

# *The Childcare Professional* EXPERIENCE

April 2013  
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A Quarterly Journal for Childcare Providers Discussing Legal, Administrative & Professional Issues

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## Guns: What Can You Control?

For many of us, 2012 will be remembered as a year filled with an astonishing number of mass shootings throughout the nation. In the aftermath of these tragedies, our office has received numerous calls from child care providers across the country, asking us what they can do in an effort to prevent similar occurrences at their facilities. An overview of federal gun regulation is essential toward an understanding of the rights and responsibilities associated with this serious subject.

It would be remiss to discuss any gun-related subject without first touching upon its American bedrock, the Second Amendment to the Constitution. Conceived as part of the Bill of Rights, the Second Amendment mandates: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Since being first penned over two centuries ago, these twenty-seven words have become inextricably intertwined with gun regulation in America.

The first distinction to make in this discussion, however, is the prevailing notion of the sanctity of property ownership. The rights of the private property owner will always defeat the rights of someone else inter-

acting with that property. This point cannot be understated. Any private business owner can flatly deny any other individual's Second Amendment right while that individual is on the private business owner's property, effectively self-imposing a mini-ban on firearms. When it comes to firearms, their rights end where your property begins.

Despite the seemingly broad language of the Second Amendment, the federal government has also constitutionally regulated firearms through numerous pieces of legislation, dating back to the National Firearms Act of 1934. Prominent legislation includes the Omnibus Crime Control and Safe Streets Act of 1968, the Gun-Free School Zones Act of 1990, and the Brady Handgun Violence Prevention Act of 1993. The Bureau of Alcohol, Tobacco, Firearms and Explosives, popularly known as the ATF, is tasked with enforcing all federal gun laws and regulations.

Although most of these laws are still in effect and shape the contours of current gun regulation in this country, a few may have particular application for child care providers. The first is the Gun-Free School Zones Act of 1990, codified at 18

Continued to Page 3

## The Astonishing Statistics: Murders and Firearms in the United States

The Newtown, Connecticut tragedy brought forth, **once again**, the issue of the senseless murders that occur each year in this country. While we certainly do not believe that there is one simple or quick answer to the issue of gun violence in our country the statistics regarding death among our youngest members of society are quite astonishing.

A total of 12,664 murders occurred in the United States in 2011. Of those 12,664 murders, **67%**, or 8,583 were caused by firearms. Of the 2,945 individuals under the age of 22 who were murdered in the U.S. in 2011, 2,044 or approximately 70 % were killed by a person using a firearm.

The statistics are just as troubling regarding the youngest children in our society. In 2011:

- ♦ 301 children, 1 to 4 years of age, were victims of homicide, 46 killed by a person using a firearm.
- ♦ 84 children, 5 to 8 years of age, were victims of homicide, 34 killed by a person using a firearm.
- ♦ 65 children, 9 to 12 years of age, were victims of homicide, 30 killed by a person using a firearm.
- ♦ 300 young teens, 13 to 16 years of age, were victims of homicide, 238 killed by a person using a firearm.
- ♦ 1,069 older teens, 17 to 19 years of age, were victims of homicide, 909 (85%) killed by a person using a firearm.
- ♦ 196 infants were victims of homicide, 9 of them killed by a person using a firearm.

RVM and Associates remembers and honors the 20 children and their teachers who lost their lives on December 14, 2012 in the tragic and senseless Sandy Hook Elementary School Shooting

- |                        |                    |
|------------------------|--------------------|
| ♥ Charlotte Bacon      | ♥ Grace McDonnell  |
| ♥ Daniel Barden        | ♥ AnneMarie Murphy |
| ♥ Rachel Davino        | ♥ Emilie Parker    |
| ♥ Olivia Engel         | ♥ Jack Pinto       |
| ♥ Josephine Gay        | ♥ Noah Pozner      |
| ♥ Ana Marquez-Greene   | ♥ Caroline Previdi |
| ♥ Dylan Hockley        | ♥ Jessica Rekos    |
| ♥ Dawn Hocksprung      | ♥ Avielle Richman  |
| ♥ Madeleine F. Hsu     | ♥ Lauren Russeau   |
| ♥ Catherine V. Hubbard | ♥ Mary Sherlach    |
| ♥ Chase Kowalski       | ♥ Victoria Soto    |
| ♥ Jesse Lewis          | ♥ Benjamin Wheeler |
| ♥ James Mattioli       | ♥ Allison N. Wyatt |

## *The Childcare Professional* EXPERIENCE

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U.S.C. §922(q), which makes it unlawful for any individual to knowingly possess most firearms at a place that the individual knows, or should know, is a school zone. The GFSZA defines a "school zone" as being within one thousand feet of the grounds of a public, private, or parochial school, while noting that the term "school" is defined by each individual state's own definition of "school." Therefore, if your program falls within the definition of a "school" under your state's laws, you are within the protection of the GFSZA.

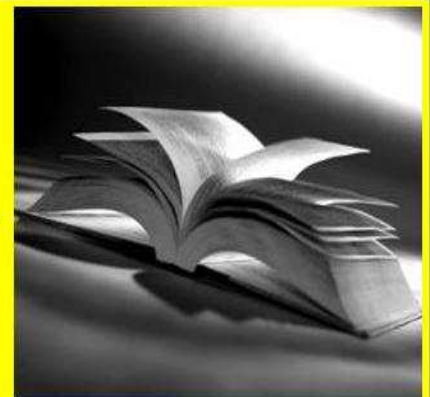
Another important federal law is the Law Enforcement Officers Safety Act (LEOSA), which allows bona fide law enforcement personnel to carry concealed firearms throughout the country, immune from any contrary state or local laws. The LEOSA is important to child care providers because of its impact on other federal firearms legislation, notably the GFSZA. For example, the GFSZA provides an exception to any on-duty law enforcement officer who is acting pursuant to his or her official duties: these are the only individuals authorized by the federal government to carry a firearm in any school zone. Interestingly left out of the GFSZA, there is no exception for off-duty law enforcement officers. As with any other private citizen, an off-duty law enforcement officer cannot carry a firearm within one thousand feet of a school zone.

And finally, pursuant to the Brady Handgun Violence Prevention Act of 1993, certain groups of individuals are absolutely precluded from owning or carrying a gun anywhere at any time. Among others, these individuals include convicted felons, unlawful users of certain drugs, those currently operating under a dangerous mental illness, and most minors under the age of eighteen for long guns and under the age of twenty-one for handguns. Not only are these individuals prohibited from carrying a gun near a school, they are forbidden from so much as holding a gun. If your program becomes aware that one of these individuals is in possession of a firearm, you should immediately contact law enforcement.

Because Congressional legislation speaks only to the federal control of firearms, setting a "floor" of regulation, so to speak, the individual states have been left to establish further laws, provided that those laws are within the limitations of the Second Amendment. In fact, all states and even some local municipalities have passed gun laws. Although some federal legislation, such as LEOSA, overrides these state and local laws, the majority of firearm regulations have been enacted below the federal level. Therefore, it is important that you familiarize yourself with the laws and regulations pertaining to your particular state.

## 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.

2013

Ronald V. McGuckin and Associates

# Directors' Training Summer Cruise

From NYC to Nova Scotia and Halifax, August 15 – 19, 2013



Virtual tour: [www.carnival.com/cruise-ships/carnival-glory](http://www.carnival.com/cruise-ships/carnival-glory)

## Theme: "The Most Common Mistakes Directors of ECE Programs Make"

We are thrilled to bring you this new adventure and look forward to sailing with you this summer!

### Cruise Info

- **Departs** Manhattan Cruise Terminal: August 15 @ noon. **Returns** to port: August 19 @ 10am.
- **Prices begin @ \$635/person** (double occupancy).
- Contact **Mikaela Walker**, Cruise One Travel Agency, with cruise-related questions (800-765-0346 or [mwalker@cruiseone.com](mailto:mwalker@cruiseone.com)). Include "Ronald McGuckin Cruise" in email subject line.
- Guests not attending conference can still book cruise through Cruise One to receive special group cruise pricing.

### Conference Info

- **10 hours of professional development** while at sea.
- **Conference-only fee\***: \$200/person (\$175 for ECE Retainer Clients or previous attendees of Ronald McGuckin programs).
- Contact Dawn Martini with conference-related questions (215-785-3400, 215-380-1710, or [dkqt0409@aol.com](mailto:dkqt0409@aol.com)).
- For terms of conference-fee refunds only, see the information below.
- *\*Cruise booked separately.*

### Booking Info

- **Register online:** <http://tinyurl.com/cxnods7>.
- Complete form for each conference attendee.
- Fees are due when submitting form, via the PayPal link.
- Mikaela Walker from Cruise One will contact you within 24 hours to book your cruise and pay the deposit. She will also provide you with the payment schedule for the cruise.

The Conference Fee ONLY is refundable as follows. Cancellations received less than 30 calendar days prior to the first day of the seminar will not be refunded. Cancellations received between 31 and 60 calendar days prior to the seminar are subject to a 25% cancellation fee. Cancellations received more than 61 calendar days before the seminar will be refunded 100%. Cruise refunds are subject to the terms of Carnival Cruise Lines and Cruise One Travel Agency.



Ronald V. McGuckin and Associates  
is currently accepting new clients for our  
**Retainer and Consulting Program**  
for  
**EARLY CARE AND EDUCATION PROVIDERS**

RVM and Associates is pleased to open our retainer/consulting program to a limited number of new clients **nationwide**. The Early Care and Education Professional Retainer/Consulting Program offers special hourly rates to Private Early Care and Education Programs, Corporate Agencies, Head Start Programs, Family/Home Based Providers, and School Age Programs. Special hourly rates are only available when you join before experiencing a law suit requiring representation. Attorney's are licensed in PA and NJ, and provide consulting only services in all other states. Program members also received discounts on all Professional Development programs hosted by RVM and Associates.

**Over 35 years of Experience Representing Early Care and Education Professionals**

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

## Key Firearm Laws, State by State:

Ronald V. McGuckin and Associates represents clients in legal matters in Pennsylvania and New Jersey. As such, our office has extensively researched gun laws in only these two states. If you are located elsewhere but would like us to research the laws of your particular state, please feel free to contact us to discuss the matter further.

### PENNSYLVANIA

Pennsylvania is a generally moderate regulator of firearms, compared to other states. In addition to all pertinent federal laws, Pennsylvania has set forth several notable regulations of its own. For example, it is a misdemeanor to carry a firearm or other dangerous weapon into a courthouse or onto school property. Under Pennsylvania law, "schools" are any elementary or secondary educational institutions that have been licensed by the Pennsylvania Department of Education. Most child care centers, which are licensed by the Department of Public Welfare, are not considered a "school" by Pennsylvania law. Although child care center owners can forbid someone from carrying a gun on the child care center owner's property, there is no state law preventing someone from carrying a gun immediately outside that area, unless it is near a school zone, per the federal Gun-Free School Zones Act.

### NEW JERSEY

New Jersey has been characterized as having slightly more restrictive firearm laws than the rest of the United States. In addition to passing state legislation, New Jersey allows most local municipalities to issue their own ordinances pertaining to gun control as well. As such, New Jersey has a wide and varied patchwork of laws. New Jersey State Law also forbids anyone from carrying a firearm "in or upon any part of the buildings or grounds of any school, college, university or other educational institution or on any school bus." Therefore, if your organization falls within the definition of any of these groups, it is protected by this law.

For guidance drafting and adopting personnel and/or parent policies related to staff and/or parents carrying firearms into your facility please contact Dawn Martini in the office (215) 785-3400 or by email: [dkgt0409@aol.com](mailto:dkgt0409@aol.com). We can design language to meet your state's specific concealed weapons/carry laws.

## Mandated Reporting as Public Policy

Every state has a child protective services law that mandates child care providers report any suspected child abuse or neglect to the appropriate authority as identified in the law. It is an important responsibility that the states place upon child care providers; that of being a voice and advocate for the children in our care. Child Protective Services Law's mandate to report applies to the **individual**, not the child care agency. While state child care licensing regulation may require the agency to report child abuse or neglect to the licensing agency, the CPS law requires the individual provider to make that call and report any suspicions of child abuse and neglect to the CPS designated appropriate authority.

To ensure proper reporting many child care agencies routinely implement a personnel policy which requires an employee who suspects child abuse or neglect to report the suspected abuse/neglect to a designated individual within the agency. This designated individual is then responsible for making the report to Child Protective Services. Although we don't necessarily frown on having such a policy, we have found that difficulties can arise with this procedure. We've been involved in cases where the designated reporter of the agency disagreed with the employee's suspicion of abuse or neglect, and he/she decided not to make the report to CPS. We've also seen designated reporters who are reluctant to report suspicions of abuse/neglect for fear of breaching confidentiality, liability risk or parent retaliation. The repercussions for this failure to report may be great; the child may be placed at continued or further risk, and the individual who first suspected the abuse/neglect, **who is a mandated reporter by law to report such suspicions**, has now failed to abide by the law.

Because the law applies to the individual, we have always encouraged that the individual who suspects the abuse or neglect make a report to Child Protective Services. If the agency has a designated reporter who also makes the call then the worst that will happen is that two people

have alerted CPS to a possible abuse/neglect situation.

What we **DO** take umbrage with (and are still quite surprised when it occurs) is a child care employee being disciplined or terminated by their employer because the employee made a call to Child Protective Services for what the employee believed was a form of abuse or neglect. We were recently involved in a case whereby a child care employee suspected neglect, informed the director of the program of her suspicion, who then instructed the employee to wait to make the report to give the parent time to address the issue. The employee, uncomfortable with this directive for fear it might pose additional risk to the child, knowing the family and the excuses that had been provided for all manner of care of the child, **and following the law as a mandated reporter**, called CPS and reported the suspected neglect. Shortly thereafter the employee faced disciplinary action in the form of a suspension. The employer claims the suspension was for insubordination (calling when told to wait) not actually calling and making the report. It is never insubordination to comply with the law. Employers should never tell a Mandated Report to not call but should provide guidance and then allow the individual to determine whether they should call. The law mandates that child care providers report any suspected child abuse or neglect and disciplining someone for following the law is an action that goes against **public policy** and could subject the employer to a possible lawsuit for wrongful termination, constructive discharge and/or retaliatory employment action.

The converse however, IS cause for disciplinary action. If a Mandated Reporter **DOES NOT** call and report suspected abuse, this is a violation of the CPS Law, child care licensing regulations and the employee should be disciplined.

For assistance with developing a comprehensive personnel policy and procedure for Mandated Reporting of Suspected Child Abuse and/or Neglect please contact our office, (215) 785-3400.

Ronald V. McGuckin and Associates Announces

## Wednesday Webinar Series



Join us on the first and third Wednesday every month from 1:00 p.m. until 2:00 p.m. (EST) for a live Webinar Professional Development Session. Each session is just \$29.00/person. Professional Development Participation Certificates will arrive in the mail to you within one week of the session. The Live Webinar platform allows for discussion with the presenter as well as instant messaging questions and comments. Webcam link also allows you to see the presenter on your computer screen or you may participate by phoning in and listening to the discussion. For more details please call Dawn Martini (215) 785-3400 or email [dlegt0409@aol.com](mailto:dlegt0409@aol.com).



- \_\_\_ Feb. 6, 2013: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)
- \_\_\_ February 20, 2013: Parent and Grandparent Involvement
- \_\_\_ March 6, 2013: Leave Policies: PTO, Sick, Unpaid, FMLA, Maternity Leave
- \_\_\_ April 3, 2013: Social Networking and Maintaining Professionalism
- \_\_\_ April 17, 2013: Kindergarten Readiness
- \_\_\_ May 1, 2013: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)
- \_\_\_ May 15, 2013: Custody Orders and the Release of Children
- \_\_\_ June 5, 2013: Confidentiality in the ECE Setting
- \_\_\_ June 19, 2013: The Hiring Process
- \_\_\_ July 17, 2013: Using Your Personnel Policy Manual Effectively
- \_\_\_ August 7, 2013: Defending against Unemployment Compensation Claims
- \_\_\_ August 21, 2013: Employee Onboarding: The New Orientation Process
- \_\_\_ September 18, 2013: Tattoos, Piercings and Thongs...Dress Codes
- \_\_\_ October 2, 2013: Protected Classes and Employment Discrimination

No. of Sessions: \_\_\_\_\_  
x \$29.00  
Total Due: \_\_\_\_\_

Sessions begin at 1:00 p.m. EST. Login Information will be sent to your email address. Please login 10 min prior to the start.

### REGISTRATION AND PAYMENT INFORMATION

Name: \_\_\_\_\_ email: \_\_\_\_\_

Agency Name: \_\_\_\_\_ phone: \_\_\_\_\_

Address: \_\_\_\_\_ fax: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Please select payment option:

\_\_\_ Visa/MC/Discover: \_\_\_\_\_ Exp: \_\_\_\_\_ Sec Code: \_\_\_\_\_

\_\_\_ Check payable to RONALD V. MCGUCKIN AND ASSOC is enclosed.

Mail payment to: Post Office Box 2126, Bristol, PA 19007 or fax registration with credit card payment information to (215) 785-3401. One registrant per form please. Login Info will be emailed the Monday prior to your session(s) and again the morning of the session(s).



## WHERE IN THE WORLD...

We certainly don't mind adding a day or two to our travel schedules to work with you.

**Contact Dawn Martini at (215) 785-3400, [dkgt0409@aol.com](mailto:dkgt0409@aol.com) to see if we can visit your program when we are in town.**

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.

**April 10 and 11:** Pennsylvania Head Start Spring Conference, Gettysburg, PA. For information go to [www.paheadstart.org](http://www.paheadstart.org)

**April 11 to 13:** Indiana AEYC Annual Conference, Indianapolis, IN. For information go to [www.iaeyc.org](http://www.iaeyc.org)

**April 24 to 26:** Academy for Early Learning Leaders (Formerly NACCP) Annual Conference, Nashville, TN. For information go to [www.naccp.org](http://www.naccp.org)

**June 9 to 12:** NAEYC Institute

for Early Childhood Professional Development Conference, San Francisco, CA. For information go to [www.naeyc.org](http://www.naeyc.org)

**July 16 to 18:** RVM and Associates Advanced Policy Writing Retreat. Mt. Airy Casino Resort, Mt. Airy, PA. For information email Dawn Martini at [dkgt0409@aol.com](mailto:dkgt0409@aol.com)

**Aug 15 to 18:** RVM and Associates Professional Development Cruise: NYC to Halifax and Nova Scotia. For information email Dawn Martini at [dkgt0409@aol.com](mailto:dkgt0409@aol.com)

We are always adding Conference Events to our schedule. If you would like us to submit an RFP to your local, state or regional professional development event please contact Jan at [janice91455@aol.com](mailto:janice91455@aol.com)

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