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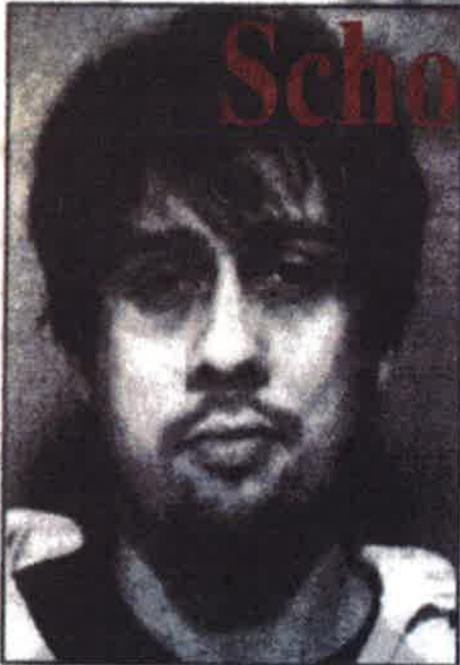
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How Much Should Schools Know About the Teachers They Hire?



Anthony Correnti was hired as a music teacher in Seaford despite sexual harassment charges raised against him in New York City.

IN THE WAKE of the arrest of a Seaford high school music teacher who had been hired without the district learning of his alleged sexual misconduct in a New York City school, administrators on Long Island are reexamining their hiring procedures to assure that children are better protected from sexual predators and criminal wrongdoers.

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Eugene R. Barnosky

What have they learned?

They have learned that they must try to protect our children with one hand tied behind their backs.

Both federal and state law limit what employers may ask job applicants. So school administrators are being forced to rely on the accuracy of what the applicants report about themselves as well as the honesty with which references are given. While personal privacy and reputation are important, the legal pendulum has swung too far in the direction of non-disclosure to the detriment of our children's safety.

Since school districts are potentially liable for the negligent hiring of a person who poses a potential danger to children, districts must conduct an investigation of the applicant's background. But district officials are wary of the possible lawsuits that may ensue if sensitive information or unsubstantiated allegations are conveyed from one district to another as part of a reference check. Lawyers may contribute to this "code of silence," since many counsel their clients to give only "name, rank and serial number" to avoid possible defamation or civil-rights suits by applicants if they are denied a job.

While New York courts have recognized a qualified privilege for the purpose of permitting a prior employer to give honest statements as to the

character of a former employee, many personnel directors are still reluctant to share negative information. The recipient of the information must also be careful not to repeat a potentially defamatory statement to other parties. Experienced personnel directors often "read between the lines" and know when they receive the terse "dates of employment only" response that there may be a problem.

While background checks are routinely conducted, it is generally unlawful to inquire about an individual's prior criminal record if the arrest did not result in a conviction. Even if convictions are discovered, a job applicant may not be automatically denied employment under the New York Correction Law unless there is a direct relationship between the criminal offense and the

*Despite concerns for
the privacy of applicants,
our laws must change
to protect students.*

job. The law expresses a laudable public policy to encourage the employment of persons previously convicted of criminal offenses who have served their time, but this

must be balanced against the school districts obligation to protect children. If anything, the law should be amended to allow school districts to choose their own criteria for employment of ex-offenders and err on the side of safety in determining that a former convict poses an unreasonable risk to the children within its charge.

Recently, administrators have been given new tools to screen job applicants. This July, as part of the recently enacted Project SAVE (Schools Against Violence in Education), all prospective school district employees must undergo fingerprinting for purposes of a criminal-background check. The State Education Department will receive criminal histories from the Department of Criminal Justice Services and the FBI. The State Education Department will then advise the school district whether the applicant is cleared for employment. State education officials will also use the same criteria under the Correction Law, which districts currently use in weighing the impact of past convictions. Afterwards, the State Education Department will be notified should the applicant ever be arrested again. In New York City, fingerprinting school employees has been a requirement for a number of years.

While this process may prove helpful in screening applicants convicted of a crime, it does not assist school officials in screening those whose misconduct does not rise to the level of criminality. This was apparently the case in Seaford.

As reported in the media, Anthony Correnti, the teacher in Seaford, had not been convicted of any crime nor had he been subject to a disciplinary action at the time he was hired. He was, however, under investigation for sexual harassment of two female students at the High School for Environmental Studies in Manhattan. The school principal gave the music teacher a glowing letter of recommendation. He resigned from the high school before the investigation was concluded, only to be hired in Seaford a month later. He has since been accused in a 52-count indictment of, among other things, videotaping sexual acts with students, one as young as 13.

This case illustrates a severe shortcoming in the current system: Pending accusations, which had

not resulted in a finding of guilt, were not known to the incoming school district.

Although Project Save has given school districts new tools such as fingerprinting and new mandates such as a prohibition on silent resignations, employment screening for school employees remains a difficult area for personnel directors. When they are screening prospective employees, personnel directors are encouraged to aggressively seek background information. On the other hand, when new employers contact them for references, they are often fearful of saying too much and exposing themselves and the district to lawsuits.

This schizophrenic role must be addressed by the state legislature by mandating that personnel directors give honest and complete information about former employees to prospective employers. The fact that an employee resigns while a sexual harassment claim is pending - even if it does not constitute a "silent resignation" now prohibited by Project SAVE - should be reported.



Gene Barnosky a partner in the Melville law firm of Lamb & Barnosky, LLP, is president of the New York State Association of School Attorneys.

OTHER VOICES



The situation we faced in Seaford could happen to any school district on Long Island. For the safety of the students and members of the community, it is very important that schools have as much relevant information as possible about prospective employees. There should be a uniform, mandatory and effective hiring process set by the state that all school districts should strictly adhere to. I am pleased that new legislation will help break the "code of silence" that has created many unfortunate situations for districts everywhere.

- **Ranier Melucci, Seaford schools superintendent**



I feel safe with all the teachers and administrators I have encountered at my school. I have never felt endangered. But the administration should do in-depth background checks of employees and get good references. The last thing students need to worry about is if their teachers have a criminal background.

- **Nick Boffoli eighth-grader at John F. Kennedy Middle School In Port Jefferson Station**



My colleagues and I are pleased the new legislation finally gives us a legal channel through which we can exchange sensitive information about former employees. Currently, when an employee leaves the district due to a criminal wrongdoing, we are forced to make "gag" deals with that employee and his or her lawyer. We are also unable to prevent the hiring of some undesirables because a comprehensive background check would infringe on their rights.

- **Nathaniel Clay, Hempstead schools superintendent**



We have a responsibility to ensure that public schools are safe places for children. Part of that responsibility includes appropriate investigation of prospective employees, including background investigation checks, authentication of credentials, telephone interviews of former employers and written letters of recommendation. It would be dangerous to assume that the new requirement to fingerprint potential employees could supplant these activities. In fact, if a district has a comprehensive pre-employment background investigation procedure in place, it is questionable whether fingerprinting will add any value to the process.

- **Pat Wall, executive director of personnel at Eastern Suffolk BOCES**



There should be intensive screening and in-depth reference checks for people applying to work within a school district. Many people I know are interested in fingerprinting and central registering for a school district's employees. It should somehow be easier for a school to get full information. More needs to be available and in a more timely way.

- **Mary Ellen Williams, president of District Council PTA at Mineola Schools**



One of the things that we recommend to all employers is that they do some reference checking. On the other hand, you don't want to completely violate an applicant's privacy. So my feeling is that you should be privy to certain information for certain kinds of jobs. If someone is selling perfume, you wouldn't want an employer to know everything about that person.

- **Comila Shahani-Denning, associate professor of psychology and co-director of the master's program in industrial/organizational psychology at Hoftra University**



All employers, including school boards, have a right to check criminal records and a school board has a responsibility to do so, plus a thorough reference check. School boards can also ask the commissioner of education if there has been a report of "moral turpitude" such as a business calling the Better Business Bureau. And starting July 2001, all new school employees must be fingerprinted. But beyond that, teachers, like all employees public and private, are protected under the labor law from inquiries into their lawful outside activities, including their political association, union activity, reading matter, off-the-job smoking or drinking, or other benign or even risky activity as long as it doesn't directly affect their jobs.

- **Barbara Bernstein, executive director of the Hassan County Chapter of the New York Civil Liberties Union.**



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