

Pre-Employment Background Screening Critical

By: Harben, Hartley and
Hawkins, General Counsel

Across the country the number of reported cases of sexual abuse or harassment of students committed by school employees has increased dramatically in recent years. Many of these cases have resulted in major federal litigation in which the victims of such abuse seek damages, not just from the perpetrator, but also from local school districts, superintendents, and principals. To try and establish such liability, victims make two arguments. First, they claim that the perpetrator's supervisors had knowledge or notice of past acts or accusations of sexual abuse but failed to investigate or take appropriate remedial action. Second, they allege that the school system's established procedures for investigating, hiring, and supervising employees were so deficient that they constituted deliberate indifference to students' rights.

A systematic, thorough, and consistently used process of pre-employment background screening of potential employees is absolutely critical. It is no longer

sufficient to accept at face value representations made by job candidates.

Administrators must evaluate a job application critically for danger signs. Are there time gaps between positions? Has the person left teaching for a period of time and returned, but in another state? There are legitimate explanations for such employment histories, but



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verification is essential. Not only must references provided by the applicant be checked, but someone at each prior place of employment should be contacted and asked direct questions about the individual's reason for leaving. Vague questions, such as, "is there anything we should know about John Doe," are simply inadequate. Specific questions, such as, "did you have any problems with Mr. Doe" and "were there any complaints from parents or community members about Mr. Doe's conduct in general, not just his teaching skills" address the issue directly. A record of the name of the person contacted and the responses obtained should be maintained.

In the past, many school districts in Georgia that sought to terminate the contracts of

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educators accused of sexual misconduct with students simply permitted the employee to resign. Without a specific inquiry into the reason for the resignation, a new employer would not learn the very information that would predict future behavior and signal problems. The statutory requirement that local school systems report suspected violations of the criminal law, including sexual offenses, to the Professional Standards Commission (PSC) (O.C.G.A. 20-2-984.2) is helping to minimize the problem of inadequate information. However, school systems must always check the PSC information as to each candidate and should not rely exclusively on the PSC to obtain background information. An independent investigation remains essential.

All employees hired by a local board of education for the first time must be fingerprinted and must have a criminal record check made. Certificated personnel must have a criminal record check made upon any certificate renewal application to the PSC and each local board of education must adopt policies to provide for subsequent criminal record checks for non-certificated personnel who continue to be employed by the board.

Fingerprints are used to run criminal record checks through

both the Georgia Criminal Information System (GCIC) and the National Crime Information Center (NCIC) databases maintained by the Georgia Bureau of Investigation and the Federal Bureau of Investigation. Both databases include criminal offense history information for persons who are taken into custody for felony offenses and for certain misdemeanors.

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The use of criminal record checks entails several procedural matters, as well as a small fee. This fee can either be paid by the board of education or the board can require that the fee be paid by applicants or employees. The GBI requires that the applicant or employee submit a set of fingerprints conforming to GBI standards. Most local police departments provide this service for a small charge.

A few caveats on the GCIC service are of note. First, the state computer system may not indicate criminal history from other states. Secondly, O.C.G.A. §35-3-37

elaborates a procedure whereby an individual may request the expungement of records pertaining to certain arrests, including the purging of those records from the GCIC. Where an individual is arrested but subsequently released without the offense being referred to the district attorney or where the district attorney dismisses the charges without seeking an indictment or filing an accusation, the individual may request the arresting agency in writing to expunge all records of the arrest. If no other criminal charges are pending against the individual, the individual has not been convicted of the same or similar offense within the last five years, and no other reason exists to maintain the record, the record will be expunged. The removal of this information from the GCIC system may further reduce school systems' access to an applicant's background. In general, it must be emphasized that no single source of information is complete when checking applicants.

As with all computer systems, the information obtained through background checks may be erroneous. Thus, O.C.G.A. 35-3-35 requires the employer who refuses to hire an applicant or who fires an employee on the basis of GCIC information to inform the individual of the search, the results of the search, and the effect the information had on the employment decision. Failure to provide this information

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to the employee is a misdemeanor. Furthermore, educators should be aware that the final disposition of the charges against an individual is frequently not entered into the system. Therefore, it usually will be necessary to call the local prosecutor to learn whether the individual was convicted or whether the charges were dropped or reduced, as is often the case.

The information from criminal background checks must be supplemented with solid reference checking, inquiries to the PSC, and questions on the job application designed to elicit pertinent information from prospective employees themselves. While, sadly, it may be impossible to eradicate sexual abuse of student by employees, such steps can minimize the risk of harm. In terms of avoiding liability, what is critical is not absolute prevention but, rather, that the school has taken all reasonable precautions to protect students. ■

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Geared Up For Improved Member Service

We are all feeling the effects of a struggling economy in our school district budgets. To add to these concerns, the news media is now reporting the state may indeed not send reimbursements of property tax relief revenues to counties and school districts. This news, along with the increased cost of fuel and its impact on school transportation, presents huge challenges for local school districts.

Because we too are in the public education business, GSBA remains sensitive to the difficulties faced by members of our Risk Management Fund and Workers' Compensation Fund. Please know that our commitment to Fund members is unwavering during the good as well as difficult times.

Since becoming director of GSBA's Risk Management Services in January, I've had the wonderful opportunity to visit with many of you already. And while I met some of you for the first time, many are "old" friends from my superintendent and HR days. Not only did I enjoy visiting with you, I took so much from our conversations. Combining your ideas with my own public school leadership experience, we are implementing changes in our service to Fund members. We



Trudy Sower
GSBA Director of
Risk Management

are committed to improving our support for and contact with you.

We are expanding the training options for the staffs of our Fund members. We are doing this because one of our chief goals is to provide a safe school and working environment for students and staff. We know that effective training of your staff is critical to achieving this goal. However, we also recognize that professional development budgets are smaller now and probably stretched to the limit. This rationale underscores the expansion of our training options. GSBA RMS will offer training in three delivery modes or methods: 1) by hosting scheduled webinars on high-interest or pertinent topics; 2) by conducting workshops in various geographic regions across the state; 3) by providing on-site training where appropriate.

Other Fund initiatives include:

- A certification program for

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school personnel will be sponsored by GSBA RMS through the National Alliance for Education. More information is available in this newsletter.

- A strategic plan for Risk Management Services will be developed with a kick off on August 26, 2008. Several of our members will be represented as we examine our current condition and plan our future.
- Two on-line courses will be developed to enhance district level safety and loss control.
- Job-alike focus groups will be convened. Our members, as owners of the fund, can best assist in directing our continuous improvement efforts.

On behalf of the entire GSBA RMS staff, thank you for the work you do for the children of Georgia. Please call on us if we can ever be of service to you.

*Sincerely,
Trudy*

Save the Date!

What: Annual Member Meeting

When: October 10, 2008

Where: Gwinnett Place Marriott in Duluth

Members of the GSBA Risk Management Fund and the GSBA Workers' Compensation Fund are invited to attend the Annual Member Meeting to hear guest speakers address legal, human resource issues and safety. Watch for more details coming soon.



Make Your Mark: CSRSM

GSBA, in partnership with the National Alliance for Insurance Education and Research, is proud to announce that the Certified School Risk Management Certification Program is now available in Georgia. This five-part education/designation program is for school risk managers, employee benefit managers, and the insurance representatives who work with them. All CSRSM courses are approved for 4PC and 3 ETH CE hours in Georgia. The program includes Fundamentals of Risk Management, Handling School Risks, Measuring School Risks, Funding School Risks and Administering School Risks. The first course, Fundamentals of School Risk Management, will be held at the GSBA office located in Lawrenceville on September 23rd. The Handling School Risks (Safety & Loss Control) course will be offered the next day, September 24th. The cost for each one-day course is \$179. To register, go to www.scic.com/

The CSRSM courses emphasize practice or theory and are aimed at risk management education specialists. If you are responsible for your district's property and liability insurance plan, claims management or safety program, the CSRSM courses will help you to understand how to manage your programs and reduce your total cost of risks. Complete all five courses within three years and obtain the CSRSM designation, a highly recognized symbol of professionalism.

Register today! We have limited classroom availability and seats are going fast. Go to the Alliance's website at: www.scic.com/ for additional details and registration. ■

Fundamentals of School Risk Management - September 23rd at GSBA in Lawrenceville.

The Handling School Risks (Safety & Loss Control) - September 24th at GSBA in Lawrenceville

The cost for each one-day course is \$179. Go to: www.scic.com/ to register.



Claim Reporting

An important element of any risk management program is prompt reporting of claims. GSBA requests that members report all claims immediately and at least within 24 hours of the occurrence regardless of fault. Claims should be reported to GSBA Claims Services toll-free at 1-888-245-4722 or by fax to 678-376-0056.

When a claim occurs or is received, the Member should:

1. Follow their in-house investigation and handling procedures.
2. Supply GSBA Claims Services copies of in-house reports.
3. In the event of an auto accident, please supply other pertinent information such as a police report, video, list of students on the bus and identify anyone who complains of injuries.
4. In the event of a serious auto accident, a field adjuster and or accident reconstructionist may be assigned to investigate the claim.
5. Communicate with the GSBA adjuster how they view the claim, questionable or legitimate.
6. If a claim should be denied to the claimant, GSBA Claims Services adjuster will discuss denial with the Member and obtain their opinion before submitting to GSBA's Risk Management Department for approval.
7. If the Member becomes aware of circumstances which affect the severity of a claim, GSBA Claims Services should be informed of this information as quickly as possible.
8. In the event of a property loss, the Member is asked to take such measures as are necessary to mitigate further damage.
9. In the event of a severe property loss, a field adjuster and or engineer will be assigned to assess the damage.
10. If the property damage is due to lightning, a lightning affidavit from an outside electrical vendor may be required.
11. In the event of a crime loss, a Forensic Accountant may be assigned. If so, please provide them with information regarding the nature of the loss, extent of the misappropriation of funds and documents supporting the analysis.

We have seen significant improvement in the past two years in the timeliness of claim reporting. We appreciate the response of our Members to our emphasis on reporting. ■



Time Matters!

Report claims within 24 hours by calling GSBA Risk Management toll-free at 1-888-245-4722 or by fax to 678-376-0056



Five Keys to Safety

By: Smith Systems Driver Training

- 1) Aim high in steering - look down range
- 2) Get the big picture - check your environment
- 3) Keep your eyes moving - be alert and pay attention
- 4) Leave yourself an out - exit plan
- 5) Make sure they see you - don't drive in their blind spot(s)

Welcome Long and Crisp County Schools: New Member/Owners

The Risk Management Fund welcomed two new South Georgia members July 1. Long and Crisp Counties joined 75 other school districts in Georgia who have taken advantage of the two GSBA Funds and their unique coverage and service.

Long County is located in Southeast Georgia and the City of Ludowici is its county seat. Long shares county boundary lines with Wayne and Tattnall Counties who are also members of the GSBA Funds. The Long Pre-K School Center, Smiley Elementary, Walker Middle, and Long County High are home to some 2,340 students.

Cordele is the county seat of Crisp and is located along Interstate-75 in South Central Georgia. While *Crisp County* is a new member of the Workers' Comp Fund, it is a veteran member of 11 years of the Risk Management Fund having joined in 1997. Crisp school sites include O'Neal Pre-K Center, J.S. Pate Elementary, Blackshear Trail Elementary, Southwestern Elementary, A.S. Clark Elementary, Crisp Middle and Crisp High which together serve approximately 4,250 students.

Dr. Robert L. Waters is the newly appointed Superintendent of Schools in Long and works with the following six Board Members: Chair *Dempsey Golden*, Vice-Chair

Florence Baggs, Linda DeLoach, Billy Hall, and Emma Strickland.

Crisp County's School Superintendent is *Dr. Judy Bean* and her Board Chair is *Erskine Weaver*. Serving with Mr. Weaver on the Crisp Board are Vice-Chair *Scott Forehand, Lydia Atkins, Tom Carden, Troy Pullin, and Colon Williams.*

Both the Crisp and Long County school boards are active in GSBA activities. "We are delighted to add these two outstanding school districts to our Risk

Management Funds," commented Dr. Ricky Brantley, GSBA RMS member service advocate for Southeast Georgia. Dr. Brantley had nothing but praise for the work these two school boards and staff are doing to provide quality educational programs for their students. "It has been a pleasure to work with *Dr. Judy Bean & Dr. Michael Lehr* in Crisp, and Long's *Dr. Robert Waters & Bridgett Welch*, and their boards. I look forward to working with them for many, many more years," he said.

Directory for GSBA Risk Management Services

Administration

Director - Trudy Sowar - 770-995-4371

Administrative Assistant - Mary Bailey - 770-995-4371

Claims Management

Claims Manager - Olan Hembree - 770-822-3627

Membership Development

Member Advocate - Elaine Horne - 770-995-4375

Member Advocate - Ricky Brantley - 770-995-4369

Member Advocate - Lori Sours - 770-995-4376

Member Advocate - Roger Mathews - 770-995-4383

Member Services Rep. - Adriane Highfill - 770-995-4373

Risk Information Services

Underwriting Manager - John Shore - 770-995-4372

Staff Assistant - Lorena Correa - 770-995-4377

Risk Control Services

Safety and Loss Control Manager - Bill Cody - 770-995-4381

Safety Assistant - Nakya House - 770-995-4374

Risk Control Advocate - Conni Whitten - 770-995-4378

Risk Control Advocate - Brad Thompson - 770-995-4379

Risk Control Advocate - David Magouyrk - 770-995-4382

Georgia School Boards Association

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