both certified and noncertified personnel (Table 4).

Generally these statutes require the school district to obtain verifiable information regarding the criminal history of persons employed in the public schools in positions which place them in close proximity to children. The type of search for the criminal history of the person varies, but generally includes either a search for the person's fingerprints in the national criminal history record files, or a criminal history record check, not involving fingerprints, by the state's criminal justice center.

Understanding that the concern of educators in identifying and ridding the schools of personnel who endanger the lives of the children is an issue of recent vintage, the writers reviewed all state statutes in terms of when they were implemented. Fifteen of the mandatory statutes were passed and went into effect in the 1990s; 16 statutes were passed in the 1980s. Only two states, Nevada and Iowa, had statutes prior to 1980 (Table 5). Nevada's statute was changed in 1993. It is the only state statute which provides for strict liability in cases where a child suffers as a result of a sexual offense when the offender could have been identified as a prior offender through a criminal background check.

In addition to reviewing the extent states' statutes regulate criminal background checks of school personnel, a survey of 129 school systems, 100 located in the southeastern United States and 29 systems selected from states across the country, was conducted to determine the procedures used by school systems in reviewing and screening applicants for public school positions. With 92 of 129 surveys returned (71%), the following information reflects the hiring practices of those participating in this study. The questions (Table 6) were an attempt to identify personnel practices in today's selection and employment of public school personnel beyond that of the traditional vita with references.

A background check (question 1) was used by 86 of the 92 respondents (93%). One school replied "no" but indicated they did check on the employee's background after hiring. Another "no" reply indicated they would check only if the last employer was not listed on the application.

Question two showed a positive reply for 66 of the 92 respondents (72%). Twenty-five respondents utilized a state law enforcement agency to provide information for the formal criminal background check. Others cited were local law enforcement ( $n = 14$ ), and federal law enforcement ( $n = 2$ ), with 22 answering that a combination of those indicated were used.

Fifty-one of 92 respondents (55%) reported that they do a personal character check of applications (question 3). A combination of former employers ( $n = 23$ ) and references ( $n = 21$ ) comprised the source of the information gained.

A work experience check (question 4) was carried out by 84 of the schools reporting (91%). A telephone call or personal visit to the previous employer(s) was indicated most often ( $n = 71$ ) as the way the information was compiled, followed by a written confirmation ( $n = 59$ ) from the previous employer(s), and third, the work experience record provided by the candidate ( $n = 45$ ).

The fifth question asked about listing references. Seventy-two (78%) responded that they did require references for employment. References were contacted usually by telephone ( $n = 55$ ) or in writing ( $n = 26$ ).

A follow-up question to #5 asked if references not given by the candidate were contacted. Forty-three (47%) stated they did, selecting the names from a previous employer of the applicant, a co-worker of the applicant, or an investigative agency.

Question six addressed the authorization of a background check by the applicant. There were 56 affirmative replies (61%).

The final question (#7) examined whether additional screening of athletic coaches and physical education teachers was performed. Only 9 (10%) responded that they did. Of the small number responding "yes," the following were listed as sources for the information: college preparation program, previous athletic director(s), and prior administrator(s). Even though the nature of coaching and teaching physical education places the individual in close proximity to the students, it appears that school systems are not adding more criteria in the selection process when hiring for these positions.

What can schools do to improve their investigatory procedures so as to avoid liability of hiring applicants who pose a threat to school children? The following list of practices is recommended.

1. Train personnel administrators in all areas of the law relating to hiring and dismissal of personnel.
2. Write clear and concise job descriptions. Know what the applicant will be doing if hired.
3. Develop application forms which comply with federal and state laws and school board policy.
4. Require applicants to certify that all information on the application is true and accurate.
5. Obtain authorization from the applicant allowing the school system to conduct an investigation and perform a criminal background check.

6. Warn applicant that application will not be considered if falsified.
7. Obtain copies of professional certification and degrees if applicable to job.
8. Check on non-indicated references as well as indicated references and check on references beyond the most recent employers of applicant.
9. Document all information gathered from former employers.
10. Look for unexplained gaps in applicant's work history as well as major changes in type of employment.
11. Conduct a criminal background check if permitted by law. If your state has a mandatory statute, follow all mandates. If the statute is permissive, the school system should seriously consider doing criminal checks on all persons working in close proximity to students. If criminal records are found, then the school system must determine if there is a relation between the crime committed and the person's ability to perform the respective job.

***APPENDIX***

Since the completion of this study and the tabulation of the data in 1993, 4 additional states have passed legislation addressing criminal background checks of school personnel: Georgia, Indiana, Wisconsin, and Wyoming.

**Table 1.** Statutory Regulations of Criminal Background Checks of School Personnel.

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STATES WITH STATUTES

ALABAMA  
ALASKA  
ARIZONA  
CALIFORNIA  
COLORADO  
CONNECTICUT  
DELAWARE  
FLORIDA  
HAWAII  
ILLINOIS  
IOWA  
KENTUCKY  
LOUISIANA  
MARYLAND  
MASSACHUSETTS  
MICHIGAN  
MISSISSIPPI  
MISSOURI  
NEVADA  
NEW HAMPSHIRE  
NEW JERSEY  
NORTH CAROLINA  
OHIO  
OKLAHOMA  
OREGON  
PENNSYLVANIA  
SOUTH CAROLINA  
TENNESSEE  
TEXAS  
UTAH  
VERMONT  
VIRGINIA  
WASHINGTON  
WEST VIRGINIA

**Table 2.** Statutory Regulations of Criminal Background Checks of School Personnel.

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STATES WITHOUT STATUTES

ARKANSAS  
GEORGIA  
IDAHO  
INDIANA  
KANSAS  
MAINE  
MINNESOTA  
MONTANA  
NEBRASKA  
NEW MEXICO  
NEW YORK  
NORTH DAKOTA  
RHODE ISLAND  
SOUTH DAKOTA  
WISCONSIN  
WYOMING

**Table 3.** Statutory Regulations of Criminal Background Checks of School Personnel.

STATE	MANDATORY	PERMISSIVE
ALABAMA	X*	-
ALASKA	X*	X*
ARIZONA	X*	-
CALIFORNIA	X*	-
COLORADO	X*	-
CONNECTICUT	X	-
DELAWARE	X	-
FLORIDA	X	-
HAWAII	-	X
ILLINOIS	X	-
IOWA	-	X*
KENTUCKY	X	-
LOUISIANA	X	-
MARYLAND	X	-
MASSACHUSETTS	X	-
MICHIGAN	X	-
MISSISSIPPI	-	X*
MISSOURI	-	X
NEVADA	X*	-
NEW HAMPSHIRE	X	-
NEW JERSEY	X	-
NORTH CAROLINA	-	X
OHIO	-	X*
OKLAHOMA	-	X
OREGON	X*	-
PENNSYLVANIA	X	-
SOUTH CAROLINA	X	-
TENNESSEE	-	X
TEXAS	X	-
UTAH	X	-
VERMONT	-	X
VIRGINIA	X*	-
WASHINGTON	X	-
WEST VIRGINIA	X	-

**Table 4.** Statutory Regulations of Criminal Background Checks of School Personnel.

STATE	CERTIFIED PERSONNEL	NON-CERTIFIED PERSONNEL
ALABAMA	X	X
ALASKA	X	X
ARIZONA	X	-
CALIFORNIA	X	X
COLORADO	X	X
CONNECTICUT	X	X
DELAWARE	X	-
FLORIDA	X	X
HAWAII	X	X
ILLINOIS	X	X
IOWA	X	X
KENTUCKY	X	X
LOUISIANA	X	X
MARYLAND	X	X
MASSACHUSETTS	X	X
MICHIGAN	X	-
MISSISSIPPI	X	X
MISSOURI	X	X
NEVADA	X	X
NEW HAMPSHIRE	X	X
NEW JERSEY	X	X
NORTH CAROLINA	X	X
OHIO	X	X
OKLAHOMA	X	X
OREGON	X	X
PENNSYLVANIA	X	X
SOUTH CAROLINA	X	-
TENNESSEE	X	-
TEXAS	X	X
UTAH	X	X
VERMONT	X	X
VIRGINIA	X	X
WASHINGTON	X	X
WEST VIRGINIA	X	X

\* Mandatory for certification; permissive for checks prior to hiring

**Table 5.** Statutory Regulations of Criminal Background Checks of School Personnel.

<u>STATE</u>	<u>DATE OF IMPLEMENTATION</u>	<u>STATE</u>	<u>DATE OF IMPLEMENTATION</u>
ALABAMA	1985	MISSOURI	1989
ALASKA	1990	NEVADA	1967/1993
ARIZONA	1990	NEW HAMPSHIRE	1994
CALIFORNIA	1982	NEW JERSEY	1989
COLORADO	1990	NORTH CAROLINA	1991
CONNECTICUT	1994	OHIO	1993
DELAWARE	1994	OKLAHOMA	1986
FLORIDA	1984/1990	OREGON	1986
HAWAII	1990	PENNSYLVANIA	1994
ILLINOIS	1985	SOUTH CAROLINA	1985
IOWA	1977	TENNESSEE	1994
KENTUCKY	1988	TEXAS	1981
LOUISIANA	1986	UTAH	1992
MARYLAND	1986	VERMONT	1991
MASSACHUSETTS	1993	VIRGINIA	1989
MICHIGAN	1993	WASHINGTON	1992
MISSISSIPPI	1987	WEST VIRGINIA	1986

**Table 6.** Survey Questions

1. Does your school district do a background check on candidates being considered for employment beyond the information contained in the application?
2. Do you conduct a formal criminal background check?
3. Do you conduct a formal personal character check?
4. Do you conduct a work experience check?
5. Do you require written references?
6. Is the candidate required to authorize background checks as a part of the application process?
7. Does your system do any additional screening of athletic coaches and physical education teachers?



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