

Insights, News & Events

## WHO'S ON YOUR CAMPUS? HAVE YOU CHECKED THE SEX-OFFENDER LIST LATELY?

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An administrator's nightmare is receiving a phone call that an individual on the sex offender's list has harmed a child within the school. To avoid this horrible situation, schools now regularly check the criminal backgrounds of employees of the institution. Many states and accrediting organizations require it.

A disturbing trend we have seen in school communities, however, is the presence of sexual offenders or sexual predators that often are under the radar for most institutions. These are spouses of employees, parents, grandparents, volunteers, contractors, or individuals on the authorized pick up lists. Many schools do not perform criminal-background checks on these individuals or even check the sexual-offender/predator website to determine whether these individuals should be permitted on the school's campus or at school-sponsored events.

In the last few years alone, schools have learned of several situations in which sex offenders (or those being prosecuted for sex crimes against children) are performing coaching services, going on overnight field trips, or wandering around the community as a beloved face interacting with young, vulnerable children.

### Unpleasant Realities

When a sexual-offender/predator is discovered in your community, it can be a difficult issue to deal with. Although it may be easy enough to restrict the individual's activities at

### Related People



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school, what about the fact that these same individuals are present at play dates, sleepovers, and other activities away from school?

Schools ask whether they have a duty to warn the entire community about an individual's sex-offender status. Should they tell parents not to let their children sleep over at a particular person's house or go to parties where that individual may be present? While there may be a desire to provide full exposure in this way (and even a posting of their photo from the sex offender site in the school hallway), there may also be legal rights that the sex offender has not to be "outed" in such a way.

Our approach for schools in discovering and addressing this issue is multifaceted and fairly simple. First, each year, the school should check all persons who are not thoroughly criminally background checked against the sex-offender list. There are some tools that larger schools have purchased that can run an immediate check against the sex-offender list based on the individual's driver's license. This requires that the school have only one or two main entrances to the school for visitors and that it enforce the procedure against all persons entering the campus.

Another, less expensive, way to handle this process (on at least a yearly basis) is to have either an outside service or a highly confidential employee run all visitors who have not been subjected to a criminal-background check through the sex-offender database. This requires that the school have good procedures to collect names of spouses, significant others, and persons who will regularly visit (grandparents) or who may be on the designated pick up list. Obviously, the list should be prepared before school starts.

In addition, names should be run of all volunteers and contractors who may have unsupervised access to children. Think about the soccer-coaching company that runs your summer programs or the parent who works in the lunchroom or during the annual fund call-a-thon. All such persons who may have unsupervised access to children should, ideally, be checked. Many of these latter people (coaches and volunteers) can be required to submit to your criminal-background processes as a condition of engaging in such activity, which is even better.

This, of course, raises the question of who has

“unsupervised” access to children. Think broadly. The person has unsupervised access if the individual will be present on your campus when children are present and may interact or encounter them in a way that is not supervised by a cleared adult. The easy one is the room parent who is present with the students frequently, sometimes when the teacher steps out. The harder ones are those that typically are supervised but may use the same restroom as a child or may walk across campus without an escort.

As to drop off and pick up, if the person will not be permitted to exit their vehicle, they will not have unsupervised access. However, if it is possible that the individual may park, wait at a designated waiting area or by the playground for the child to appear, then you have the potential of unsupervised access given the massive number of moving children and adults during this transition time. In some cases, rethinking your processes may reduce substantially the number of individuals with access.

### **“Meet My Spouse, The Sexual Predator”**

Once you have run these searches, you may be surprised at what you find. Unfortunately, a disturbing number of these individuals happen to be spouses of your employees, some of whom regularly volunteer or appear at your school. You would certainly think that your employees understand the importance of not permitting sex offenders on campus, but sometimes they justify the non-disclosure on the basis that they believe that the underlying conviction was false or unfair.

For your purposes, it does not matter. The sex offender should not be on campus, employee spouse or not. Because of this potential, we recommend that you add language to your employee handbook making clear that all employees have an obligation to report to the administration (a designated person) any information that the individual has regarding the fact that a sex offender or someone who may be in the process of prosecution or a lawsuit alleging inappropriate sexual activity with a minor may be visiting campus. Failure to do so should result in termination of employment.

Once the school has identified individuals on the sex-offender list, the school must take affirmative steps to remove or restrict them from the campus and school-related

activities. This will typically involve a conversation with the individual, followed by a letter, outlining the situation and the restrictions. There will be many permutations of the various concerns expressed by parents, including the fact that the person on the sex offender list may be the only person available to handle drop off and pick up; or that they (or the grandparent) want to come to various special activities, such as the child's ballet recital or graduation.

Each of these issues will need to be dealt with appropriately (with advice of counsel) to ensure that the school's community is protected. If there will be any limited permission for the individual to be on campus, you want to ensure that there are strict guidelines that the individual must follow such as checking in with security, ensuring security is watchful of the individual's actions, etc.

In addition, to help educate other parents in the community about sex offenders in the community and their obligation to ensure they are aware of who is supervising their children, we have long suggested that schools put a statement in their student handbook advising parents that the school performs criminal-background checks on its employees and volunteers with unsupervised access to children, but cannot attest to the background of the various parents and other adults with whom their child may associate away from school. This policy should provide a link to the appropriate governmental websites where sexual-offender/predator information can be found.

## **Legislative Actions**

After the Penn State investigation and prosecution, we have seen more attention by the various state legislatures both to discover inappropriate backgrounds for those who want to interact with children and to require more reporting of potential abuse. Some states have enacted provisions that require more persons to be criminally background checked; some have put more bite into their child abuse reporting laws by imposing substantial fines for failure to report; some have required that volunteers be trained on and required to report child abuse; and some have required specific and interactive training on child abuse.

As reflected in our June 16, 2014 Legal Alert, Florida now requires nonpublic colleges, universities and schools to inform employees and students at orientation and on the

school's website of the existence of the Florida Department of Law Enforcement sexual predator registry website and the toll-free telephone number that gives access to sexual-predator and sexual offender public information. Each of these types of steps are things you should consider for your institution. Although we hate to talk about the ugly side of our society, as a school, you can never be too safe.

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*For more information on this issue or to receive a copy of our model policy for your student handbook, contact the author at [SBogdan@fisherphillips.com](mailto:SBogdan@fisherphillips.com) or 954.525.4800.*