

E The Childcare Professional XPERIENCE

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

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The ADA: Accommodating Children with Peanut Allergies

Long known as a nutritious and economic staple in the American diet, peanuts or peanut products can cause a life-threatening reaction. Today peanut butter is becoming most severe reaction, anaphylaxis, is a swelling and tightening of the throat and airways causing difficulty breathing and is also accompanied by a sudden and dramatic drop in blood pressure which can be fatal within seconds unless an emergency medication, known as epinephrine is administered. In the most severe cases, epinephrine must be administered within 30 to 45 seconds of the onset of symptoms.

It is estimated that over 2 million Americans are allergic to peanuts and peanut products and that instances of peanut allergies are increasing at an alarming rate. The number of children with this food allergy has grown dramatically and it is now believed that 5 percent of all children under the age of six are allergic to peanuts. Allergic reactions can range from mild intolerance to anaphylactic shock reactions, whereby even a miniscule amount of peanuts or peanut products can cause a life-threatening reaction. The assembled key school personnel, including teachers and the school nurse, to address and implement special procedures should an emergency situation related to a severe allergic reaction take place. Teachers have been trained to identify the symptoms of anaphylaxis and how to respond from a first aid perspective. Other schools have taken things a step further and have instituted "peanut free zones" in cafeterias or to ban peanuts and peanut products from the centers completely. Naturally, the issue has become a major concern for both school districts and

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When to Call EMS...

The American Academy of Pediatrics has recently released lists of common medical emergencies or urgent situation regarding the health of a child, which may be encountered at the childcare center. These lists provide us with tangible guidelines to help prepare us for the unfortunate, but inevitable situation of a child being seriously injured or taking ill while in our care.

To be prepared for such situations, all staff should be trained in recognizing and differentiating between emergency medical needs and urgent situation regarding a child's health. Staff should know how to access the EMS in your area, have ac-

cess to the children's emergency contact information, and be involved in discussion regarding the special medical needs of any child in their direct care.

Staff should be trained to call EMS immediately should any child be at risk of life or permanent injury. Other reasons for contacting EMS are: difficulty breathing, or inability to speak; skin, specifically lips that are blue gray or purple in color; seizure and/or loss of consciousness; decreasing responsiveness; a head injury followed by, loss of consciousness, vomiting, confusion, headache, decreased level of alertness or difficulty with motor skills; severe pain anywhere; severe burns, cuts that are deep and/or won't stop

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ASK A LAWYER...

What can I do if a parent refuses to pick-up a sick child?

As with any issue it is important to refer to the policies you have established in the Parent Handbook and the Contract for Services or Fee Agreement before taking any action. You want to be sure that whatever your course of action, that the policies you have promulgated support your decision. If it is a matter of first impression, you may not have a specific policy or statement regarding this issue. However, most child care programs are required by licensing to have a policy regarding when children can be excluded from the program due to illness and another policy or statement in the Contract for Services outlining for parents the consequences of violating policies of the program. In concert these policies will allow you to take action if faced with this issue.

Generally, we recommend that the director or other such administrator make all phone calls to parents regarding picking up for illnesses and/or incidents or accidents. We recommend this because the director or administrator should be fluently versed in policy and procedure and can communicate this to parents. Also, when talking to a teacher or assistant, parents often feel that they have an out by appealing to the director or administrator if they do not want to do or believe what the teacher is saying. In the situation involving a sick child, there is no discussion. You believe the child is too sick to remain at the program and the parent or other authorized individual needs to pick up the child.

It is important when making a call to a parent that you have documented the child's symptoms and behavior including onset and treatment given so far, so they can be communicated clearly. After giving the parent a clear picture of the child's condition, be sure to clearly state your expectations. Generally it is recommended that a sick child be picked up within one hour of the phone call notifying the parent of the illness and that the child be isolated from the other children as much as possible until the parent arrives. This should be included in the Parent Handbook and explained to parents at the time of enrollment or orientation.

Parents may balk at this news simply because it may take them a minute or two to figure out a way to end their work day early and re-schedule appointments and responsibilities. Providers should be supportive and remind parents that they can send anyone already on the Authorization to Release the Child Form to pick up the child and that it does not need to be a parent per se.

If a parent doesn't just hesitate, but refuses to pick up a child, it is important for the provider to remain calm and once again communicate the child's condition, the provider's expectations and then state the policy that applies to this situation. Relaying that you understand the inconvenience this may be creating for the parent and being empathetic, without being apologetic (you did not cause this situation) is important. Explaining to the parent that this is not only your agency's policy, but that licensing re-

quires that sick children be excluded from the program can also reinforce your position.

Should the parent remain confrontational at this point, the child care provider should one last time restate the agency's position, and state the consequences for failing to cooperate. This should be done in a confident, NOT threatening, manner. The consequences will be determined by your existing policies. If you do not have an existing policy, now is the time to add it to your Parent Handbook and/or Contract for Services. Do not wait until the issue is in front of you to address it. The consequences may include dis-enrolling the family from the program for failure to comply with health and safety policies, or if you wish to be more lenient, you may choose to write the parent a strong warning letter following the first incident stating the policy and that if it happens again the family will be immediately dis-enrolled. This is a matter of personal style. You should be sure to treat all parents the same regarding this issue. If you give one parent a warning, you have set precedent and will need to give all parents a warning so as not to appear discriminatory.

While, for some of you who are the ober-warm and fuzzy type, dis-enrolling the family may seem harsh, remember that the parents have asked you to partner with them in caring for their child and you can not care for the child appropriately if the parents do not work with you. Also, the health and safety policies are not just about one child or parent. They are in place to ensure the health and safety of all children in the program. This is a natural part of group child care. Parents need to embrace this fact and understand that the health of ALL the children is what you are trying to protect.

The Childcare Professional EXPERIENCE

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Reducing Colds and Flu in the Winter

The winter months are upon us and with them come the usual increase in colds, flu and upper respiratory infections. No one is more aware of this than early childhood educators! As a care giver to young children, you have probably noticed that you are currently devoting a significant portion of your day to wiping runny noses and instructing children to "cover-up" their coughs and sneezes.

The majority of common colds and respiratory infections occur between early fall and late spring, with the peak "infection" months being January and February. Cold temperatures and inclement weather often necessitate spending more time indoors working and playing in close proximity. This increases the likelihood that viruses will spread from one person to another. Cold air and indoor heating further add to the problem by drying out nasal membranes making it easier for a cold virus to get a foothold and multiply. Considering these contributing factors, it is no wonder that we spend the winter months trying to keep illnesses at bay.

Realistically, we will never be able to eliminate colds, flu or respiratory infections from attacking us, nor would we want to. It is necessary for young children to be exposed to these illnesses on order to build up their immune system and prevent serious infection and future illness. However, there are strategies we can adopt to minimize the number of disease-causing germs in the child care setting, and minimize their impact on the children.

The germs responsible for causing the common cold and respiratory infections can be easily transmitted from child to child in several ways. The most common ways illnesses are spread in the early child care setting are by hand-to hand contact, hand-to-mouth contact and through the air.

Clearly the most effective way to reduce the spread of germs is through frequent, thorough hand washing with liquid soap. Children should be taught to wash their hands after using

the bathroom and before eating. They should be instructed to wash for approximately twenty seconds or the time it takes to sing a simple childhood song. Hands should be dried with disposable paper towels, as research has shown that both bacteria and viruses can live on cloth towels for several hours. Children should also be taught the importance of covering their nose and mouth when coughing or sneezing and that tissues need to be promptly placed in the garbage.

Frequent cleaning of common areas in the child care setting is an essential practice to help reduce the spread of infection. Door knobs, hand rails, counter tops, tables and light switches should be wiped clean regularly with a disinfectant solution. Shared toys should also be cleaned regularly. The American Academy of Pediatrics recommends that toys be disinfected with diluted dishwashing soap, followed by a diluted bleach rinse.

It is advisable to eliminate "water table" play during peak infection months. As you can imagine, water harbors and spreads germs. There are some child care centers that limit the use of the water table to one or two children at a time, changing the water after each use. Sand tables or sand

boxes can be another source of infection and the same standards of hygiene should be applied.

It is also good health practice to open windows each day to "clean the air". Child care providers should open the windows in the evening, after all children have gone home, for up to ten minutes. This does wonders to flush out stale, stagnant air and airborne germs.

Child care staff should be diligent about identifying sick children and separating them from the general "healthy" population until a parent or appointed adult can pick-up the child. When a communicable disease is present centers should inform other parents of the disease so that they are alert to the situation and can look for early signs of infection in their own children. All centers should have guidelines clearly stating when children are considered too sick to attend child care and these guidelines need to be given to parents and enforced.

Although frequent, the majority of illnesses contracted while in an early child care setting are mild and non-life threatening. Colds, flu and respiratory infections are a common and necessary, although unpleasant, part of growing up. By following a few simple guidelines, child care centers, in partnership with attentive parents can help reduce the spread infections and minimize the length of infection.



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

CONTINUED...The ADA

Due to the increasing number of children suffering from peanut related allergies, early childcare professionals are faced with the challenge of determining what steps or procedures need to be taken to adequately and safely provide services to a child with a peanut allergy. Child care professionals are familiar with their responsibility to accommodate disabled children. However, it is unclear if peanut allergies, mild or severe rise to the level of a disability according to the Americans with Disabilities Act (ADA).

In order to adequately address this issue, we must review what constitutes a disability in accordance with ADA regulations. Under ADA, an individual is considered to have a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities. Major life activities include things such as caring for oneself, seeing, hearing, speaking, walking, breathing, performing manual tasks, learning and working. ADA also protects an individual who has a history of an impairment that substantially limited a major life activity or was misclassified as having such an impairment. If a person is perceived by others as having an impairment he or she also is protected, as well as those discriminated against because of a known association or relationship with an individual with a disability.

In 1999, the United States 8th Circuit Court of Appeals had to deal with the issue of a life threatening peanut allergy in the landmark case, *Land vs. Baptist Medical Center*. After suffering two allergic reactions to peanut products while at the Baptist Medical Center Daycare, the center refused to provide further services to Megan Land on the basis that they could not provide adequate supervision for Megan with regards to her peanut allergy. Megan's mother, Marie Land, filed a lawsuit against the agency, under the Americans with Disabilities Act, claiming that Megan's peanut allergy constituted a disability. The court considered various ADA definitions of a disability and came to the conclusion that although Megan's

peanut allergy was an *impairment* it did not constitute a *disability* because it did not *substantially limit* her ability to eat or breathe. In essence, her peanut allergy limited her ability to eat certain foods, but her ability to eat, in general, was not limited. In addition, her ability to breathe was only limited, *if, and when*, she ingested peanut products. Although Marie Land filed an appeal, the 8th Circuit Court of Appeals upheld the original decision.

However, in contradiction to the finding in *Land vs. Baptist Medical Center*, the Department of Justice has taken an opposing position. The Department of Justice, the federal agency responsible for enforcing the ADA, asserts that child care agencies must accept children with food and/or bee sting allergies and, that agencies must be prepared to take appropriate first aid steps if an allergic reaction occurs.

According to the Department of Justice, child care agencies faced with this situation must make an individualized assessment of the child to determine if the center can reasonably accommodate the child without a fundamental alteration of its program or policies. According to the ADA it is considered discrimination if a center fails to make reasonable modifications in policies, practices, or procedures, when those modifications are necessary to provide services to individuals with disabilities, unless the center can demonstrate that making the modifications would fundamentally alter the nature of the service provided. If it is reasonable to accommodate the child, then the center must do so, and may not deny the child admission based on her disability. In spite of this mandate, however, the terms "reasonable accommodation" and "fundamental alteration" are left undefined by the ADA, therefore, it has been left to the courts to define these terms on a case by case basis.

Factors courts take into consideration when determining whether a particular modification should be considered a reasonable accommodation include; the nature and cost of the modification needed for the child to participate, the overall financial re-

sources of the center involved, the number of people employed by the center, and the impact on the operation of the program. Although it would be impossible for a single article to list all the possible accommodations related to peanut allergies and label them all as either reasonable accommodations or fundamental alterations, it is possible to briefly analyze the two major accommodations that courts have addressed that would apply to the peanut allergy situation; changes in medication administration policies, and diet restrictions.

It has been established that making exceptions to center policies which prohibit the administration of medication thereby allowing for the administration of medication related to a child's disability is a reasonable accommodation. Although courts considering this question recognize that center policies banning the administration of medication are designed to shield the child care center from potential liability; they have determined that this same goal can be accomplished through by using waivers and releases of liability. Therefore, changes to medications policies allowing for the administration of medications such as asthma inhalers, epinephrine shots, and diabetes finger prick tests have been held to be reasonable accommodations which a child care center must make. Providing training to staff on the use of these devices has also been established as a reasonable accommodation. Though courts have been reluctant to go so far as to completely eliminate policies restricting the administration of medication on site, it is evident that creating exceptions to the policies for disabled children is required. Additionally, increased insurance premiums resulting from the presence of a disabled child is not legitimate reason to deny admission of that child.

Therefore, it would be necessary for a child care center to follow parental and health care provider specifications regarding the diet of a child with a peanut allergy. Left unanswered, however, is whether it would be a reasonable accommodation if a center were required to restrict the diet

of all the children and staff in the center in order to accommodate a child with a severe peanut allergy. One of the requirements of the ADA is that a disabled child be accommodated in the most integrated setting possible. In a situation where a child's allergy is so severe that the presence of peanut products anywhere in the center could put the child at risk, it may be deemed reasonable to prohibit all students and staff from bringing peanuts and peanut products into the center to accommodate the allergic child.

In light of the conflict between *Land* and the DOJ publications it is still not completely settled as to whether a peanut allergy even qualifies as a disability under the ADA. Nonetheless, considering the potential expense of litigation, and the fact that if litigated today, a severe peanut allergy would likely qualify as disability under the ADA, the most advisable route to take is to treat a peanut allergy as a disability.

Child care centers should consider the following accommodations for children with severe peanut allergies;

prohibiting peanuts and peanut products from the center, prohibiting the sharing of food among children, amending the medications policy to allow for use of emergency medication for children with severe peanut allergies such as an Epi-pen, and conducting training for non-medical staff on appropriate use of the Epi-pen.

As this area of the law is greatly unsettled, it is important to openly discuss the issue with the child's parent/guardian and to seek the advice of an attorney familiar with the American with Disabilities Act prior to denying a child with severe allergies admission to the program.

Model policies regarding these issues can be found in the *Model Parent Handbook for Child Care Agencies*. Model waivers and releases of liability for children with severe allergies can be found in the *Model Forms for Child Care Agencies*. Both of these publications can be ordered through childproviderlaw.com by downloading the order form and faxing it to (215) 785-3401.

ADMINISTRATOR'S WEBSITE FAVORITES

As an employer, one website which can provide an invaluable amount of guidance is the website for the United States Department of Labor, www.dol.gov.

The Department of Labor (DOL) is the Federal agency charged with the task of administering and enforcing more than 180 Federal labor laws including the Fair Labor Standards Act (FLSA), Occupational Safety and Health Act (OSHA) and the Family Medical Leave Act (FMLA).

On their very user friendly site you can find a number of useful links categorized both by topic as well as by audience. For each of the major Federal labor laws the DOL website has a very helpful Commonly Asked Questions section.

The site also contains a vast index of 'fact sheets' which are essentially summaries of the law geared towards more specific audiences. For example, fact sheet #46 deals specifically with how the FLSA applies to Daycare Centers. Another useful aspect of the DOL website are the opinion letters found under Employment Standards Administration (ESA) section of the site. From this link one can find a collection of letters written by various employers asking questions pertaining to the FLSA as well as an official response to the question drafted either by the DOL Administrator or another member of the DOL staff.

Whether you are interested in reading the actual text of a specific federal labor statute, or are seeking a basic explanation of what an Act is designed to accomplish you can find it on the DOL website.

CHILDREN'S BOOK CORNER

You may be familiar with Eric Carle's book *From Head to Toe* but if it's been sitting on your bookshelf for awhile, it might be a good time to bring it out of retirement and read it to your class. It's perfect for incorporating movement activities into your everyday schedule on cold winter days when outside play may be limited and gross motor activities are needed to burn off excess energy.

From Head to Toe will welcome your class into the animal kingdom as it presents an array of animals performing familiar actions and movements. Children are encouraged to join in and mimic the various animal antics. Fun will abound, winter doldrums will wane and confidence will build as children successfully copy each movement.

As with most of Eric Carle's books, *From Head to Toe* is illustrated with bold, colorful, collage style pictures. Children's attention and interest are easily captured, and their imagination is stimulated as each picture clearly depicts a familiar animal and the accompanying movement.

Not only will this special book be an asset at story time, it will be a valuable teaching tool in your classroom. *From Head to Toe* can be used to reinforce listening skills, following directions, and identifying body parts.

If this Eric Carle favorite is currently on your bookshelf, why not dust it off and reintroduce it to your class? Or, if not, visit your local bookstore and add this valuable book to your collection.

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.

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.

Continued From Front Cover...

bleeding; vomiting blood; high fever or fever which spikes suddenly; and a child who suffers from significant dehydration.

For these emergency situations staff should be trained to call EMS first, relay the condition and symptoms to the operator, begin any first aid treatment, and have another staff member contact the child's parent/guardian.

Once EMS arrives, they will take over first aid and medical care of the child. If the child's parents are not on site by the time the EMS are ready to transport the child to the hospital, a representative from the agency should accompany the child to the hospital. Be sure this agency representative has the child's emergency contact information with them, should they need to continue to try to reach the child's parents or guardians.

Staff back at the center should complete all incident/accident reports required. Be sure to check your local licensing guidelines for regulations regarding notification of licensing agency when a child is transported to the hospital. You may also be required to report the incident to your local health department if a communicable disease is involved.

Other medical situations which may require medical attention, but not necessarily EMS, include but are not limited to: fever in any child who looks more than mildly ill, fever in any child 2 months old or younger, sudden and spreading red or purple rash, blood in stools, and cuts which require stitches. In these urgent situations, staff should begin first aid treatment, and contact the child's parent/guardian. Upon reaching the child's parent/guardian staff should make them aware to the urgent situation and the need for medical attention within one hour.

If the parent/guardian is unreachable, or treatment with a medical professional can not be arranged within one hour, the child should be taken to the hospital. Staff should not be transporting the child, EMS should be called and a staff member should accompany the child to the hospital and remain with the child until the parent/guardian arrives.

The preservation of the child's life and limb is of the utmost importance when considering when to call for EMS assistance. All staff members can be held personally accountable for their actions or lack thereof, which makes training for these situations key.

Acting in the best interest of the child, doing what a prudent childcare professional would do, in a like or similar situation will be the standards by which you will be judged should your decisions be questioned. Proper and thorough documentation of the incident will assist with answering such questions.

Humor in the Workplace

The work done in the childcare industry is some of the most important work being done anywhere in the world. Those who call themselves childcare professionals are a unique group of people, motivated not by money, fame or recognition, but by the cutest of smiles from a three year old, the quirkiest of antidotes told by a four year old and the witnessing of life's milestones each day in the infant classrooms.

However, the work done in the childcare industry can be the most belaboring, stress invoking, and burnout causing in the world. Ever complaining parents, poorly disciplined children, licensing inspectors who know everything, and fellow staff members who don't pull their weight, are all contributing factors to the high turnover rates we are seeing throughout the industry.

Inviting humor into your workplace can minimize the effects these negative scenarios have upon staff. Learning to laugh together when times get stressful can unite a team, conquer burnout, and help staff focus back on the virtues of what childcare is about.

Managers and owners should realize that the tone of the agency is set by their attitude. If the boss laughs, everybody laughs. But if the boss is neurotic, then everyone will be neurotic. Management needs also to remember that humor is essential to cope and grow through adversity and change. Embracing and encouraging positive expressions of humor in the workplace will promote creativity and wellness amongst staff.

Management can promote positive humor throughout the center by: encouraging staff to share cartoons from the newspaper on a bulletin board in the staff lounge; plan funny prop or costume days with the staff and require all to participate; and during important meetings when stress levels begin to rise, stop and play a silly game to recharge and refocus everyone.

Remember that providing a safe and nurturing environment for the children and staff is the agency's top priority. Doing so with a smile can go a long way in communicating a positive attitude.

Humor can be the best medicine for what ails the agency, whether it is employee discontent, turnover, or lack of productivity. Encourage people to take their job seriously, but themselves lightly and let humor help us get the job done.



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.

February 6, 7, 8, 9: Region IV Head Start Conference, Hilton Atlanta Atlanta, GA For information and registration go to rivhsa.org

February 20: YMCA of Brandywine Private Training Visit papathways.org training calendar for information on this training.

February 23, 24, 25: National After School Association Conference, Louisville, KY For information go to naaconference.org

March 8: Bucks County Quality Child Care Coalition, Bucks County, PA Contact Pat Miiller at: pmiiller@earthlink.com or visit the papathways.org training calendar for information.

March 9, 10: National Child Care Association, Las Vegas Hilton Las Vegas, NV For information and registration go to nccanet.org

March 9, 10, 11: Indiana AEYC, Indianapolis, IN For conference information go to www.iaeyc.org and click on "conferences"

March 23, 24, 25: Virginia Asso-

ciation for Early Childhood Education The Richmond Marriott and The Richmond Center Richmond, VA For information go to vaece.org

March 25: Educare, Land-O-Lakes, FL Private Training Trainer can extend stay in FL for additional trainings. Email dawn@childproviderlaw.com for information on scheduling a seminar at your program

April 20, 21: California AEYC Anaheim Hilton and Anaheim Conference Center Anaheim, CA For information visit www.caeyc.org

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 childproviderlaw.com and click on Seminar Information and then on Upcoming Seminars for the schedule and to download a registration form.

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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

...Continued on Page 2...

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
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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

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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 strait 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, Allegheny, 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-providerlaw.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.ecaooffl.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.

E *The Childcare Professional*
EXPERIENCE

The Childcare Professional EXPERIENCE

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FMLA: Getting Down to the Basics

By: Dawn K. Martini

Enacted in 1993 this revolutionary law today covers over 67 million employees nationwide. While still very far behind many other countries in terms of job protection, the Family and Medical Leave Act (FMLA) was a major step forward in job protection for American employees. In passing the FMLA, the United States has acknowledged that employees need to balance workplace responsibilities with their familial responsibilities. By providing reasonable job security to employees, this law strives to promote a family's economic stability and security thereby preserving the integrity of the American family.

In an attempt to protect the interests of business owners, Congress limited the applicability of this law to employers with 50 or more employees using the most liberal method of counting employees. If an employer employs 50 or more employees for each day in 20 or more calendar workweeks in the current or preceding calendar year the employer is required to offer FMLA Leave to its employees who meet certain eligibility criteria and who have a qualifying event.

The FMLA Leave is up to 12 weeks of UNPAID leave in a 12 month period with restoration to the same or an equivalent position upon return to work. Upon completion of the FMLA Leave, employees must be returned to their same or equivalent position with no adverse employment consequences for taking the FMLA Leave. If restoring the employee to an equivalent position the employer must consider a number of factors in determining if the position is truly equivalent. The equivalent position

must be the same in status, pay, duties, and possibly location to be considered equivalent.

Employees who have been designated in advance by the employer as being "Key" employees must be permitted to take FMLA Leave but are not entitled to restoration to the same or equivalent position following their return. In order to deny restoration, the employer must demonstrate that restoration will result in the company sustaining substantial and grievous economic injury. In order to deny restoration for this reason the employer must inform the employee prior to designation of FMLA Leave, that the employee is in fact a key employee and that the employee will not necessarily be restored to the same or equivalent position upon their return. The designation as a "key" employee can only apply to FLSA exempt employees who are among the top 10% of wage earners

While on FMLA Leave, the employee's benefits including but not limited to medical insurance must be maintained in the same manner as they would be when the employee is working. If the employee makes contributions from their paycheck to cover the cost of the benefit, the employee must continue to make the same contributions during the FMLA absence. Employees on FMLA Leave are also entitled to any and all bonuses that they would have received had they not taken leave including end of the year bonuses, or attendance bonuses. FMLA Leave can not be counted against an employee's attendance for purposes of determining eligibility for attendance bonuses, or no

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fault attendance policies. Employees would not be entitled to performance based bonuses they would have received had they not taken FMLA Leave, such as a bonus for reaching a sales goal.

The 12 weeks of leave can be taken consecutively, or intermittently depending upon the needs of the employee. For leave to be used intermittently, the employee's qualifying event must necessitate periodic absences from work, with the employee being able to attend and perform job duties between absences.

Intermittent leave is typically taken when an employee or their spouse, child or parent is receiving ongoing outpatient medical treatments like dialysis, chemotherapy or other such treatment. The employer, as policy, may require the employee to use any accrued/earned paid leave time in conjunction with the 12 weeks of unpaid leave time. The employee would then exhaust their paid time off and receive compensation for all/part of the FMLA Leave as determined by how many paid days of leave they have accrued/earned.

An eligible employee is defined as an employee who has been employed for at least 12 months (they need not be 12 consecutive months) and the employee must have completed at least 1250 hours of work during the 12 months immediately preceding the commencement of FMLA Leave. 1250 hours is roughly equivalent to working 40 hours per week in a little more than 31 weeks or if a part time employee, at least 24 hours per week for 52 weeks.

Once the employer is established as a covered employer and the employee is identified as an eligible employee, the employee must submit certification that they have a qualifying event which entitles them to FMLA Leave. Qualifying events include the birth or adoption of a child, the employee's own serious medical condition, or the serious medical condition of the employee's spouse, child or parent that requires the employee's presence to care for their needs. Certification must be a letter from the treating physician or licensed health care provider and must detail the condition which necessitates the absence and the expected duration of the condition. While the employee is out on FMLA Leave the employer may request additional medical certifications detailing the need for leave and that the qualifying event still exists. These additional medical certifications may be requested as necessary to determine eligibility for leave at reasonable increments, generally every 30 days. The employer may also require a "Fitness for Duty" certification prior to the employee returning to work.

The FMLA requires that where the employee can foresee the need for FMLA Leave, the employee must provide 30 days written notice requesting FMLA Leave. Where the leave is for an unforeseeable circumstance, the employee is required to notify the employer as soon

as practicable. However, case law in this area suggests that when an employer suspects that an employee's absence is for a FMLA qualifying event, the employer should designate the leave as FMLA Leave and then require the employee to submit supporting documentation. If the leave is later determined not to be for a FMLA qualifying event, the employer can retroactively cancel the leave under the FMLA policy. However, if after an employee begins leave or returns from leave, the employer may not retroactively count the leave as FMLA Leave time even if it is determined that the employee had a qualifying event. If a leave is taken and not designated as FMLA Leave the employee is still entitled to FMLA Leave for another qualifying event in the future.

While there have been no changes to the Family Medical Leave Act since it was adopted in 1993, there has been significant court action which has shaped the application of the law through court interpretation. In most cases, case law suggests a trend toward finding in favor of the employee, where the employee has been denied or treated unfairly by the employer in relation to the FMLA. This trend should be a warning to employers to be careful and diligent in their administration of this law. Designating a knowledgeable administrative staff person to oversee the application of this law and the employment policies which are derived from it, would be a prudent decision.

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Nurturing "Thankfulness" in Young Children

By: Janice Nieliwocki

Thanksgiving is right around the corner, so once again it is that time of year where we become introspective, count our blessings, and reflect on the things for which we are thankful. In keeping with this topic, many child care centers adopt "Thankfulness" as a November curriculum theme. This seems sensible and simple, but in reality the concept of "being thankful" is not one that comes easily to young children. Nor is the task of teaching "thankfulness" an easy one for child care teachers to tackle and accomplish.

By the very nature of their developmental stage, preschoolers do not understand the concept of gratitude in the same way older children and adults do. However, we all realize the societal importance of raising children whom are both appreciative and thankful. So how do we, as child care providers and teachers, approach this daunting task?

First and foremost, the best way to foster thankfulness in young children is to model appreciative behavior. The simple task of saying, "thank you" to someone when they have done something we appreciate is a good example and demonstrates to children our consideration for others. In addition, offering praise to children when they perform an empathetic gesture towards another reinforces this concept. Eventually as children mature, they will internalize these social courtesies and begin to show their gratitude to others.

Lead the way by letting children know the things for which you are grateful. Concentrate not on material things, but on true values, such as good health, family, and friends. Include shelter and food on your list, things children can easily relate to but often over look. In addition, let the children in your classroom know that you are thankful for them and the pleasure they bring into your life everyday.

After you've set the example, have a discussion with the children in your class as to the things in their life for which they are thankful. Of course you will get the typical answers such as "my action hero figure", or "my Dora doll" but encourage children to shift the focus to other more important values. You'll be surprised as to how easily the discussion will shift to include appreciation for family, grandparents, beloved pets, sib-

lings, and friends.

Below is a list of some possible activities designed to reinforce the concept of thankfulness and appreciation:

- ◆ Put together a food basket or have a food drive for those who are less fortunate. You may want to ask children to contribute an inexpensive, non-perishable item. (If there are monetary concerns, have a small collection of inexpensive items at your center from which children can choose and contribute.) By stressing to young children that not everyone has some of the things we have and by letting them contribute to solving this situation, empathy and appreciation grows.
- ◆ Take a walk outside and point out nature's bounty. As children observe the world around them, ask them to point out something they are thankful for. Answers may include "the changing leaves", "the squirrel in the trees" and "the warm Autumn sunshine". Take things a step further and set up a "Nature's Bounty table" in your classroom. Place things on the table that you gathered on your nature walk. Include pictures of those things you could not bring inside, such as the squirrel and sunshine!
- ◆ Following your discussion on Thankfulness, make a "Thankful Tree" to

decorate your classroom. Cut a tree trunk and branches from brown construction paper or poster board. Attach the trunk and branches to your bulletin board or classroom wall. Cut leaves from orange, red and yellow construction paper. As children tell you what they are thankful for, write their comments on the colored leaves and attach them to the tree branches.

- ◆ Make "Thankful" Thanksgiving turkeys. Cut turkey pieces from colored construction paper, making sure to include head, neck, waddle, body, feet and feathers. On the piece which will serve as the turkey's body, write "I am thankful for..." Have children assemble their individual turkey by gluing the various pieces onto a large sheet of construction paper. Ask each child what he or she is thankful for and write the responses on the paper feathers. Have the children glue "their" feathers onto the turkey.

Although we tend to focus on gratitude in conjunction with the Thanksgiving holiday, keep in mind that in order to truly cultivate thankfulness in young children, it needs to be nurtured year round. As the adults in their lives model appreciation and thankfulness, overtime children will come to be appreciative and thankful for the many things they have.



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New FLSA Regulations: Are Lead Teachers Exempt?

By: Jason Dalton

It's been nearly two years since the regulations defining the exemptions to the Fair Labor Standards Act (FLSA) have been revised. In this time, many of the questions regarding interpretation of the regulations have been answered. One issue however, which has yet to be resolved is under what circumstances do teachers in child care qualify as exempt from the FLSA? As the law currently stands there are two categories in which a child care teacher may fit, the "Learned Professional Exemption," and the "Teacher Exemption," each with its own requirements and potential pitfalls for child care providers.

I. The "Learned Professional Exemption" and Child care Teachers

A teacher in child care qualifies as an exempt employee under the "learned professional" exception to the FLSA if three requirements are met. 1) The teacher must be paid on a salary basis not less than \$455 a week. 2) The teacher's *primary* duty must be either imparting knowledge, or some other type of work which is intellectual rather than manual in nature. 3) The job being performed by the teacher must require "advanced knowledge in the field of science or learning" which is "customarily acquired by a prolonged course of specialized intellectual instruction." What this last requirement essentially means is that in order to qualify as exempt, the teaching position in question must require at a minimum a 4 year degree from an accredited college or university in a field specific to the job being performed (i.e. a bachelors degree in early childhood education or related field).

If a center employs both teachers who meet the minimum education requirements as well as those who do not, it may be necessary to establish two separate job titles in order to preserve the exempt status of the more highly educated teachers. A center might, for example, have one position and title for exempt teachers which requires a four year degree in a specific field, and a second, separate position and title for those teachers with lesser educational backgrounds.

II. The "Teacher Exemption" and Child care Teachers

In addition to the "Learned Professional Exemption" to the FLSA, the regulations also include a specific "Teachers Exemption." This exception has much more lax educational requirements than the "Learned Professional" exception. In fact, according to a DOL opinion letter published in October 2005, "there is no minimum educational, or academic degree requirements for bona fide teaching professionals in educational establishments." Additionally, unlike the "learned professional exemption" the "Teacher Exemption" has no minimum salary requirement.

At first blush it appears as though this FLSA exception is an ideal fit for day care teachers. However, the "teachers exemption" has one added requirement which makes it inapplicable to most child care providers. In order to qualify for the teacher's exemption the teacher must be employed in an "educational establishment" which is defined in the regulations as a school "licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools." Because a day care center is in no

way a "career school" this second part of the definition is inapplicable. Therefore, unless the center is certified by the State Department of Education as a pre-school or kindergarten, the "teacher exemption" to the FLSA is inapplicable. One caveat to this rule is Head Start Agencies which have been considered "educational establishments" under other federal legislation such as the Individuals with Disabilities Education Act (IDEA), and therefore could by extension be considered educational establishments under the FLSA.

As mentioned earlier the regulations defining the exemptions to the FLSA are still new, and will require more time before all the intricacies of the exemptions are clarified though case law and DOL opinion letters. Nonetheless, at the present time the above guidelines most accurately reflect the current state of the law regarding the exemptions and should be taken into consideration when determining whether to treat an employee as an hourly or FLSA exempt employee. It is possible that this interpretation will change in the future. For example, the DOL may eventually determine that licensed day care centers accredited by a nationally recognized association such as, NAEYC or NACCP do in fact qualify as an educational establishment for the purposes of the "teachers exemption." At that point the offices of Ronald V McGuckin and Associates will be sure to post an update for you to adjust your policies accordingly, so be sure to stay tuned.

For more information on the FLSA and its exemptions check out the document center on our website at www.childproviderlaw.com or visit the Department of Labor website, www.dol.gov.

Head Start Demographics

By: Dawn Martini

According to the US Department of Health and Human Services, Head Start has seen a swing in its demographics since 2000.

As of 2004 black and Hispanic children make up 62.3% of the Head Start population. The percentage of black children attending dropping by 3.4% and the percentage of Hispanic children increasing by 2.5% over the four year period between 2000 and 2004. Seeing only a slightly larger drop, white children now occupy 3.5% less space in Head Start as they have in the past.

The Asian and Hawaiian/Pacific Islander populations with only 1.8% and 0.9% respectively, represent the smallest ethnic groups in the Head Start Program.

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

Take a leap into autumn with the book, Leaf Jumpers written by Carole Gerber and illustrated by Leslie Evans. Young children will delight in this story, as a young girl and boy, accompanied by their black and white dog, partake in a ritual of the season, by first enjoying the falling leaves, then raking and jumping into the colorful pile they've created.

Carole Gerber's use of poetic prose captures the essence of Autumn, as each leaf and it's descent to earth is clearly defined. She richly describes each color and compares the various leaves to common shapes and familiar objects. Her simple, yet descriptive words create a clear picture of the scenario that is taking place and the surrounding environment.

Preschoolers will take pleasure in the accompanying illustrations, which are bold and beautiful. The pictures fill the pages with splendid color, quickly capturing the interest and attention of young children. The illustrations are drawn from different perspectives adding to the overall appeal of the book.

Not only is Leaf Jumpers perfect for story time, you might want to consider adding it to your lesson plans. The book concludes with a simple, but thorough explanation on why leaves change color and also identifies and illustrates common leaves.

After reading Leaf Jumpers to your class, follow up with some related "leaf" activities. You may want to purchase several "child-size" rakes and partake in raking leaves, building on gross motor skills. (Be careful of children with allergies, as leaves can sometimes trigger a reaction). Gather leaves and have a group discussion about their colors and shapes, building and reinforcing vocabulary skills or incorporate leaves into art activities, by doing "leaf" crayon rubbings or creating a decorative wreath by gluing leaves onto a paper plate "ring". Take advantage of the autumn leavesbefore you know it, winter will be here!

Remember to Thank Staff

By: Janice Nieliwocki

In keeping with this season's theme of "thankfulness", why not take some time out of your busy schedule to commend your staff for the fine job they do everyday? This is the ideal time to show your appreciation to your employees for the many contributions they bring to your program.

A high quality teaching staff is one of your agency's most important assets. Good teaching requires dedication, professionalism and a commitment to excellence. Patience, kindness and creativity are additional qualities necessary for teaching young children. When you've found teachers that fit this profile, recognize them for the key role they play in making your program a success.

Teaching is a reward in and of itself, but we all like to be recognized for a job well done. Keep in mind that rewards don't need to involve money or great expense. Small gestures that show respect and appreciation can make a monumental difference in raising morale and building a more harmonious workplace. Ultimately teachers will be happier, because they can feel and see your appreciation of them through your actions.

Let your teachers know how much you value them. Rather than just relying on verbal commendations, consider writing a brief note to each teacher. A simple note on nice stationery or note cards can do a lot to boost morale and encourage teachers through rough days. Focus on the special qualities that each teacher brings to your program and compliment his or her individual strengths.

You can also show your appreciation at your monthly or weekly staff meeting. Print commendation "certificates" from your computer and present them to your employees. If your budget permits, you can present inexpensive "trophies", to recognize a job well done.

Consider involving your entire agency and host a simple "thank you" breakfast. Coffee, bagels, pastries and a letter expressing your gratitude is not terribly time consuming or expensive. If mornings are a particularly hectic time of day at your center, present a dessert buffet after lunch or at the end of the day. These gestures will go a long way and will have a positive impact on your employee's morale.

So, as you reflect and count your blessings, count your fine teaching staff among them. Good teachers are hard to come by. Let them know you value the positive impact they have on your program, not just this holiday season, but year-round.

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



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COBRA 101

By: Jason Dalton
What is COBRA?

No, its not just a deadly snake, the Consolidated Omnibus Budget Reconciliation Act or COBRA is a piece of legislation passed by Congress in 1986 designed to provide temporary continued health insurance benefits to employees and their families in situations where coverage might otherwise be terminated. Under COBRA certain "qualifying beneficiaries" who undergo a "qualifying event" are entitled to continued health insurance at their own expense for a period ranging from 18-36 months.

What Plans are Covered by COBRA?

COBRA applies to group health care plans for employers with 20 or more employees on more than 50% of its typical business days in the previous calendar year. Both full and part-time employees are counted in determining whether a plan is subject to COBRA with part-time employees counting as a fraction of an employee proportional to the amount of time the part-time employee works compared to a full time employee.

Who is Entitled to COBRA Benefits?

Employees covered by a group health plan, their spouses, and their dependants will generally qualify as beneficiaries under COBRA if they were covered by the plan on the day before a "qualifying event." In certain circumstances retired employees, their spouses and dependants will also qualify for COBRA coverage. "Qualifying events" are specific events

that would cause an individual to lose health coverage. For employees and their families "qualifying events" triggering COBRA coverage include; voluntary or involuntary termination of employment for any reason except for gross misconduct and a reduction in the number of hours worked. For an employee's spouse and children, qualifying events may also include; the covered employee becoming entitled to medicare, divorce or legal separation of the covered employee, death of the covered employee, and loss of the dependant child status under the plan rules.

What Notices are Required?

When the qualifying event is termination of employment, a reduction in the number of employment hours, or the employee's death, it is the duty of the Employer to notify the health plan administrators of the event within 30 days. If, on the other hand, when the qualifying event is divorce, legal separation, or a child's loss of dependant status, the duty to notify the plan administrator is extended to 60 days and rests instead on the beneficiary. After receiving notice of the qualifying event the plan administrator must then send an election notice to the beneficiary within 14 days. Finally, the beneficiary then has a period of 60 days following the later of the coverage loss date or the date of the COBRA election notice to decide whether to elect COBRA coverage.

What Benefits are Covered by COBRA?

Qualified Beneficiaries who elect COBRA coverage must be offered identical coverage as that available to

similarly situated beneficiaries who are not receiving COBRA coverage under the plan. This coverage is typically the same as the coverage available to the beneficiary immediately before qualifying for continued coverage. Qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment by the plan.

How Much Will COBRA Cost Me?

The actual amount a beneficiary will be required to pay for COBRA coverage will vary depending on the insurance plan and provider. The premium cannot however exceed 102% of the full cost of the coverage. Because an employer will typically pay all or a portion of the actual cost of the plan coverage for its employees, COBRA coverage will generally cost more than active employees are required to pay. However COBRA coverage is ordinarily less expensive than individual health coverage.

How Long Does COBRA Coverage Last?

When the qualifying event is a covered employee's termination or reduction of work hours COBRA coverage will typically last for a maximum period of 18 months. For all other qualifying events, or a combination thereof, the maximum period of coverage is extended to 36 months.

Please note: this article is a generalized overview of COBRA, for additional information please visit the US Department of Labor website at www.dol.gov/dol/topic/health-plans/cobra.htm

FMLA: Federal v. Individual State Laws

By: Jason Dalton

As though the Federal Family Medical Leave Act ("FMLA") weren't complicated enough, employers in a number of states must also comply with the leave laws of their individual state. As mentioned in the article in this news letter: *FMLA: Basics*, the Family Medical Leave Act is a federal statute. This means the provisions of the FMLA are applicable throughout the country. Whether you live in Alaska or Florida you are subject to the federal FMLA. There are, however, 11 states that have established their own state statutes similar to the FMLA with provisions different or additional to those in the federal act.

According to the US Department of Labor, these states currently include: California, Connecticut, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington and Wisconsin, as well as the District of Columbia. Therefore if you are an employer located in one of these states, you must be familiar with not only the Federal but also your own state's family medical leave laws to assure full compliance.

One major way in which the individual state laws may differ from the Federal FMLA is with regard to the requirements necessary for an employer to be covered by the act. As you may already have learned in the article: *FMLA: Basics*, the FMLA applies to employers who employ 50 or more employees for each day in 20 or more calendar workweeks. For some state laws however, this threshold is lower, and for others it is higher.

For example: Vermont's medical leave act law applies, in some situations, to employers with 10 or more employees, whereas in Connecticut the number of employees necessary for the state law to apply is 75, counted as of October 1st annually.

An employer who meets the initial threshold for one law, but falls short of the other, will obviously only be required to comply with the law that applies. On the other hand, should an employer meet the initial requirements to be subject to both the Federal and state FMLA laws, the employer is re-

quired to comply with both acts. The consequence of an employer being covered by both the Federal and state laws is that in situations where the two laws differ, or overlap, the Federal or state provision that provides the greater protection to the employee must be followed.

For example: If state law allows leave to be taken in order to care for an eligible employee's parent-in-law, and that situation arises, the employer must at the least give leave for the period of time required by the state law, even though the FMLA may not require any leave be offered in the same scenario.

The threshold an employee must meet to be protected by the act may also vary between state and Federal law. For example, unlike the Federal act which requires 12 months of employment and a total of 1250 hours in the preceding year before an employee is eligible for leave, in Hawaii an employee becomes eligible for state family medical leave after only working for 6 consecutive months. Minnesota, by contrast, is similar to the FMLA in that an employee must be employed for at least 12 months before becoming eligible for leave, however the 1250 hour requirement is not part of Minnesota state law. Again, if an employee only qualifies for one or the other (state or federal leave), they need only be given the leave to which they qualify.

Another way state and federal family medical leave act laws differ is the number of weeks leave time an employee must receive. As you may recall, the FMLA requires covered employees be given up to 12 weeks unpaid leave in a 12 month period. For most state laws this period of time is shorter.

In Maine, the state law only requires 10 weeks to be given in a 2 year period, in Hawaii the maximum state leave is 4 weeks during a calendar year. In Connecticut employees of covered employers may receive as much as 16 weeks leave, however, like Maine this amount is calculated in a 2 year period. Employers covered by both laws must give eligible employees the longer of the two leave periods

available under either law. In some situations this may result in an employee receiving more than 12 weeks unpaid leave.

For example: In a state where 16 weeks unpaid leave is required to be given to eligible employees, and an employee is eligible in that state for both federal and state leave it will be necessary to give the employee up to 16 weeks unpaid leave thus satisfying both statutes. This isn't to say an employer needs to add up the leave periods, as most states allow the state and federal leave to be given concurrently.

In addition, 3 states (California, Minnesota and Washington) offer paid family leave, and other states are exploring proposals to establish paid leave systems through the state's unemployment insurance programs, through temporary disability programs or through some other wage-replacement mechanism. In these states an employer covered by both acts must offer the longer period of leave available and pay for leave in accordance with the state statute for at least the leave period mandated by the state statute.

Individual state and Federal laws also vary with regards to a number of other elements including; which events trigger leave eligibility, the employee's reinstatement rights, the right to intermittent leave, the key employee exemption, the amount of notice required, etc. It would be impossible to analyze all of the subtitle differences between each of the 11 state laws and the federal law in one article. However the United States Department of Labor gives a helpful overview of the differences on its website at www.dol.gov. A consolidated chart comparing each state law and the federal FMLA is also available on our website at www.childproviderlaw.com.

Finally, employers are encouraged to utilize the resources available on their own particular state agency's Department of Labor website in order to obtain more complete information about a state's laws affecting employment leave for family, medical, and other purposes. Links for these websites are also available on the US Department of Labor's above listed address.

HOLIDAY CELEBRATIONS IN THE DIVERSE CLASSROOM

By: Janice Nieliwocki

'Tis the season for holiday celebrations and, once again, child care professionals must make the decision on how to incorporate the holidays into their classroom curriculum.

For many years, Christmas seemed to have "cornered the market" as the predominant winter holiday. Holiday displays and decorations typically involved Christmas trees, Santa, the Nativity scene, and perhaps an Advent wreath. As time went by and awareness grew, Hanukkah began to emerge on the forefront and menorahs and driedles were added to holiday displays. Today with our diverse culture, Christmas and Hanukkah have been joined by Kwanzaa, Diwali, Ramadan and Eid, just to mention a few. Many public schools, and governmental agencies, unsure of how to correctly address and include the numerous holidays, banned all holiday displays and activities with any religious connotations, opting instead to focus on "winter" celebrations.

As the holiday season emerges, television commercials and store catalogues and brochures constantly remind us that the holidays are upon us. As families make preparations, young children are aware of the accompanying excitement and begin to anxiously anticipate the holiday celebrated in their home.

That being said, it is only natural for young children to come to school eager to share their related holiday thoughts and experiences. Rather than opting to exclude holiday celebrations from the classroom, this can be the perfect opportunity for young children to learn about other cultures and valued family traditions. Yet how do child care educators make the decision as to what holidays to include in their curriculum?

In keeping with the concept of parents and child care providers working together in partnership, incorporate parents input when making holiday decisions. You may want to distribute a questionnaire inquiring about the holidays celebrated in the home and related family traditions. This helps to ensure that the diverse popu-

lation of your classroom is represented and no cultures or religions are excluded. Many times parents are more than willing to come into your classroom to share their particular traditions with the children. This can be a rewarding experience for all those involved.

Work to create an environment where children are able to share information about their holiday celebrations, while cultivating respect for others' traditions. Keep in mind that you do not need to "celebrate" each and every holiday, but let children know that all holidays of those in the classroom are meaningful and important. You may want to include activities related to the specific holidays, ensuring that they are developmentally appropriate and provide a significant learning experience. Playing music from other cultures, sampling different "holiday" foods, and art projects related to cultural traditions are ways to raise children's awareness of various heritages.

When presenting historic information, try to ensure accuracy. A trip to your local library can be a great source of information. Make an effort to incorporate interesting pictures in your presentation. Be sure to include pictures which represent not only the historic element of the holiday, but

ones which also show families enjoying the holiday celebration today.

If you are serving children in your center whose religious beliefs prohibit them from taking part in celebrations, have a discussion with the parents to see how to best provide alternative activities for those children.

As the hustle and bustle of the holiday season grows, so does the related anticipation, stimulation and excitement. You can almost feel the exhilaration in the air as you walk into the child care center! Keep in mind that some children have a particularly difficult time coping with this added excitement and feel the stress associated with the holiday season. For this reason, many child care agencies choose to keep celebrations "low-key", distancing themselves from the commercialism of the season, instead focusing on the "giving and sharing" aspect of the holidays.

The holiday season in the early child care setting can be a time of great excitement and joy! Take the opportunity to also make it a time of great learning. By teaching children about different cultures and their related holiday traditions, we not only expand on respect for others but also increase our children's knowledge about the world around them. Happy Holidays!



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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.

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

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

Oct 19: Pennsylvania Child Care Association Harrisburg, PA. For information go to pacca.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.

Dec 5 - 6: Pennsylvania Head Start Association Harrisburg, PA. For information go to pahead-start.org.

Dec 15 - 19: National Head Start Association: Parent Training Conference Boston, MA. For information go to nhsa.org

Jan 25 - 27: Chicago Metro AEYC Chicago, IL. For information go to

Feb 21 - 24: Virginia Association for Early Childhood Education Norfolk, VA. For information go to vaece.org

Mar 8 - 10: California AEYC San Jose, CA. For information go to caeyc.net

Mar 21 - 23: National After School Association Phoenix, AZ. For info go to naaconference.org

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Workplace Harmony: Defeating the Workplace Bully

By: Janice Nieliwocki

Take a look at today's workplace and compare it with the workplace of yesteryear and see a very different work environment. Today's workplace is a virtual melting pot, rich in diversity, reflective of our present day society. People come to the workforce with varying backgrounds; differing ethnicity, race, religion, culture and language. We are also experiencing greater age disparity in the workplace, as Americans are living longer and thus staying in the workforce longer. Not to mention, gender difference; men and women working together. This is especially unique in the child care industry as it has always been predominately staffed with female employees.

People also bring differing *personal* traits to the workplace. We all bring our own talents and skills, but we also bring different personalities, differing values, expectations, experiences, work ethics, preconceived ideas and prejudices. It is no wonder that the workplace often becomes a place of conflict and discord.

However we all, hopefully, realize the importance of a harmonious workplace and the benefits of getting along with co-workers. One of the major benefits of harmony in the workplace is that it brings increased productivity. In the child care industry, increased productivity would involve doing a better job, taking the extra step to better serve our children and families. Keep in mind that people can't work to their full potential if they don't feel good about showing up for work each day. A harmonious workplace also goes far in raising morale. This is especially important from a supervisory aspect, as high morale inspires people to achieve more. In addition, a peaceful, amicable workplace limits work stress, making work more enjoyable.

As a result, employers experience less absenteeism, less tardiness and a lower rate of staff turnover.

With that said, what can we do to build on and improve interpersonal relationships with co-workers? The answer can be summed up fairly easily with the focus being on professionalism, respect, flexibility, compromise, cooperation, and communication.

One of the first steps is to recognize that you are a professional. Remember that all your actions and interactions should represent and reflect the professional you truly are. This includes speaking to co-workers in a professional manner and showing respect for others.

The importance of respect can't be emphasized enough. Be respectful in all your interactions in the workplace, recognizing that small gestures, such as greeting your co-workers with a smile and applying good manners, goes a long way in showing respect. In addition, recognize that everyone is different and respect and celebrate those differences. Take the time and effort to look for the positive qualities in your co-workers. You don't need to like everyone, but respect them for the skills and qualities they bring to the workplace. Remember to respect your co-workers boundaries, recognizing that not everyone is comfortable discussing all subjects. Also, accept co-workers boundaries concerning criticism, instead shifting the focus to showing support.

It is import to respect confidences. If you know personal information concerning a co-worker, keep it confidential. Avoid gossiping and spreading rumors. These tend to be hurtful and counterproductive to the workplace.

Remember to be open-minded.

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Collecting Past Due Accounts

By: Jason Dalton

I. Set the tone as soon as a new client is taken

An all too familiar problem with many child care providers is the issue of collecting outstanding debts from delinquent clients. However, like many of the issues day care providers face this is one that can, in a large part, be avoided through sound policy. To begin, it is important that the initial agreement between your agency and an enrolling parent clearly outlines your procedures for recovering past due tuition. It is recommended that you include in your contract with every new parent a provision which states that overdue balances will incur interest at the maximum rate legally permitted. Your initial agreement should also state that should the client's delay in paying a debt, require your agency to hire attorney the client will be responsible for those costs. Provisions such as these can serve several purposes. Initially, they act as an additional disincentive to your clients from becoming behind in payments in the first place. Later down the road, should you find the need to peruse more aggressive options to recover outstanding fees, these policies shift the expense of collecting the debt onto the client and provide leverage for your agency when attempting to negotiate debt settlement.

Whatever policies you decide to adopt regarding late tuition payments, it is crucial that you actually intend on following through with them. One of the primary goals behind an agreement regarding late payments is to ensure that bills are paid promptly, thus saving you the time and expense of tracking down deadbeat clients. Should you fail to enforce your own policies regarding late bills, you will develop a reputation as a pushover, clients will lose the incentive to pay your agency on time, and you will find yourself spending more and more time chasing down late tuition payments. Likewise, only make threats to file suit or turn a bill over to a collection agency if you actually intend on doing so, otherwise future collection of past due bills will become even more difficult.

II. Be diligent with outstanding debts

Should a client fall delinquent in tuition payment the key to recovery is prompt action. Any experienced debt collector will tell you that more time that passes before actions are taken to recover a debt the less likely it is that you will be able to collect even part of the debt later. Therefore as soon as a client misses a payment you should remind that parent, in writing, of the billing practices, finance charges, and any other billing fees outlined in your initial agreement. If the parent continues to fail to make tuition payments you should refuse to accept the child into the program until the outstanding bill (including all late fees) is satisfied. This may seem like a harsh step, but you must remember that you are running a business, not a charity. See what happens for example

if you stop paying your cable bill, your electric bill, or your phone bill. Denial of service can be a mighty effective wakeup call to a client, and can set the tone for prompt tuition payments thereafter.

Another reason why it is advisable to deny service to a client who fails to make tuition payments is to control the amount owed to you. Although there are a number of options to recover past due debt (discussed below), they are all contingent on the client having the assets somewhere to repay you. After all, "you can't draw blood from a stone" and in the situation where a former client is completely bankrupt and simply cannot pay you, it's better to have them \$500 rather than \$5,000 in your debt.

III. Taking More Drastic Measures

In the event that you are unable to persuade a client to voluntarily pay past due bills, you have a number of more aggressive options to choose from. It is important to note however, that each of the following options will cost you additional time and money. Finally, as mentioned earlier the more time that passes before an outstanding debt sought the more it will cost you and the less likely it will be that you will be able to collect, so diligence in perusing debts is recommended.

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Recognize that your way isn't the only way and there is often more than one way to get the job done, to reach a common goal. Acknowledge and respect that your co-workers may do things differently, but that doesn't mean their way is wrong. Be flexible enough to cooperate and compromise when necessary.

Effective communication is a key element in the workplace. Keep in mind that good communication can improve all relationships, including those with co-workers. Communicating frequently and effectively can avoid misunderstandings. Be cognizant of your choice of words and how they affect others. If a conflict arises, avoid using blaming statements and again be cautious with criticism. Remember that an important component of effective communication is good listening. Give the person you are speaking with your full attention and focus on what the person is saying. Establish and maintain eye contact. Ask for clarification and more information if needed and wait until the other person has finished speaking before you reply.

When communicating in the workplace give and take praise accordingly. We all like to be recognized for a job well done and positive statements go a long way in improving relationships and fostering a feeling of well being.

Even though we may put all our efforts into working towards a harmonious workplace, conflicts will arise. Address them as soon as possible, to keep them from escalating. A direct approach often works best. Talk to your co-worker using neutral language. Offer solutions, working together to find ways to solve or correct the problem.

Recognize that some conflicts are often difficult to resolve and may require assistance from a supervisor or manager. He or she may be able to offer the help needed to resolve the issue.

A report of harassment or bullying within the workplace is a very serious matter and needs to be treated accordingly. Harassment, in its simplest form, can be defined as any im-

proper conduct by an individual, that is directed at and offensive to another person or persons in the workplace. Keep in mind that it doesn't arise to a level of harassment until someone complains about it. Although closely related, bullying takes things "a step above and beyond". Although definitions vary, bullying can be described as offensive behavior and an exercise of power that attempts to undermine an individual through humiliation. Often, bullying involves repeated incidences and a pattern of actions meant to intimidate and offend.

The negative effects of harassment and bullying in the workplace are many and far-reaching. The individual who is the victim of the harassment or bullying may suffer from anxiety, reactive depression, loss of self esteem and self-confidence. Not to mention the physical ailments which may evolve as a result of the increased stress. However the individual isn't the only person who feels the negative effects of the uneasy work situation. The entire workplace falls victim, and may experience loss of morale, reduced productivity, excess use of sick leave, increased staff turnover, and possible legal ramifications.

It is important to point out that there can be legal liabilities to both the individual who is committing the harassment and/or bullying, and to the employer (corporation) as well. The harasser or person who is doing

the bullying can be held liable both CRIMINALLY and CIVILLY, depending on the actions taken place. Different elements of harassment/bullying have different penalties in place. Keep in mind that liability can involve monetary as well as criminal penalties.

Employers or corporations can be held liable if they don't have a system in place to handle such situations. A procedure should be in place for dealing with harassment and bullying that involves the written documentation for reporting such incidents. In addition, the employer can be held liable if he or she knew of the situation or should have known of the situation and failed to take all appropriate measures to make the harassment/bullying stop and punish the person who committed the offenses. The employer needs to take immediate, remedial action which involves an investigation and removal of the perpetrator from contact with the individual.

We all need to recognize the importance of getting along with others in the workplace. A harmonious workplace does wonders in making the organization run smoothly. The better we get along with others and work as a team, the easier it is to achieve a common goal: that being to provide the best services we possible can to the parents, families and children we serve.



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Can Head Start Teachers Collect Unemployment Compensation?

By: Jason Dalton

Are Direct Grantee Head Start Centers schools? Although the answer may seem simple enough, this issue has created a lot of controversy as it can mean the difference between whether or not teachers at these institutions are entitled to Unemployment Compensation benefits.

In general, the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no fault of their own (as determined under State law), and meet other eligibility requirements of State law. Although the states are free to create their own specific unemployment compensation laws, the states must meet certain Federal guidelines in order to receive compensation from the Federal Unemployment Compensation fund. Therefore, although there is a degree of variation in the UC laws from state to state, most state laws contain a number of similar provisions necessary to keep in compliance with the federal guidelines.

Among the provisions required by the Federal Unemployment Tax Act ("FUTA") to be implemented on the state level is what is referred to as the "between the terms denial provision" for employees of educational institutions. Basically, this provision requires that UC benefits be denied to employees of "educational institutions" whose period of unemployment at issue is "between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms." Simply put, this provision requires

states to deny UC benefits to school employees during regularly scheduled breaks such as summer recess when the employee has been assured a return to her position at the conclusion of the break. The law however, fails to give guidance as to what exactly qualifies as an educational institution. Quite clearly public elementary and secondary schools qualify as educational institutions, but where do Head Start centers fall?

Currently the official position of the US Department of Labor is that Community Action Group run head start programs do not qualify as educational institutions under FUTA while Head Start centers run directly by local boards of education do qualify as educational institutions. This position is expressed in a 1997 Unemployment Insurance Program Letter (UIPL) citing a 1979 UIPL letter, numbered UIPL 41-97 and 40-79 respectively. Community action groups, as discussed in UIPL 41-97 are typically umbrella action programs that run a number of other programs such as, food distribution, energy assistance, senior citizen assistance, weatherization programs, etc. According to UIPL 41-97, a community action group run head start center whose goals include "child adjustment and development at the emotional and social levels, rather than school-type training" would not qualify as an educational institution under the Act.

On the other hand, when a local board of education operates a Head Start program as an integral part of the school system in the facilities of an educational institution, with Head Start workers as employees of the board, UIPL 41-97 deems the head start center to qualify as an "educational institution."

Left unanswered by the letter, however, is the status of Head Start programs run by a direct grantee whose primary purpose is the education of pre-school aged children.

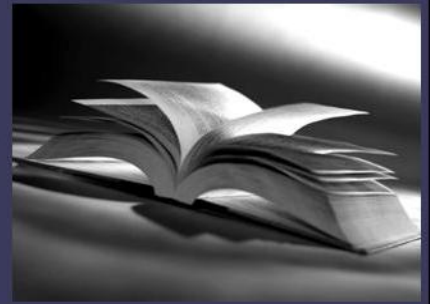
This very issue is currently being argued on various levels of appeal within the Pennsylvania Unemployment Compensation system. Direct Grantee Head Start Programs are typically non-profit corporations whose sole function is running an education driven Head Start School. They focus on five areas of service, Education, Nutrition, Medical/Dental, Community Involvement, and Disability Services, however the bulk of their focus is usually in Education. The majority of Direct Grantee Head Start Center employees are typically teachers, and although the Centers are not regulated directly by the Pennsylvania department of education, they are held to federal performance standards that exceed those of the department of education.

In Pennsylvania there is some case law that seems to indicate that Direct Grantee Head Start Centers would qualify as educational institutions according to PA Unemployment Compensation law. In the case of *Easter Seal Society v. Unemployment Compensation Board of Review* the Commonwealth court of Pennsylvania held that the Easter Seal Society for Handicapped Children qualifies as an Educational Institution under PA UC law. In so holding the court noted: "that Easter Seal does not operate a school exclusively, but provides other services that are not academic, does not mean that Claimant did not 'provide services for an educational institution.'"

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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.

...Continued from page 2

A. Small Claims Court

Small Claims Court refers to the section of civil court devoted to claims involving small amounts of money.

The maximum demand permitted in a small claims court complaint varies from state to state but is typically within the range of \$2,000 to \$5,000. If you have a client who owes you more than the maximum amount permitted in your state, you can still choose to peruse the claim in small claims court however you will forfeit your claim to any money in excess of the court maximum. For example, in a state where the small claims court maximum is \$5,000, you may file a complaint against a client who owes you \$6,000 however in the event that you win the case you will only recover \$5,000 and you will be barred from perusing the additional \$1,000 in a subsequent case.

The benefits filing a claim in small claims court is that it can be less expensive than hiring an attorney or a collection agency. Although you may choose to hire an attorney to represent you in small claims court, it is not necessary and many of the cases are litigated *pro se*. The filing fees and court costs for small claims court are also typically relatively small. For example in New Jersey the filing fee in small claims court is \$15 for one defendant and \$2 for each additional defendant.

In order to win a judgment in small claims court you need to be

physically present on your court date and present evidence of the debt your client owes you. Documents demonstrating your client's debt including, contracts, bills, letters, receipts, etc. are crucial to your success in court, so it is very important that you keep careful record of all of these documents and bring them with you to court.

Among the drawbacks to small claims court is the limited amount of money that may be recovered. It can also be time consuming, as you will need to prepare for your case and personally attend court on the trial date. Finally, should you be unable to adequately present your case a negative judgment against you could bar any future efforts to collect the debt.

Additional information regarding small claims court in your state including any necessary forms is available online or at your local county courthouse.

B. Private Attorney

If the amount in question is too large for small claims court, or if you do not have the time to prepare and present a case yourself, you may consider hiring an attorney to pursue the debt for you. Lawyers can be more effective than debt collection agencies, especially if the amount in controversy is large enough to consider court action. Most of the time a simple threatening letter on an attorney's letterhead is sufficient to persuade a client to satisfy an outstanding debt. Should the client continue to refuse to pay the debt a

lawyer can file suit in civil court and obtain a judgment against the debtor. The judgment may then be satisfied immediately by the debtor, it can be obtained through court ordered wage garnishment, or it can then be entered as a lien against any property the debtor owes and if necessary obtained through sheriffs sale.

Although hiring an attorney is an effective method to recover a debt, the obvious drawback to using an attorney is the cost. Depending on the amount of the debt and the amount of work required, an attorney may charge based on an hourly fee or collect at least one-third of the recovered amount, or both.

C. Debt collection Agency

A debt collection agency is a company whose specialization is the recovery of outstanding debt. Debt collection agencies come in all sizes and vary from general debt collection to those specializing in certain locations and types of debt. Once hired, a Collection agency will take the same type of measures you would. They send stern letters and make threatening phone calls, however, because collecting debt is their sole focus they often tend to be more cost effective than you would be personally. Debt collection agencies typically charge a percentage of the amount collected. Their fees range from 25-50% depending on the amount sought and the time lapsed. Although this may seem like a steep amount, recovering \$2,500 of a \$5,000 debt is better than nothing.

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Although the Easter Seal Society and Direct Grantee Head Start Centers are clearly not the same organization, they have a number of similarities. Both are comprehensive service agencies with a primary focus on education and supplemental services provided to enhance the educational experience. In fact, the most distinguishing characteristic between the two is that Direct Grantee Head Start centers are involved in a substantially greater amount of structured instruction than the Easter Seal Society, which cares for primarily disabled children and focuses to a greater extent on physical and medical care. Therefore, since it has been established that the Easter Seals Society qualifies as an Educational Institution under PA UC law it appears as though Direct Grantee Head Start Centers, which are more like schools than the Easter Seals Society, should also qualify as Educational Institutions.

Despite the forgoing analysis, many local Unemployment Compensation Service Centers continue to reach the conclusion that Direct Grantee Head Start Centers are not Educational Institutions under PA UC Law. Continued challenges of these finding to the State Unemployment Compensation Board may provide final clarification for all Direct Grantee Head Start Programs in PA. We will continue to work with Head Start Programs in PA in an effort to work toward clarification.

If your Head Start Agency is seeking representation for Unemployment Compensation matters, contact Dawn Martini at (215) 785-3400 for information. For updates regarding this issue stay tuned to our website at www.childproviderlaw.com.

Gross Motor Activities for the Winter Months

By: Janice Nieliwocki

Now that winter has finally arrived, don't take a vacation from activities designed to promote the development of gross motor skills. Gross motor skills are the abilities needed to control the large muscles of the body. These muscles control movements such as walking, running, crawling, throwing and similar activities.

The importance of a good preschool movement curriculum can't be over emphasized. Children love to move and movement helps to develop the large muscles of the body necessary for the above mentioned activities and promotes self-esteem and self-confidence. In addition, physical activities, introduced at an early age, encourage physical fitness and set the stage towards healthy and active lives, especially important today as we face a nationwide increase in childhood obesity.

You are probably spending more time indoors due to winter weather and it can be a challenge to incorporate physical activities and movement into your everyday regimen. Why not face the challenge, be creative and have some fun, keeping in mind that your ultimate goal is to promote and improve gross motor skills?

When planning your movement curriculum, look at the developmental level of each child. Take care to ensure that your lesson plans and activities are developmentally appropriate yet offer a certain degree of challenge. Arrange your activities in a hierarchical sequence so that earlier skills build towards more complex physical skills. If incorporating equipment into your movement program, make sure that the equipment is developmentally appropriate and inspect it periodically to ensure it is safe and in good condition.

Include activities that promote balance, spatial orientation, coordination and body awareness. Incorporate movements that are designed to work the major muscles of both the upper and lower body.

Parachute play is a perfect indoor activity for improving upper body

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Coming Spring 2007

Learning Stations for the Pre-School Classroom

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Learning Stations for the Pre-School Classroom is a comprehensive curriculum guide with over 50 activities and includes everything needed for implementation including: Lesson Plans, Reproducibles, a Management Guide, Organizational Tips, Parent Newsletters and a Concept Chart.

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strength and coordination. Spread the parachute out and position children equidistant around the perimeter, instructing them to hold a portion of the parachute. Allow children to manipulate the parachute up and down in a wavelike motion. Incorporate a lightweight ball into the activity and have children either toss and catch the ball with the parachute or roll it around the parachute in a circular pattern. These activities and similar ones will work the muscles of the wrist, arm, shoulder and trunk. You can also include activities which involve crawling under the parachute, etc. to further involve other large muscle groups. You can also purchase music CD's which include music and activities designed for parachute play.

Beanbag and/or lightweight ball toss can easily be

adapted for indoor play.

Work to improve throwing and catching skills. In keeping with a winter theme, you can also simulate "snowball" activities, having children roll white tissue paper into pretend "snowballs". Children love having a "pretend" indoor snowball fight or tossing their pretend snowballs into a basket or other container. You can also involve kicking activities, as long as space allows and there are no safety risks.

An indoor obstacle course is easy to set up and can provide a great deal of fun as well as focus on improving gross motor skills. There are many pieces of equipment, such as a low balance beam, fabric tunnel, or sets of stairs, specifically designed for just this purpose which can be purchased fairly inexpensively. However, lack of equipment shouldn't prohibit you from this activity as you can use items from your classroom to establish an indoor obstacle course. You can easily put together a make-shift tunnel by draping a sheet over chairs or tables. Large wooden blocks can serve as a "balance beam" on the floor or as an obstacle for children to step over. Small classroom chairs can be set up in a particular configuration, so that children can "weave" through or around them. Large hoops, laid flat on the floor, are perfect for children to step (or jump) in and out of. Make an effort to incorporate various movements and challenges into your obstacle course activity, including, but not limited to, crawling, jumping, skipping, stretching, climbing, and left and right coordination. Consider your particular classroom situation and environment and the developmental level of the children you're working with. Proceed accordingly, keeping safety in mind.

Dancing to music can be a favorite activity for young children and can serve to develop gross motor skills. It is the perfect activity to incorporate stretching and reaching movements. Include ribbon wands with your dance motions and improve coordination and rhythm, as well.

Don't overlook the importance of static activities, which work to improve stability and balance. Have children stand on one leg, switch to the other leg, and/or perform other balancing actions. The game of Simon Says is the perfect venue for these activities.

When inclement winter weather limits your ability to play *outdoors*, seize the opportunity and accept the challenge to focus on physical activities *indoors*. The benefits a good movement curriculum can provide is well worth the extra time and effort it may take to plan and execute. The children you serve will experience improved gross motor skills, as well as increased self-esteem and confidence!

CHILDREN'S BOOK CORNER

By: Janice Nielowocki

If you are looking for a very special book to complement winter weather and snowy days, consider including Snowmen at Night in your preschool story time selection.

Written by Caralyn Buehner and illustrated by her husband Mark, this story will capture the attention of young and old alike and take them on a delightful journey into the secret night time activities of snowmen.

The story begins with a young boy's narrative account of the building of a typical snowman. Following a good night's sleep, the boy awakens, only to realize that something is quite amiss with his snowman. The boy wonders what might have occurred, which leads to further speculation as to what snowmen do at night. The reader or listener is instantly whisked off on a magical expedition, where snowmen take part in fun-filled winter activities. Not only do they drink cold cocoa and eat pizza, but they skate, make snow angels, and partake in other snowy antics.

Young children will especially enjoy the story's rhyming text and will be charmed by the imaginative, fun-filled storyline. Beautifully illustrated, the whimsical snowmen seem to take on personalities of their own. If the reader looks carefully, hidden pictures can be discovered throughout.

Snowmen at Night is the perfect book for alleviating winter doldrums. After reading it to the children in your class, why not stimulate imaginations and reinforce verbal skills by starting a discussion as to what snowmen might *really* do at night? Consider adding dramatic play, by having the children act out the snowmen's activities. Extend the theme further, and have the children paint or construct snowmen in a related art activity. Snowmen at Night will surely prove to be a favorite in your classroom!

The Strategic Planning Process

By: Dawn K. Martini

Strategic Planning has become an integral part of the child care industry. Child care centers all over the country, especially those in states with quality initiative programs, have begun to make charting the course of their businesses a priority. In an effort to promote and sustain quality early care and education programs, non-profit organizations such as the United Way have invested large quantities of money in the child care industry in the area of Strategic Planning. Many new business savvy for-profit owners have taken lessons from other industries which have used Strategic Planning to build healthy and profitable companies and are engaging the Strategic Planning.

At its core, a Strategic Plan is a road map for the company. The Strategic Plan outlines and sets markers for achievement of specific goals over time. Typically the Strategic Plan is set out as one, three and five year benchmarks, although some businesses push forward and include a 10 year benchmark as well.

As a process, Strategic Planning forces the owners and administrators of child care programs to focus on key issues effecting the growth and development of their businesses as a whole. In child care it is important to consider the entirety of the business when Strategic Planning. For too long child care business owners have not paid much attention to business and employment practices as keys to developing a healthy and successful early care and education business.

The Owner/Administrators begin the Strategic Planning Process by establishing the current position of the business and setting a solid foundation from which to work in relation to the following indicators: Agency Mission, Financial Stability, Range of Services Provided, Curriculum, Facilities, Population Served and Administrative/Human Resource Systems.

With the above indicators in mind owners move onto selecting a Strategic Planning Team. The Strategic Planning Team will meet several times over the course of the process to discuss goals, barriers and action steps. It is the Strategic Planning Team that sets the roadmap for the business for presentation to the owners/BOD approval or adoption as the official Strategic Plan for the business.

The methodologies for developing a Strategic Plan vary depending upon the particular style of the facilitator. Finding a facilitator that compliments the personality of the business and the owners/administrators, who is also knowledgeable about the child care industry can greatly impact the success of the overall process. The facilitators role is to tap into and draw out the richness and creativity of the Strategic Planning Team Members and to direct the teams energy into developing a comprehensive Strategic Plan. It is not the facilitators role to develop the Strategic Plan for the business. Setting the course of the business from an outside perspective would not result in a personalized, effective and useful Strategic Plan.

Please look for Strategic Planning articles in upcoming issues as they will delve into specific areas of the Strategic Planning Process.

Next Issue: Strategic Planning: Set the Foundation

Learning Stations: An Introduction

By: Janice Nieliwocki

If you are looking for something to enhance and enrich your preschool curriculum consider adding **Learning Stations for the Preschool Classroom** to your classroom. Often used in primary and elementary classrooms, the Learning Station concept can be easily adapted for use in preschool classrooms. All it takes is a little creativity and ingenuity!

Learning Stations are individual areas set aside in your classroom, specifically designed for small group interactive learning. Each area is equipped with teacher developed materials and activities which are designed to teach and/or reinforce a specific skill or concept. The teacher designed materials are of various formats and are created to appeal to young children. The activities can be work mats, games, and/or manipulatives.

Your Learning Stations can be either literature or theme based, but should be related in some way so to add to the overall continuity of the activity. Make a list of the developmentally appropriate concepts you wish to teach and make and create activities to reflect both the skills and the theme (or book) you've selected.

The number of stations set up in your classroom can vary, but it is best to limit the number to three or four at any given time. This allows for an organized classroom environment and for the teacher to maintain contact with all groups throughout the activities.

Children are then placed in small groups of four or five. Each group begins at a different station and then rotates from station to station as each activity is completed. Learning Stations work best with older three, four and five year old children, but can be adapted for the younger preschooler as well. You will just need to simplify and modify the activities to be appropriate for the age and stage of development of the child with whom you are working.

The teacher's role is that of planner and facilitator. After providing directions for each activity, the teacher should provide support and guidance, allowing the children to successfully complete the activities at each station.

Learning Stations can serve to motivate hands on learning, build and reinforce basic skills, and foster independent learning. Once incorporated into your classroom curriculum, the benefits you will discover will be great and far-reaching!

Next Issue: The Benefits of Adding Learning Stations to Your Classroom Curriculum

DO YOU KNOW YOU ARE LIABLE?

By: Dawn K. Martini

A great dis-service is being done to our teachers and assistants with respect to the liability they face every-day when walking into a classroom or onto a playground. The dis-service is not that they face the liability. Liability goes with being a professional. The dis-service is that the liability is not explained to them.

As our industry grows and becomes more sophisticated owners have positioned themselves and their businesses in an effort to protect their assets by carrying professional liability insurance policies. Owners have accepted, sometime begrudgingly, the liability that comes part and parcel with providing quality child care services to our nations children.

Owners and the media, have made staff and society aware of the liability that exists in the industry. Staff knows that we live in an extremely litigious society. They know parents are poised to sue when little Johnny falls down and goes boom. Yet, teachers and assistants have nary a clue that the liability extends to them personally.

As the child care industry grows and expects a higher level of professional conduct from its teachers and assistants it becomes increasingly important that they are educated in this regard.

When informed that the personal liability exists, staff who are committed to the children and families we serve will act in a more professional manner. On the other hand, staff who are here because it is a job, just like any other random job, tend to be weeded out because they feel the stakes are now too high.

So where should we begin with this discussion? It is important for staff to understand that when a parent files a lawsuit on behalf of their child, the person or people in the classroom at the time of the incident or injury will be named in the lawsuit in addition to the company. Additional people may also be named depending upon the company's

management/supervisory structure. Further, there is no requirement that the employer provide representation for the staff member. In fact, the company's insurance policy will not cover the liability assessed to the employee, only the liability assessed to the company.

Staff should be aware that they are exposed for their actions or inactions in a number of areas, most commonly: accidents/injuries to the children (these most frequently occur on the playground where supervision is often sub-par) and accusations of child abuse. It is critical for staff to be involved in planning and developing procedures within their classrooms and on the playground in order to be proactive in addressing the liability issue. Staff should be made to read all licensing regulation documents and accreditation standards as well as the Personnel Policy Manual, Procedures Manual and the Parent Handbook in an effort to be best prepared to prevent situations which would lead to lawsuits.

Staff and management should also take a proactive posture with regard to their relationships with parents and children. Many of the lawsuits filed by parents on behalf of their children are frivolous and a result of a parent not understanding the activities or interactions between children or trusting the staff working with their child. Taking the time to teach parents about child care and what activities their child will be engaged in, as well as the common things children do when in group care can go a long way to prevent the lawsuit from being filed in the first place.

From the employers perspective, the more the staff is trained on policy and procedure, the more responsible staff become for their actions or inactions. If you look at liability like a pie-chart the percentage of the pie the staff is responsible for gets larger, while the employers slice of the pie gets smaller. Neither the employee not employer will ever reduce their

responsibility to zero because employers are always responsible for what their employees do on behalf of the company and the employee will always be considered a trained professional and will be held responsible for their own professional conduct.

To be clear, what being liable for your professional conduct translates to for staff is that their personal assets, their home, their car, their possessions, their investments, can be taken to satisfy a civil judgment entered against them.

One comment which is often heard from young staff members is that they don't care about getting sued personally because they don't have anything for the parents or the child to get. They don't own a home yet, have large investments or a big savings account. But the bottom line is that the judgment remains on the record until such time that it is satisfied. The collection process can be done over long periods of time and can involve sheriff sales of acquired property. The collection of the judgment will depend entirely on the aggressiveness of the parents and their attorney. Hoping it the lawsuit won't come your way because you don't have anything is a weak and wishful position from which to come.

Staff may wish to consider buying an individual professional liability insurance plan to protect themselves and their assets. This is a new concept, but there are insurance agents who can write this type of policy. Overall, it would not be prohibitively expensive to be insured in this way and considering the consequences and size of the judgments in accident/injury cases involving children, the price could be a bargain.

Liability in the civil courts is the one area where child care providers are held to a professional standard. As we push for professional recognition on all fronts we can not choose the professional responsibilities we like and ignore the ones we don't. We must embrace the issue of liability as the professionals we are.



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.

WHERE IN THE WORLD...

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

Jan 25 - 27: Chicago Metro AEYC Chicago, IL.

Feb 6 - 7: Region IV Head Start Conference Atlanta, GA.

Feb 17 - 18: Bright Beginnings Management Retreat, Anchorage, Alaska

Feb 19: Children's Courtyard Management Retreat, Dallas, TX.

Feb 21 - 24: Virginia Association for Early Childhood Education Norfolk, VA. For information go to vaece.org

Feb 27 - Mar 1: Ronald V. McGuckin and Associates hosts the Orlando, FL Seminars. For seminar and registration information go to childproviderlaw.com or contact Janice Nieliwocki (215) 785-3400

Mar 10: CITE Conference, East Brunswick, NJ. For information email mail@njaeyc.org

Mar 8 - 10: California AEYC San Jose, CA. For information go to caeyc.net

Mar 21 - 23: National After School Association Phoenix, AZ. For information go to naaconference.org

Mar 24: Central Florida Child Care Conference Ocala, FL.

Mar 31: Central Susquehanna AEYC Williamsport, PA

Apr 16 - 17: Mississippi Head Start Conference

Apr 16 - 19: National Head Start Association Conference, San Antonio, TX. For information go to nhsa.org

Apr 25: NACCP Annual Conference Boston, MA. For information go to naccp.org

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