

Recruitment and the Law: What are the responsibilities of the school and its leaders?

Dear International Task Force Members:

A working committee of the **International Task Force on Child Protection (ITFCP)** is re-examining recruiting practices, in consultation with law enforcement agencies around the world, including Australia/ Canada/ Europol/Interpol/ Netherlands/UK/US. Today, I'm writing on behalf of the **ITFCP Recruitment Committee** to share some of our emerging recommendations in response to calls for action to address recruitment challenges that have recently been posted in this forum. A full report on the activities and outcomes to date from the collective work of the Task Force will be distributed separately.

The ITFCP Recruitment Committee is a volunteer group of recruiting professionals from 12 recruiting agencies/organizations, and heads of 6 international schools who are collaborating to achieve the following objectives:

- Assess processes used by international schools and recruiting organizations to screen educators seeking positions,
- Analyze what measures need to be put into place to ensure or improve their effectiveness, and
- Recommend a set of best-practice protocols that schools and recruiting agencies can adopt to meet this objective.

Reviewing a number of recruitment related communications between heads of school during these past few months of peak recruiting activity, they have generally fallen into two categories:

- 1) Contacts to check in with colleagues about the candidates under consideration, and,
- 2) Warnings to colleagues about candidates whom they believe should not be working with children – for a variety of reasons ranging from poor performance to serious allegations of misconduct.

During this period, a number of heads have posted on AISH-net and Head-net, expressing frustration at the lack of one central “clearing house” for candidate screening, some of them referring to the work of the Task Force and wondering how we can help. Others are advising caution about “do not hire” or “please contact me” messages that lack specific detail about the reasons behind the warnings.

The question of defamation of character arose during the general session at the AAIE Conference a few weeks ago during a presentation by the International Task Force. As part of the Q&A session, a head of school asked: *“In writing references for teachers, there’s an apprehension about legal repercussions. Has language been developed as advice for those writing references?”* As a result, one of the future actions of the Task Force Recruitment Committee will be to develop language in consultation with legal experts and share this information with the international community.

In response to this request for guidance to address concerns about the legal obligations of schools leaders whether writing references, making referrals or calling for verification as part of the hiring process, the Recruitment Committee has held its own healthy discussion on these topics, as we review recruitment practices and prepare our recommendations. While the scope of our work is to address child protection challenges, there are broader areas of learning that are timely to share.



It is safe to write that **all of us** are concerned at the significant number of international hires which are seemingly being made without verification of references via direct contact with international peers. What makes this doubly frustrating is that this is one area over which we CAN have complete control and for which each school has absolute accountability. One head approached me at a recent conference with a plea that we remind everyone to make these calls. He said he had 19 teachers leaving last year, and he and his leadership team were contacted by only three of the schools where they were hired.

The ITFCP Recruitment Committee is developing recommendations to strengthen the screening of candidates in order to protect children from abuse. We believe the resulting work of this committee can also serve to enhance effective screening practices overall, addressing pervasive recruiting concerns which have continued to arise from year to year.

In our capacity as recruiters, we all must exercise due diligence as part of the selection and hiring process. What, however, is "due diligence?"

What is too much and what is too little?

Do we understand the meaning of negligence and how to avoid being negligent? How do we avoid defaming someone when the circumstances are unclear?

[Negligent hiring](#) according to UK/US law is defined as:

"...a claim made by an injured party against an employer based on the theory that the employer knew or should have known about the employee's background which, if known, indicates a dangerous or untrustworthy character. Pre-employment background checks, employee drug testing, and employment physical exams are some of the ways negligent hiring claims can be avoided."

Three examples of potentially negligent referrals and the resulting legal implications (according to UK/US law) can be found in an article published by the Pepperdine University Graziadio School of Business and Management. The full article, [Defamation Vs. Negligent Referral](#), by Linnea B. McCord, JD, MBA, can be read at their website. The article refers to three types of potentially negligent referrals which, in certain circumstances, could make an employer/referee subject to litigation.

- Providing a "good" reference which presents a candidate too positively (i.e. omits important information which may be viewed as negative)
- Providing a "bad" reference which unjustly presents the candidate too negatively
- Providing a "neutral" reference which does not provide enough important information one way or the other

As employers, we can be charged with "negligent hiring" if someone we hire harms another at our school or organization and it is subsequently proven that due diligence was not used when screening the candidate. The article goes on to illustrate how one can be charged with **negligence** if the employer (or former employer), when contacted as a referee, does not reveal factual evidence that someone is a danger to others:

Former employers can be sued for negligent misrepresentation or negligent referral if the employee is involved in some incident at the new workplace that might have been predicted based on prior behavior.

Negligent referral or misrepresentation includes the failure to disclose complete and accurate information about former employees.

Within the international school community, questions of performance and character are often resolved through non-renewal of contract. Let's face it, no one enjoys conflict (or very few of us do). Non-renewal of contract and the provision of a neutral (or no) reference are frequently chosen as the easiest and most expedient means of dealing with poor performance or behavior. This approach does not release us from our obligation to the law and our moral obligation to society as a whole.



The Recruitment Committee will be working to provide further clarification of these issues as we believe they come within the core purpose of the Task Force. Returning to the purpose and focus of the **International Task Force on Child Protection**...one of our goals is to recognize that it is law enforcement's job to track child abusers, so that educators don't have to. In order for this to happen, we have a collective responsibility to report suspected or known abuse (or other potential criminal activity) to professionals who are trained as first-responders.

When, how and where should we report suspected or known abuse? Many of you have asked for advice and counsel on this topic. The Task Force is working closely with the International Centre for Missing and Exploited Children (ICMEC), where reports can be made from anywhere in the world.

Last Friday, together with Christy Brown and Fernando Matus from the U.S. Department of State, I traveled to Alexandria, Virginia to meet Maura Harty, ICMEC's new Executive Director. Christy and Fernando introduced us to ICMEC and have been exploring the potential to work collaboratively to establish a web-based resource center on child protection education, with a focus on international challenges and reporting. Collaboration with ICMEC has high impact potential, combining resources and training with an international reporting point for suspected and known abuse through the [Tipline](#).

Staffed by professionals trained as first-responders to assess reports, provide counseling and direct-line reporting to national law enforcement agencies to investigate crimes, they are a valuable resource for international educators dealing with suspected abuse.

ICMEC has a source of funding to create a new website which will include resources for the international community. We are proceeding with our discussions and planning, as we realize we need to seek counsel from suitably trained experts in the field, to guide us through our questions and concerns about when, how and where to report suspected or known abuse.

The Task Force Recruitment Committee's findings emphasize that ultimately, **accountability and responsibility for hiring lie with the school**. Recruiting agencies have many different business models and in the marketplace, schools can select agencies that meet their needs, ranging from a full scale out-sourced screening approach including background checks and validated credentials, to a mass-market approach with no screening whatsoever.

The Committee has determined that key elements of effective screening must include:

- **Candidate profile review**
- **Collection and verification of references**
- **Identity and credentials verification**
- **Background checks:**
 - Criminal Records
 - Police Records
 - Offender Registries

The Committee has turned these recommendations over to the School Evaluation Committee, on which there is representation from all the US Accreditation agencies and British inspection agencies. This Committee is drafting updated standards for child protection that will address effective recruiting practices.

To inform the continuing work of the Task Force on this topic, and specifically the School Recruitment Committee, please contact the following people, copied on this post, who are devoting their time as volunteers in service to all of us working in international education.



ITFCP School Recruitment Committee

Bridget McNamer, Senior Associate at Search Associates (Co-chair)

Chris Akin, Secondary Principal at Colegio FDR (Co-Chair)

Roger Hove, President of ISS (Task Force Liaison to the Committee)

We hope this information is helpful to you!

Jane Larsson

Chair, International Task Force on Child Protection

Members of the Task Force

- Colin Bell, CEO, Council of British International Schools (in liaison with BSME, FOBISIA, LAHC and NABSS)
- Bambi Betts, Executive Director, Academy of International School Heads
- Christine Brown, Regional Education Officer for Europe, U.S. Department of State, Office of Overseas Schools
- Linda Duevel, President-elect, Association for the Advancement of International Education
- Roger Hove, President, International Schools Services
- Jane Larsson, Executive Director, Council of International Schools (Chair)
- Kevin Ruth, Executive Director, ECIS