A Trusted Teacher With a Pedophiliac Past

By William S. Friedlander, Esq.

This is an actual case involving a popular small-town middle school teacher, a man with a criminal history that was not uncovered until it was too late. Tragically, as recent media coverage, case law, and commentary make clear,[1] cases like this one are all too common. Pedophilia and other forms of child sexual abuse have recently received widespread attention, particularly in connection with abuses by clergy.[2] Abuse in schools—or at least the reporting of such abuse—is also on the rise.[3] Children and adult survivors who were silent for years about pedophiliac and abusive teachers have come forward with horrifying accounts of "trust betrayed,"[4] their reports inspired at least in part by the emerging recognition that schools and teachers may be held legally accountable for lifelong damage caused by abuse.[5]

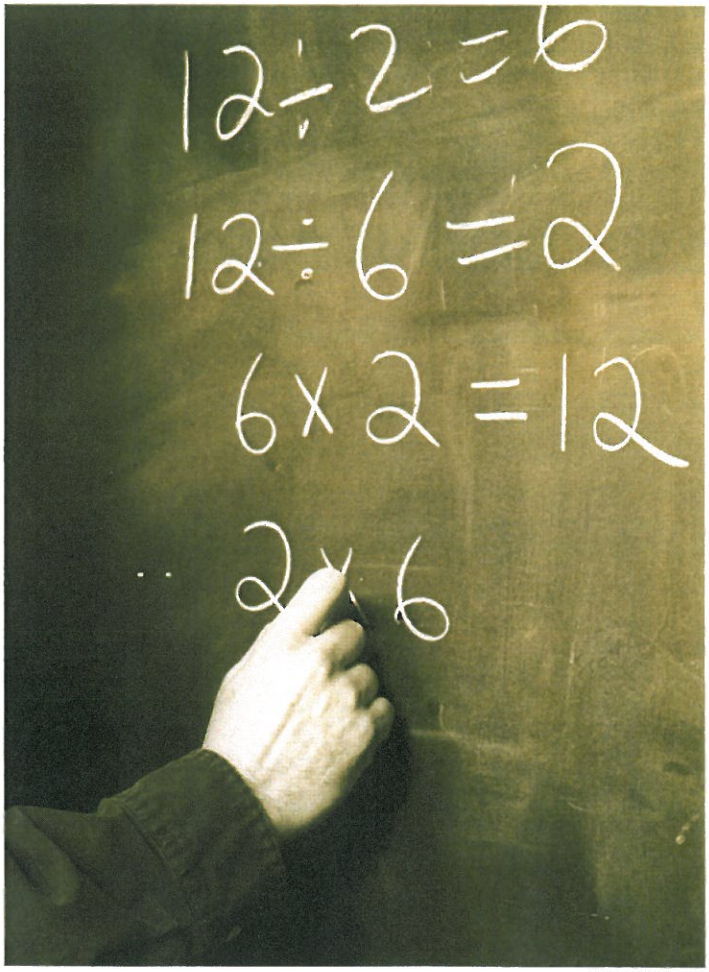

PHOTO: PHOTODISC

A Common Story

The teacher in this case, "Coach," supervised after-school activities for male students. Coach used the activities to reach out to some of the more challenging boys in the student body: marginal students, social misfits, products of dysfunctional homes—those most at risk of getting lost in the scholastic shuffle. Capturing his charges' interest with a combination of adolescent horseplay and fundamental skill-building, Coach became a mentor, counselor, advocate, and confidante. Students and faculty voted him the district's "Teacher of the Year."

Then a story surfaced. There was a rumor among students, an anonymous letter to the student council, a whispered aside in the teachers' lounge: Coach was crossing the line between horseplay and foreplay with a student, Tom, using basketball and math tutoring as a cover for pedophiliac advances. The rumor circulated for months. All the students, and many teachers, seemed to know about it, some even buttressing it with personal observations or anecdotes: Coach seen leaning over Tom in math class, Coach showering with team members in the locker room, Coach involved in a student's disciplinary problems a few years earlier. A well-meaning colleague mentioned the rumor to Coach, even handing him the anonymous student council note. Coach coolly shrugged it off as an adolescent prank—perhaps the product of a disgruntled student—and tore up the note. The colleague accepted Coach's explanation with evident relief. After all, Coach was an award-winning educator, while Tom was a mediocre student with few friends, hardly credible under the circumstances.[6]

A month or two later, Coach and Tom were observed together off campus. Questioned at home, Tom broke down. He described to his grandmother how Coach had molested him and his cousin, John, both in and after school. The angry families of the two victims confronted a dubious middle school principal, who in turn alerted the district superintendent. A school investigation ensued, and at the advice of district counsel, the police were called in.

An Undiscovered Past

To the apparent surprise of the whole community, the police investigation revealed that Coach was a veteran pedophile, with a damning criminal record. His last teaching job—in a middle school in a neighboring state some years earlier—ended abruptly with his conviction on charges of consummated and attempted deviate sexual intercourse with eight named students, for which he served six months in prison and three years on probation. Confronted by his record, which gave new credence to the complaints under investigation, Coach eventually pled guilty to several counts of sexual abuse involving Tom and John.

School officials quickly expressed their ignorance of Coach's criminal record, which apparently did not come to light during the district process that led to Coach's hiring and state certification. At the same time, it became clear that other complaints about Coach's inappropriate intimacy with a student were made, without apparent consequences, during Coach's tenure with the district.

These earlier complaints—made to police and district administrators—were similar to Tom's and John's stories: Coach lavished physical attention on the complainant in class and then set up an opportunity for one-on-one intimacy in after-school activity. Classmates corroborated the victim's accounts of Coach's in-class attentions, but they could not speak to his after-school conduct. However, the school psychologist examined the victim and attributed the victim's problems to molestation consistent with his complaints against Coach.

Curiously, no record of the nature and extent of these past complaints, the district's investigations, or any conclusions reached appeared in Coach's district file. When, in 1996, a parent questioned the class placement of the complainant's younger brother, the district superintendent advised the principal that the police had "exonerated" Coach of the earlier charges. They had concluded that the complainant was simply a troublemaker. Although the superintendent informally suggested that the principal "keep an eye on Coach," the principal simply continued his regular practice with Coach, as with other teachers, of twice-yearly observation of classroom skills.

Indeed, Coach's district file turned out to be remarkably thin. It contained no record of any background or reference checks despite Coach's poor academic record, his out-of-state teaching history, his lack of in-state teaching certification, and an unexplained ten-year gap in his teaching employment. In fact, his application for employment includes no listing of references. The district apparently had no requirement for reference checks, and no procedure for pursuing such

PHOTO: PHOTODISC

checks. The file did not even follow Coach to the various school buildings to which he had been assigned in his twelve years in the district. Coach's principal, his teaching colleagues, even the members of the committee that hired him, knew remarkably little about him. Apparently, he obtained his position primarily on the recommendation of a neighbor, a now-retired district teacher who had briefly and unsuccessfully served as a middle-school principal when Coach applied for a job.

Coach's principal and teaching colleagues also seemed to know little about sexual harassment and abuse policies, including federal and state mandates regarding nondiscrimination and the reporting of suspected harassment or abuse. Administrators admitted that, at most, one two-hour training session regarding harassment, abuse, and reporting requirements had been conducted for teachers in the past ten years. Even the administrators who underwent more extensive harassment and abuse training were unable to delineate the reporting and enforcement obligations of faculty and staff under the state or federal mandates. Although a copy of Title IX may have been posted in each school's office, the district lacked a formal policy of its own, much less a protocol for implementation and enforcement.

As the news of Coach's arrest, indictment, and guilty plea emerged, other male students—including the son of one of the deputies who had "exonerated" Coach a few years earlier—came forward with accounts of abuse at Coach's hands. Uniformly, their accounts chronicled a history of academic marginalization, unwarranted attention in Coach's classes or clubs, and betrayal into unwanted intimacy when Coach found ways to be alone with them. These victims also chronicled a subsequent history of personal and emotional distress—school failure, social ostracism, inability to concentrate, depression, suicidality, impulsivity, and acting-out behavior. These were Coach's legacy to his victims—the enduring by-products of predatory pedophilia.[7] All of Coach's victims have required a long course of therapy.

As the news of Coach's arrest, indictment, and guilty plea emerged, other male students—including the son of one of the deputies who had "exonerated" Coach a few years earlier—came forward with accounts of abuse at Coach's hands.

So what help can a school, school district, administrators, teachers, and staff be required to provide to the victims and potential victims of sexual abuse? And, more pointedly, what hope can the legal system offer victims in terms of compensation and stopping the abuse?

A Civil Lawsuit

This author represented Tom and John and their parents in lawsuits arising out of the abuse by Coach. After interviews with both boys and their families, a review of police files, conversations with other students and their parents, and due notice of the claims under state municipal tort claims law, Tom and John, by their parents, filed a civil complaint in federal court with claims under 42 U.S.C. §1983, 20 U.S.C. §1681 (Title IX), state child abuse reporting statutes, and various iterations of state tort law, including negligent hiring, supervision, and training and several intentional torts. The named defendants were the school district and Coach.[8]

Unlike many such actions, no state statute of limitation problems existed in this case, given the recentness of the abuse and the requirement of expeditious filing of suit found in state law governing claims against municipal entities.[9] Once the state notice requirements were met, municipal immunity from civil liability was also not an issue.[10] Indeed, the state municipal claims law's provision for a preliminary hearing offered an opportunity to test and substantiate the plaintiffs' claims early on. While this can often be a double-edged sword, in this case the preliminary hearing brought to light previously unknown developments in the police investigation that assisted the plaintiffs in framing their complaint.

Immediately after filing the complaint, the plaintiffs moved for permission to proceed anonymously. They effectively established that the matter had generated a great deal of regional publicity at the time of Coach's arrest and indictment, and that the victims had already been hounded by rumor and suspicion at school where many peers and teachers seemed ready to blame them for Coach's downfall. Although permission to proceed anonymously is a matter of judicial discretion, and the grounds vary from circuit to circuit,[11] or even district to district,[12] plaintiffs' motion for anonymity was quickly granted in light of the victims' ages and the humiliation resulting from Coach's conduct.[13] Thus, the boys and their families were shielded from public exposure—or even worse, retribution[14]—while they developed their case.

The defendants raised a number of predictable defenses in their answers. However, perhaps due to a dispute over the district's insurance coverage which eventuated in litigations, none of the defenses was litigated by motion, either on the pleadings or in summary judgment.[16]

With respect to the §1983 claims, the district asserted its lack of liability for Coach's conduct. The district argued that the plaintiffs could not establish—as required for a successful §1983 claim against a municipality—

that district policy or custom amounted to an intentional violation of, or deliberate indifference to, the plaintiffs' constitutional rights.[17]

As to the Title IX claims, while the plaintiffs' filing predated the U.S. Supreme Court's decision in *Gebser v. Lago Vista Indep. Sch. Dist.*,[18] the district, apparently anticipating *Gebser's* actual notice/authoritative administrator/deliberate indifference standard,[19] claimed that no authoritative administrator had actual or even constructive notice of Coach's conduct with the complainants. At most, the district asserted, fellow teachers were aware of some complaints against Coach, but took no action to bring these or any other concerns to the attention of Coach's principal or district administrators.[20] Moreover, as to the prior complaints, the police were unable to find corroborating evidence, and the complainant himself supposedly lacked credibility, offering administrators no basis for action against Coach, or even heightened scrutiny of Coach's conduct.[21]

As to the state law claims, the defendants set out all the usual defenses—failure to state a claim based on want of duty and causation, comparative negligence, apportionment, and contribution.[22]

The case proceeded to the discovery phase, which began with document demands but moved quickly to depositions. Although an effort was made to protect the boys from examination—on the grounds that they had already been subjected to detailed and humiliating questioning in the municipal claims preliminary hearing[23]—the court denied the motion, and the boys' depositions were taken first. Fortunately, they proved to be strong witnesses. They were consistent in their accounts of Coach's conduct and its impact on their lives.

School personnel, on the other hand, were evasive, even hostile, during their testimony. The witnesses included the middle school principal, the district superintendent, members of the district hiring committee, and several teachers. Evasiveness notwithstanding, the depositions of the school administrators and staff confirmed the district's careless hiring practices, its lack of a policy addressing sexual harassment and abuse, and its utter failure to train or even advise staff and students about procedures and other information relating to sexual abuse.

The district's approach to the depositions was exacerbated by its careless and dilatory responses to document production demands. Eventually, the plaintiffs had to file a motion to obtain Coach's district and building personnel files. Items had apparently been removed by district staff before initial disclosure of the files. Even then, it was only upon deposition of the superintendent that the district finally produced a copy of the file containing all the information and documents in the original file.

The district now requires applicants to report any criminal convictions and to identify references.

The evidence brought out in depositions and documents clearly supported the plaintiffs' state law claims, particularly with regard to the district's negligent hiring, supervision, and retention of Coach. Specifically, the plaintiffs could substantiate the district's failure to check Coach's references or prior employment records during the hiring process;[24] its failure to properly investigate, document, and follow-up on the earlier complaints of abuse;[25] its failure, notwithstanding admitted administrative concerns regarding Coach's conduct, to institute a protocol for supervision that might have prevented the abuse in this case;[26] its failure to advise staff and students of any mechanism for reporting complaints so as to bring improper conduct to a prompt end;[27] and staff's failure to make mandated reports under state law.[28]

While such evidence might not have met the stricter burdens of proof for §1983 or Title IX liability, especially after *Gebser*, the plaintiffs still might have gotten to the jury even on those counts, given the district's failure to adopt or implement any sexual abuse policy, and its failure to follow through with any screening, reporting, or supervision of staff, either during or following the earlier complaints against Coach.[29]

As the case unfolded, the district took immediate action to meet its Title IX obligations and implement state reporting mandates. With the assistance of the State School Board Association, it quickly adopted a sexual harassment and abuse policy as required under Title IX, and began a course of staff training modules to address recognition of abuse, channels for complaints or observation of abuse, and state abuse reporting requirements.[30] In addition, the district changed its teacher application forms and hiring protocol. The district now requires applicants to report any criminal convictions and to identify references. References and certifications must now be checked, in part by use of the National Association of State Directors of Teacher Education and Certification's online clearinghouse.[31]

Despite their strong deposition performances, the boys remained in a fragile state. A trial would have forced them and their families to relive again very painful experiences, with the ever-present possibility of minimal reward.[32] When the district made a settlement offer that would compensate the victims for the fiscal and emotional strains placed upon them as they sought medical attention, counseling, and academic services in the immediate aftermath of the abuse, and that would cushion the families' efforts to see to the boys' emotional and academic needs in the future, the families agreed that further litigation would not serve the boys' best interests—nor, in light of the district's belated policy changes, would it offer any additional protection to other students who might encounter a "Coach" in the future.

Of course, the boys' futures remain

uncertain. Victims of abuse trudge a long, arduous road. Likewise, the district's willingness to enforce its newly adopted policies remains to be seen. Still, in the case of a teacher like Coach, litigation may be—for both the victims and the district—an important first step toward recovery on the one hand, and a fair and effective educational system on the other.[33]

William Friedlander, Esq., is a member of the National Crime Victim Bar Association with a general litigation practice that is limited to plaintiffs' trial work. For the past few years, he has concentrated on representing children who have been victimized. He also works to hold firearm dealers and manufacturers and ammunition sellers accountable. Recently, he has been working to protect nursing home residents from abuse and neglect. He can be contacted at 109 N. Aurora St., Ithica, NY 14850, (607) 272-5590, wsf47@msn.com.

1. *See, e.g., Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (sexual harassment of students in school "all too common"); *see also*, Carol Shakeshaft, *Responding to Complaints of Sexual Abuse*, SCHOOL ADMINISTRATOR, Oct. 1994, No. 9, vol. 51 (noting school sexual harassment "neither uncommon nor new" although reporting may be on the increase, and citing studies indicating 25% of female students, 10% of males in grades 8-11 have been sexually harassed by a teacher or staff member); Brad Goorian, *Sexual Misconduct by School Employees*, ERIC DIGEST 134, Dec. 1999 (sexual abuse of students a problem of sufficient magnitude, notwithstanding significant underreporting, to warrant close attention by school officials).
2. *See, e.g., Roman Catholic Diocese of Covington v. Secter*, 966 S.W. 2d 286 (Ky. App.1998); *Hutchison v. Luddy*, 742 A.2d 1052 (Pa. 1999); *R.A. v. First Church of Christ*, 748 A.2d 692 (Pa. Super. 2000); *Lee v. Gelineau*, 2001 R.I. Super. LEXIS 69 (R.I. Super. 2001).
3. *See* Shakeshaft, *supra*.
4. "A Trust Betrayed" is the title of a three-part series on educator sex abuse published by EDUCATION WEEK ON THE WEB in December of 1998. The entire series is available on line at *www.edweek.org/ew/vol-18/*.
5. *See* Shakeshaft, *supra*; American Association of School Administrators, *Responding to Complaints of Sexual Abuse* (reporting on the rise in court-held accountability for teachers and administrators).
6. Shakeshaft, *supra*, reports on a review of 225 school sex abuse cases, drawing an "abuser profile" that uncannily resembles Coach—popular mentors, with after-school contacts, often chosen for "outstanding teacher" awards, who target vulnerable children, marginal students with family problems, whose credibility will be suspect in any investigation. *See also* Caroline Hendrie, *Sex With Students: When Employees Cross the Line*, EDUCATION WEEK ON THE WEB, Dec. 2, 1998, available on-line at *www.edweek.org/ew/vol-18/14abuse.h18*, reporting on study of 244 school sex abuse cases, in which abusers are found to be popular teachers, with after-school contact, targeting marginal students unlikely to be believed, relying on collegial disbelief and administrative denial to survive charges.
7. S.E.S.A.M.E.: Survivors of Educator Sexual Abuse and Misconduct Emerge, *www.sesamenet.org*, offers links to research regarding the physical, emotional, and life-course consequences of sexual abuse and pedophilia. *See, e.g.*, AdvocateHope,*www.advocateweb.org/hope/whatissexualexploitation.asp*, offering a summary of sexual abuse consequences.
8. Although the district superintendent, individually, might have been subject to § 1983 liability, he was not named, in part to avoid extensive litigation over the issue of qualified immunity. *Cf., Gooden v. Doe*, 214 F.3d 952 (8th Cir. 2000) (superintendent entitled to qualified immunity where notice of isolated incidents, some unconfirmed, does not establish a pattern of unconstitutional acts); *Doe v. Dallas Indep. Sch. Dist.*, 153 F. 3d 211 (5th Cir. 1998) (principal entitled to qualified immunity, not having acted with deliberate indifference where she investigated complaints and concluded erroneously they were untrue); *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720 (3d Cir. 1989)(qualified immunity granted where administrator's conduct amounts to "inaction and insensitivity" rather than active condonation or authorization of abuse).
9. *Compare, e.g., Smith v. Estate of Kelly*, (N.J. Super. 2001) (statute of limitations bars parochial school abuse case); *with Ortega v. Pajaro Valley Unified Sch. Dist.*, (Cal. App. 1998) (equitable estoppel precludes district from raising defense of statute of limitations in school abuse case); *Hobert v. Covenant Children's Home*, (Ill. App. 1999) (statutory "date of discovery" rule governs limitations defense in sex abuse case); *Miller v. Monogalia County Bd. of Educ.*, 2001 WL 1456195 (W. Va.)(2-year limitations period tolled by victim's minority and defendant's fraudulent concealment of wrongdoing).
10. *Cf., Hubbard v. Canton City Sch. Bd. of Educ.*, 2001 Ohio App. LEXIS 1619 (Ohio App. 2001)(Ohio sovereign immunity statute precludes negligent supervision and retention claim against school district); *Doe v. New Philadelphia Pub. Sch. Bd. of Educ.*, 996 F. Supp. 741 (N.D. Ohio 1998) (Ohio sovereign immunity statute does not immunize district from liability under state reporting statute); cf., also, *Wilson v. Webb*, 2000 U.S. App. LEXIS 23585 (6th Cir. 2000, unpublished) (Kentucky sovereign immunity statute bars state tort claims against administrators in their official capacity).
11. *Cf., Doe v. Frank*, 951 F.2d 320 (11th Cir. 1992); *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981); *James v. Jacobson*, 6 F.3d 233 (4th Cir. 1993).
12. *Cf., Doe v. Shakur*, 164 F.R.D. 359 (S.D.N.Y. 1996); *Doe v. Provident Life and Accident Ins. Co.*, 176 F.R.D. 464 (E.D. Pa. 1997); *Does v. Covington County Sch. Bd.*, 884 F. Supp. 462 (M.D. Ala. 1995).
13. *See Does v. Covington County Sch. Bd., supra; James v. Jacobson, supra; Candy H. v. Redemption Ranch, Inc.*, 563 F. Supp. 505 (M.D. Ala. 1983); and *cf. Doe v. Stegall, supra; Doe v. Santa Fe Indep. Sch. Dist.*, 933 F. Supp. 647 (S.D. Texas 1996) (shielding children from derision for litigation involving unpopular religious beliefs).
14. *See* Hendrie, *supra*; Shakeshaft, *supra*; Goorian, *supra* (all noting that school sex abusers— often popular teachers with a public following—may inspire students and the community to blame, isolate, or intimidate the victims).
15. *Cf., Watkins Glen Cent. Sch. Dist. v. National Union Fire Ins. Co. of Pittsburgh*, 732 N.Y.S.2d 70 (N.Y. App., 2d Dept. 2001); *Sweet Home Cent. Sch. Dist. v. Aetna Commercial Ins. Co.*, 695 N.Y.S.2d 445 (N.Y. App., 4th Dept. 1999); *Bd. of Pub. Educ. of the Sch. Dist. of Pittsburgh v. National Union Fire Ins. Co. of Pittsburgh*, 709 A.2d 910 (Pa. Super. 1998).
16. *Cf., Warren v. Reading Sch. Dist.*, 2002 U. S. App. LEXIS 890 (3d Cir. Jan. 23, 2002) (in school sex abuse case, trial court granted summary judgment as to all causes except Title IX claim against district and 1983 claim against principal); *Doe v. Dallas Indep. Sch. Dist.*, 220 F.3d 380 (5th Cir. 2000) (case history notes Title IX claim initially dismissed on pleadings; summary judgment later disposes of all causes).
17. *See Monell v. Dep't of Social Serv. of the City of New York*, 436 U.S. 658 (1978); *Schrum v. Kluck*, 249 F.23d 773 (8th Cir. 2001); *Davis v. DeKalb County Sch. Dist.*, 233 F.3d 1367 (11th Cir. 2001).
18. *Supra*, 524 U.S. 274 (1998). In *Gebser*, the Court clarified that a school district's civil liability for harassment under Title IX is limited to cases in which an administrator with authority to take remedial action could be found to have actual notice of the harassment and responded with deliberate indifference. Post-*Gebser* cases have litigated, with differing conclusions, which administrators have authority, what constitutes actual notice, and what responses amount to deliberate indifference. *Cf., Warren v. Reading Sch. Dist., supra* (3rd Circuit concludes principal has authority); *Baynard v. Malone*, 268 F.3d 228 (4th Cir. 2001)(4th Cir. concludes principal lacks authority, and finds knowledge of past abuse and physical contact insufficient to provide actual notice of present abuse); *Davis v. Dekalb County Sch. Dist., supra* (leaving aside question of principal's authority, concluding that notice of past touching does not afford actual notice of present abuse); *Doe v. Dallas Indep. Sch. Dist., supra* (leaving open question of principal's authority and adequacy of notice, but concluding district's one-sided investigation vitiates claim of deliberate indifference).
19. *See also Canutillo Indep. Sch. Dist. v. Leija*, 101 F.3d 393 (5th Cir. 1996), cert. den. 520 U.S. (1997) (pre-*Gebser* case in which 5th Circuit premised Title IX liability on actual notice to authoritative administrator); *cf., Krakunas v. Iona College*, 119 F.3d 80 (2d Cir. 1997) (2nd Circuit permits Title IX liability to rest on Title VII principles of agency liability and constructive notice).
20. *Cf., P.H. v. Kansas City Sch. Dist.*, 265 F.3d 653 (8th Cir. 2001) (knowledge of fellow teachers, including vague complaints to administrators that the abuser "favored" particular students, does not constitute actual notice to school district).
21. *Cf., Doe v. Dallas Indep. Sch. Dist., supra* (administrator with actual notice of complaints of abuse did not act with deliberate indifference when, upon investigation, she did not credit complaints); *P.H. v. Kansas City Sch. Dist., supra* (unsubstantiated prior complaint does not place district on notice), *see also, Baynard v. Malone, supra* (no Title IX liability where principal, although repeatedly warned of teacher's past misconduct, had no actual notice of present abuse); *Davis v. DeKalb County Sch. Dist., supra* (administrator with prior notice of inappropriate touching had no actual notice of present sexual molestation).
22. *Cf., Roman Catholic Diocese of Covington v. Secter*, 966 S.W. 2d 286 (Ky. App. 1998) (apportioning fault in sex abuse case between negligent diocese and intentional abuser).
23. *Cf., Maggio v. Palmer*, 810 F.Supp 50 (E.D.N.Y. 1993).
24. While it is not clear that a certification check would have revealed Coach's prior conviction—sister-state reporting requirements were beset with loopholes, *cf. K.I. v. New York City Bd. of Educ.*, 683 N.Y.S.2d 228 (N.Y. App., 1st Dept. 1998) (negligence premised on inadequate record check fails where records would not have revealed sex abuse); *Mirelez v. Bay City Indep. Sch. Dist.*, 992 F. Supp.916 (S.D. Texas 1998) (same, §1983 action)—it is likely that, in the instant case, a reference check, or pointed questions in the application process regarding references, certification, and past convictions would have elicited at least some damning information warranting further investigation; *see* Goorian, *supra; see also Districts Should Improve Background Checks, Lawyers Advise*, EDUCATION WEEK ON LINE, Apr. 21, 1999 (both urging strict applicant screening as reasonable preventive measure). Negligent hiring practices in the face of questionable applicant information are actionable in many jurisdictions. *Cf., Skelley v. Trustees of Fessenden Sch.*, 1997 Mass. Super. LEXIS 149 (Mass. Super. 1997) (negligent hiring claim survives summary judgment based on information available at time of hire); *K.I. v. New York City Bd. of Educ., supra* (recognizing viability of negligent hiring claim where plaintiff can show that adequate reference check would have revealed propensity to molest or required further investigation); *Godar v. Edwards*, 588 N.W.2d 701 (Iowa 1999) (same, invoking RESTATEMENT 2D, AGENCY § 213); *Walters v. Hawken Sch.*, 1999 Ohio App. LEXIS192 (Ohio App. 1999) (same); *R.A. v. First Church, supra* (same).
25. *Cf., Warren v. Reading Sch. Dist., supra* (evidence regarding inadequacy of investigation where school relies only on police or social service investigators).
26. *Cf., Hutchison v. Luddy, supra* (diocese's knowledge of past allegations of abuse, together with supervisor's observations of abuser in close contact with abused boys, required appropriate precautions); *Skelley v. Trustees of Fessenden Sch., supra* (negligent supervision and retention claims survive summary judgment where complaints are inadequately followed); *Warren v. Reading Sch. Dist., supra* (in Title IX action, evidence supports findings of knowledge and indifference where, *inter alia*, administrator referred parent's complaint to subordinate who took no action).
27. *See Warren v. Reading Sch. Dist., supra* (evidence regarding absence of adequate reporting and training procedures in Title IX action); *cf., Davis v. DeKalb County Sch. Dist., supra* (failure to follow *established district abuse policies* does not amount to deliberate indifference); *P.H. v. Kansas City Sch. Dist., supra* (record regarding district's established abuse policies, grievance channels, staff and teacher training, precludes finding of deliberate indifference in §1983 action).
28. *Cf., Kimberly S.M. v. Bradford Cent. Sch.*, 649 N.Y.S.2d 588 (N.Y. App. 4th Dept. 1996) (school's liability for teacher's failure to report under state reporting statute); *Sprouse v. Lucas County Bd. of Educ.*, 1999 Oh. App. LEXIS 870 (Ohio App. 1999) (summary judgment denied on reporting violation claim); *Mirelez v. Bay City Indep. Sch. Dist., supra* (reporting failure raises questions about adequacy of district's policies).
29. *Cf., Warren v. Reading Sch. Dist., supra* (Title IX, principal's inaction in response to complaints, including informal delegation of response to subordinate and minimal warning to abuser, goes to jury on question of deliberate indifference); *cf., also, P.H. v. Kansas City Sch. Dist., supra* (in §1983 action, failure to train claim might have some viability where district completely lacks abuse policies and procedures); *Bd. of County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397 (1997) (in §1983 action, noting viability of municipal failure to train and inadequate screening claims where risk of constitutional violation resulting from municipal inaction is plainly obvious, so that continued inaction constitutes deliberate indifference).
30. *Cf., Gebser, supra*, 524 U.S. at 291-292 (noting preventive function of Department of Education regulations—inter alia, at 34 CFR 106.8 and 106.9 [1997]—requiring school districts to adopt and disseminate harassment policy and grievance procedures); *see also* U.S. DOE., OFFICE OF CIVIL RIGHTS, SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES (2001), VIII (noting preventive role of adoption and publication of district harassment policy and grievance procedure, as well as effective teacher training programs) and IX (noting that requirement for district adoption of anti-discrimination policy and grievance procedures under Title IX, in place since 1975, includes provision for prohibition and grievance of harassment, and delineating elements of minimally-effective grievance policies). Shakeshaft, *supra*, also notes that effective abuse-prevention strategies include strong sex-harassment policies, staff and student education about harassment and grievance channels, and staff training in signs and reporting of possible abuse.
31. *See* Shakeshaft, *supra* (effective prevention strategies include screening and reference checks); *see also* Caroline Hendrie, *"Passing the Trash" by School Districts Frees Sexual Predators to Hunt Again*, in A TRUST BETRAYED, *supra*, EDUCATION WEEK ON LINE, Dec. 9, 1998 (noting problem of poor recruiting practices and urging reference and clearinghouse checks as minimal screen for migrating abusers); *Districts Should Improve Background Checks, Lawyers Advise, supra* (urging use of common application form to elicit complete criminal and employment histories).
32. *See, e.g., Susan Smith, Civil Remedies for Victims of Sexual Abuse, www.smith-lawfirm.com/remedies.html* (noting stressful and risky nature of sexual abuse litigation); Shakeshaft, supra (noting that "the effects of sexual abuse are lifelong unless interventions take place" and cautioning that student victims are at risk of being "victimized twice–first by the abuser and then by the process.").
33. *Cf., Gebser, supra*, 524 U.S. at 292 ("No one questions that a student suffers extraordinary harm when subjected to sexual harassment and abuse by a teacher, and that the teacher's conduct is reprehensible and undermines the basic purposes of the educational system.")