

Reference Checking for Safety in Independent Schools

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Schools use references for any number of reasons: to verify educational and career credentials, to gain insight into a candidate's skills, and to get a better understanding of the person they are hiring. Ensuring that hired candidate does not have a record of being harmful to children provides the most important reason for schools to perform thorough reference checks to ensure the appropriateness of the candidate to work with children. Many schools have a difficult time consistently following a hiring process, and too often reference checks get lost in the details. While criminal background checks uncover the most obvious infractions that have been prosecuted under the law, reference checks tell a school much more.

Getting References

The hiring school calls or otherwise contacts references and should do this consistently across all searches. Ideally the school has a checklist of the kinds of references (e.g., professional, personal, experiences working with children, etc.) it seeks and how deep it will go into an individual's list of employers and reference lists. The checklist helps the school document its process and maintain consistency over time.

When should a school contact references?

Schools should not hire an individual until the reference check is complete. Some schools, particularly in closed searches, may offer a job contingent upon a reference check, but the individual should not receive an official job offer and should not be allowed to work with students until the reference check is

complete. There are benefits to running reference checks on the final two or more candidates, as this provides the hiring school with greater insight into candidates' strengths and weaknesses and opens the door to further conversations about both before hiring.

What should we ask?

Schools should absolutely use references to verify credentials, confirm employment history, and gain insight into the individual's overall professionalism and work. However, schools should also be straightforward and clear about conduct related to maintaining professional boundaries with students. Such questions may include any — or all — of the following.

- Are you authorized by the school / camp / etc. to provide this reference on behalf of your institution?

This is an important question because most institutions have policies about who can provide references. Not all staff members will know why an individual left and they may unwittingly provide a clean reference without being aware of the circumstances that caused a separation. Schools can still speak with personal references, but these individuals will not necessarily be able to answer these questions and may be more of a "friend" than a reference point.

- Do you know why this individual left your school?

If the answer is "no," see if you can speak with someone who does.

- Have you seen this person work with children?

If not, relevant questions can be posed to someone at the school who has seen the individual work with children, if applicable.

- Do you have any concerns about this individual working unsupervised with children?

This can be asked of individuals who have a knowledge of this person's work history with the school, as well as those who have worked with the person in the school setting.

- To your knowledge, has this person ever been investigated for abuse or sexual misconduct, or disciplined or asked to resign due to such accusations?
- To your knowledge, has this person ever been involved with the abuse or neglect of children?
- This is our Code of Conduct. Based on your experience with this candidate, do you feel these boundaries will be difficult for them to maintain?
- Do you feel this person is mature enough to handle this position?
- Who else should we contact regarding this individual's history of working with children?

- Do you know where this person worked before coming to your school?
- Do you know where they went when they left?
- Would you hire this person again?

Schools should work with their legal counsel to create a list of questions that will help the school get an accurate picture of the candidate both for safety and for other purposes.

Who should be contacted?

Schools should contact as many relevant, child-service-related institutions as practicable, particularly those that other references may divulge but may have been undisclosed by the candidate. Ideally, references will be provided by those within the school, camp, or other entity who have worked with the individual and who have knowledge about why the individual left, including if there is anything that may be troubling about why this person left, or any information regarding how this candidate maintains appropriate boundaries with students. However, it may be that the entity providing the reference does not have someone authorized to speak on its behalf who has both these viewpoints of the candidate. If that is the case, it never hurts to ask to speak with someone who did work with the individual and can provide that insight.

What if the past work place refuses to provide a reference?

Often it helps for the school requesting a reference to provide a waiver form similar to the example at the end of this article. This form provides a waiver of liability to those providing references during the hiring school's reference check. Other schools may have their own forms they would prefer the individual sign before providing the reference, which can also be done. Either way, the waiver helps insulate the reference-providing school from liability for providing a truthful reference that may reflect poorly on the candidate.

If the candidate refuses to sign a waiver, then the hiring school may ask why or ask if there is anything from the candidate's history with the former school that the hiring school should know. If the former school refuses to provide a reference, the hiring school can ask if this is the school's policy across the board, or if the school is not providing a reference in this specific situation. The hiring school can also ask the candidate if there is any reason why the former school may be unwilling to provide a reference. Schools should work with legal counsel to ensure that any reference waiver forms they use are enforceable in their state and drafted appropriately for their reference processes and situations.

Once the reference checks are complete, the hiring school can ask candidates further questions relevant to what it learned during the reference check. References provide the hiring school with more insight and allow the hiring school to push for more information on specific challenge areas.

Giving References

Sometimes schools have a difficult time providing negative feedback, but references require it. In some states, namely Connecticut, Missouri, and Oregon as of the time of this writing, there is an affirmative duty for the school to disclose allegations or investigations related to abuse. A failure to disclose the information can result in liability for future harm done by the teacher or state-imposed fines and fees. Indeed, case law in some states supports a school being secondarily liable for the harm a staff member does at another school if the reference-providing school encourages the hiring and fails to disclose knowledge of past abuse. For these reasons, schools should get comfortable with how they provide references and what those references may contain.

How do we provide references?

Schools should have a process through which all references are provided. It may be through one office or it may be through one office overseeing the references being given by different staff members. For instance, the human resources office may coordinate the reference process with the business office confirming dates of employment, salary, and why the individual left; the chair of the relevant department providing commentary on the teacher's work style or methods; and the head of school offering further details relevant to deeper questions and describing any concerns. Whatever the process, having one ensures that all references are provided in the same way. The school can limit the questions it answers, as long as it answers truthfully and discloses any information that may be relevant to potential harm to a child.

What if the person was terminated?

If a staff member was terminated, it helps to know what the school's response will be if a reference is requested. If your school entered into a separation agreement with the individual, the terms of that agreement may still control the relationship of the parties — work with legal counsel on a response for a reference. People do get fired. Hiring schools can make these disclosures easier by providing a way for candidates to provide that information in the hiring process as in the sample provided.

What if we have something negative to say?

If there are negative aspects of the reference, then information provided should be clear and factually driven. Truth and accuracy are important in the event that a school faces a legal challenge for a reference. Schools can also request a waiver before providing the reference. If necessary, and likely dependent on the nature of the issue being disclosed, the school should talk with its legal counsel to ensure the reference is as factually driven and documented as possible and that any waiver provides appropriate coverage for the school. The school should keep a copy of the waiver the candidate signed. Because of secondary liability, schools that have had negative and potentially harmful interactions with candidates should not provide a reference that would somehow encourage the next school to hire that individual without disclosing the negative aspects of the reference.

Steps for Schools

Accurate, industrywide references can go a long way toward increasing the safety of independent schools. They can also help schools identify both strong cultural fits and early plans to help acclimate new staff members into their next school. Schools should look carefully at their processes and begin taking steps toward both getting and giving more accurate and helpful references. The following steps can help get you started.

Getting References

- Determine how far back or what kinds of references your school will obtain on candidates.
- Determine if there are any state reference questions that are required of your school or that are required of public schools to ensure that you are in keeping with state practices.
- Determine a list of regular reference check questions that your school will ask for all jobs.
- Determine a list of any additional questions that may be related to types of jobs.
- Determine who will oversee the reference checking process.
- Create a method to document and track the reference gathering for all final candidates.
- Ensure your reference checkers get the training they need.
- Implement appropriate applications and waivers.
- Work with legal counsel to ensure the appropriateness of the above steps and conclusions for your school.

Giving References

- Understand the state requirements or potential liability for failing to disclose concerns about abuse.
- Identify a consistent process for giving references within your school and train staff about this process so no references are given outside the established structure.
- Be aware of any separation agreements that may limit the ability to give references and work with legal counsel if the school gets contacted for a reference for that individual.
- Work with legal counsel to develop a reference waiver form for your school if needed.
- Develop a system for tracking references given and signed waiver forms (whether from your school or the school seeking the reference).

This publication is provided for informational purposes only. Schools should work with legal counsel to ensure that their practices, policies, and forms are appropriate for the school and compliant with state and federal law.

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This form is provided in the Independent School Hiring Handbook, prepared for NAIS by Linda Johnson. Schools should work with legal counsel to adopt application and waiver forms appropriate for their circumstances and state law.

Authorization and Release: Criminal Background Investigation and Reference Check

I hereby authorize *Johnson Academy* to make an independent investigation of my background, references, character, past employment, education, criminal or police records, including those maintained by both public and private organizations, and all public records for the purpose of confirming the information about my prior work and criminal background and/or obtaining other information that may be material to my qualifications for employment now and, if applicable, during the tenure of my employment with *Johnson Academy*.

I release *Johnson Academy* and its employees and any person or entity that provides information pursuant to this authorization from any and all liabilities, claims, or lawsuits in regard to the information obtained from any and all of the above-referenced sources used.

I understand that this information will be used by *Johnson Academy* for the purpose of making a determination as to my eligibility for employment, my retention as an employee, or other lawful purpose.

The following is my true and complete legal name, and all information is true and correct to the best of my knowledge:

Full Name (Printed)

Other Names Used

Present Address How Long?

City/State/Zip

Former Address How Long?

City/State/Zip

*Date of Birth, Social Security Number, Driver's License Number, State of License

Signature Date

**NOTE: Johnson Academy is an Equal Opportunity Employer and does not discriminate on the basis of any category protected by applicable law, including but not limited to race, sex, religion, age (40 and over), disability, national origin, veteran, and any other categories protected by state law.*

Self-Disclosure of Criminal Background and Work Discipline History

In addition to the criminal background check that you have agreed to undergo, and in our continuing efforts to provide a safe work environment, please complete the following questionnaire.

Name:

Date:

CRIMINAL RECORD

1. Have you ever been convicted of any of the following crimes, which conviction has not been erased or annulled?

Yes

No

Murder

Manslaughter

Sexual Assault

Kidnapping

Incest

Endangering Child

Endangering Incompetent

Indecent Exposure

Lewdness

Prostitution

Child Pornography

Computer Pornography

Child Exploitation

Obscenity Offense

2. Have you ever been convicted of some other crime, other than a minor traffic violation, which conviction has not been erased or annulled?

Yes

No

If yes, please provide the details of each conviction, including the state and city/town in which the conviction occurred, the nature of the crime or citation, date of crime and conviction, and court.

Note: Conviction of a crime other than those listed in number 1 above may not automatically disqualify you from employment. Consideration will be given to such factors as date of conviction, crime involved, job duties, and other circumstances deemed relevant by the work.

DOMESTIC VIOLENCE, ABUSE, NEGLECT, AND VIOLENCE

3. Have you ever been found by a court, administrative agency, or employer to have committed any of the following?

	Yes	No
Domestic Violence		
Stalking		
Child Abuse		
Child Neglect		
Sexual Harassment		
Other Harassment		
Assault		
Battery		
Other Act of Violence		

4. If yes, please provide the details of the matter, including what happened, the date of the incident, and the ultimate disposition.

TERMINATION AND/OR DISCIPLINARY ACTION

5. Have you ever been disciplined by an employer?

Yes	No
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6. Have you ever been discharged or asked to resign?

Yes	No
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7. If you answered yes to question 5 or 6, please explain what occurred, including a description of the situation, the date it occurred, and the employer for whom you worked. (Use the space on page 3 if you need more room for your response.)

Additional Space for Responses

(Please indicate the number of the question you are responding to.)

Applicant's Statement

I have read and fully understand the questions asked in this verification form. I understand and

agree that this verification is neither an offer of employment nor a contract. I certify that my responses to the questions on this verification form are truthful and accurate. I agree to discuss my responses further with the school on request. I understand that any misrepresentation, falsification, or omission, if any, may result in the immediate rejection of my application or, if I am hired, may result in my immediate termination from employment. I understand that if the school determines that my criminal or other background or work discipline history is not satisfactory, in its sole discretion (and based on an individualized evaluation of my record, if any), it shall be grounds for the school to withdraw any offer of employment or to terminate my employment immediately.

Print Name:

Signature:

Date: