



# Requesting and Providing References: How to Exchange Information Respectfully and Professionally

By Joan Rennekamp

If you ask three HR professionals about how to give and request references, you are likely to get five opinions. This is an area fraught with conflicting information and a fear of legal risk. However, schools need references to determine whether an applicant might be a good fit for the job they have open. Information about past performance is critical to this decision.

Sometimes, legal counsel has told us that giving any negative reference has a high risk of litigation. Consequently, many organizations have developed the policy of only giving “name, rank, and serial number” to those who seek a reference, or more accurately, name, job title, and dates of employment. However, this type of policy doesn’t help employers at all. It drives reference-seekers to call co-workers and request information off-the-record from individuals who may not know the whole story. It also forces schools, who have such a high level of responsibility for the safety of children, to make uninformed choices.

We also need to keep in mind that many states have statutes that specifically remove liability from employers that give references “in good faith.” In addition, your application form should contain a statement that applicants sign that holds prior employers harmless for any information exchanged in the application process. These two things can go a long way to reduce risks related to reference checks and open the door for a more frank discussion.

Allow me to suggest an alternative for schools that models a respectful and responsible method of giving and receiving references. Always remember that state laws on this topic may differ, and it is wise to consult your local legal counsel before embarking on any change.

## Requesting References

To be helpful, references should be checked prior to extending an offer of employment. Although you may have received letters of reference with the application or the names of people the applicant suggests you contact, the best reference will come from someone who doesn’t expect the call. If you are considering applicants for a leadership position, you also should consult at least one person who reported to the applicant. I also recommend references by phone because it allows you to pursue information you hear from the person you call in a way that a written form does not.

The questions you ask in a reference check should be related to the information provided in the application materials. For example, if the prospective teacher claims to have curriculum design experience, you should ask their prior supervisor if that is the case. If they claim to have coaching experience, you should check that out. And, if they claim to have resigned from their position, you should make sure they were not asked to resign.

All of these questions are appropriate because they are objective, that is, they relate to facts, not opinion. Problems are more likely to arise when a reference involves subjective questions. For example, asking a reference to tell you “Was she a good teacher?” or “How did he handle his classroom?” or “Was she well-organized?” all ask a leader to synthesize information and give their opinion. It is in these cases where information is more likely to generate problems because the answers might not fairly represent the situation.

In addition, all reference calls in schools should contain a

standard set of safety questions such as:

- *Has anyone, to your knowledge, ever accused this person of sexual misconduct with a young person?*
- *Are you aware of any instance in which he or she sexually harassed another individual or was accused of doing so?*
- *Has anyone ever reported this person to have problems with anger, either inside the classroom, or with coworkers?*

The information acquired in a reference check should remain highly confidential and should only be shared with the hiring supervisor (e.g. the principal or head of school) and the HR Department. Search committees should not check or review references. Neither should the principal's secretary. The reference should include information pertaining to the quality and quantity of work performed, attendance, education, and other work-related information. Prospective employees might also be asked to supply the names of at least three professional references.

Avoid asking the reference to speculate on the applicant's suitability for your job and keep your questions focused on the applicant's job performance in the former position.

The most important thing to remember is to avoid asking whether the applicant is "eligible for rehire." We tend to ask this question because we think we might obtain some "hidden information" that will give us a window into the overall suitability of the candidate. However, I have seen former employees labeled as "Do Not Rehire" for the most inappropriate reasons. Sometimes, it might be the individual's schedule created problems (but schedule problems might resolve themselves in the future); sometimes it is because the supervisor just "didn't like" the individual, with no documentable reason; and sometimes it might be because of problems with one student, parent, board member, or donor. The answer to the rehire question may mislead you and will certainly not contain enough specifics on which to base a hiring decision.

Limit your questions to objective (factual) questions rather than subjective questions. For instance, it is better to ask, "How frequently did Jim communicate with parents?" than

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to help employees pay for their medical expenses, effective January 1, 2017.<sup>1</sup> The new arrangement is called a "qualified small employer health reimbursement arrangement" (or a "QSEHRA"). QSEHRAs will not be considered "group health plans" under the Patient Protection and Affordable Care Act ("Affordable Care Act"), so market reform requirements will not apply to QSEHRAs.

Eligible qualified small employers will be allowed to pay or reimburse employees' eligible medical care expenses through a QSEHRA on a pre-tax basis. Employers are eligible to offer a QSEHRA if they (1) are not applicable large employers as defined under the Affordable Care Act<sup>2</sup>, and (2) do not offer a group health plan to any of their employees.

#### **A QSEHRA must meet the following requirements:**

- All employees of the employer must be covered by the QSEHRA, unless they have not completed 90 days of employment, are under the age of 25, are part-time or seasonal employees, are covered under a collective bargaining agreement that does not provide for coverage under the QSEHRA or are nonresident aliens with no U.S. source income.
- The QSEHRA must be provided on the same terms to all eligible employees. An employee's permitted benefit under the QSEHRA is allowed to vary in accordance with the variation in the price of an insurance policy in the relevant individual health insurance market, based on the age of the eligible employee and covered family members, or the number of family members of the eligible employee covered.
- The QSEHRA must be funded solely by the eligible employer; no employee salary reduction contributions are allowed.
- The QSEHRA must provide for the payment of, or reimbursement of, eligible medical care expenses (as described in section 213(d) of the Internal Revenue Code) incurred by the eligible employee or the eligible employee's family members (including premiums for individual health coverage), but only after the employee provides proof of health coverage or expense. The Act does not describe the types of proof that are considered acceptable.
- The employer must ensure that, in 2017, annual payments or reimbursements from the QSEHRA to an eligible employee do not exceed \$4,950 (\$10,000 if family members are covered under the QSEHRA). If an individual is not covered under a QSEHRA for the entire year, this dollar limitation is prorated for the number of months the individual is covered by the QSEHRA.

For a complete review of QSEHRA, see the article *Qualified Small Employer Health Reimbursement Arrangements Permitted, Beginning in 2017* at [www.acsi.org/legal-resources](http://www.acsi.org/legal-resources). ¶

to ask, "How were Jim's communication skills?" Some of the following also might be helpful reference questions:

- Did Jim ever receive a verbal or written reprimand?
- When did Jim arrive in the morning and when did he leave at the end of the day?
- Did Jim ever miss a deadline? If so, how frequently did this happen?
- Did you ever receive a complaint from a parent about Jim?
- Did Jim every have angry outbursts on the job?
- Why did he or she leave?
- Did anyone ever accuse him of inappropriate behavior of any kind?
- Did Jim resign or was he discharged? If he resigned, did his supervisor tell him he would be discharged if he did not resign?

If you want to get at information that you haven't touched on, you might ask:

- As you know, you and I are both responsible for the safety of children. Is there anything I have not asked that you think might be important in this regard?
- Give me an example of an interaction you observed between Jim and one of his students that you think represents his overall teaching style.

You can see that all of these examples are objective. No one is being asked to speculate about or synthesize information into a personal opinion. However, you still are receiving helpful and useful information about the candidate.

## Providing References

When providing reference information to a potential employer of a former employee you can use the same guidelines. As with requesting information, it should ordinarily be done by the HR Department or the principal.

The same guidelines apply. Answer only objective (factual) questions rather than subjective questions. For instance, if the employer asks, "How was Jim's attendance?" you should respond, "Well, I can tell you that he was late three times during his final twelve months of employment."

Some of the following also might be helpful reference guidelines:

- You may answer questions regarding verbal or written reprimands, as long as they are factual rather than subjective.  
Example: "He did receive one written reprimand in 2001, but none after that."
- You may answer questions about missed deadlines, complaints or commendations from others, and accuracy of work.

Example: "There were a couple of complaints from parents about scheduling religious ed classes, but nothing that we considered major."

- You may answer questions about behavioral issues, such as rudeness, angry outbursts, negativity, and spreading rumors.

Example: "She had some difficulty controlling the classroom when she was teaching teenagers, and we heard from parents that she got quite angry, although I never observed it."

- You should answer questions about harassing behavior:

Example: "He was dismissed because of behavior we thought was inconsistent with our anti-harassment policy."

- I believe you are morally obligated to answer questions about any behavior that puts another in an unsafe situation, such as sexual misconduct, abuse of trust, or violent behavior. In some situations, you should volunteer this information, whether asked or not. However, any references for employees to whom this applies should be reviewed by the HR Department and by legal counsel before they are given.

Example: "There are some other issues that I would like you to talk with our HR Director about."

- You may answer questions about the reason the person left the employ of the school, even if it was a dismissal, and you may answer questions about the reason for dismissal. The reason should be consistent with the reason given to the employee when he or she was dismissed. For instance, if the employee was given a choice of whether to resign or be dismissed, and he or she chose to resign, then you should state that the teacher resigned. However, an employee should never be given this choice if the employee was engaged in harassment or misconduct at the school.

Example: She was dismissed from employment because she shared confidential information about the kids in her program.

- Remember, you should never answer any questions about eligibility for rehire.

Example: "We generally don't answer the rehire question because of how broad it is. Do you have any more specific questions?"

All of these suggestions are intended to provide you with a useful and effective protocol for requesting and providing references in a manner that is consistent with the values of respect and professionalism. Using it should make the school better at selecting employees as well as better members of the school community. ¶

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