Legal & ethical issues in early childhood and school age programs

Do you know why I pulled you over?

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A. RISK MANAGEMENT decision-making:

1. When making decisions: a) Be consistent, b) Follow written policies & procedures, c) Stay objective & act reasonably, d) Document & report facts, e) Do not discriminate vs. protected classes, f) Exercise Due Process (give notice of new policy & invite input—right to a hearing).


3. Written policies & procedures. You don’t have to be Shakespeare to write staff, parent handbooks, job descriptions and new procedures. Written, publicized policies, signed/initiated by the reader demonstrate that notice has been given. For online documents, maintain a signed hard copy in employee’s file.

B. HIRING

What can you say when asked to give a reference on a former employee? At an interview, what questions can you ask?

1. References: Common practice “When asked for a reference for a former employee, our policy is to state: a) whether the person worked for us, and b) the dates of her/his employment.” Some policies allow you to respond to the question: “Would you rehire this person?”

2. Consent for employer to give a reference- “I, __________, an employee of ________ childcare, agree to hold ________ childcare harmless for a recommendation that organization may give me in the following areas: classroom management, developmentally appropriate practices, building partnerships with families, inclusiveness, timeliness, professionalism, preparedness, _____.”

3. Job descriptions: “Functional requirements of the job” focus on the task to be accomplished, not the attribute needed, e.g. diapering a baby, not lifting 20 #.

4. Interview questions: a) allow the applicant to demonstrate the ability to perform the functional requirement of the job, b) ask same questions of each applicant.

5. ADAAA (Americans w/ Disabilities Act Amended 2009): requires that persons with a disability (restriction of a major life activity like breathing, walking) who otherwise qualify for the job, be given reasonable accommodations to apply, perform, enjoy the job, unless doing so will cause the employer an undue hardship or a Direct Threat is imminent. Employers may not ask: “Do you have a disability?”

6. Equal opportunity law forbids discriminating against protected classes (age, gender, race, religion, national origin (Patriot Act exceptions), and marital status.
C. TERMINATING an employee
If I work in at “at will” state, do I need to use progressive discipline procedures?

1. Employees “at will” can resign or be fired without notice. Employer says: “It’s just not working out.”
2. Probation period is the easiest time to let an employee go.
3. Progressive discipline’s 3 strikes: a) Verbal warning, b) Probation, c) Termination. All 3 require written notice. Employer’s “Conscientious rescue effort’ includes: a) notice of what is expected, c) plan with timeline for correcting behavior, d) enhanced supervision, d) consequences of failure to improve.
4. “Good cause” Grounds for termination: poor performance, inability to deal w/ subordinates, insubordination, violations of employee regulations, refusal to participate in legal investigation. Immediate grounds: theft, violence, drug use.
5. Checklist for termination: a) followed written policies & procedures, b) could firing be viewed as retaliatory, c) consistent w/ treatment of other employees, d) if employee has been at organization for years, why terminate now, e) any question about employee’s responsibility for poor performance/misconduct?
6. New trend: Replace Progressive Discipline with “at will” process. “_____ child care is an at will employer: Employees may resign at will and the employer may terminate an employee at will. This policy replaces and nullifies the prior Progressive Discipline policy, #____” The employee can be terminated “at will” without cause. Continue to document process, however.

D. AMERICANS WITH DISABILITIES ACT (ADA as amended)

What is a disability? What makes an accommodation reasonable? Should I give preference to an applicant or an employee with a disability?

The Americans with disabilities act as amended (ADAAA), effective 1/1/09, overrules Supreme Court decisions interpreting the ADA narrowly, and will result in far more conditions qualifying as disabilities.

1. ADAAA protects a person with physical or mental impairment that substantially limits one or more major life activities (NEW: functioning of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions along with eating, sleeping, thinking, communicating, concentrating, lifting and bending)
2. Impairments can be: Physical (deaf, blind, wheel-chaired), conditions (epilepsy, diabetes, AIDS), or Mental (bipolar, major depression, ADHD), also Record of impairment (cancer in remission), and/or Regarded as impaired.
3. “Who is otherwise qualified for the job” means person meets job requirements, and is able to perform the functional requirements of the job with or without accommodation.
4. Reasonable accommodations are adjustments or modifications to enable people with disabilities to enjoy equal employment opportunities (in applying for and
performing on the job). Accommodations are individualized, tailored to fit the employee’s needs. Ask for the doctor’s written recommendations.

5. If an **undue hardship** would result from making a reasonable accommodation, the accommodation does not have to be made. Undue hardship includes excessive cost, putting the organization in financial jeopardy.

6. **Direct threat exception** comes about if an employee poses a **significant risk of harm** to him/herself or others on the job. The direct threat must be **likely to occur**, not just speculative (e.g. seizure disorder that cannot be treated by meds).

### E. INAPPROPRIATE USE OF ONLINE social networking sites.

Can teachers, claiming 1st amendment freedom of expression, post derogatory or inappropriate statements online, in their free time?

Encourage positive usage of social networking sites by staff, as long as program and personal confidentiality is honored.

To prevent inappropriate usage, utilize:

**Professionalism Policy:** Employees of ______ while in public will act in ways that reflect positively on our program and on the education profession.

### F. BABYSITTING & RELEASE TIME Policies, procedures & practices

Making sure each child leaves our program safely must be balanced with the custodial parents’ right to pick up the child. These policies and procedures prevent issues from arising when families pick up children.

1. **No babysitting policy:**

   **Staff members at _____ are not permitted to babysit for families in our program.**

2. **Consent to hold _____ program harmless for staff babysitting:**

   We/I ________ parents/legal guardians of ________ (name of child/ren) agree to hold ________ (Name of program) harmless for any injury our child may experience while under the care of staff member ________ (teacher’s name). We are aware of the program’s No Babysitting policy, and chose to take exception to that policy.

   _______________  ________  _______________  ________  _______________  ________

   Parent(s)/guardian’s name  Date  Teacher’s Name  Date  Program Director  Date

3. **Rights of persons with custody to pick up child(ren):**
Under the laws of the state of ________, both parents may have the right to pick up their child, unless a court document restricts that right. The enrolling parent, who chooses not to include the other parent on the authorized list, must file an official court document (e.g. current restraining order, sole custody decree, divorce decree designating sole custody, adoption decree). Absent that document, the program may release the child to either parent, provided that parent adequately documents his/her paternity/maternity of the child.

4. Shared custody agreement

We, _______&_______, parents/legal guardians of ________ (child/ren) agree that ______ (parent 1) will pick up_______ Monday-Wednesday; ________ (parent 2) will pick up _____ on Thursday and Friday. If a parent attempts to pick child/ren up on the other parent’s day, that parent must document the consent of the other parent to the change in schedule. If continuous changes occur, both parents will file a revised agreement with the program. Refusal to follow this agreement is grounds for terminating the child/ren’s enrollment.

5. Car safety seats required:

Children transported in vehicles must be buckled securely into car safety seats/seatbelts that meet state requirements. Parents will take whatever steps are necessary to maintain and use car safety seats. Another person on the authorized list will be called if this requirement is not met.

6. Age requirement on authorized list for pick up:

Persons on the authorized list must be at least 18 years of age and able to supply documentation of their identity.

7. Child’s safety preeminent:

If we have concern about a child’s safety when a person on the authorized list picks up your child, we will contact another person on the authorized list.
8. **Release time crisis procedure:** If a crisis arises at the end of the day, we will take the following steps to ensure everyone’s safety and well being. We will:

- **Not immediately release the child.** While discussing our concerns with the person picking up the child, we will engage the child with another staff member or otherwise ensure the child’s well-being;
- **Contact the other parent or persons on the authorized list to enlist them in ensuring that the child leaves our care safely.**
- **Offer alternatives.** Brainstorm with the family member alternative ways to ensure the child goes home safely.
- **Release the child with reservation, notifying the appropriated authorities of our concern.**
- **Call in the police and/or other authorities if anyone’s well being and/or safety is threatened.**

9. **Conflict of interest policy:** Employees, who wish to work at additional jobs outside the Child care center must first advise the child care’s Director who will determine if that employment poses a conflict with the employee’s work at the center.

**Resources:**

Americans with disabilities act as amended,

Baptiste, L. and Bruno, H.E. “Are you in compliance with the ADA as amended?” *Heart to heart conversations on leadership: Your guide to making a difference*, BAMradionetwork.com Leaders Channel


Copeland, T. and Bruno, H.E. “Can you prevent teachers from ‘dissing’ your program online?” *Heart to heart conversations on leadership: Your guide to making a difference*, BAMradionetwork.com Leaders Channel

Peck, R. and Bruno, H.E. “Have we all become public figures in cyberspace?” *Heart to heart conversations on leadership: Your guide to making a difference*, BAMradionetwork.com Leaders Channel.

Winickoff, Johathan. “Smokers need not apply: Should smokers be banned from working with children?” *Heart to heart conversations on leadership* (2011)