

# E *The Childcare Professional* XPERIENCE

July 2009  
Volume 3 Issue 4

A Quarterly Journal for Childcare Providers Discussing Legal, Administrative & Professional Issues

## On the Inside...

**DPW Regs: Page 1**  
Has DPW limited the natural rights of a parent by using the term "enrolling parent" in the regs?

**Children's Book Corner Page 2**  
Barn Dance  
By: Bill Martin, Jr.

**New NACCP Board Member Page 2**

**Water Play Safety Guide Page 3**

**Heat Exhaustion and Heat Stroke Page 4**

**Playground Safety Page 5**

**Where in the World... Page 8**

## PA's New Regs: "Parent" vs. "Enrolling Parent"

By Dawn K. Martini

The new DPW Rules and Regulations for child care facilities, as published in 2008, indicate, in section 3280.117 related to Release of Children, that only **the enrolling parent** may designate in writing the individuals to whom a child may be released. The section goes on further to state that **either parent** may pick a child up at any time, unless there is a court order on file at the agency that restricts one or both parent's access to their child. Finally, the section also states that **the parent** may make an oral designation for release of the child with specific requirements for documentation in the child's file.

This article is meant to address concerns that have been raised by parents, particularly non-enrolling fathers, with respect to how terms used in this section of the DPW Rules and Regulations for child care facilities contradict and/or restrict their rights as parents of their child. Specifically, that the term **the enrolling parent** limits the rights of both parents (in the absence of a court order to the contrary) to access information and make decisions about their child. As stated in the regulation, only **the enrolling parent** may designate writing other people who may from time to time pick up a child. In the majority of cases the mother is the enrolling parent. This regulation would therefore limit a father's right to make decisions related to his child.

In terms of custodial rights, both parents, in the absence of a court or-

der, have the right to make decisions related to the everyday needs of the child. These decisions include but are not limited to, education, religion, and medical needs. The issuance of a Sole Custody Order for one parent would limit the non-custodial parent's ability to make everyday decisions related to the child's needs. However, the vast majority of custody orders and agreements issued today retain legal custody rights for both parents in the form of Shared/Joint Custody Orders. So even in a situation where a custody order is in place, both parents are likely to have the right to access information and make decisions about their child.

It is our opinion that by limiting the ability to designate alternate pick up individuals to **the enrolling parent** this regulation infringes on the rights of the non-enrolling parent who has not been limited in his/her custodial rights by the court. The United States Supreme Court in *Troxel v. Granville* (June 2000), which, in concert with The Fourteenth Amendment, ruled to assert the fundamental rights of parents, to the exclusion of others. The Fourteenth Amendment's due process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." "Parenting your own child" has always been seen by the courts as a fundamental right. The United States Supreme Court in *Troxel* reaffirmed through it's broad and definitive decision that state laws limiting/restricting

...continued to Page 7

# CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

Have you ever wondered what happens down on the farm when the sun sets and moonlight shines upon the barnyard? The book, Barn Dance, written by Bill Martin, Jr. and John Archambault will shed a whole new light on what scarecrows and farm animals do in the p.m. hours.

The story takes place on a moonlit farm, where, inside the farmhouse, a young boy is settling down for the night. The boy is quickly roused from his sleepiness and beckoned into the barnyard by an unknown sound. Once outside, the young boy realizes the sound is that of distant music, surprisingly coming from the barn. He makes his way across the barnyard and the distant sounds give way to fiddle music and the sound of stomping feet! But who could be having a hoe-down in the middle of the night? The young boy enters the barn and, much to his amazement, it is the animals engaged in a good old fashioned barn dance, complete with scarecrow fiddler! It is a magical night, complete with whirling pigs and dancing chickens! But of course the magic must end and so does the barn yard hoedown.

Barn Dance is a fun-filled, imaginative story that your preschoolers are sure to enjoy. The author's use of rhyming, lyrical text is genuinely engaging. As you read the text aloud, it takes on an almost "musical" cadence which truly complements the story line. Ted Rand's appealing illustrations quickly capture the attention and interest of the reader/listener. His realistic portrayal of the barnyard bathed in moonlight and his rendering of the animals dancing at the hoe down, accurately capture the mood of the storyline.

Barn Dance, a Reading Rainbow selection, will prove to be a favorite story time addition. (It can also serve as a valuable accompaniment to a lesson on Farms or Barnyard Animals).

So if you are in the mood for some good old fashioned country fun, why not read Barn Dance to your preschoolers today? But don't be surprised if they (and you) want to get up and dance!

## NACCP Board of Directors

Following the 2009 NACCP Annual Conference, Ronald V. McGuckin was invited to serve on the Board of Directors. Since 2007, Ron has been the legal expert on the NAC Board. Ron was honored by the invitation and after a good deal of consideration, accepted the position.

Ron is excited to serve on the NACCP Board of Directors and believes that this organization is poised to take a larger role in the Professional Development and Growth of our industry. Ron joins a wonderfully talented team of professionals, dedicated to promoting professionalism, quality and higher standards in the ECE Field.

For a complete list of the NACCP Board of Directors or for more information on NACCP and NAC Accreditation please visit the NACCP website at [www.naccp.org](http://www.naccp.org).

## *The Childcare Professional* **EXPERIENCE**

### **Publisher**

Ronald V. McGuckin and Associates  
Post Office Box 2126  
Bristol, Pennsylvania 19007  
(215) 785-3400 [Childproviderlaw.com](http://Childproviderlaw.com)

### **Editor**

Dawn K. Martini, BS Ed

### **Contributing Writers**

Ronald V. McGuckin, JD  
Dawn K. Martini, BS Ed  
Jason D. Dalton, JD  
Janice A. Nieliwocki, BS

### **Guest Writer**

Tymothy Smith

Copyright 2006 RVM & Associates All rights reserved. Reproduction in whole or in part without permission is prohibited. The Experience provides information about current developments, trends and issues. It does not offer solutions to individual problems and it should not be construed as legal or professional advice or opinion. You should obtain competent legal advice for an individual issue or problem.

## SUMMER FUN...Water Play Safety

By Janice Nieliwocki

Perhaps no other outdoor, warm weather activity attracts children quite like that of water play. However, along with the fun and excitement water play evokes, comes some safety perils and concerns. Nationwide, more than 600 preschoolers alone drown each year and thousands more are hospitalized due to near-drownings. Two-thirds of all drownings happen during the months of May through August.

Kick the summer off on the right foot by brushing up on water safety so that the children in your care can have both a safe and enjoyable summer.

The type of water play your child care agency offers will undoubtedly depend upon your facility's amenities. Some agencies have access to in-ground swimming pools, others use wading pools, while others simply rely on water table or sprinkler play. Regardless of the water activities you offer, refer to your state licensing requirements regarding water activity regulations. Be sure to check staff to child ratios (which often increase) as well as pool care/maintenance regulations.

Your goal for water play should be two-fold: to offer safe and enjoyable water activities as well as comply with all licensing requirements.

**Active supervision is essential** anytime children are involved in any type of water play. Young children can drown in as little as one inch of water which means that ANY standing water presents a potential hazard. Further, young children often drown quickly and quietly. Any momentary lapse in supervision can result in a tragedy. Minor lapses in supervision are the most common factor in the major-

ity of drownings and near drownings. With that in mind, staff should be trained annually regarding the following water play safety guidelines:

Children should NEVER be left unattended near water, including large buckets, pails and water tables.

Children should be within an "arms length" of an adult when involved in water activities.

Wading pools and water tables should be emptied once activities are finished.

If your facility has a pool on the premises, make sure all fences and latches meet regulations and are in good working condition.

Flotation devices, including inflatable devices such as "swimmies", "water wings" or "tubes" are not effective protection against drowning.

All toys and devices should be removed from the pool and surrounding pool areas when water activities are over so as

not to attract children.

Remove children from the pool area once swimming/water play has been concluded.

Educate children about water safety at an early age. (There are many great lesson plans and activities that address water safety specifically designed for young children.)

Keep emergency phone numbers readily available.

Make sure all staff have been trained in CPR. A review at this time of year can literally be life-saving.

Hot weather, children and water just seem to go together. But a child's natural curiosity about water, accompanied by lack of fear can potentially lead to a catastrophic result. Because of this, it is up to the adults who care for them to keep children safe when engaged in water activities. Provide a safe environment as well as **active supervision**. Have a safe and enjoyable summer!



### CHILD CARE PROVIDER RETAINER PROGRAM

Ronald V. McGuckin  
and Associates

is proud to announce the  
expansion of this program

With the recent addition of **Attorney Jason D. Dalton**, we have been able to open the retainer program to a limited number of new clients in **Pennsylvania and New Jersey**. The Child Care Provider Retainer Program offers special discounted rates to Private Child Care Agencies, Corporate Agencies, Head Start Programs, Family/Home Based Providers, and School Age Programs.

Over 25 years of Experience Representing Child Care Providers

For Information about how to Become a Retainer Client  
Please Contact Dawn Martini at  
(215) 785-3400

## SUMMER PERILS: Heat Exhaustion and Heat Stroke

By Janice Nieliwocki

As summer temperatures soar, so can the risk of heat exhaustion and heat stroke. Young children are at greater risk for heat induced illnesses because their bodies have a greater "surface area to body mass index" which means they absorb heat more quickly. That, coupled with the fact that children have a less efficient "sweat" mechanism, makes them particularly vulnerable to heat related maladies. In addition, children actively engaged in play and exercise, rarely recognize the need to drink more water or modify activity. And children who suffer with certain chronic health conditions or take certain medications may be at even greater risk.

As child care providers, it is essential to recognize the symptoms of heat exhaustion and heat stroke and be able to distinguish between the two.

Heat exhaustion, sometimes referred to as heat stress, occurs when the body is unable to cool itself properly. It is often characterized by *profuse sweating*, dry mouth, clammy skin and may

include fatigue, weakness, headache, dizziness and/or nausea. Body temperature may be close to normal or somewhat elevated.

Heat stroke, on the other hand, is usually characterized by hot, dry, red skin with *no sweating*. Symptoms may include dizziness, headache, nausea, vomiting, deep breathing, confusion, agitation, lethargy, rapid heart rate, and an increased body temperature of 104 degrees or higher. Seizures may occur and the individual may or may not lose consciousness. Heat stroke is a TRUE MEDICAL EMERGENCY. In severe cases, heat stroke can cause liver, kidney and brain damage and result in death.

In both heat exhaustion and heat stroke, the first course of action should be to move the individual into a cool, shady environment, preferably an air-conditioned facility. The individual should lie down and clothing should be loosened. If you suspect the child is suffering from heat exhaustion, administer water or other liquids, in an effort to re-hydrate the child. A

cool, wet cloth should be applied to the forehead. (If the child suffering from heat exhaustion begins to vomit, do not force fluids and seek immediate medical treatment.)

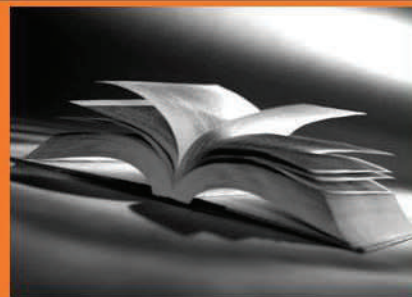
**Heat stroke** can be life threatening and requires more drastic intervention. **Immediate, emergency medical treatment should be summoned.** Besides moving the individual to a cool environment and loosening clothing, efforts should be made to lower the body temperature by bathing the child in cold water or applying cold, wet towels to the body. Ice packs can be applied to the armpits and groin areas. These efforts should continue until emergency help arrives.

However, the best course of action regarding heat induced illnesses is **prevention**. Simple measures can have profound effects in reducing the risk for heat exhaustion and heat stroke. Staff should be reminded annually to follow these guidelines regarding hot weather activities:

Because children take longer to adjust to environ-

### ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

- ◆ Model Personnel Policy Manual for Child Care Agencies: 4th Ed.
- ◆ Model Parent Handbook for Child Care Agencies
- ◆ Model Forms for Child Care Agencies
- ◆ Current Issues in Child



Available at [childproviderlaw.com](http://childproviderlaw.com) by downloading and completing the ORDER FORM and mailing or faxing it according to the instructions. The MODEL publications come with a workbook and a CD for your computer to make them easy to use. CD is WORD formatted but can be converted to MAC applications easily. These are the most valuable and child care specific administrative resources available nationwide.

mental heat, a gradual, slow increase in outdoor play will help them to acclimate to hot weather.

The duration of time that children play outdoors should be adjusted according to air temperature, humidity and sun exposure. Children should be well hydrated before partaking in outdoor activities and they should drink water periodically. This is especially true when temperatures are excessively high. (Drinks that contain caffeine should be avoided.)

If possible, schedule outdoor activities for cooler times of the day and/or in shady areas.

Lightweight, light colored, loose fitting clothing is best on hot days.

If a child in your care has a medical condition and/or is taking medications, consult with the parent regarding possible heat related consequences and additional

precautions to be taken.

A hat, sunglasses and sunscreen (SPF 15 or higher) will offer protection from the sun.

No article on heat related illness would be complete without some mention of the danger of leaving children (or adults and pets, for that matter) in a locked, closed vehicle. The temperature within a closed car rises rapidly and can reach dangerous levels in a matter of minutes. This can occur even when temperatures outside are relatively mild. From 1998 to May, 2009 there were a total of 419 hyperthermia deaths of children left in vehicles in the United States. In 2008 alone, there were 42 of these senseless tragedies. Most recently in Pennsylvania the owner of a child care center left a child in her own personal vehicle in a lot across the street from the center on a hot June day and the child died. Every summer, we hear reports of children dy-

ing because they were left, intentionally or inadvertently, in a hot car. Remember, heat stroke in children can occur quickly and, as stated earlier, can have dire results.

As an added note: Only 15 states have laws prohibiting leaving a child unattended in a car, while the others do not. Currently, 9 states have proposed legislation that would make it a crime to leave a child unattended in a car and wide disparity exists in the frequency of prosecution as well as length of sentences in car related hyperthermia deaths.

Summertime brings hot weather and with it, the prospect of safe, enjoyable outdoor activities. Help to make that expectation a reality, by taking precautions to safeguard the children in your care from heat related illnesses. Recognize the signs and symptoms of heat exhaustion and heat stroke and act quickly to administer treatment if need be. Have an enjoyable, safe summer!

## Playgrounds: How to make them safe.

By: Dawn K. Martini

The playground is usually one of a child's favorite areas at school. It also can be one of the most dangerous areas for children. Each year about 200,000 children visit the emergency room as a result of an injury that occurred while on the playground. What is more horrifying is the number of children killed as a result of a playground injury. Nearly twenty children die each year from se-

vere playground injuries and countless less serious injuries occur on playgrounds each day.

Designing safe playgrounds that allow children to explore their physical abilities, and providing ACTIVE supervision are key ways to avoid some or all of these terrible accidents. Safe playgrounds need not be boring, and active supervision need not be intrusive to accomplish the goal of providing the safest environment for children.

Safe playgrounds contain four elements:

### **Proper Supervision.**

Proper playground supervision begins with maintaining appropriate staff to child ratios on the playground at all times. Staff members need to be aware of how many children are outside with them. If a staff member has to take a child inside, he or she should take as many children with him or her to

maintain the ratio on the playground. There should never be fewer than two staff members on the playground at a time. This provides for coverage in an emergency. One staff member can attend to the situation, while the other can get additional aid if needed. Having the appropriate number of staff members on the playground is not enough. The staff must actively supervise the entire playground area. Staff members should appropriately disburse themselves throughout the playground so that all children can be seen and directed. Actively supervising does not have to mean hovering over children and interfering with their free play. Be inconspicuous, but be aware of every student's actions at all times and be close enough to react if you see a dangerous situation about to unfold.

**"Soft" Fall Zones.** Fall Zones are the areas around any part of the playground, which require a child to take his or her feet off of the ground. Fall zones should be covered with a material that would provide cushioning if a child should fall. To create a soft fall zone, materials like certified playground mulch, sand, and shredded rubber, make excellent cushions. Regulations vary from state to state, but the general rule is the material should be approximately twelve inches deep and ex-

tend out from the equipment in all directions a minimum of six feet. (Swings require more fall zone space in the front and back. A general rule would be two times the height of the swing set).

**Age-appropriate equipment.** Providing playground equipment that is appropriate to the age and physical development of the children who use it, also decreases injury. When analyzing the age-appropriateness of your playground, consider, height, width of platforms, grip size of the students and the open spaces in equipment. Generally, the height from one flat surface to another flat surface should be no higher than the child can reach. It is recommended that the overall height (from ground to top) of the equipment be no higher than seven to eight feet for preschool children. The width of each platform should provide adequate room for a child to sit, turn around and climb back down. When considering the grip of the child, staff members should be looking to see if the child's hands are large enough to hold on to railings, platforms and rungs. The open spaces in playground equipment beckon children. To prevent a child's head from getting in, but not out, equipment openings should be no less than three inches or more than 10 inches wide.

## **Regular equipment and play area maintenance.**

Playground maintenance is the final and most important key to playground safety. Child care providers can build or purchase a playground fulfilling all of the above safety guidelines, but if the equipment and area are not maintained, daily risks for injuries increase. The percent of playground injuries attributable to improper maintenance is a shocking forty (40%) percent.

When considering plans to renovate or replace a playground, consider the maintenance required to keep the area safe. Develop a plan for continued maintenance. Staff members should inspect equipment daily for protruding bolts, rust, ropes which are not secured at both ends, and sharp edges. High traffic areas in the fall zones should be raked daily to prevent compacting (especially under swings and at the bottom of slides). New material should be added occasionally to maintain the recommended twelve inch base.

By taking the time to consider these four elements of a safe playground, you can reduce the risk of injury to the children who enjoy exploring their physical abilities. While minor scrapes and bruises are expected as an unpleasant part of play, serious injuries and death are unacceptable. It is the responsibility of the child care provider to provide the safest environment for the children.

...continued from Page 1

parents with respect to decisions regarding raising their child as the parents see fit are unconstitutional. A state regulation limiting the ability of a parent to authorize/designate who may or may not pick up his/her child from childcare would, according to the Fourteenth Amendment and Troxel, be considered unconstitutional.

Another United States Supreme Court case (*Wisconsin v. Yoder*, 1972) established that in specific circumstances where the parent's decision has the potential to effect significant social burden, the parent's power may be subject to limitation. This ability for the State to limit parental power/rights has been narrowly defined to matters of significance like mandated school attendance for children, establishing child labor laws, and establishing guidelines for mental health commitment for minors. It would be a hard fought and futile argument to suggest that allowing both parents the ability to make decisions regarding pick up designations on enrollment documents in a childcare setting creates a significant social burden, and that by limiting the right to designate these alternate pick-up individuals to the enrolling parent the significant social burden would be relieved. The process of updating and maintaining enrollment forms, especially when parents are fighting/disagreeing, can be an inconvenient, but it certainly does not rise to the level of "significant social burden" as defined by the US Supreme Court.

Where does all of this leave childcare providers? This is a tough question with no clear answer. Should the childcare program follow the DPW Rule and Regulation as written and refuse to allow the non-enrolling parent to make additions and/or changes to the forms designating alternate pick-up individuals, the program could be sued in civil court by the non-enrolling parent for restriction of liberty as a constitutional violation. We also see the potential for a gender discrimination issue here, since this policy would tend to discriminate against males, as they are most frequently the non-enrolling parent. Conversely, if the childcare program allows changes to the forms by the non-enrolling parent there is the potential for citation by DPW for licensing violations. Ultimately, if this were to occur, the childcare program, could, on appeal, argue the Constitutional framework established above and we believe prevail. However, either situation presents significant expense in relation to time spent fighting the matter and legal fees to pay an attorney to make the arguments. Until DPW understands the legal predicament in which this regulation places providers and acknowledges that it has overstepped it's regulatory authority and redrafts

this section of the DPW Rule and Regulations for child care facilities the matter will be unsettled and providers and parents will be left at odds.

In an attempt to put a "patch" over the issue, child care facilities can define, through it's policies and procedures, "enrolling parent" to include both parents with exception of a parent, who through court order has had his/her custodial rights limited with regard to accessing information and/or making decisions related to the child's schooling, childcare or related activities. Since the DPW Rules and Regulations for child care facilities do not provide a specific definition of the term "enrolling parent" programs can set the definition of this term as used at their facility. This will not necessarily end all debate or complaints regarding this issue. A parent who is looking to make things difficult for the other parent may argue with the program that since the other parent did not fill out the paperwork, he/she is not technically the enrolling parent and as per this regulation can not designate someone to pick up the child. In this case the "complaining" parent may even contact DPW and DPW will inform the parent that in fact a non-enrolling parent can not designate alternate pick up individuals as per regulations. This will create another avenue for argument between the parent and the administration which does not bode well for customer relations.

In an attempt to resolve the issue, this article as well as a letter requesting clarification and or amendment of the regulation will be sent onto DPW's Office of Child Care Licensing as well as to PACCA. We encourage child care providers as well as our State Professional Development Organizations to contact DPW regarding this issue as well. Hopefully, once DPW becomes aware of the conflict of law they have created with the use of the term "enrolling parent" they will redraft this section of the regulations and simply substitute "parent" for the term "enrolling parent."

Addendum: If you are not a PA child care provider this article may still prove relevant for you and your staff. The Supreme Court issues raised in this article are applicable to all states and paint for all child care providers a poignant picture of the rights and overwhelming significance of the parent in a child's life. While not everything a parent may choose to do or not do regarding raising their own children, it is important to acknowledge the high value and importance that the highest courts in our land place on the right to parent your child as you see fit without interference from outside. If you have specific questions about how custody issues effect the release of children please contact us.



## WHERE IN THE WORLD...

Ron, Dawn and Jan will be traveling to the following cities for Local, State, Regional and National Conferences on the dates indicated. We welcome you to attend the conferences. Information has been provided so you can contact the organization conducting the training/conference.

If we are going to be in your state or area, we welcome you to contact us about coming to your program or organization to do a private training. The cost of bringing us in to your program or organization is significantly reduced because we are already traveling to your area. We certainly don't mind adding a day or two to our travel schedules to work with you.

**Contact us at (215) 785-3400 to see if we can visit your program when we are in town.**

**June 30 - July 2:** RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Employment Issues and Strategies for the Advanced Administrator. For information go to [childproviderlaw.com](http://childproviderlaw.com) under upcoming seminars

**July 21- 23:** RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Current Issues for Child Care Professionals. For information go to [childproviderlaw.com](http://childproviderlaw.com) under upcoming seminars

**July 23 and 24:** The One Goal Summer Conference, Tampa FL. For information go to: [www.onegoalsummerconference.org](http://www.onegoalsummerconference.org)

**July 28 - 30:** RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Your Agency's Personal Policy Manual and Parent Handbook. For info. go to [childproviderlaw.com](http://childproviderlaw.com) under upcoming seminars

**Sept 24 - 27:** ECA of Florida in Orlando, FL. For information go to: [www.ecaoffl.org](http://www.ecaoffl.org)

**Sept 24 - 26:** TXAEYC in Galveston, TX. For information go to: [www.txaeyc.org](http://www.txaeyc.org)

**Oct 3:** Bucks County AEYC at BCCC in Newtown, PA. For information go to [www.bcaeyc.org](http://www.bcaeyc.org)

**Oct 10:** York Area AEYC at Penn State York Campus. For information go to: [www.yaaeyc.org](http://www.yaaeyc.org)

**Oct 12 and 13:** Newport, OR HR BOOT CAMP for Early Care and Education Administrators. For information and registration contact Dawn at (215) 785-3400

**Oct 23 and 24:** NJAEYC Annual Conference at the Atlantic City Convention Center. For information go to [www.njaeyc.org](http://www.njaeyc.org)

**Oct 26 - 28:** PACCA Annual Conference at State College, PA. For info go to [www.pacca.org](http://www.pacca.org)

---

---

**E** *The Childcare Professional*  
**EXPERIENCE**