

E The Childcare Professional XPERIENCE

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PA Commonwealth Court Ties DPW's Hands...

On April 3, 2006 the Commonwealth Court of Pennsylvania issued a decision in *St. Elizabeth's Child Care Center v. Department of Public Welfare* that could change the way non-profit child care centers operate in Pennsylvania. The decision states that the Department of Public Welfare (DPW) **DOES NOT** have the requisite statutory authority to require Certificates of Compliance from **NON-PROFIT CHILD CARE CENTERS**.

The case began when a DPW field representative visited St. Elizabeth's, a non-profit child care center affiliated with the Roman Catholic Church, and learned that the center was operating without a Certificate of Compliance. Because DPW regulations require a Certificate of Compliance for the operation of such a facility, DPW issued a Cease and Desist Order. St. Elizabeth's appealed the decision.

The Administrative Law Judge (ALJ) who initially heard the case ruled in favor of the DPW, determining that Article XI of the Public Welfare Code granted the DPW the authority to promulgate regulations requiring non-profit child care centers to obtain Certificates of Compliance. The DPW bureau of hearings and appeals then adopted the ruling of the ALJ, and St. Elizabeth's appealed the case to the Commonwealth Court of Pennsylvania.

After careful examination of Articles IX and X of the Public Welfare Code, the Commonwealth Court of Pennsyl-

vania reversed the decision of the Administrative Law Judge. The court ruled that although Article X allows DPW to promulgate regulations requiring **for-profit** child care centers to obtain Certificates of Compliance in order to operate, Article X was **NOT applicable to non-profit child care centers**. This reversal was based on specific language in Article X which listed "**for-profit**" child care centers as those over which the DPW has authority. By leaving out specific mention of **non-profit child care centers** the Commonwealth Court determined that the Public Welfare Code **did not** grant DPW the authority to regulate **non-profit child care centers**. The court applied this rationale equally to all non-profit child care centers regardless of whether or not they are faith based.

The court did hold that under Article IX of the Public Welfare Code, DPW has the power to visit, examine, and inspect non-profit child care centers. However, in the event DPW finds an objectionable condition in a non-profit child care center, it is not permitted to use its own administrative process to adjudicate a Cease and Desist Order, nor cite the non-profit child care center for non compliance and require the implementation of a corrective action plan. Instead, DPW's remedies are limited to withholding state money available to the child care center until the condition is

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ASK A LAWYER...

Is there a minimum amount of time I can suspend without pay an Exempt Employee for disciplinary reasons under the new FairPay Act Update?

At the National Head Start Association's Annual Conference in Detroit, MI, we were engaged in a discussion about disciplining employees for policy violations and or poor work performance. The question was posed as to whether or not an employer could suspend without pay an Exempt employee as a form of disciplinary action and if so where there any requirements regarding the length of the suspension. After a lengthy review of the FairPay Act Update, which became effective August 24, 2004, we have found the following regulation which speaks to this issue:

541.602(5): Deductions from the pay of an exempt employee may be made for suspensions of **ONE OR MORE FULL DAYS** imposed in good faith for disciplinary reasons for infractions of workplace conduct rules. The employer must have a written policy applicable to all employees in place prior to imposing a disciplinary suspension.

In summary, it is recommend that employers have written into the Suspension section of their Disciplinary Action Policy a paragraph outlining the rights of the employer to suspend Exempt employees without pay in increments of a full day for violations of agency policy.

Employers should be sure that when issuing a suspension to an Exempt employee, the employer is able to cite the specific policy violation for which the suspension is being issued. A copy of the policy violated, a copy of the employee acknowledgement of receipt of the policy manual and the Suspension notice should be presented to the employee. If the suspension is related to violations of licensing regulations, the employer should be sure to site the licensing regulation violated and the companion Personnel Policy requiring the employee to maintain compliance with all licensing regulations as a matter of standard policy.

The employee should be required to sign acknowledging receipt of the Suspension Notice. Be sure to the Suspension notice includes language addressing the consequences for further policy violations in the future.

DPW Authority Limited...

Continued from Front Page....

...remedied or request that the Attorney General of Pennsylvania enforce compliance. At that point it would be within the discretion of the Attorney General's office whether to persue a Cease and Desist Order against the child care center.

In conclusion, it is the ruling of the Commonwealth Court that DPW DOES NOT have the authority to require non-profit child care centers to obtain Certificates of Compliance under either Article IX or Article X of the Public Welfare Code.

It is important to note that DPW is likely to appeal this decision to the Supreme Court of Pennsylvania. However, as it stands this ruling serves to seriously undermine the power DPW has to regulate the non-profit segment of the child care industry in Pennsylvania.

To keep up to date on this issue, please visit our website childproviderlaw.com, where updates will be posted as they develop. If you are operating a non-profit child care center in Pennsylvania and have questions or concerns regarding how this ruling will effect your business, please contact Dawn Martini in our office at (215) 785-3400. We will be happy to discuss your rights and possible courses of action related to this decision.

The Childcare Professional **EXPERIENCE**

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Playground Safety

Now that summer is here, many of us are taking advantage of the warmer temperatures and sunshine and spending more time outdoors with the children. However, with the increased amount of time spent on the playground, we often see an increase in playground related injuries and accidents. The National Program for Playground Safety has concluded that outdoor injuries account for the majority of injuries young children sustain in school environments.

Perhaps more alarming is the fact that approximately 40% of the outdoor injuries children sustain are directly related to inadequate adult supervision. With this in mind, it is especially important that all child care agencies have in place a workable playground supervision plan and that this plan is implemented by staff and reviewed periodically.

At the forefront, to ensure adequate playground supervision, agencies need to be adhering to state regulations regarding adult to child ratios. Keep in mind that the age of the children and the activity they are engaged in can alter required ratios. For example, some states require a lower staff to child ratio when children are engaged in water activities such as swimming or wading. In other states, it is just recommended that supervision and ratios be lower. It is advisable to check with your individual state licensing requirements regarding water play.

Once ratios are established and maintained, staff need to partake in active supervision. Staff should be well disbursed throughout the playground so that all children can be seen and directed. **At no time should staff be sitting while supervising outdoor play.** They should also be alert to conflict or unsafe situations arising on the playground so they can take a proactive approach to intervene in the unfolding situation.

Focus needs to be directed at the playground equipment as well. Equipment needs to be inspected and maintained to ensure that it is in proper working condition and pre-

sents no hazards. Care should be taken to ensure that all equipment is well anchored and secure. All bolts need to be tightened with no protrusions from the structure. Slats should be close enough together to prevent a child's head from getting stuck, yet not so wide apart that a child could slip through. Equipment should be regularly inspected for rust, wood rot, fraying ropes, sharp edges and similar unsafe conditions.

In addition, play equipment needs to be developmentally appropriate for the ages of the children it is meant to serve. Teachers should advise children on the proper use of the equipment and review those instructions with the children periodically.

Approximately 70% of all playground injuries are related to falls to the surface, so it is crucial that "fall zones" be covered with adequate and proper protective surfacing. A fall zone would be anywhere on the playground where a child is required to lift his or her feet and the potential for a fall exists. Options for ground coverage include mulch, fiber chips, pea gravel, rubber mats, sand and shredded rubber. Regulations vary from state to state, but a general rule of thumb is that coverage be twelve inches deep and extend out from the equipment in all directions a minimum of six feet. Swings generally require a larger fall zone. It is especially important to make sure that the coverage

around swings, climbing equipment and slides is well maintained and doesn't become displaced or compacted by play activity. If for some reason ground coverage becomes damaged or compromised, staff should be willing and authorized to discontinue play on that particular piece of equipment until the situation can be corrected.

In addition, clothing with drawstrings around the neck should not be allowed on the playground as they pose a potential safety hazard. Children should wear closed shoes such as tennis shoes/sneakers, as opposed to sandals, for foot protection. Advise parents as to your regulations concerning appropriate clothing for outdoor activities.

Even with our best efforts in place we will never be able to totally eliminate all playground related injuries. For this reason, we need to make sure that staff is routinely trained in first aid and CPR. It is also important that you provide staff with yearly training concerning Universal Precautions and Blood Borne Pathogens Standards and ensure that staff is following and adhering to those regulations.

It is important that direct care staff and administration work together to ensure, to the best of their ability, a safe playground environment for the children they serve. Remember, their safety and well being is of utmost importance.



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.

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Please Contact Dawn Martini at
(215) 785-3400

Encouraging Fathers To Become Involved in Child Care Activities

Parental involvement is a key aspect of a child's successful involvement in any child care setting. As professional child care providers we recognize this fact so much so that we hold meetings about it at the center level, talk about it at state licensing meetings and discuss methods to increase involvement at local, state, regional and national conferences.

Unfortunately, we often focus most of our energy on activities which draw mothers into the child care center. This occurs not out of malice for fathers, but simply because often the people planning these events are women, and women tend to plan events they themselves would attend.

Interestingly, the results of a recent U.S. Department of Education study indicates that when fathers are involved in school and child care, children attain higher achievements. Also these children are happier in the child care or school setting. Thus it would be to everyone's benefit to involve fathers in our agencies.

Many agencies do not have men on staff, and therefore, thinking "like a man" and planning events that would attract fathers becomes challenging, but when have child care professionals stepped back from a challenge?

The easiest and most obvious way to find out what type of activities fathers would like to participate in is to ask the fathers themselves. At enrollment or intake, why not ask dads for suggestions as to ways they might want to be involved in their child's school or child care setting? Sending surveys home with a list of ideas, having a field trip/special event suggestion box, or recruiting already active fathers in planning events designed specifically for fathers and children are all ways to expand your ideas.

In addition, staff can consult

with the fathers in their lives to see what types of activities they enjoyed attending when their children were in school or would attend if they had children in school today.

The children themselves are also a great resource for ideas on how to involve dad. Ask the children what types of activities they would like to do with their fathers. Then have the children create and send invitations directly to their father.

Some suggested activities for father involvement might include, picnics, playground activities, and/or community walking trips, fishing, carpentry events, model car/plane racing, trips to fire stations. Consider inviting fathers to come to the agency and share their hobbies or careers with the children or set aside some time for special "dad" reading time. Perhaps a fishing expedition to a local pond or a field trip to a local zoo might spur father involvement. You might even want to take things a step further and sponsor a "Dad's Club" for fathers and their children with ongoing, regularly scheduled outings and activities. Further acknowledge the importance of fatherhood with a special Father's Day Celebration or perhaps a special breakfast or snack time, "Donuts with Dad".

Recognizing the special relationship between Dads and sons or dads and daughters can spur on father involvement. Hosting a Father/Daughter Tea or Father/Son Fishing Tournament would be ways to encourage involvement.

Not only do we want to sponsor events that dads will enjoy, but in order to facilitate father involvement, we need to make fathers feel welcome in our child care agencies. If we strive to make fathers feel comfortable, we greatly increase the likelihood that they will want to be involved in agency sponsored activities.

Many agencies initially offer

activities that involve both parents. Once engaged in activities at the center, fathers connect with other fathers and are then more likely to attend "father only" events.

You may also want to join forces with other child care agencies in your area and sponsor father activities together. Remember, there's "force in numbers" and fathers tend to participate in activities where they know there will be a good number of dads attending.

Perhaps one of the most crucial considerations when facilitating father involvement is the actual scheduling of events and activities. Although work hours vary, it is usually advisable to schedule activities on weekdays after normal work hours, or preferably on weekends. Remember, if we want fathers to attend the events we are sponsoring, we need to make it convenient for them to attend!

Child care professionals often balk at the idea of creating activities just for children and fathers because of the concern that some children do not have a father in their life. This concern can be skirted by expanding the definition of father to include; any significant male figure in the child's life, whether it is an uncle, cousin, grandfather, neighbor, friend or big brother. No child need be left out of a father/child event because he/she does not have a father involved in their life.

The most important thing to keep in mind when looking to increase parental involvement is that fathers are parents too and we need to take the time and effort to plan activities in which fathers want to participate. By increasing father involvement, everyone wins.

Once fathers become involved, remember to tell them how much their involvement is appreciated and how valuable they are to the well being of the children and the agency.

Sunscreen Season

Tis the season for applying sunscreen...so here are some guidelines to follow to make this a burn free summer. 1. Make sure all parents have given written permission to apply sunscreen and that they have provided their own bottle labeled with their child's name in permanent marker. 2. Remember that children under 6 months of age need a doctor's note giving permission to apply sunscreen. 3. Employee's MUST wear gloves when applying sunscreen and wash hands and change gloves after applying sunscreen to each child to prevent spread of communicable diseases such as rashes, body lice etc. 4. Sunscreen should be applied 20 to 30 minutes BEFORE going outside for it to be most effective. 5. Shade covered areas should be on every playground to allow children refuge from direct sun.

CHILDREN'S BOOK CORNER

With the summer months just around the corner, many families are busy making travel plans, anxiously awaiting the rest and relaxation that comes with a much anticipated and well deserved vacation. However, we all know that traveling with young children has its own unique challenges and even the "best made plans" of moms and dads often go awry.

This certainly holds true in Arthur's Family Vacation, written and illustrated by Marc Brown. This delightful story begins with the well-loved aardvark, Arthur, reluctantly saying goodbye to his friends to embark on a summer adventure with his family. Unfortunately, things don't quite go as planned, and Arthur and his family face some vacation challenges. The location of the hotel is not quite what they anticipated. The pool leaves something to be desired; and the weather is uncooperative. At first, Arthur and his sister, D.W., can't quite hide their disappointment, but within a day or two decide to deal with the situation at hand.. Although things are not quite what they expected, once a few changes are made to the itinerary, the vacation is salvaged. A good time is finally had by all and some cherished family memories are made.

This is the perfect story to read to young children this time of year. Not only will they delight in the adventures of Arthur and D.W., but the children learn an important lesson, as Arthur makes the best of a bad situation and comes to realize the importance of spending time with his family.

After sharing Arthur's Family Vacation with the children in your class, why not invite them to bring in their own vacation pictures to share with others? In "show and tell" fashion, have children show and explain their photos. You can then decorate your classroom with a display of vacation memories!

Keeping Employees Posted...

As an employer you are required by both Federal and State law to meet certain minimum posting requirements, and can face fines in the order of thousands of dollars for not having the proper up-to-date notices posted in conspicuous location visible to all employees. Not sure what you need to post? Don't worry staying in compliance can be cheap and easy.

Federal Posting Requirements: In order to assure that employees are kept up to date on their rights, the federal government requires that employers keep specific information posted in conspicuous places where employees have ready access to the information. Regardless of where in the US your center is located, as an employer you are required at a minimum to provide notice of the following; Employee Polygraph Protection Act (EPPA), Fair Labor Standards Act (FLSA), Equal Employment Opportunity (EEO), and Uniformed Services Employment and Reemployment Rights Act (USERRA). Additionally, if your agency is subject to the Family Medical Leave Act, or if your agency engages in contracts with the government, additional posting requirements may apply. Fortunately, the Department of Labor (DOL) provides easily accessible information designed to aid you in determining exactly which notices you must post. Additionally up-to-date notice forms can be downloaded and printed straight from the DOL website at www.dol.gov/compliance/topics/posters.htm.

State Posting Requirements: Aside from the posters which must be displayed in the workplace under federal law, each state has its own specific requirements regarding workplace postings which must also be followed. Depending upon the state in which your center is located you may have to post additional notices regarding for example, Worker's Compensation, Unemployment Compensation, Safety and Health, Smoking Policies, or State Minimum Wage. The DOL website also provides guidance in this regard by providing a link on their website to the appropriate state agency where the additional posting requirements and notice downloads are available. The state links can be found at www.dol.gov/osbp/statemap.htm.

Considering that it takes a matter of minutes to visit the appropriate websites, print up the required forms, and hang them in an area accessible to all employees there is no reason you should risk being slapped with a hefty fine for non-compliance. Finally, even if you have all of the required postings displayed in your center, it's a wise policy to periodically check both the state and federal websites for updates, as both federal and state notice laws require up-to-date posters and the posters are amended and updated from time to time.

ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS



- ◆ Model Personnel Policy Manual for Child Care Agencies: 3rd Ed.
- ◆ Model Parent Handbook for Child Care Agencies
- ◆ Model Forms for Child Care Agencies
- ◆ Current Issues in Child

Available at 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.

REGISTER NOW...SPACE IS LIMITED!!!

2006 Cape May Training Seminars

Seminar A Teachers, Parents and the Classroom June 27, 28 and 29, 2006

- A1: The Ideal Child Care Provider
- A2: Confidentiality
- A3: Mandated Reporting of Child Abuse and Neglect
- A4: Supervision of Children in the Classroom
- A5: Fostering Parent/Teacher Communication
- A6: Observation versus Inference/Record Keeping
- A7: Accommodating Disabled Children (ADA Title 3)
- A8: Resolving & Dealing with Parent Issues
- A9: Learning Stations for the Pre-school Classroom
- A10: Teaching Public Speaking to Young Children
- A11: Kindergarten Readiness
- A12: Transition from Educator to Administrator

Seminar B Employment Practices in Child Care July 11, 12 and 13, 2006

- B1: Introduction to Employment Law
- B2: Discrimination and the EEOC
- B3: The Ideal Child Care Provider
- B4: The Hiring Process
- B5: Developing Job Descriptions
- B6: Developing an Effective Personnel Policy Manual
- B7: Encourage Professionalism w/ Personnel Policies
- B8: Crafting Leave Policies (incl. FMLA)
- B9: Conducting Performance Appraisals
- B10: Avoiding Termination Lawsuits
- B11: ADA: Accommodating Disabled Employees
- B12: The Fair Labor Standards Act

Seminar C Your Agency's Personnel Policies and Parent Handbook July 26 and 27, 2006

Participants will be engaged in Drafting and Editing their Agency's Personnel Policy Manual and/or Parent Handbook over the entire two days of this Seminar. Participants are asked to bring their current Personnel Policy Manual, Parent Handbook and a laptop computer. A laptop computer is not required for participation. Participants will be engaged in one on one discussion with seminar presenters regarding issues specific to their agency.

As part of the registration fee, participants may choose to receive either the **Model Personnel Policy Manual for Child Care Agencies Third Edition** or **Model Parent Handbook for Child Care Agencies**. Publications co-written by Ronald V. McGuckin, JD & Dawn K. Martini BS Ed.

Seminar D 24 Hour Law School August 1, 2 and 3, 2006

- D1: Principles of Employment Law
- D2: Discrimination and the EEOC
- D3: The Americans with Disabilities Act: Title I
- D4: The Americans with Disabilities Act: Title III
- D5: Family Medical Leave Act
- D6: The Fair Labor Standards Act
- D7: Bloodborne Pathogens & Universal Precautions
- D8: Court Orders and the Early Childhood Setting
- D9: Unemployment Compensation Hearings/Appeals
- D10: Business Structures/Profit & Non-Profit Entities
- D11: Before you sign on the dotted line...Contract Law
- D12: Confidentiality

SCHEDULING AND REGISTRATION INFORMATION

Please visit our website childproviderlaw.com for the full schedule and registration information. Location and Accommodations information is also available on the website. From the website home page click on Seminars and then click on Upcoming Seminars. Registration is Limited and Discounts are available. If you do not have access to the internet contact Dawn at (215) 785-3400 for more information.

Sexual Orientation and Gender Identity as Protected Classes...

The term “protected class” refers to a group of the population that lawmakers specifically protect from discrimination. There are currently a number of federally protected classes including race, religion and gender. (For a full list and brief explanation of each federally protected class please refer to the handout entitled “Protected Classes” on our website childproviderlaw.com.)

To date sexual orientation and gender identity are not considered protected classes under Federal Law. This means is that as far as Federal Law is concerned, an employer may lawfully base an employment action such as hiring, promotion, merit increases, and/or discharge based solely on an individual’s sexual orientation or gender identity. Despite the lack of Federal Law protecting against discrimination based on gender identity and sexual orientation, there has been a growing trend among state lawmakers to include these two classes in antidiscrimination legislation at the state level.

According to the Human Rights Campaign website, there are currently 18 states that have enacted legislation designed to protect individuals from discrimination on the basis of sexual orientation and 14 states which have laws protecting individuals from discrimination based on gender identity. An “X” on the chart below indicates that a state has enacted legislation protecting against discrimination based on either gender identity or sexual orientation.

Many people are unfamiliar with the difference between gender identity and sexual orientation, however, there are key differences between the two. Sexual orientation refers to an individual’s sexual preference, and deals with whether that person is attracted to members of the opposite sex or members of the same sex. Sexual orientation can be broken down into two classes, heterosexual and homosexual. Gender identity on the other hand refers to the gender norms to which an individual relates, regardless of their biological gender. Individuals

with gender identity different from their biological gender have been referred to as transgender, or transsexual.

In addition to the states listed below a number of individual city and county non-discrimination laws include sexual orientation as a protected class even though that may not be the case in the state as a whole. For example Philadelphia, Allegany, and Dauphin counties all have local laws that include sexual orientation as a protected class whereas the rest of Pennsylvania has no such law.

Acknowledgment of sexual orientation and gender identity as a protected class is a new and growing trend in the law. Many of the state antidiscrimination laws that include gender identity and sexual orientation have been enacted within the past few years. And so, although these two classes are not currently protected on the federal level, sexual orientation and gender identity are gaining recognition as a protected class one city, one state at a time.

18 States incl. D.C. that extend Protection for...	Gender Identity	Sexual Orientation
California	X	X
Connecticut	X	X
District of Columbia	X	X
Hawaii	X	X
Illinois	X	X
Maine	X	X
Maryland		X
Massachusetts	X	X
Minnesota	X	X
Nevada		X
New Hampshire		X
New Jersey	X	X
New Mexico	X	X
New York	X	X
Rhode Island	X	X
Vermont	X	X
Washington	X	X
Wisconsin		X



WHERE IN THE WORLD...

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

June, July and August: Ronald V. McGuckin and Associates present the CAPE MAY TRAINING SERIES. We will hold 4 Conference Style Seminars at the Inn of Cape May in beautiful Cape May, NJ. For information or to register please contact Dawn Martini at (215) 785-3400 or go to child-provider-law.com and click on Seminar Information and then on Upcoming Seminars for the schedule and to download a registration form.

Sept 28 - 30: Early Childhood Association of Florida Annual Conference, Orlando, FL. Go to www.ecaoffl.org for conference information.

Sept 30: York Area AEYC Conference, Penn State York Campus. For information email Cele McCloskey, simplymrsm@suscom.net.

Oct 7: Buck County AEYC Conference, Buck County Community College. For information contact Conference Co-Chairperson Alison Sheridan (215) 702-1686 or Angie Somogyi (215) 943-6629.

Oct 6 - 7: Georgia Association on Young Children Atlanta, GA. For information go to gay-conline.org.

Oct 27: New Jersey Child Care Association, Annual Conference. For information go to njcca.org Ron will be giving the Morning Keynote.

Nov 2 - 3: West Virginia Child Care Centers United Roanoke, WV For information contact Helen Post Brown at sun-beamccc@aol.com

Nov 3 - 4: New Jersey AEYC Annual Conference. For information go to njaeyc.org.

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.

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