

The Hiring Process

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Guiding Considerations

- Student Safety and Security is the #1 Priority
 - The duty of care
- “Zero Risk” Doesn’t Exist
 - We cannot eliminate, but can minimize, risk
- Always do a Risk Benefit Analysis
 - Don’t make that decision on your own!
- Culture, Culture, Culture!
 - Not all independent schools are alike
- Trust Your Instincts
- Reconciling the Law with School Policy

Today's Agenda

- Overview of the Hiring Process
- Legal Framework
- Recruiting and Vetting Applicants
- Elements of a Complete and Thorough Background Check

Goals in the Hiring Process



Hiring Process Overview

- Vacancy
- Job Description
- Job Announcement and Recruitment Efforts
- Application / Resume Gathering
- Interview Process
- Background Check and Screening
- Offer Letter or Contract

Hiring Process Best Practices

- Designates person or people in charge of the process
- Promotes consistency and fairness
- Recruits from a wide net – avoids hiring through word of mouth
- Hard wires questions and evaluation steps to avoid hiring based on vague terms like “a good fit” or “felt comfortable”
- Carefully vets candidates to weed out potential dangers to students and others
- Includes a process for creating and maintaining documents
- Includes trainings of all individuals who interact with a candidate
- Creates a welcoming experience for the candidate and showcases the school

Legal Framework

- Failure to hire based on discrimination
 - Disparate Treatment/Intentional Discrimination:
 - A person, who is a member of a protected class, suffered harm because of their statutorily protected characteristic
 - Disparate Impact/Unintentional Discrimination:
 - When facially neutral policies and practices have unintended discriminatory effects
 - Does the policy have a “business necessity”?
- Negligent hiring
 - Failure to properly check background and references resulted in harm
- Failure to accommodate
 - Failure to accommodate a qualified applicant with a disability during the hiring process and/or after hire
- Breach of contract, Detrimental reliance
 - Failure to fulfill promises made during the hiring process that applicant relied upon in accepting the offer

Federal Protected Categories

- Age (over 40)
- Disability
- Race and Color
- Sex
- National origin
- Gender
- Religion
- Military experience
- Genetic info
- Citizenship

State EEO Protected Classifications

(Beyond race, color, religion, sex, national origin, citizenship, disability, age, military status, and genetic info)

Alabama	None.
Arkansas	None.
Florida	Marital Status (Fl. Civil Rights Act of 1992); HIV Status. (Fla. Stat. 760.50)
Georgia	Age, specifically between the ages of 40-70 years. (Small departure from federal ADEA). GA Code Sec. 34-1-2).
Kentucky	An individual's status as a smoker/non-smoker (as long as they comply with any workplace smoking policy).
Louisiana	Sickle cell trait (La. Rev. Stat. 23:352)
Mississippi	None.
North Carolina	None.
South Carolina	None.
Tennessee	Creed; although this is probably synonymous with religion. However, no TN court has actually established what "creed" means in the context of the Tennessee Human Rights Act. (E.g., is veganism a creed if it is a sincerely held belief?)
Texas	None.
Virginia	None.

Tips on Avoiding Discrimination Claims

- Equal opportunity statement in recruitment process / job announcement
- Consistency in entire process across divisions
 - Application, Interview Questions, Reference Checks, Background Checks, and Evaluation Forms
 - Have a policy, checklist, or some other way of ensuring consistency across divisions
- Avoid questions that solicit information regarding a protected category
- Focus on qualities that are relevant to the job

Be careful when taking notes!

Vacancy / Hiring Need

- Consider
 - Do you need to fill a vacancy?
 - If yes, evaluate the job and consider whether needs have changed
 - Is there a need to fill a new position?
 - Are there other ways to fill this need?
 - Is this position financially sustainable?

Job Description

- Overview of position
- Duties and responsibilities
- Supervisory chain
- Essential functions (important for ADA)
- Exempt or Nonexempt
 - If exempt, make sure job description supports the exemption
- Language skills, computer skills, etc (if any)
- Degrees and experience required
- Working conditions (FT/PT, travel, flex schedule, etc.)
- Other duties as assigned

Recruitment

- Advertise the Position
 - Cast a wide net
 - Create job announcement consistent with job description
- Recruit for diversity
 - Diversity job fairs
 - Minority colleges and universities
 - EEO language in announcement
 - Can look for diversity clues in resumes
 - Club membership, leadership roles in religious institutions, college attended, professional associations

Standard Application

- **Don't rely on the resume**

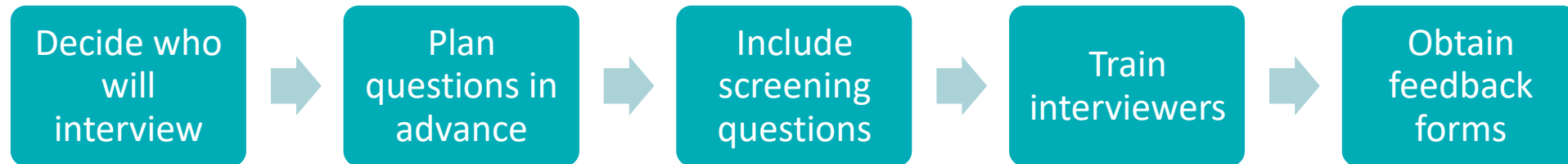
- Use a standard application that an applicant ***completes and signs*** at some point in the application process
- Requires applicants to supply information we want to collect
- Require applicants to provide start and stop dates for all prior employment
- Applicant signs an acknowledgment that all information provided is truthful and any false information is subject to decision not to hire or termination if already employed
- Applicant signs release to speak to references



Standard Application

- Common Red Flags
 - Gaps in employment
 - Conflicting, incorrect or incomplete information
 - Unstable work history (short-term positions)
 - Overeducated for position
 - Weak references (no former supervisor)
 - Frequent geographic changes
 - Vague reasons for leaving previous jobs

Effective Interviewing



Before the Interview

- Prepare for the Interview
 - Follow a standard interview outline
 - Helps you avoid illegal questions
 - Produces more reliable and relevant information
 - Allows valid comparison between applicants when asking consistent questions
 - Counteracts unconscious bias
 - Helps vet potentially unsafe applicants

Effective Interviewing

- Communicate expectations
 - Provide overview of the job and description of department
- Ask questions on your outline
 - Don't be afraid to ask follow up questions
 - Take notes of relevant information only
- Allow opportunity for applicant to ask questions

Effective Interviewing

- Behavioral Questions

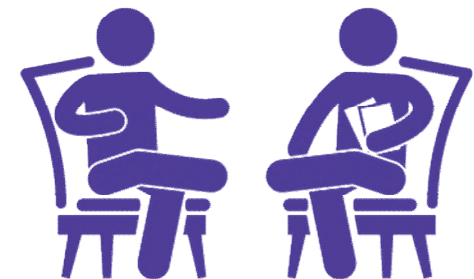
- Open ended to get the applicant talking
 - Why? Describe? How? Give an example.
- This position requires (organizational skills). Give me an example of when you have used these skills and how they impacted your performance.
- Tell me about your experience and why you are interested in our school?
- Do you work better alone or as part of a team? Why?
- What do you consider to be important qualities of a leader?

Best predictor of future behavior is past behavior.

Effective Interviewing

- Behavioral Questions

- Describe a time when you had to communicate something difficult to a colleague or a parent
- Describe a time when you had to discipline a student
- Describe a time when you made a mistake and what you did to resolve it?
- What do you like or dislike about your previous job?
- Give me an example of when you had to use ____ skill?
- Have you had to discipline a student and how did you do it?



Permissible and Impermissible Interview Questions

The information obtained and requested in the pre-employment process should be **limited** to those **essential** for determining if a person is **qualified** for the job.

Permissible	Impermissible
Race	
--	What is your skin color? Were you recently at the beach – how did your complexion get so dark?
Religion	
Are you able to work on the weekends? **only if a business necessity and asked of all candidates**	What is your religion? Are you practicing? What holidays do you celebrate?
Sex/Gender	
--	What gender do you identify as? Have you ever been sexually harassed?

Permissible and Impermissible Interview Questions, Cont.

Permissible	Impermissible
Citizenship	
If hired, will you be able to produce evidence of your authorization to work in the United States?	Are you a US citizen? Naturalized or native born? Of what country are you a citizen?
National Origin	
What languages do you speak? **only if relevant to the position**	That's an interesting accent – where are you from? Where were your parents born? What is your native language? How did you learn to speak a foreign language? Where is your spouse from?
Age	
Are you at least 18 years of age?	How old are you? How long have you been working? When did you graduate college? How old are your children?

Permissible and Impermissible Interview Questions, Cont.

Permissible	Impermissible
Marital/Family Status	
Are you willing and/or able to put in the amount of time this position requires? Are you willing to relocate (if needed)? **must be routinely asked and asked of both sexes**	Should we call you Miss or Mrs? Are you married? Do you have children? What are your childcare plans? Are you planning to have children? What kind of birth control method are you using? Are you divorced? Where is your spouse employed?
Disability	
	Do you have a disability? Do you have any mental or physical impairments? Are you an alcoholic? Have you ever abused drugs? Do you take any prescription medications?
Military Service	
Do you have military experience?	Did you receive a discharge that was less than honorable?

Effective Interviewing

- Questions you can ask
 - Have you worked under a different name?
 - Relevant to reference and background checks
 - Can you work outside regular hours for school events?
 - Are you willing to travel as needed for this position?
 - What professional organizations do you belong to?
 - Can you perform the duties and responsibilities as outlined in the job description?
- Legal trends in interviewing
 - Salary history information
 - “pass the trash laws”
 - Ban the box

Effective Interviewing

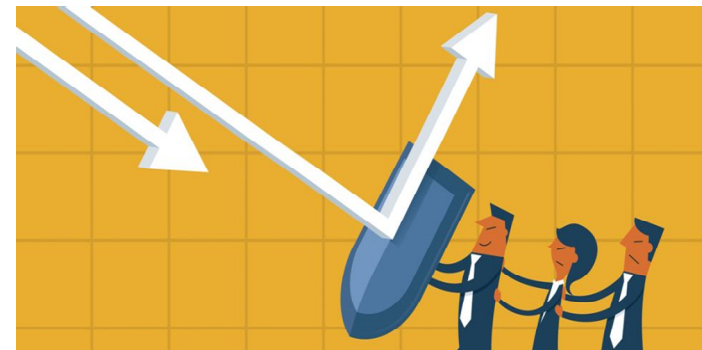
- What if protected category comes up?
 - Applicant asks if he/she will have a designated parking spot close the entrance due to difficulty walking
 - Applicant asks if she can have every Friday off to care for her mother undergoing chemo
 - Applicant is visibly pregnant and reveals that she is expecting her third child in three months
 - Applicant says he can't work Saturdays due to religious beliefs
 - Applicant sees pictures of your kids on your desk and starts talking about his/her kids

Post Interview

- Evaluation
 - Document impressions from interview
 - Recommend using a standard evaluation form
- Decision making process
 - Committee
 - Consultation with / approval of head of school
 - Ensure collaboration and buy-in

Background Checks and Screening

- Proper screening
 - First line of defense against abuse
 - Defense of claims for negligent hiring
 - More than criminal history check
- Do it before an offer is made or made the offer contingent upon successful completion of background investigation
- No one should report to work prior to the background check



Background Check and Screening

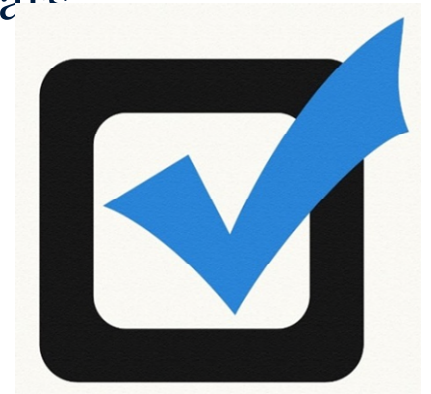
- Background Investigation
 - Criminal background check
 - Must complete FCRA compliant form
 - Credit check
 - Only if relevant to the position
 - Education check
 - Can ask for diploma from schools on resume
 - Employment verification
 - Reference check
 - Professional license check
 - Driving record check
 - Internet / Social media check (pros and cons)

Background Check and Screening

- Who gets checked?
 - Faculty
 - Staff
 - Seasonal employees
 - Contractors
 - Volunteers
 - Interns
 - Parent chaperones
 - Other adults living on campus (i.e., spouses, significant others)

Criminal Background Check

- Elements of a thorough criminal check
 - At least 7 years looking back
 - Form that collect **all names** and **addresses** for past 7 years
 - Fingerprint check
 - Multi-state and county police reports
 - Social security check
 - Sex offender registries
 - Check professional license status, even if not required for the job
 - Sex offender registries
 - Data base check
 - Conducted by a third party vendor



Fair Credit Reporting Act Compliance

- Applies when using third party background check agency (credit or criminal)
- FCRA notice requirements
 - Alert the applicant that a criminal background check will be performed
 - Obtain applicant's written authorization for the check
 - Provide the applicant with the name of the agency that performed the background check
 - Supply a copy of the background screening results to the applicant prior to adverse action or upon request
- Background check agencies can help you with the process – not a bad idea to check with your lawyer

Reference Checks

- Must do it to protect school and defend against potential claim of negligent hiring
- Use a reference check form
- Check references listed
 - Can check references not listed
- Document reference calls, even if no answer
- Can ask if applicant is eligible for rehire
- Be consistent about when you conduct reference checks
 - Last two finalists?

Background Check and Screening Tips

- Have a process for conducting background checks and screening across divisions
- Train employees involved in the process
 - Complete the background check before person is hired / starts working
- Have a policy for reviewing information discovered through background check
- Repeat criminal background checks
 - Some vendors will run continuous checks or notify if someone's name comes up
 - Run every 2-3 years
 - Repeat for seasonal individuals
 - Policy requiring individuals to notify an administrator of an arrest or conviction of a crime voluntarily?

Post Interview

- Document Retention

- Keep all documentation used during the selection process for (at least) two years

- Application form
 - Resume
 - Interview questions
 - Reference checks
 - Background checks

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