Better Safe Than Sorry

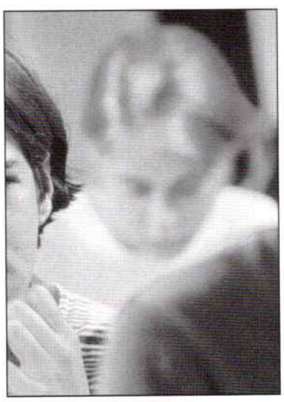
Facing the Issue of Volunteers and Child Abuse

If only it were unthinkable: allegations of child abuse by priests, neighbors, teachers and other adults in positions of trust and power. But we know it's not. It's a horrific, life-shattering reality for far too many children and adolescents, their parents and the institutions and organizations entrusted with the care of youth.

The most-respected organization can be ruined by charges of abuse and molestation, even if they prove to be false. And heaven help the organization that failed to protect its constituents out of inattention or inadequate policies.

The following Workshop articles deal with this extremely sensitive and disturbing issue.

Our guest editor, Sarah J. Schmidt, is an attorney and editor of a monthly legal newsletter, *Nonprofit Alert,* published by the Virginia law firm of Gammon & Grange, P.C. She can be reached at sjschmidt2@earthlink.com. ♦



Resources

- **Advocate Web** – a nonprofit organization that promotes awareness and understanding of the issues involved in the exploitation of persons by trusted helping professionals; maintains an informative web site that includes comprehensive summary of all state sexual exploitation laws; 512-249-1217; www.advocateweb.org
- **GuideOne Center for Risk Management** – commercial insurance company specializing in risk management for churches and nonprofit organizations; offers risk reduction tips and education materials for training employees and volunteers; 877-448-4331; www.guideonecenter.com
- **National Clearinghouse on Child Abuse and Neglect** – service of the U.S. Department of Health and Human Services; statistics on child abuse and other information; maintains a database of documents, audiovisual materials, services, programs, excerpts of state statutes, and ongoing research projects concerning child abuse and neglect; 800-394-3366; nccanch@calib.com; www.calib.com/nccanch
- **National Data Archive on Child Abuse & Neglect** – operated by Cornell University primarily as a resource for researchers and professionals; maintains large database of research; offers newsletter and other publications; (607) 255-7799; www.ndacan.cornell.edu
- **Nonprofit Risk Management Center** – provides assistance and resources for community-serving nonprofit organizations; offers a variety of risk management tools, including collection of guidebooks for screening employees and volunteers to prevent child abuse; (202) 785-3891; www.nonprofitrisk.org

Developing a Policy of Protection

The disturbing reports of child molestation and pedophilia that have rocked the Catholic church in recent months are forcing other organizations to take a hard look at their own programs and policies. Could the same thing happen elsewhere? It's a question no one wants to answer, but fear of the possibility is motivating action.

Organizations that serve children also serve as a first line of defense against this tragic and horrifying crime. To face the risk of child molestation, organizations should adopt and implement a policy of protection. If such a policy is in place already, now is the time to review that policy and determine if it still provides the level of protection mandated by current needs. If no such policy is in place, move quickly to establish one.

An organization should establish its position of prevention and protection against all child abuse and molestation by developing a written policy that fully describes acceptable and unacceptable behaviors within the organization. The following points must be addressed in establishing an effective policy for dealing with this serious issue:

● **Standards of Conduct.** The policy must describe appropriate conduct for adult/child relationships and delineate acceptable standards of contact between adults and children during working hours and after-hours, on premises and off premises. This is the real heart of the policy, so great detail and attention should be given to these standards. An attorney should also be consulted regarding proper definitions to use and other specific legal terms that may be defined under state or local statutes.

● **Reporting Inappropriate Behavior.** Every report of inappropriate behavior should be taken seriously and investigated promptly. Your policy should describe the avenues available in your organization for reporting suspected or actual incidences of inappropriate behavior. Identify by name or position those individuals to whom children, parents, employees or others in your organization should file a report.

You may also want to include a statement that the identity of those involved, including persons making a report, will be protected to the extent possible under the circumstances. But include a caveat that information will be shared with law enforcement officials as required by law and with others as required to investigate and comply with organizational policies.

● **Consequences for Violations.** This part of the policy should briefly describe what short- and long-term steps will be taken when a report of inappropriate behavior is made. The first and most immediate step is to remove the accused from the situation in which the accusation arose and prevent any further contact with children. This should be done quietly and without fanfare, but quickly and without exception. A leave of absence or transfer to another position that does not involve contact with children are possible solutions and may be appropriately stated in this section of the policy.

● **The Investigation.** The next step is to initiate a prompt investigation. Your policy should state that the investigation will begin within a certain period (usually 24 hours of receiving the report). Consult legal counsel to determine what state or local statutes may require your organization to report allegations of child abuse or molestation to law enforcement authorities and make sure your investigation corresponds to those time periods.

If the outcome of the investigation exonerates the accused, then his or her position may be restored. The policy should state how long the investigation record is kept on file and whether the accused will have access to that file. If the outcome of the investigation results in a finding of inappropriate behavior, then the accused faces certain discipline for the actions. The policy should clearly state what forms of discipline will result from which behaviors, including reprimand, probation, termination and so on.

● **Disseminating the Policy.** Once your policy is in place, disseminate copies to children, parents, employees and others inside the organization. At least once a year, provide reminders detailing the standards for conduct and procedures for reporting. Depending on the degree of turnover in your organization among employees, volunteers and children, dissemination of this information on a more frequent basis may be appropriate.

● **Additional Steps.** Implementing a child protection policy requires a solid commitment on the part of an organization and its members. However, a policy is only one part of a comprehensive protection program that must also include proper employment screening and monitoring. Read the Workshop articles that follow for additional information. ♦

All articles in this series were written by Sarah J. Schmidt.

Screening Volunteers and Employees

The first and best defense against child sexual abuse in nonprofit organizations is to exercise reasonable care in screening and hiring those who work with children. An optimal screening process includes the following minimum components:

- a thorough screening application, including references and a verification statement that the applicant must sign;
- investigation, confirmation, and evaluation of all the information provided on the application; and
- a criminal history background check for all applicants who will have contact with children.

Screening

This application requires data about previous employment, experience with children, personal and professional references, criminal records, and any other information pertinent to the applicant's potential role in the organization. If relevant to the job, it may also include questions regarding the applicant's driving record and use of alcohol, tobacco, etc.

All questions should be carefully worded to elicit only relevant information that does not violate discrimination laws. For instance, a question that asks whether the applicant has ever received counseling or therapy could arguably violate the Americans With Disabilities Act. Rephrase such an inquiry this way: "Is there any reason you might be unfit, unwilling, or unable to perform any job-related duties involving youth or children's activities? If so, please explain."

The screening application should also contain a statement for the applicant to sign indicating his/her responses are true and complete. It should state that any misrepresentation or omission of information could be grounds for rejection, or if later employed, then dismissal. The statement should also authorize the organization to investigate and confirm all information provided and relieve the organization of any associated liabilities. Finally, the statement should ask the applicant whether he or she has ever been convicted or involved in any incidents of misconduct involving children.

Verification

Employers must diligently verify all information provided on the screening application. This means every reference and employer listed should be contacted to confirm the accuracy of information. The importance of this step can't be overlooked, since even the best designed and most thoroughly constructed application provides only what the applicant writes down—true or not.

Any irregularities discovered during the process of confirming and evaluating must be resolved before an applicant is actually hired. Look for peculiarities, like gaps in employment, unexplained absences or frequent relocations. Investigate these "red flags" by questioning previous employers or asking the applicant for additional information.

Do not permit applicants to have contact with children in any capacity unless they have completely passed the screening process. This point cannot be stressed enough. Permitting an applicant to work with children, despite indications of risk discovered during screening, will inevitably lead to trouble. Failure to follow screening procedures, or failure to heed information disclosed during screening, will expose an organization to serious legal liability.

The National Child Protection Act requires employers to conduct criminal background checks of all employees who work with children. The Volunteers for Children Act permits, but does not require, "qualified entities" (i.e., organizations that work with children) to conduct criminal background checks of their volunteers. These laws apply equally to public, private, for-profit and nonprofit organizations.

Although volunteers aren't required to undergo a criminal background check, it's a good idea to implement this requirement for both volunteers and employees since a failure to perform such a check may result in negligent hiring, for which an organization could face liability.

State law enforcement agencies perform criminal background checks upon request. The applicant's fingerprints and written permission must be provided. Most agencies charge about $50 per search. Contact your state law enforcement agency for specific requirements and procedures.

Concerns

Organizations sometimes complain about the complexity of screening. One concern is that applicants are deterred by screening, resulting in a smaller employee or volunteer pool. No statistical data suggest this is true.

Concerns about the burdensome delay and cost of screening pale next to the million-dollar verdicts some courts have handed down in recent child molestation cases. Given the potential risks involved, the benefits of employee and volunteer screening far outweigh the costs. ♦

Legal Issues in Prevention

As if the devastating injuries and long-term trauma that result from child abuse aren't bad enough, nonprofit organizations that serve children must also consider the myriad of legal issues that arise from these tragic situations. A complete review with trusted legal counsel before problems occur helps solidify an organization's child abuse prevention plan and potentially reduces the risk of legal liabilities.

In addition to special issues that may be unique to your organization, a legal review should also address these general topics:

Hiring and Supervision

If an organization is somehow negligent in hiring or supervising an employee or volunteer, then the organization may be liable for whatever harm that employee or volunteer causes. This kind of claim rests on a legal duty of care that the organization owes to the injured party whenever there is a foreseeable risk of injury to others that the organization could prevent with reasonable efforts.

Such efforts include screening and monitoring employees/volunteers, orientation and training, and proper management. Depending on the circumstances, many other steps may be required before an organization's duty of care is reasonably satisfied.

This is potentially the most serious area of liability for organizations serving children. Liability for the acts of volunteers is just as great as for the acts of paid employees. To minimize risks, volunteers should undergo the same application and screening process as employees (see the earlier article in this series on screening). Both volunteers and employees should be properly trained and monitored.

Insuring against the risk of negligent hiring and supervision should be a significant part of an organization's overall risk management plan, but that alone cannot take the place of proper internal controls and preventative measures. Discuss with your insurance representative the possibility of offsetting restrictions in your organization's policies when you implement risk avoidance measures.

Privacy

By necessity, organizations that properly screen employees and volunteers gather significant amounts of personal information about applicants. If that information is improperly disclosed, the organization could be liable for invasion of privacy, defamation or other personal injuries.

To reduce this risk, guard personal information of all applicants as confidential. Mark applications, reference feedback and related materials as "confidential." These files should be kept in a secure location with access limited only to appropriate personnel with a need to know. Train those personnel about when the proper disclosure of such information is allowed, including how and when disclosure is required by law for mandatory reporting.

Mandatory Reporting

All 50 states require at least some measure of mandatory reporting when child abuse is suspected, although the laws vary widely by state. Some states require anyone to report suspected child abuse if they have reason to believe a child's welfare is threatened. Other state laws require reporting only by those professionals in positions to observe certain evidence.

An organization's executives should be fully versed in the laws of all the states where that organization operates facilities serving children. The key questions to address in every jurisdiction are:

- What constitutes "child abuse" and/or related offenses under the laws of this state?
- Who is legally required to file a report of child abuse in this state?
- When and where is such a report filed?

Beyond the mandatory reporting requirement, another category of "permissive" or "authorized" reporting also exists in many states. These statutory provisions generally permit, but do not legally require, reporting of suspected child abuse. This means civil or criminal penalties are not imposed for failure to report.

In either case, consultation with legal counsel is essential to determine the full extent of the state reporting obligations where an organization operates. Most states provide statutory immunity from civil or criminal liability for those individuals (including both mandatory and permissive or authorized reporters) who, in good faith, file a report of suspected child abuse. Reports filed in bad faith, however, may be subject to penalties.

Seek the advice of a local attorney familiar with your organization's mission and structure for a full review of the risks your organization faces. Remember, there's more at stake than mere liability. A charity's good name and reputation suffers great damage whenever legal claims are raised, regardless of their merit. Even more importantly, managing legal risks can help protect innocent victims and their families who may otherwise suffer lifetime consequences. ♦

Managing Mentors to Reduce Risk

Mentoring relationships provide some of the best teaching, counseling and social development that many of our nation's young people ever receive. The merits of mentoring are without question, but when mentors are left to function independently without oversight or accountability, problems occur frequently. Failure to supervise and monitor mentors adequately creates a high-risk environment for child abuse—a risk your organization simply cannot afford.

A properly managed mentor program helps reduce the risk of child abuse by establishing a level of supervision that prevents improper relations between mentors and mentees. Most of the same policies and procedures that apply to volunteers and employees who work with children should also be followed in mentor programs.

Additional essential protections include the following safeguards:

- **Written policy.** The organization's policy of protection should be clearly explained and enforced among all mentors during orientation and training—and throughout their mentor careers. Examples of proper and improper standards of conduct should be openly and widely discussed among all personnel. Parents and guardians of children involved in mentoring relationships should also be made aware of the organization's policy and standards of conduct. Even the children can be educated with age-appropriate explanations of what permissible and non-permissible forms of contact are acceptable between themselves and their mentors.
- **Family involvement.** If your mentoring program involves participation by mentees, parents or guardians, be sure your policies adequately address all family members. Conversely, if members of a mentor's family also volunteer, then they should be screened through the same application or hiring process as other mentors.
- **Observation period.** Whenever reasonably possible, consider requiring employees and volunteers to serve in their positions for a period of time—generally, three to six months—in good standing before allowing direct access or supervision of children. This provides you ample time to assess the individual's behavior and also serves as a strong deterrent to potential offenders who, according to FBI profiles, generally prefer immediate access to children.
- **Teams of two.** Arrange "teams" of at least two mentors each. Partner the mentor team with two or more children as mentees. This approach facilitates better monitoring and makes it very difficult for any single individual to achieve unsupervised access to children. It also ensures at least one adult witness is always on hand to corroborate or refute any allegations of misbehavior. It works especially well with student mentors.
- **When and where.** Set requirements as to when and where mentors may meet with mentees and for how long. Some organizations require all mentoring meetings to be held in public places during normal business hours. Prohibiting meetings in mentors' and mentees' homes unless other adults are present is a good rule because it limits opportunities for mentors and mentees to be alone together. Specifying how often and how long mentors should meet with mentees helps clarify the expectations of all parties and serves as a "red flag" when violations are unexplained.
- **Accountability.** Sign-in and sign-out procedures should be enforced when mentoring meetings take place at an organization's facilities. If meetings occur elsewhere, an additional reporting procedure should require that mentors keep their supervisors or other contact personnel informed as to where and when such meetings are scheduled. To the extent possible, it's a good idea to monitor mentoring relationships randomly on an unannounced basis. Be alert to any warning signs of problems. Immediately pursue and probe unusual facts or circumstances.
- **What and why.** The activities that mentors and mentees participate in together should be selected based on their connection to the organization's mission. For example, an educational organization may design a mentoring program that involves primarily educational meetings between mentors and mentees at museums, libraries, etc.

Of course, the individual needs of each mentee must be considered when selecting activities, but if an organization allows its mentoring activities to be driven by its own mission, then it's much easier to solve policy questions that arise along the way.

- **An issue of trust.** Successful mentoring programs depend almost entirely on relationships, and relationships depend on trust. When the risk of child abuse goes unchecked, that trust is seriously threatened. If trust is violated, then little chance remains for building and sustaining mentoring relationships.

Implementing proper policies and wisely managing mentors offers the best hope for preserving that trust. ♦

Responding to Charges

Preventing and responding to child abuse takes on special significance for charitable organizations whose missions are to preserve the welfare of children. While the importance of proper prevention measures cannot be stressed enough, it's an organization's response to charges of child abuse that often determines the long-term results. A proper response shields other children from potential abuse and helps protect an organization from the legal nightmare of failing to respond or act appropriately. As part of an organization's child abuse prevention plan, response mechanisms should be carefully developed and implemented so the organization is prepared to intervene when child abuse is suspected. These mechanisms should include:

- **Urgent Response.** Do not disregard any reported incident as lacking enough merit to warrant investigation. When a discovery, suspicion or report of child abuse is made, an organization must respond immediately. All personnel in an organization should be trained not to suppress or dismiss their suspicions. Instead, a clear procedure and chain of authority should be established for raising concerns.

- **Staff Training.** All new staff members, including volunteers, should undergo orientation, a part of which should address how and what to report when child abuse is suspected. All current staff members should receive "refresher" training at least once a year, or more often if possible. State and local law enforcement authorities may be available to attend these training sessions and offer more comprehensive discussions about reporting obligations, particularly for those required by law to report child abuse.

- **Reporting Procedure.** A typical reporting procedure calls for an organization to designate a "response team" of at least two individuals trained in proper investigation techniques and crisis management. Concerns or suspicions raised by a staff member are reported directly to a supervisor, who in turn, notifies the response team, which then initiates the investigation. Outside legal counsel or other authorities may also be called upon to assist in the investigation.

If the investigation is conducted by legal counsel or at the direction of legal counsel, then the information collected may be privileged from disclosure as confidential attorney/client communication under certain state laws. For this reason, one of the response team's first steps should be to call competent legal counsel and involve him or her in any actions relating to the incident.

The attorney will also help determine the appropriate time to notify the organization's insurance carrier. Notification should not wait until civil or criminal charges have been filed, since some policies require immediate notification to be effective. Many insurance policies simply don't cover sexual misconduct due to the enormous liabilities, but a thorough review of your policy by a legal expert will insure compliance with all requirements that must be met for coverage, if any, to apply.

- **Personnel Management.** Immediately remove the accused from any further contact with children. Depending on the unique circumstances of the situation, an organization may decide the best approach is to quietly place the individual on a leave of absence or transfer to another position. Alternately, an organization may choose to disclose the personnel action as a means of publicly delineating the organization's position and describing its response. Circumstances will dictate the best approach, but whatever course is chosen, it must be undertaken swiftly and judiciously.

- **Report and Cooperate.** If a staff member qualifies as a "mandatory reporter" under state law, then a legal obligation requires that the incident be reported to appropriate authorities. If no mandatory report is required, then an organization may still decide it best to report the incident. Unless otherwise advised by legal counsel, cooperate fully in any investigation conducted by law enforcement or social service authorities.

- **Release of Information.** Never release any information until its factual content has been solidly confirmed. Be especially careful with information about personal identities of the parties involved, as the release of this information could lead to serious privacy or confidentiality issues. Prepare a written statement to use when disseminating information throughout the organization or to answer media inquiries, and designate one person to handle inquiries so the organization puts forth a consistent and coordinated response.

The threat of child abuse is a real and immediate concern to any organization that serves children. Establishing effective response mechanisms is a crucial part of an overall child abuse prevention plan that helps ensure your organization offers a safe, secure environment for children. ♦