

Academic Leadership: The Online Journal

Volume 6
Issue 4 Fall 2008

Article 3

10-1-2008

Background Checks and Fingerprinting in Public School Systems

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Recommended Citation

Salmans, Mindy (2008) "Background Checks and Fingerprinting in Public School Systems," *Academic Leadership: The Online Journal*: Vol. 6: Iss. 4, Article 3.

DOI: 10.58809/OTBW6892

Available at: <https://scholars.fhsu.edu/alj/vol6/iss4/3>

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Academic Leadership Journal

On a single day in April 2003, parents and educators in five different states woke up to the following headlines:

“Former Educator Sentenced for Sex Crimes”

“Teacher Convicted of Having Sex with Two Students”

“Abuse Gets Ex-Teacher a Year in Jail”

“Gilbert Teacher Charged with Sexual Misconduct with Student”

“Lawsuit Says School Officials Failed To Protect Young Girl from Teacher”

(Education Week on the Web, 2003)

Although information is not kept at the national level on how often educators cross the line and shatter the sacred trust of students, Education Week conducted a six month study, from March through August of 1998, around the nation and found 244 cases of sex offenses against students by school employees (Education Week on the Web, 1998). This is not the type of publicity people want to read about their schools nor is the incident ever what any parent or child wants to experience.

The integrity and character of our leaders in the school and in the classroom—our teachers and principals—should be the first place State Education Departments look for safety, security, and positive role models for our children. Without accurate, timely background checks, public schools increase the risk that students will be placed in danger from educators with a high propensity to commit crimes against children. Within the extant literature, it is clear that research and reports focusing on employee/student sexual criminal acts are more common than other types (drug violations, theft, assault, misappropriation of funds, etc.), possibly because the American society is much less forgiving of abusive acts toward children. In most states, sexual misconduct is the primary reason that educators lose or surrender their teaching licenses (Vaishnav, 2004).

Data collected by the American Association of University Women indicated that students who are victims of educator sexual misconduct reported that they suffered emotional, educational, and developmental or health effects (Shakeshaft, 2004). At least one third of students reported behaviors that would negatively affect academic achievement. Larry Lezotte, Wilbur Brookeover, and Ron Edmonds found in their research that a safe and orderly environment was one lead indicator of school effectiveness, defined by high student achievement for all students (Lezotte, 2000). Therefore, if we know that a safe and orderly environment is essential to an effective school and we know that incidents of sexual misconduct by teachers against students are occurring, then it seems reasonable to question whether the current safeguards used by states are sufficient to ensure a safe and orderly environment for all students.

Currently, state department licensing practices and requirements for background checks are inconsistent. For example, a national survey conducted by Caroline Hendrie (2003) found that 27 states have laws targeting educators who abuse their positions of trust or authority by having sex with students and 35 states recognized the tort of negligent hiring where employers can be liable for negligently retaining employees they knew or should have known were unfit for the job when it creates a danger to third parties. Yet, as of 2003, only 17 states required school officials to report alleged wrongdoing or the resignation of educators suspected of sexual misconduct to state education officials (Education Week, 2003).

In 1987, the National Association of Directors of Teacher Education and Certification (NASDTEC) Clearinghouse was established in order to house information about licensure sanctions and background check policies. Yet only recently has NASDTEC's membership grown to include all 50 states (NASDTEC, 2000).

Recent implementation of background checks including FBI fingerprinting prompted by the fact that the inclusion of fingerprinting is a much more comprehensive and accurate background screening than name checks alone, have played a large role in keeping our classrooms safe. Although fingerprinting as a portion of comprehensive background checks is not new, the expense of background checks, the time it takes to receive information back from the checks, and the intrusiveness and criminal connotation of fingerprinting has always been of utmost concern to some states. However, fingerprint-based checks are now more effective and efficient than ever. Technology has allowed this process to become less expensive and intrusive, with faster capture of prints and a much quicker turnaround on the fingerprint background checks.

SEARCH, The National Consortium for Justice Information and Statistics, headed by Dr. Alan Westin, commissioned Opinion Research Corporation International to conduct a telephone survey of the general public in both 2001 and 2002. They examined Interstate Identification Index Name Check Efficacy in order to gather data to identify policy issues associated with the increasing demand to conduct national criminal history background checks on individuals. The results indicated there was substantial support for using biometrics (an automatic method for identifying a person on the basis of a biological characteristic such as fingerprints) as an identification tool for processes such as employment background checks (ORC International, 2002). Of those surveyed, about two in three adults (69% in 2001 and 66% in 2002), reported having been fingerprinted for identification purposes, with about nine in ten feeling it was an appropriate requirement (pg. 5). Only 20% thought fingerprinting treats people like presumed criminals (pg. 5). Support in 2001 (90% of those surveyed) for biometric readings extended to government agencies issuing required occupational licenses—such as for teachers, private guards, or nursing home workers. These readings can compare an applicant's biometric information to a database of criminal offenders not eligible to be licensed.

Although the majority of the public perceive fingerprinting, or biometrics, as an acceptable safeguard against placing convicted criminals in the classroom, there are still some teachers who feel the practice strikes at the heart of the constitutional guarantee against unreasonable search and seizure. For example, in 2000, Maine school employees were required to submit to fingerprinting and FBI criminal history records checks as part of a state plan or regulation aimed at exposing and rooting out supposed pedophiles (The Progressive, 2000). A group of 57 teachers from Maine revolted against the fingerprinting requirement and were forced to choose between abandoning their jobs and

livelihoods and professional passion, on one hand, and abandoning one of their most deeply held principles on the other: presumed innocence (The Progressive, 2000). A compromise was reached as the state still requires fingerprinting, but only at the time of licensure. The process of fingerprinting school employees is conducted at the school site.

Background Checks

Background checks are very important prior to placing educators in classrooms with students. School administrators and educator licensing agencies are responsible for such background checks which have led to the apparent need for a national “collection” clearinghouse. Lohnas (1994) found in his study that opinions concerning the creation of a national clearinghouse had been collected from readers of The American School Board Journal in 1993. Eighty-nine percent of the respondents indicated a national clearinghouse was needed to screen potential employees. Many cautioned such a clearinghouse must incorporate adequate safeguards, and the information maintained needs to be accurate and up-to-date. The 11 percent who opposed the creation of a clearinghouse feared that the possibility of misuse of information was too great (pg. 37).

Actually, at the time readers were asked to respond to the idea of creating such a clearinghouse, there was already one in place. The National Association of State Directors of Teacher Education and Certification (NASDTEC) printed its first manual in 1984. The electronic version of the clearinghouse was established in 1987. More recently, NASDTEC’s membership includes all 50 states, the District of Columbia, the United States Department of Defense Educational Activity, the Commonwealth of Puerto Rico, United States Territories, New Zealand, and Canadian Provinces and Territories (NASDTEC, 2000). All NASDTEC member jurisdictions report information to the clearinghouse about educators whose certificate have been denied, suspended, or revoked for cause which can then be accessed by all members (NASDTEC, 2000, xii).

Most states conduct background checks using fingerprint screens but differ in the process of such screening. In most cases, these processes only assist that particular state, not other states where the accused educator could be attempting to seek employment. For instance, Arizona has a system in place, but it only helps school districts in Arizona. The state maintains a secured, password-protected Web site as a resource for all schools in the state. The Web site provides Arizona school districts with current certification information, fingerprint clearance information, and information on ongoing investigations of immoral or unprofessional misconduct reports to the state board (Arizona Department of Education, 2003), however, that information is not accessible outside of Arizona, thus it is of limited value to most school districts.

Initial Licensing

Measures to avoid placing unsafe and inappropriate individuals in classrooms are usually put into place at the time of initial licensure or certification. However, the teacher licensing and certifying authority itself varies from state to state. Initial licenses in some states are granted by the college and university programs that prepare teachers, while in other states, the department of education grants all licenses. Other states have established a separate and autonomous credentialing or licensing agency (2003 Education Commission of the States).

With all states becoming members of the National Clearinghouse by the year 1999-2000, evidence of

licensure revocations and denials is much easier to obtain. However, the information is only as good as what state departments report to NASDTEC. The variations in reporting systems, disclosure requirements, and criminal background checks among the states is so great that the information gathered at the National Clearinghouse should only be treated as a starting point.

A background check obtained through the National Clearinghouse is basically a name-based background check which does not include fingerprinting that would provide the latest possible criminal activity of the applicant. The positives of a name-based background check include: fast (at least for a limited area), inexpensive, non-intrusive, better than nothing, and can check any name. Among the negatives are the following: gives a false sense of security, not based on positive identification, probably not a deterrent to those using an alias or whose criminal history is outside a given geographic area.

Perhaps the greatest negative of name-based background checks is their inaccuracy. According to the July 1999 Interstate Identification Index (III) Name Check Efficacy Study: Report of the National Task Force to the U.S. Attorney General, name checks for civil background checks resulted in an approximate 5.5% “false positive” rate—those individuals without a criminal history record are indicated to have one, and an approximate 11.7% “false negative” rate—those individuals who do have a criminal history record are not indicated to have one (Kirkpatrick, personal communication, Feb. 9, 2004). Normally, the result of a false negative is due to the individual using a false name, different DOB, etc. In light of the data collected through the Criminal Justice Information Services (CJIS), Mike Kirkpatrick concluded that it was not possible to conduct a thorough background check without the use of fingerprints (2004).

Fingerprint Identification

According to the Federal Bureau of Investigation, the first systematic use of fingerprint identification began in the United States in 1902. The New York Civil Service Commission established the practice of fingerprinting applicants to prevent them from having persons take their tests for them (<http://www.fbi.gov>). The use of fingerprint systems accelerated in 1903 when the New York state prison system began to use fingerprints for identification of criminals and then again in 1904 when the United States Penitentiary at Leavenworth, Kansas, and the St. Louis, Missouri Police Department both established fingerprint bureaus. The growing need and demand by police officials for a national repository and clearinghouse for fingerprint records led to an Act of Congress on July 1, 1921, establishing the Identification Division of the FBI (<http://www.fbi.gov>).

The Identification Division of the FBI was established with the purpose of providing a central repository of criminal identification data for law enforcement agencies throughout the nation. However, in 1933, the United States Civil Service Commission turned the fingerprints of more than 140,000 government employees and applicants over to the FBI. By doing so, a Civil Identification Section was established, and in 1992 this division became known as the Criminal Justice Information Services Division (<http://www.fbi.gov>).

On October 10, 1998, the National Crime Prevention and Privacy Compact was signed into law, establishing an infrastructure by which states can exchange criminal records for non-criminal justice purposes according to the laws of the requesting state and provide reciprocity among the states to share records without charging each other for the information. The Compact became effective April 28,

1999 (<http://www.fbi.gov>). In fiscal year 2003, approximately 8,500 individuals were added to the Criminal Master File (CMF) daily. By 2004, fifteen states had Public Law 92-544 compliant statutes requiring fingerprint-based background checks for doctors, twenty (20) for attorneys, and forty-six (46) for educators.

Fingerprinting is frequently used as a form of positive identification for conducting comprehensive background checks. Although 46 states (47, including the District of Columbia) have statutes requiring fingerprinting at some time or another, as described by the National Clearinghouse, 30 of those states require fingerprinting for certification. Thirty-four states require fingerprinting for educational employment in a public school system. Seventeen of the 34 states use fingerprinting upon employment, as well as certification. There are also 17 states require fingerprinting only upon employment, not at the time of certification. Seven states report having no policy requiring fingerprinting. However, three of the seven states (North Dakota, Montana, and Louisiana) have reported two things—no fingerprinting requirements and fingerprinting at either employment or certification (NASDTEC, 2002).

It may seem unnecessary to fingerprint at the time of employment if an individual has already been fingerprinted at the time of certification. It is, however, important to note that a certification typically lasts three to five years, which allows ample time to be employed in several different school districts. It also allows time for a person to engage in criminal activity following the fingerprinting and background check for certification.

One reason some states hesitate to require fingerprinting for the public school systems is the expense of implementation. Although the expense of fingerprinting may differ from state to state, the FBI charges \$22. States charge from \$6 (AZ) to \$75 (NY). Massachusetts is considering the addition of the FBI search, but with the expense of roughly \$25 per search as well as an additional fee for billing agents, this process becomes a financial concern when resources are already tight (Eagle Tribune, 2003). New Hampshire charges school districts a total of \$34 for fulltime employee searches—\$24 to the FBI and \$10 to the state. The cost is paid either by the district or the job candidate (Eagle Tribune, 2003).

Most states now require educators to be fingerprinted and process a criminal history background check either at the time of certification or prior to employment. In 1999, Dean Pickett, a specialist in school law, spoke to an annual conference of the National School Boards Association's Council of School Attorneys concerning fingerprinting and criminal history; "This is vital to the screening process, but it must be done with the understanding that it will reveal only those who have encountered the criminal justice system in some way. Our studies teach us that the typical pedophile employed in our schools makes his or her way through three different school employment settings before being stopped" (Education World, 1999).

Shayla Lever, director of child abuse prevention for the Los Angeles Unified School District, has the same concerns. She reported, "The majority of abusers would not have anything on file. Fingerprints don't indicate propensity. Pedophiles have a history of being in situations where the child doesn't expose them" (Post-Gazette, 1999).

Mike Kirkpatrick (2004), past Assistant Director, FBI, shared both positives and negatives of fingerprinting. There are several fairly obvious positives for fingerprints: positive identification, approximate 12% "hit" rate for civil checks against the Criminal Master File, less than 1% error rate, and the deterrence of having to submit to a fingerprint-based check. Among the negatives are the

following: time factor in taking prints and getting a response, intrusiveness of taking prints, criminal connotation of fingerprints, expense involved in setting up a fingerprint infrastructure, greater expense than name checks, training for those taking prints, and finally, inability to successfully print some people. The question of the future of fingerprinting was also posed to Mr. Kirkpatrick, Assistant Director, FBI, and his response was as follows:

This is an exciting time in the world of identification. In the very near future, I expect “flat” rather than “rolled” fingerprints to become the standard for civil checks. This leads to significantly less expensive capture stations, faster capture, and “de-criminalization.” The state of Ohio in its WebCheck program for civil background checks has made great use of Internet technology to move prints from the point of capture (i.e.: school board offices, Department of Motor Vehicles, etc.) to the state identification bureau. This eliminates the need to have an extensive communication network built within a state and allows for fast movement of data. Many states would like for the FBI to implement a “rap back” feature to Integrated Automated Fingerprint Identification System which would allow for the storage of civil prints, searching all new criminal prints against the civil file (not currently done), and sending a rap sheet back to the contributor of the civil print if the applicant is subsequently arrested. Since a background check is only a “snapshot” view of that person’s criminal history at that specific moment in time, this might cut down on the need for subsequent checks. However, there are issues with this. Some states’ privacy laws do not currently allow the FBI to retain their civil prints. Companies or organizations that send employee prints in for background checks are notified if the employee has been arrested in the past. If the prints are retained and the employee leaves the company or organization but is arrested in the future, a company could be notified that their prior employee has been arrested. This becomes a privacy issue. I believe the FBI will build this functionality and allow states to “opt in” to use it (2004).

In summary, screening with fingerprints may detect individuals who have encountered the criminal justice system, but the typical pedophile moves from one employer to another approximately three different times before being stopped (Education World, 1999). Simply gathering fingerprints from teacher applicants does not solve the concerns of safety in the classrooms. If a fingerprinted individual is found to have a positive criminal identity, what then? What action is taken? The 2009 winter edition of The Academic Leadership Journal will examine the extent and causes of certificate revocations, suspensions, or denials in states as a result of various uses of background checks and fingerprinting.

Individual states are constantly updating requirements; it is therefore advised that individuals check with each state teacher education licensing agency or department websites for up-to-the-minute changes.

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