

The Redwoods Group Insurance Program for YMCAs

RISK MANAGEMENT TOPIC

TOPIC: Protecting Children Through Hiring Practices

Assume that you have just learned of an allegation of horrific child abuse directed at a member of your staff. How certain are you that your records will clearly show that everything reasonably possible was done to ensure that such an event would not occur? Does your comfort level change if the individual was a volunteer instead of paid staff?

The hard realities of life are that such misbehavior by any member of your staff, paid or volunteer, can ruin your Y's reputation and devastate its finances, and those concerns do not address the possibly irreparable harm done to the affected child or children.

Probably the best way to prevent child abuse is to prevent predators from having access to children. In the staff selection environment this can be done through a combination of applications, references, background investigations, behavioral contracts, and interviews. Separate but integrally connected is mandated training.

Before addressing the *how* of the process, perhaps a few words about the *why* and the *who* would be helpful. The *why* is probably obvious – it is better to ensure that children in our care are not abused than to leave it to chance. If we are going to serve children it is incumbent on us to keep them safe – from accidental physical harm certainly, but even more from the horrors of physical, emotional/mental, or sexual abuse.

The *who* are two-fold: those we need to protect and those from whom protection is needed. We need to protect every child who enters any program or facility of ours from time of arrival until time of release into the control of a designated parent or guardian. (We also have a duty to keep them safe from other abusive or potentially abusive situations if we see signs of abuse, but that is not part of employee and volunteer screening and selection.)

Those from whom the children need protection include everyone who is in or around our facility or programs, but that is broader than the scope of this discussion which will ignore members and guests of the Y, vendors, other children, and bystanders (of off-site programs) and concentrate on volunteers and staff. Who in that subgroup might potentially abuse children? Any of them! Obviously those who work directly with the kids are potential threats, but anyone who has access to the building can approach them. Those in custodial or maintenance roles may be invisible to other adults but the children not only recognize them, they generally know most of them by name. *The process should address every paid staff person, every child-serving volunteer, and every other volunteer (program or policy) whose duties have them in the facility (i.e., using an office, leading a class, etc.).*

Applications

Written applications should be required of every person applying to work or volunteer at the YMCA, especially those referred by the courts for public service. Those who will work directly with children should fill out a supplemental application, and some states require the use of specific forms for licensed childcare workers. While use of the same application for volunteers and employees is not necessary, the two applications should be fundamentally similar. A resume is *not* a satisfactory substitute. It can be used to augment your application, but since it tells you what the applicant wants you to know instead of what you wish to learn, it should never replace your application.



An application should ...

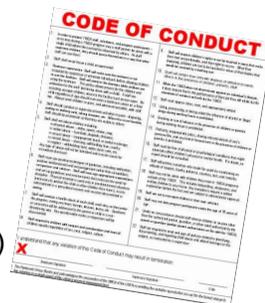
- be complete, signed, and dated (*if sections are non-applicable that should be indicated in some manner – they should not be left blank*)

- include a question about past criminal activity that is neither time-limited nor restricted only to felonies, e.g., *“Have you ever been convicted of a crime (other than a minor traffic offense) or do you have any criminal charges pending against you? If yes, please provide details. A yes answer does not necessarily disqualify you from employment.”*
- request explicit permission to conduct necessary background checks (criminal or driving history) – *the addition of a notice on the front of the application that is askew and in contrasting color (like a rubber stamp) stating “All applicants receive a thorough criminal background investigation” is an excellent initial screening device and predator deterrent*
- demonstrate continuous work history—any breaks in the sequence should be explained on the form
- include notification that any falsification is grounds for application rejection or employment termination
- request at least three references, one of whom is a close family member – *the family member reference does not help determine job qualifications; it helps provide insight regarding the applicant’s character*
- suggest that the applicant alert the references to a call—warn that non-cooperation by the reference may jeopardize the employment opportunity

Every employee/volunteer should have a completed, signed application in their file. Oversights or instances where an individual’s date of hire predated procedural changes should not be ignored...an application should be completed as soon as its omission is noted.

Behavioral Contracts

Behavioral contracts are an important tool in the effort to keep children safe. Many associations use the Y-USA Abuse Prevention Code of Conduct (or some modification) as the standard of behavior for all who work with or around children, and some use it for all staff and



volunteers (*a single-page version is available on our website*).

Things to consider when using behavioral contracts...

- make certain the person who signs the contract actually read and understood it – *give her/him plenty of unhurried time to read it and ask specific questions to ensure s/he understood what s/he read*
- give the person a copy of what was signed – *not only do you need documentation for the file, but the individual needs an accessible copy for reference and reminder*
- if the behavioral contract is introduced during the initial employee/volunteer screening process instead of during employee orientation, it may eliminate potential undesirables – *if someone is not willing to sign such a document, the process should stop immediately...no need for reference checks, no need for background checks, no need to proceed any further*

A signed copy of whatever behavioral contract your association utilizes should be in every employee and volunteer file. It is best if a new document is signed every year. This can be done as part of each person’s annual review, or can be a group effort timed with the start of school, the start of a new year, or any other convenient trigger. The reminder is good for the staff; the Y maintains current documentation, and additional sections and changes to policy (e.g., internet use policy or blog policy) can be easily added if so desired.

References

References are an important part of the screening and selection process. They provide a view of the applicant that is not available

through the written application or personal interview. Some applicants will provide letters of reference. While these are great supplemental



data, like a resume they show you only what someone else wants you to see, not necessarily what you want to learn. Use them only in conjunction with (but not in place of) your normal telephone or written reference checking protocols.

References should:

- be properly identified – i.e., should include the reference’s full name plus a means of easily contacting them, preferably day and night phone numbers (employment references will probably only have the former)
- be checked – don’t assume that a reference will only give glowing testimony. Each reference listed should be contacted (or at least attempts made) by a staff person who has been trained in the following
 - *what needs to be asked,*
 - *what cannot be asked,*
 - *how to ask in such a way as to elicit the most cooperative response,*
 - *how to listen for informative verbal clues, and how to properly document the results*
- be documented – if it isn’t recorded, it didn’t legally happen; keep a copy of each reference check document (or failed contact attempt) in the employee’s personnel file; also necessary in the documentation is an indication of who made the telephone call or entered the data, along with the date of contact
- be consistent – use a form to ensure that the necessary questions get asked of every applicant; the form may vary slightly by department if there are specific qualifications or credentials to verify, but in general it should be the same across the association
- be complete – there should be no blanks; each question should have an answer; if the reference declines to answer a question the exact phrasing of the denial should be recorded as accurately as possible
- include questions like the following
 - *“give some examples of how you have seen <applicant> interact with children”*
 - *“what skills or attributes does <applicant> have that will make working with children a positive experience for everyone involved?”*
 - *“would you rehire?” (of employment references)*

Every employee or volunteer should have two or three reference checks documented in their personnel or volunteer file. The only exceptions might be for those who were employed before your protocols changed – if someone has been an employee/volunteer for many years, you have become their reference. However, a note to the file in those cases would be prudent.

Background investigations

The basic types of background investigation used by YMCAs are criminal background checks (CBCs) and motor vehicle records (MVRs). Some positions may require a credit check (and technically the Social Security address trace discussed below falls into the credit check category). CBCs provide a picture of a person’s past social behavior, important in making decisions about who will work with and around children. MVRs give a similar view of past vehicular behavior, needful for any informed decision about individuals who may drive on association business, whether that driving is to be done in YMCA vehicles or their own.

Who needs CBCs?

- Basically, anyone who has contact and influence with children is in a position to molest a child if given the third part of the abuse triangle, seclusion. Thus, the following people, whether paid staff or volunteers, should have CBCs...
- licensed childcare workers – *the laws of most states mandate a CBC for these individuals*
 - non-licensed childcare workers – *prudence demands CBCs for anyone involved in childcare activity whether or not it is state licensed; all the children deserve the same standard of care*
 - program staff who work with youth and children, whether paid or volunteer – *prudence again demands CBCs for all involved in this arena; all have contact, all have influence, and all have the potential for seclusion*
 - anyone whose activities bring them into a facility where there are children – *except for very rare exceptions this group includes all other paid staff, all program volunteers, and*

even policy volunteers if their duties place them in your facilities, especially if they have an office in the building

Some Ys complain about the cost and inconvenience of performing CBCs on so many individuals – *however, if we cannot afford to ensure the safety of the children we seek to serve then perhaps they would be better served by those who can or will ensure their safety.* Other Ys question the wisdom of insulting volunteers by requiring CBCs of them; after all, volunteers are the life-blood of the YMCA. *However, any volunteer who has the children at heart understands the necessity of ensuring their safety and will not be offended by a CBC...those who are knowledgeable probably would be concerned by the lack of one.*

Are all CBCs the same?

CBCs can vary significantly in their detail and scope. Some report only felonious behavior, others document all criminal activity; some report findings from a limited jurisdiction (e.g., a county or a state), others search nationwide; some are performed by governmental agencies (whose use may be mandated by licensed childcare programs), others are internet-based for-profit operations; some can take literally months for results, others are nearly instantaneous.

Assuming you have options (some licensed childcare statutes mandate the source and method of inquiry) here are some things to consider when ordering CBCs...

- a thorough nationwide investigation is generally best, but some jurisdictions don't report everything upward – *i.e., a city or county may not report a violation to the state, and thus the state cannot include it in its database*
- if the individual under investigation has not lived in your area continuously for at least five years, you should search beyond your state's boundaries – *that could entail a national search or individual state searches that include all states where the individual lived, worked, or attended school during the time to be investigated*

- if you are near a state border, your minimum search should include the bordering state(s)
- if the applicant is a student who has gone to an out-of-state school your minimum search should include the state of residence plus the state(s) where the student attended school (and those bordering it, if the school was near a state border)
- fast response is better than slow response (assuming accuracy of findings) – *best practices require the results before the individual begins work*
- use of a Social Security address trace (not just verification of the applicant's Social Security number) provides a list of all addresses at which the applicant received a paycheck – *invaluable in identifying missing or false information on the employment history completed by the applicant*

What record of CBCs should be maintained?

In the event of an incident involving an employee or volunteer, verification of what was done to ensure the safety of children should be readily accessible. The best place for such information is usually the personnel or volunteer file that is kept at the association offices.

File documentation may not be simple or easy...

- most jurisdictions having authority over licensed childcare require that the original CBC be kept at the site where the individual works – *when that is the case, the entire personnel file, including the CBC, should be duplicated at the association offices*
- some jurisdictions, generally, those that require the CBC to be obtained through them do not allow the employer to retain a copy of the record, regardless of the results – *to provide verification of the CBC, the following should be done:*
 - *the personnel file should be documented with a note citing the date of CBC, its identifying number (assigned by the jurisdiction producing the document), and a comment stating that the results were satisfactory.*
 - *a master list should be kept separate from the individual files that records date*

ordered, subject's name, date received, identifying number of the CBC, and name or initials of ordering staff member for all CBCs ordered to ensure that no one's search is accidentally overlooked.

The hard truth about CBCs is that they are fallible; a clear CBC is not a 100% guarantee that the person has no criminal record and the lack of a criminal record is no guarantee that the person is not a sexual predator. That said they are still a necessary tool – one that most jurisdictions mandate for licensed childcare. While this tool may not identify every predator who seeks access to the children we serve (about 93% of predators do *not* have criminal records), failure to use it will be almost certainly considered negligent behavior by the courts.

Motor Vehicle Records

Documentation of motor vehicle experience is very important for every employee or volunteer who drives an association vehicle or who drives a personal vehicle on YMCA business. Many associations have their insurance agent/broker/company run the MVRs for them and let that person/entity determine driver acceptability. While it is perfectly acceptable to have your broker obtain the MVR (assuming that it is legal in your jurisdiction), it is unwise to allow them to make all decisions of driver acceptability. An association should never delegate safety of a critical exposure or activity to an outside entity. Thus, a copy of the MVR document should be maintained at the Y no matter how it was obtained (direct from the state, through an outside vendor, via the broker, or from the individual), and the decision regarding driver acceptability should be made by the YMCA. It is normal for a Y to set their policy based on what is acceptable by their insurance carrier, but the Y needs to make the decisions, not the insurance company.

Some important considerations regarding MVRs are...

- An evaluation of the acceptability of each driver should be done before ever allowing him/her to drive and annually thereafter – *this is best done with a current (i.e., annual) MVR coupled with a system or*

methodology to evaluate that record (see [RMA Driver Selection and Control](#))

- drivers who transport children should be held to a higher standard than other drivers, whether or not commercial driver's licenses (CDLs) are required – *this might be accomplished through more frequent MVR checks or through more stringent acceptability criteria*
- CDL drivers are required to
 - *immediately report any citation or accident to their employer*
 - *annually provide their employer with an affidavit listing any accidents or citations they have had during the previous year*
 - *the courts strongly suggest verifying the affidavit document with an MVR*
 - *prudence suggests applying the practice to all who drive on behalf of the association*

Every employee and every volunteer should have a CBC in their personnel/volunteer file. Many associations require repeat CBCs every few years, some require them annually. Similarly, every employee and volunteer who drives a personal or an association leased or owned vehicle on association business should have (preferably annually) an MVR in their personnel or volunteer file along with a statement that the indicated driving history meets association standards. An employee who was hired prior to implementation of the CBC or MVR policy should still have the necessary document(s) in file – every means without exception.

Employment Interviews

Whether each chosen applicant receives a single interview, a battery of interviews, a group interview, or a combination of methods, face-to-face interaction is critical in



the evaluation and screening process. Properly done it is the most costly part of the process because of the employee time and effort involved. It is not a good primary screening method and

probably should be the last portion of the procedure. Only those whom you believe are qualified and will fit into your association should be offered interviews.

It is important that there be a set protocol...

- Whatever form of interview you use, make certain that all interviewers have been thoroughly trained concerning acceptable and unacceptable questions and topics. Check with your human resources director, local counsel, and state statutes for the specific laws for your state.
- If multiple individual interviewers are used they should have a set of common questions – each may ask additional questions, and responses received may generate additional unique questions, but there needs to be a common ground that can be verified by the individual interviewers
- Some stage of the process should include behavioral interviewing – past performance is generally an accurate indicator of future behavior
 - *questions should deal with the applicant's experience, not hypothetical situations, so that talents, aptitudes, and skills are identified, i.e., "what did you do when..." not "what would you do if..."*
 - *questions should elicit responses that reveal skills and aptitudes rather than test knowledge; comprehension is useful, perhaps necessary to master a skill, but alone it is of little practical value*
 - *some questions should produce a demonstration of the overall traits and behaviors necessary for any position in the YMCA or working with children*
 - *there often are job specific questions because each position has its own necessary talents or aptitudes; some of the required skill sets are prerequisite, others can be trained after hiring*

- *don't be concerned with pauses – it takes an individual a moment to sift through their memory for situations that match your criteria and to formulate their response...tell them you understand that it might take a moment*
- *Arising from the interview process is the candidate assessment. Evaluation debriefings vary by the interview technique used, who and how many make the final decision, and the type of selection input each interviewer has (ultimate authority, mutual consultation, veto power, etc.).*

From the interview and assessment process a new employee/volunteer is selected, or a decision is made to re-interview one or more, or the decision is made to restart the entire process because no satisfactory applicant was identified. The interview process takes thought, prior preparation, and practice. It requires consistency and order, yet is more art than science. Experience reduces the time and effort and increases the productivity, but the results are never guaranteed.

Training

Training is technically not part of the selection and screening process and so it will not be addressed in detail here. However, it is a vital part of ensuring the children's safety. All employees and staff who serve children should receive abuse prevention training *before* they begin work with children. Best practices include its completion each year by all paid staff and program volunteers. Not all abuse is intentional and we owe it to the children in our charge to ensure that those who oversee them are fully prepared to care for them safely.

Summary

Keeping kids safe is an enormous task – proper hiring practices are only a part of the process, but they are a crucially important part – cutting corners endangers kids.

Please call us at 800-463-8546 to discuss this or any other risk management safety tip, or visit our web site at www.redwoodsgroup.com to learn more about YMCA risk management issues.