

Independent School **News**

Background Checks at Independent Schools

Job applicants, employees, and volunteers are not always who they seem. Every year some educational institutions are victimized by once-trusted employees and volunteers. Schools at all levels are increasingly turning to background checks to help them discover prospective hires, faculty, and staff who could endanger students or their school.

Independent schools face heightened risks because almost all students are minors in communities with high levels of trust. At the same time, nothing is more important to parents than the safety of their child, and they will take action if they believe their child's safety is at risk. Also, because so many schools, including independent schools, now conduct at least some background checks, parents expect they will be performed.

Numerous types of background checks are available, but some are of more value to independent schools than others. Schools should consider instituting checks of criminal history, sex offender registries, motor vehicle records, and employee references as well as verification of educational credentials and licenses. Background checks are a complicated topic, and readers desiring more detail may wish to consult the materials from UE's recent telephone roundtable on the topic. The "Resources" section at the end of this issue contains a web link to those materials and others of interest.

1. Criminal Histories

Criminal history checks are the most common type of background check, but the current process involves a mishmash of different laws in every state. Legislation pending in Congress would simplify the process and provide criminal history information to independent schools from all 50 states and the District of Columbia. Even if that legislation passes, it will be a number of years before the new procedures take effect, and so independent schools must contend with the current procedures for the foreseeable future.

Because that process for checking criminal histories can be confusing for independent schools, UE recommends the following three-step approach:

Step 1: Determine what checks your school is required to perform under your state's laws.

Every state has enacted legislation detailing the background checks that must be performed on school employees. In some states, those requirements extend to independent schools, while in others they apply

only to public schools. In the latter situation, UE strongly advises independent schools to do no less than public schools, and in some situations discussed below, independent schools should go further. All parents will expect the same level of protection as their children would receive in public schools, and some parents will expect more since they are paying tuition. Furthermore, the checks used by public schools will probably be considered as a reference point if litigation ever occurs alleging that the school conducted inadequate criminal history checks.

Step 2: Determine what criminal history information is available to your school.

States differ both in the types of criminal history information they provide and whether they allow independent schools the same level of access as public schools. While some states allow independent schools to use employee fingerprints to obtain the same criminal history information as public schools, other states do not give independent schools access to that information. States also vary in the breadth of criminal history records that their checks cover. Some run checks of criminal records only in their state. Others run their criminal checks through the FBI, which has access to the criminal records of all 50 states. A third approach, adopted by 27 states, is sharing state criminal records through an organization called the National Crime Prevention and Privacy Compact, which is operated by the FBI. The Compact was established because most experts acknowledge that the FBI's national database is not as current or detailed as the records kept by state law enforcement agencies.

Step 3: Evaluate whether your school needs to hire a private background checking company.

If a state does not provide independent schools with the same access to criminal records as public schools, then independent schools must turn to a private background checking company. In some states, independent schools should use the services of a background checking company even when the state provides them access to the same level of information as public schools. For example, in Massachusetts, the state provides public and independent schools with criminal history checks, but the information only contains crimes committed in Massachusetts. In addition, Massachusetts does not provide schools with access to FBI records. Consequently, if an independent school hires a teacher from outside Massachusetts, it should hire a private background checking company to investigate the criminal records of the teacher in his or her home state. This is an excellent example of independent schools doing more than the law requires of public schools.

The following chart summarizes the different situations an independent school may face and provides recommendations on what criminal history checks to perform:

If...	Then...
Independent schools have access to the same criminal records as public schools, but the criminal records are only for their state.	Run the state check. If an individual has lived out of state in the past seven years, hire a background checking firm to check county, state, and federal records in all out-of-state residences.
Independent schools, like the public schools, have fingerprint access through their states to national FBI criminal databases.	Request that the state run fingerprints through the national FBI database.

If...	Then...
Independent schools have fingerprint access to the same criminal records as public schools and their state belongs to the Compact.	Request that the state run fingerprints through the Compact database. If an individual has lived in a non-Compact state, and your state offers access to FBI records, run a national FBI fingerprint check. If your state does not offer access to FBI records, hire a background checking firm to check county, state, and federal records in all out-of-state residences for that individual.
Independent schools do not have access to criminal records databases available to public schools in their state.	Hire a background checking firm to conduct a Social Security number trace to verify identity and then check county, state, and federal criminal records in all places the individual lived for the past seven years.

Note: If it is not clear from a person's work history where the person lived during the past seven years, background checking firms can determine that information for a nominal cost.

Schools should repeat checks every three to five years unless state law requires that they be repeated more frequently.

2. Sex Offender Registries

United Educators recommends that independent schools conduct sex offender registry checks for all employees. The Department of Justice has made dramatic strides in its electronically searchable national sex offender registry. Just a year ago, only 22 states contributed information to the national registry. Now, the registry contains information from 48 states plus the District of Columbia and Guam, with Montana and Oregon being the only nonparticipants. Checks are free and take just a few seconds to perform. (See "Resources" for a web link to the national registry.)

Schools need to be careful that sex offender registries not give them a false sense of security. Studies estimate that less than 5 percent of sex offenders have criminal records. Most sex crimes are never reported, and even when they are, parents often decline to press charges in order to spare their child from additional trauma. Furthermore, national child advocacy groups estimate that approximately 25 percent of registered sex offenders are missing from state registries. Thus, while sex offender registry checks are better than nothing, they are hardly a panacea.

These holes in the sex offender detection process highlight the importance of training staff to recognize and report signs of suspicious activity. A detailed list of warning signs is contained in UE's publication *Policy Guidance: Preventing Molestation in Schools*. (See "Resources.")

3. Motor Vehicle Records

UE recommends that independent schools conduct motor vehicle record checks of all employees who drive campus-owned vehicles or who regularly drive as part of their job. Motor vehicle record checks typically cost from \$10 to \$30 and cover every state.

Independent schools differ on whether to conduct motor vehicle record checks for employees who occasionally drive students in their own vehicles, such as a teacher taking students on a field trip. The most important consideration in this area is that schools adopt a policy they can consistently enforce.

By adopting a policy requiring checks of occasional drivers, schools are assuming a legal duty. Failure to follow the school's own policies will enhance potential liability if an accident occurs. Thus, while motor vehicle record checks of occasional drivers are desirable from a risk management perspective, schools need to be realistic about whether they can implement processes to consistently enforce such policies.

4. References

Proper reference checks are one of the most powerful and underused forms of background checks. Some attorneys estimate that at least half of employment lawsuits would never have occurred if good reference checks had been performed at the time of hiring. A common obstacle is that current or prior employers often do not give out information other than positions held and dates of employment. Schools can overcome this difficulty by giving a candidate a provisional job offer, contingent upon the candidate's signing a waiver or release that allows current or prior employers to discuss in-depth information with the hiring school. These waivers should be crafted by legal counsel for the school familiar with any state or local laws that may apply.

Once a waiver is obtained, current and prior employers are generally more willing to discuss someone's work history. Schools should not limit themselves to talking only with the references the job candidate lists. Talk with any current or prior supervisor or colleague who is willing. Use contacts within your own institution to find others who may have relevant information about the candidate. Also, do not underestimate the power of the Internet. At one independent school, the business manager was suspicious about a potential employee even though a criminal record check revealed no convictions. Using Google, the business manager learned that the job candidate had left his last two school jobs under clouds of suspicion involving inappropriate behavior with children.

The ultimate goal is to make sure that you are hiring the right person for the job. It is far easier to withdraw a job offer if references do not check out than to terminate a poor employee whom you have already hired.

5. Education Credentials, Certifications, and Licenses

Inaccurate information is surprisingly common on resumes. According to the Screening and Selection Services division of Automatic Data Processing, which performed 4.3 million background checks in 2004, 42 percent of education-credential checks revealed a difference between what the applicant stated and what the verifying source reported. Sometimes the differences were not major, but sometimes they were highly significant. In one high-profile incident, the University of California at San Diego learned that a tenured English professor had never even earned a bachelor's degree. In another, the president of Quincy University in Illinois resigned after the board of trustees learned that he did not earn two master's degrees listed on his resume. Aside from degrees held, schools should also check the certification of teachers and licenses of professionals and whether a person has ever faced disciplinary action from a licensing or certification board. In addition, it is wise to check prior job history. Sometimes job candidates exaggerate their experience or conveniently omit prior jobs in order to hide negative information.

6. Volunteers

Independent schools are increasingly conducting criminal background checks on volunteers, and some states mandate checks on certain types of volunteers. UE recommends that, at the very minimum,

schools conduct sex offender registry checks on volunteers since they are free through the Department of Justice. In addition, it is a good idea to conduct criminal background checks on volunteers who have unsupervised access to children. Some examples of high-risk areas that warrant extra scrutiny include volunteers for summer camps and chaperones for overnight trips. You may wish to ask prospective volunteers in high-risk areas if anyone has ever complained about them and check with other organizations where they have volunteered in the past. UE recommends that schools conduct motor vehicle record checks of all volunteers that drive campus-owned vehicles. For volunteers that drive their own vehicles, UE recommends that institutions apply the same motor vehicle record check policies they would follow for employees in those circumstances.

7. Contractors and Temporary Employees

Contractors on campus may pose a risk if they have unsupervised access to children. Institutions may want to conduct their own checks on contractors or verify that some other entity (such as a temporary agency) has conducted a check. If a school chooses the latter approach, it should specify the types of background checks that school contractors must conduct and then obtain certification from the contractor that the checks have been performed.

8. Special Considerations in Residential Settings

Independent schools with residential facilities for either faculty or students face unique risks, most of which are not regulated by state laws. If faculty live on campus, UE recommends that any spouses or other adults living with a faculty member, such as children over the age of 21, be subject to the same background checks as the faculty member. If students live on campus, institutions need to be especially careful in developing procedures to limit access to their residential facilities. In particular, institutions should develop detailed access policies for maintenance staff, campus visitors, tutors, and other types of counselors.

9. Choosing a Background Checking Company

Schools that use background checking companies need to be aware that the industry is unregulated and that many companies charge low prices but offer outdated or inaccurate information. UE recommends that schools use one of the major national companies such as Kroll, Choice Point, or ADP. These companies have the resources to check criminal records at the county level in every state. Some good questions to ask when selecting a private background check provider include the following:

- How many years have you been in business?
- In how many jurisdictions do you have people who can actually go into the courthouses?
- How many employees do you have? (This question is a good way to judge the size of the company, an indicator of the kind of resources it has.)
- What quality control procedures do you have to ensure the checks are done correctly?

ADP offers UE members a 20 percent discount on background checks. (See “Resources” for information on how to obtain the discount.)

10. Developing a Policy

In developing a policy, schools should take three important steps. First, ensure that the policy complies with applicable state and federal laws for teachers, care of minors, and volunteers. Second, communicate the policy to all current and prospective employees and volunteers to explain why the policy is necessary. Third, make the policy general enough to provide leeway when unforeseeable circumstances arise. For example, one of the most difficult issues is evaluating negative information discovered through background checks. This analysis needs to be performed on a case-by-case basis. Thus, the policy need not delineate every possible factor but can instead provide examples of factors that will be considered in evaluating negative information discovered through background checks. A good example is the model policy promulgated by the state of Massachusetts (see “Resources”).

Conclusion

The wide array of background checks provides valuable tools for independent schools to enhance safety on campus and better screen employees before they are hired. Schools need to develop policies and then make sure the policies are enforced consistently. At the same time, schools need to recognize that background checks have their limits and do not diminish a school’s responsibility to monitor the school environment and take action whenever warning signs of potential wrongdoing arise.

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Resources

ADP Discount on Background Checks for UE Members

Background check provider ADP Screening and Selection Services provides a 20 percent discount to UE members on criminal background checks. To take advantage of this discount, call 888-606-7869 or go to www.adphire.com/affiliates/unitedEd.htm and complete the request form for more information. Be sure to identify your institution as a UE member to receive the special pricing.

Employee Background Checks: Advanced Issues

Reference Materials for UE Roundtable on Employee Background Checks

www.ue.org/membersonly/GetDocument.asp?id=799

This 36-page document provides a thorough examination of background checks. It contains detailed information on legal cases in each state, high-profile scandals, the Fair Credit Reporting Act, and factors for dealing with negative information. More than 100 footnotes provide references to numerous additional resources.

National Crime Commission and Privacy Compact

www.fbi.gov/hq/cjisd/web%20page/cc.htm

The Compact establishes an infrastructure by which states can exchange criminal records for background checking purposes. This website lists the details of the Compact, the state members, and the information that can be obtained through the Compact.

National Sex Offender Public Registry

www.nsopr.gov/

This website is maintained by the U.S. Department of Justice and contains information on the sex offender laws of each state. It allows free searches of the sex offender registries of a particular state or a national search that includes information drawn from 48 states plus the District of Columbia and Guam.

Policy Guidance: Preventing Molestation in Schools

www.ue.org/membersonly/GetDocument.asp?id=625

This UE publication describes school policy development and molestation warning signs and includes a detailed checklist for schools.

“Safe Hiring . . . and It’s the Law,” by Ann Bridgman, American School Board Journal, December 2005

www.asbj.com/2005/12/1205coverstory.html

This article provides a detailed analysis of criminal background check laws for teachers and proposed Congressional legislation to simplify the system. Although the article was written for a public school audience, most of the information is applicable to independent schools.

Sample Criminal Background Check Policy

www.mass.gov/Eeops/docs/chsb/cori_model_policy.pdf

The state of Massachusetts provides a sample policy that can be customized to a particular institution and has formed the basis for policies at some independent schools.

Sample Policy on Volunteers and Campus Visitors

www.ue.org/membersonly/GetDocument.asp?id=814

This grid was developed by UE member Phillips Academy in Andover, Mass., which has agreed to share it with other independent schools.

Sample Telephone Reference Check Questions

These helpful lists of questions for telephone reference checks were developed by Western Washington University and Duke University and are applicable to hiring at any educational institution.

- **Western Washington University**

www.acadweb.wvu.edu/hr/Employment/InfoForHiringOfficials/HiringPersonnel/tele.pdf

- **Duke University**

www.hr.duke.edu/utilities/managers/samples/reference_check_questions.doc

“Steering Clear of Liability: MVR Checks for Employee Drivers”

Risk Research Bulletin, October 2005

www.ue.org/membersonly/GetDocument.asp?id=761

This UE publication discusses how to perform a motor vehicle record (MVR) check, who should be checked, and components of a sound MVR policy.

We welcome your suggestions regarding issues you would like UE to address. Please contact us at risk@ue.org. For more information about UE, its services, and its policies, please visit our website at www.ue.org.

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