

E *The Childcare Professional* EXPERIENCE

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

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HEAD START ACT UPDATES: The Board of Directors

By: Janice Nieliwocki

On December 12, 2007, President Bush signed into law the "Improving Head Start for School Readiness Act", thus reauthorizing the Head Start Program. The *Reauthorization or New Head Start Act*, as it is more commonly known, addressed several key issues, which resulted in new requirements for Head Start Agencies. Perhaps one of the most significant revisions involves changes to the Head Start governance structure. More specifically, the roles and responsibilities of the Governing Board and Policy Council have now changed. Head Start agencies must now familiarize themselves with these revisions, and strive to bring their agency into compliance as soon as possible.

The Governing Board

The New Head Start Act has put into place certain requirements involving the composition of the Governing Board. Under the new Act, at least one member of the Governing Board must:

- ♦ Have a background and expertise in fiscal management or accounting
- ♦ Have a background and expertise in early childhood education and development; and
- ♦ Be a licensed attorney familiar with issues that come before the Governing Body.

If the Head Start Agency cannot recruit members that meet the above mentioned criteria, the Board is permitted to use consultants with relevant experience to work in an advisory capacity with the Board.

The remainder of the Board members must reflect the community and in-

clude:

- ♦ Parents of children who currently, or *were formerly*, enrolled in Head Start programs; and
- ♦ Individuals with expertise in education, business administration, or community affairs.

Keep in mind that the new Board composition requirements do not apply to members that oversee public entities and are elected to their positions by public election or are politically appointed.

Not only does the new Act set in place regulations concerning Board composition, it also sets forth new conflict of interest regulations. Basically, the Board of Directors must operate as an entity, independent of staff employed at the Head Start agency. They are prohibited from having a financial conflict of interest with the agency, cannot receive compensation for serving on the board, and cannot be employed by the agency. Also, Board members' immediate family members cannot be employed by the Head Start agency.

A key exception exists for the rules concerning conflict of interest, as they do not apply to publicly elected or politically appointed individuals who are required to sit on the Board of the local Head Start program as part of their job duties. If this situation exists, the Head Start agency must keep careful documentation and report this to the U.S. Department of Health and Human Services, Administration for Children and Families.

In addition, under the New Head Start Act, the responsibilities of the Governing Board have been expanded. The Board must now:

- ♦ Assume legal and fiscal responsibilities

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IN RESPONSE...

By: Dawn Martini

In an August 27, 2008 email edition of *Child Care Exchange* an article was published with a uniquely different view of child care. The article was entitled: "*An Opposing View of Child Care.*" The foundation of the arguments made in this article created such a stir in our office and with several colleagues around the nation that I felt it appropriate to discuss/rebut the article. The premise of the article was that children who attended child care were more aggressive as Kindergarteners and had lower test scores on 4th and 8th grade standardized tests than students who did not attend child care.

Overall the analysis of the data is flawed simply because there is no way to isolate the other variables that may be related to the lower test scores in 4th and 8th grade. The other variables which have also been researched and shown to contribute to lower standardized test scores include the child's home life, video games usage, and even drug and/or alcohol abuse.

Children in Kindergarten do seem to be more aggressive and may be less motivated...but we have to be open to all the possible reasons for this and not scapegoat one factor. Many Kindergarten Teachers have not adapted the curriculum to account for the fact that children entering have already attended school and are ready to learn. They have not accelerated the curriculum to account for the fact that many children have learned basic pre-reading and math skills. Kindergarten Teachers are trying to strike a balance between children with school experience and children who are leaving their parents for the first time and have NEVER even been in a school building. The result is children who are not challenged and are bored, which leads to children acting out. Teachers in public schools are also less in touch with early learning standards and offering flexibility to young children, especially young boys, with regard to physical activity during instruction time. Years ago, until grade 4 children had recess twice a day and sometimes the 1st and 2nd grades would go out another time to blow off steam when the class was particularly hyper or to do a learning activity. How often do we see teachers in public schools using the outdoor school yard/property as an extension of the classroom? This unnatural expectation that children will sit for extended periods of time in an instructional setting may contribute to these children acting out.

Finally, diet is likely a major contributing factor to all these issues. Children eat more crap and drink more sugar and caffeine laden drinks than at any other time in our nation's history. These high fat and caffeine diets have led to young children being "slugs." The heavy foods and blood sugar spikes drain energy and alter/affect children's moods. These conditions have been shown contribute to lower performance and behavior

problems.

We should also not forget that multiple studies have been conducted which have followed Head Start children over considerable periods of time, 10 and 20 years. These studies have noted that the impact of the "head start" these children get "wears off" by third grade. The reasons for the reduced impact of the benefits of Head Start over time have been related to multiple factors not one singular source. However, if the benefits of Head Start can not generally be carried beyond third grade, then how can we presume that the negative behaviors seen beyond that time frame can be related back to the singular variable of attendance in child care?

In conclusion, it is short-sighted and irresponsible for child care to be isolated as the cause of aggressiveness and lower test scores in elementary school children. The position presented in the cited article seems to promote a personal agenda as opposed to reviewing and analyzing in a responsible and scientific way the totality of the relevant data. Parents and care-givers should be cautious when reading any study results which present one specific factor for any significant human behavior and remember that there are always multiple variables effecting behavior and human interaction.

The Childcare Professional EXPERIENCE

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for administering and overseeing all programs under its authority, including the safeguarding of Federal funds;

- ◆ Adopt practices that assure active, independent, and informed governance of the corporation, including the resolution of internal disputes and the facilitation of meaningful consultation and collaboration about decisions of the Board of Directors and Policy Council, and fully participate in the development, planning, and evaluation of the Head Start program;
- ◆ Ensure compliance with applicable Federal, State and local laws and regulations; and
- ◆ Select delegate agencies and their service area as appropriate;
- ◆ Establish procedures and criteria for recruitment, selection and enrollment of children;
- ◆ Review all applications for Head Start funding and amendments to such application;
- ◆ Establish procedures and guidelines for accessing and collecting accurate and regular information for use by the Board of Directors and the Policy Council about program planning, policies and Head Start agency operation;
- ◆ Review and approve all major policies of the agency, including

(but not limited to) the annual self-assessment; financial audit, progress in carrying out the programmatic and fiscal provisions in the corporation's Head Start applications, including implementing any corrective actions, as applicable; and personnel policies regarding hiring, evaluation, termination and compensation;

- ◆ Develop procedures for how members of the Policy Council are selected
- ◆ Approve financial management, accounting, and reporting policies and compliance with laws and regulations relating to financial statements, including the approval of all major financial expenditures of the agency; annual approval of the agency's operating budget; selection of independent financial auditors who shall report all critical accounting policies and practices to the Board of Directors; and monitoring the corporation's actions to correct any audit findings and of other action necessary to comply with applicable laws and regulations governing financial statement and accounting practices;
- ◆ Review results from monitoring conducted under section 641c of the Head Start Act, including appropriate follow up activities;
- ◆ Approve personnel policies and

procedures, including those regarding the hiring, evaluation, compensation and termination of the Executive Director, Head Start Director, Director of Human Resources, Chief Financial Officer; and any other person in an equivalent position within the agency;

- ◆ Establish, adopt and periodically update written standards of conduct that establish standards and formal procedures for disclosing, addressing and resolving any conflicts of interest or appearance of conflicts of interest by Directors, Officers and employees of the corporation, and consultants and agents who provide services or furnish goods to the corporation; and complaints, including investigations, as appropriate; and
- ◆ As practicable and appropriate, establish advisory committees to oversee key responsibilities related to Head Start program governance and improvement.

The New Head Start Act will most likely require you to make some changes within your Head Start Agency. It is suggested that you review your agency's structure as well as your Board composition to make sure you are in compliance with the new regulations. In addition, you should review and revise your agency's governance documents, including your agency by-laws and other related policies to ensure compliance with the new Act.

As with any new regulations, there are portions of the New Head Start Act which will require interpretation and clarification. It may seem to be a daunting task to meet all the regulations included in the Reauthorization Act. Keep in mind as you work to meet these new standards, the purpose is to provide improved leadership to your Head Start agency and ultimately improved services to the children and families you serve.

For more information regarding Head Start Reauthorization visit www.nhsa.org.



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THE NEW FMLA: Military Family Leave Amendment

By: Janice Nieliwocki

On January 28, 2008, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008. A section of this Act included revisions to FMLA, the Family Medical Leave Act, now providing eligible employees two new leave rights directly related to military service. Military Family Leave, as it is known, signifies a notable expansion of the FMLA since the law was first enacted in 1993.

NEW QUALIFYING REASON FOR LEAVE

Military Family Leave provides a **new qualifying reason for leave** directly related to active duty, seemingly without regard to any medical issues. Eligible employees are entitled to up to 12 weeks of leave because of **"any qualifying exigency"** arising out of the fact that the spouse, child or parent of the employee is on active military duty or has been notified of an impending call or order to active duty.

However, "qualifying exigency" is not defined in the law. The Department of Labor is expected to issue regulations regarding "qualifying exigency", but has not yet done so. Until DOL executes those regulations, it has offered *examples* for "qualifying exigency" which include: making arrangements for childcare required due to the service member's absence, making of necessary financial and/or legal arrangements to address the service member's absence, attending counseling related to the service member's duty, attending official military ceremonies where the military requests the family member's participation, attending to farewell or arrival arrangements for the service member, and/or attending affairs caused by the missing status or death of the service member.

If the need for this type of leave is foreseeable, the employee must provide the employer with "reasonable" notice and the employer may require supporting documentation.

Although this portion of the Military Family Leave does not officially go into effect until the

DOL issues regulations defining "qualifying exigency", employers are encouraged to provide this type of leave to qualifying employees immediately.

A NEW LEAVE ENTITLEMENT

Another provision of Military Family Leave provides a **new leave entitlement**. This entitlement grants eligible employees who are the spouse, child, parent or "next of kin" of a covered service member who is recovering from a serious illness or injury sustained in the line of duty (on active duty) **26 weeks** of leave in a single 12 month period to care for the service member. The 26 weeks of leave permitted under this entitlement more than doubles the 12 weeks of leave eligible employees may take to care for their own or a family member's *non-service* serious medical condition.

In addition, the definition of a serious illness or injury is under this provision is much broader than the definition under FMLA. Serious illness or injury under this provision is defined as one incurred in the line of duty that renders the service member medically unfit to perform the duties of his/her office, grade, rank or rating. This provision of the law became effective immediately.

The Department of Labor is expected to offer clarifications regarding Military Family Leave in the near future. Employers, who are required to grant FMLA leave (employers with 50 or more employees) must inform their employees of the new military family leave rights. In addition, employers will need to amend their personnel policies regarding FMLA to include these new Military Family Leave provisions.

For more information on FMLA in general please read archived articles of *The Child Care Professional Experience* as found in the General Index on our website www.childproviderlaw.com. For specific information about Military Family Leave go the DOL webpage: www.dol.gov/esa/whd/fmla/NDAA_fmla.htm.

Strategic Planning: Setting Goals

By: Dawn K. Martini

Once the Strategic Planning Team establishes the Rules under which they are going to work it is time to begin the first of three steps leading towards the final written Strategic Plan: Setting Goals.

This is the time when the team gets to DREAM BIG. Team members should focus on listing goals they would like to accomplish over the entire course of the Strategic Plan without regard to the who, what, when, how and why's of accomplishing the goal. Those issues will be taken care of through subsequent steps in this process.

Team Members should view the Goal Setting meetings as brainstorming sessions where ideas, creativity and ambition flow freely. In many cases things begin happening related to a goal simply because someone put it out there and wrote it down on paper. By doing so, the goal becomes part of the agency's collective con-

science and Team Members think and act in relation to the goal as they may not have before it was said aloud. So DREAM now! Plan, contemplate, worry and analyze later.

Once the goals are listed the Team can go back and edit them to more accurately state the goal or more clearly identify the intent of the goal. The next step is for everyone on the Team to individually prioritize the Goals. Which goals are the most important for the agency at this time? This should be done without regard to how soon the goal can be accomplished, how easy or difficult the goal may be to accomplish. This step simply looks at what the needs of the agency are at this time and what the individual team members value most. For example the agency might set a goal to be NAC Accredited. This goal may take several years to accomplish due to the details of the process however, because the Owner is focused on improving the quality of the pro-

gram and gaining National recognition she may list this as her number 1 priority.

The individual lists of priorities would then be combined and averaged out and the goals are then listed in the collective groups order of priority. This allows the group to focus the next two steps on the issues that are most important to the agency. This may also lead the group to drop goals off the list which don't seem to be particularly important to the direction or purpose of the agency and the Strategic Plan.

When deciding on the final language of the goals, Team members should be sure that the goals are: specific, measurable, attainable, related to the mission of the agency, and timely. The acronym SMART will help the Team remember these qualifiers.

In the next issue of *The Child Care Professional Experience* we will discuss the next step in the process: Identifying the Barriers to achieving the Goals.

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

If you 're looking for a good book to help welcome Fall into your preschool classroom, read In November by Cynthia Rylant. The newest of Cynthia Rylant's children's books, In November captures the essence of the season in a way that will delight readers and listeners young and old.

In November outlines the changes that take place during the eleventh month as the earth and its various creatures prepare for the impending winter. From the animals that pile together to stay warm to the tree limbs reaching for the sky, Cynthia Rylant describes these events using eloquent, poetic text. The reader/listener is quickly drawn in by her descriptive words which truly depict the seasonal happenings.

But the changing earth isn't the only thing that occurs In November, as the story goes on to tell of family traditions where loved ones gather, share good food and count their many blessings. Portrayed in a simple yet enticing way, children will undoubtedly relate to these family gatherings and begin to reflect on their own traditions.

The beautiful, realistic illustrations that accompany the text certainly cannot be overlooked. Abundant in color, the illustrations fill the pages! Be sure not to turn the pages too quickly, for the children in your classroom (and teachers, too!) will most likely want to take some extra time enjoying the captivating pictures.

Why not add In November to your list of Autumn books? Not only is it perfect for storytime, it will undoubtedly lead to classroom discussions about the many happenings of the season. Don't be surprised if it quickly becomes a "favorite" and you find yourself reading it many times throughout the month!

PA Dept of Public Welfare Issues New Child Care Regulations

By: Dawn K. Martini

Pennsylvania has adopted new and updated child care licensing regulations for the first time since 1992. These new regulations became effective on September 22, 2008 with an exception for playground surfacing regulations which will become effective in September 2010. The new regulations reflect changes in industry standards, new laws which effect child care programs and incorporate various statements of policy which have been issued by the Department of Public Welfare clarifying and/or interpreting the regulations since they were last published in 1992.

One of the most significant changes relate to more clearly defining child to staff ratios when there are mixed age groups of children. In the old regulations there was a table listing possible combinations of age groups matched with an appropriate ratio. However, there were several possible combinations missed in the table. This gave child care providers who were cited for ratio violations with mixed age groups an argument that there was no written regulation regarding that particular combination as is it was not specifically listed in the regulations as other groupings. The new regulations state what many child care providers and licensing inspectors understood the regulation to be which is: when there are mixed age

groupings of children the ratio and maximum group size is determined by the youngest child in the group. If the youngest child is an infant then the ratio is the infant ratio, if the youngest child is an older toddler then that is the ratio used.

The new regulations have also made a change to the definition of a Kindergarten Child. Kindergarten children will no longer be counted as preschool children and will now be "young school age children." This will effect a number of staffing issues which will result in significant cost savings to programs providing child care to Kindergarten children. With the new designation as a "young school age child" a kindergarten child can be transported with other school age children without the need to have an additional "aide" in the vehicle as was the case when these children were considered "preschool children." Also, the ratio of preschool children is 1 to 10 whereas the ratio of "young school age children" is 1 to 12 which will allow programs to enroll two more Kindergarten age children thereby generating more revenue. Even with the reduced subsidy reimbursement rates for "young school-age children" a group of 12 young school-age children" will still generate more revenue then a group of preschool children.

Other changes include reducing the requirement of annual Staff

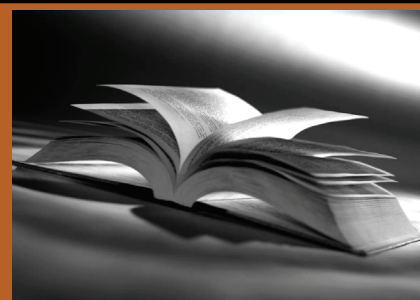
Health Appraisals and bi-annual TB testing to bi-annual Health Appraisals and eliminating the bi-annual TB test. This will represent a significant cost saving to programs that pay for their staff health appraisals and TB tests or a savings to the individual employees if they pay for these items.

One change that this author finds silly is the requirement that "nonporous gloves" be included in the First Aid Kit. Centers are required to provide these as "personal protective equipment " under the OSHA: Bloodborne Pathogens Standard. Further, programs are required to institute Universal Precautions to reduce the potential for transmission of a bloodborne pathogen from staff member to child or from child to staff member. Gloves are only a small part of this larger OSHA regulation and by only mentioning nonporous gloves in the licensing regulations, programs may not be aware that there are higher standards which they are required to meet.

Overall, the new regulations appear to be straight-forward and expected considering the issues facing our industry today. Over time we will see how licensing inspectors and their supervisors will interpret and enforce these regulations. For help with citations and/or legal representation please call our office (215) 785-3400.

ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

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



Available at childproviderlaw.com 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.

A Conversation with... Dr. Phillippa H. Campbell

DAWN: Please introduce yourself and give a brief history of your involvement with child care and working with special needs children.

DR. CAMPBELL: Suzanne Milbourne and I developed Cara's Kit as a way to help child care providers work more effectively with all children, including those with special needs. We have worked with child care programs in the Philadelphia area for over 15 years both by providing training to child care staff and on-site consultation to help teachers successfully address situations with children. In our work with child care programs, we noticed that caregivers often lacked ideas for effective ways of dealing with various situations in their classrooms. Suzanne created Cara, a fictional child care teacher whose practical ideas for how to approach classroom situations and get effective solutions are outlined in the tool kit. Cara stands for "Creating Adaptations for Routines and Activities".

DAWN: Please give an overview of Cara's Kit.

DR. CAMPBELL: The kit includes an easy to use reference booklet and a CD-Rom that provides additional information and resources for using the kit. Four basic steps guide early care and education teachers to identify issues and use effective solutions. The first step is to gather information about what is currently happening in the classroom by using Cara's Checklist of Activities and Routines. The second step is to complete the Adaptation Notes by describing what is happening and what you would like to see happen. A series of matrices outline ideas for address-

ing various situations that may occur within various activities and routines. As a third step, teachers use the matrices to complete the additional sections of the Adaptation Notes by writing down various ideas that might be used to address the identified situation. As a final step, teachers try an adaptation and then describe the success of the adaptation on the Adaptation Notes.

DAWN: Who is the ideal user of Cara's Kit?

DR. CAMPBELL: Cara's Kit comes in two separate but related versions. One version is designed to be used by classroom teachers. Teachers can listen to an audiotape that guides them through the kit and how to use it. The second version is used with teachers by consultants or specialists who visit child care classrooms. Many child care classrooms are visited by special education and related services, quality improvement, mental health, disability coordinator, or other types of consultants. The second version of the kit can be used by these consultants to help teachers address special needs of individual children.

DAWN: How did you get involved in creating this type of instructional instrument?

DR. CAMPBELL: For the past 10 years, Suzanne, myself, and staff at Child and Family Studies Research Programs have provided training and on-site consultation for child care teachers. Many teachers reported challenges with classroom activities and routines or with promoting children's participation. In order to help teachers better address these chal-

lenges, we developed the Adaptation Hierarchy so that teachers would be able to generate ideas for addressing these challenges. It also became apparent that neither the teachers themselves or the consultants working with them ever really looked at what was happening within classroom activities or routines. Instead, the focus was often more on a child or children and what they were or were not doing. The Activities and Routines Checklist was created to help everyone focus on the classroom's activities and routines. Finally, we developed the activity/routine idea matrices by collecting successful ideas that were used in the classrooms where we were working. All along, our goal was to put this information together in such a way that it could be easily used by teachers and consultants to improve what was going on in a classroom in terms of both curriculum and individual children's participation.

DAWN: What benefits can teacher's expect to see in their classroom by using the adaptations presented in the Kit?

DR. CAMPBELL: Our hope is that teachers will be successful in both enhancing the quality of what is going on in their classrooms and in successfully including every child in activities/routines so that children benefit from increased opportunities for participation and learning. While Cara's Kit is especially helpful in creating opportunities for children with special needs to participate successfully, all of the situations identified as problematic by teachers do not necessarily relate to children with special needs. We have found that the Kit

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is equally useful when teachers are experiencing challenges with particular activities such as circle time or specific routines such as transition. By following the 4 steps in the Kit, teachers are often successful in improving activities and routines for all children in a classroom.

DAWN: How can professionals order Cara's Kit?

DR. CAMPBELL: The Kit is available through the Council for Exceptional Children, Division of Early Childhood (DEC) through their website www.dec-sped.org/publications.html. Click on Additional Resources to locate the Kits.

DAWN: What support is available to Providers who purchase Cara's

Kit?

DR. CAMPBELL: Cara's Kit was published in the fall of 2007. Both Suzanne and I, individually and together, have conducted many training sessions in the Philadelphia area, throughout Pennsylvania, and for national audiences. We are available to answer questions or provide in-service training sessions for Head Start, school districts, or child care organizations who request this training. Suzanne may be contacted at Suzanne@udel.edu and I can be reached at picamp@aol.com (215-503-1602). Many individuals who are employed as child care trainers/professional development specialists across the country have told us about how they have successfully provided training and

support for teachers in their regions and states by using the materials on the CD-Rom. A powerpoint presentation that can be used by itself or modified by a trainer for use with specific audiences, the walk-through audio script, and other materials included on the CD-Rom can be used by anyone to provide training and support for early care and education staff.

The Child Care Professional Experience would like to thank Dr. Campbell for taking the time to answer a few questions and share with us about this great tool for the child care industry.

If you have suggestions for professionals to be interviewed for this feature please email Dawn@childproviderlaw.com.

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FLSA: Analyzing the Teacher's Exemption

By Jason D. Dalton, Esq.

Originally passed in 1938, the Fair Labor Standards Act (FLSA) is the primary federal legislation establishing national wage and hour standards. The FLSA was crafted at a time when the nation was just recovering from the great depression, and was designed as a means to establish a maximum number of jobs offering a minimum amount of pay. The Act functions to protect the working class from overwork and underpay by providing rights, which can not be waived, to a minimum wage and a premium pay rate at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

Ever since its enactment, the FLSA has exempted certain classes of "white collar" workers from the pay requirements required by the Act. The theory behind leaving "executive, administrative, and professional" employees out of Act was that these management-type workers were capable of protecting themselves from exploitation through their own personal marketability. Although the FLSA mandates that "executive, administrative, and professional" employees are exempt from the requirements of the FLSA, it has been left to the Department of Labor to establish workable definitions of these classes. In August of 2004 the regulations governing the FLSA were updated in an attempt to, inter alia, modernize and clarify the limits of the white collar exceptions.

It has been nearly four years since the regulations defining the exemptions to the FLSA have been revised. In this time, many questions regarding interpretation of the regulations have been answered. One issue, however, which continues to confuse members of the child care community is, under what circumstances do teachers in daycare qualify as exempt from the FLSA?

Introduction

As the law currently stands there are two exempt categories in which a daycare teacher may fit, the "learned professional exemption," and the "teacher exemption" The learned professional exemption is more of a general category which is not specific to teachers and includes any employee who meets certain minimum requirements regarding the employees duties and salary. The teacher exemption, on the other hand, has somewhat lax requirements regarding the employee's duties and salary, but is limited only to teachers employed in "educational establishments" Although according to its name it would seem logical that the "teacher exemption" would be most applicable to teachers in child care, its strict definition of what qualifies as an "educational establishment" leaves the exemption inapplicable to most programs, leaving the more generalized "Learned Professional Exemption" as the most viable option for most child care providers. The following is a brief analysis of the applicability of each to teachers employed in the day care setting, and is designed only to provide the reader with a general familiarity of the two exemptions, child care providers are encouraged to seek the advise of a local attorney prior to making any decisions regarding a specific employees exempt status. \

I. The "Learned Professional Exemption"

In order for a teacher to qualify as an exempt employee under the "learned professional" exception to the FLSA three requirements must be met. 1) The teacher must be paid on a salary basis not less than \$455 a week. 2) The teacher's *pr*

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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."

The Salary Requirement

The first requirement is relatively self explanatory. In order for an employee to qualify as exempt from the FLSA as a learned professional, the employee in question must be paid a minimum of \$455 per week on a salary basis. Unlike an hourly employee's whose pay may vary from week to week depending on how many hours the employee worked that week, salaried employees regularly (on a weekly or less frequent basis) receive a predetermined amount of money constituting *all or part* of the employee's compensation. Moreover, this base compensation amount, which must be \$455 a week or greater, may not be subject to reduction because of variations in the quality or quantity of the work performed.

The Primary Duty Requirement

Second, the teacher's *primary* duty must be either imparting knowledge, or some other type of work which is intellectual rather than manual in nature. The term "primary duty" is defined as the "principal main, major, or most important duty that an employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee." "The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, an employee who spends more than 50 percent of his or her time performing exempt work will generally satisfy the primary duty requirement."

In the context of teachers in child care, this first requirement basically means that the employee's main purpose at the center needs to be instruction. Therefore, those employees, whose primary job function consists of, supervising children, engaging in manual labor, performing clerical or administrative tasks, or caring for the physical needs of children would not fit into this exemption. The fifty percent rule is a good rule of thumb to use here. If the employee spends more than half of his/her time actually instructing children, then they most likely would satisfy the primary duty requirement. If not, then he/she probably would not be considered a "teacher" for the pur-

poses of the FLSA exemptions and should to be paid overtime.

The Advanced Education Requirement

Finally, the position must require "advanced knowledge in the field of science or learning" which is "customarily acquired by a prolonged course of specialized intellectual instruction." Work "requiring advanced knowledge" essentially means "work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment as distinguished from performance of routine mental, manual, mechanical or physical work" Additionally, the requirement that the knowledge be "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The indicator that an employee meets this requirement is possession of an appropriate academic degree. Conversely, section 541.301(d) further clarifies that "the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in *any* field."

In applying this last standard to child care, the teaching position at issue must emphasize academic instruction as opposed to simple custodial care of the children. The position should allow the teacher a degree of discretion regarding the substance and implementation of a lesson

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The Childcare Professional EXPERIENCE

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plan. Lastly, the teaching position in question must require at a minimum, a 4 year degree from an accredited college or university in a specific field such as ECE, Elementary Education or a related field. If a center employs different categories of teachers, some of which meet these requirements, and some of which do not (such as lead teachers and teachers aids), it is important to establish two separate job titles/ job descriptions in order to preserve the exempt status of those teachers who qualify as "learned professionals"

Conclusion

To summarize, it seems apparent that teachers in the child care setting may qualify as exempt employees under the general "professional exemption" to the minimum wage and overtime requirements of the fair labor standards act. However in order to qualify a number of prerequisites must be met. The teacher in question must be paid on a salary basis, not less than \$455.00 a week. The teacher's primary duty must involve instruction or must otherwise be intellectual in nature, and the position must allow the teacher to exercise discretion in the performance of her duties. Finally, as a minimum, the position must require a 4 year degree from an accredited college or university in a specific field.

II. The "Teachers" Exemption

In addition to the general professional exemption discussed above, teachers are also specifically listed under the DOL regulations as a class of professionals exempt from the minimum wage and overtime requirements of the FLSA. To determine if an employee qualifies as a "teacher" under this exemption a two part test is used; 1) the employee's "primary duty must be teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge" and 2) the teacher must be employed in an "educational establishment." Both aspects of the test must be met before an employee qualifies for an exemption to the overtime requirements of the act. It is im-

portant to note that unlike many of the other FLSA exemptions, such as the more generalized learned professional exemption discussed above, there is no salary requirement under the teachers exemption. Furthermore, there is no per se education requirement for teachers under this exemption. This too is different from many of the other "learned professional" exemptions which require an "advanced knowledge in the field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction." What distinguishes this specific exemption from the more generalized professional exemption however is the requirement that the teachers be employed by an "educational establishment" a term which seems to be interpreted fairly rigidly by the Department of Labor when considered in light of child care.

The Primary Duty Requirement

The first requirement under the teachers exemption is that the employee's primary duty must be teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge. This requirement utilizes essentially the same definition of "primary duty" as is utilized in the general professional employee exemption addressed earlier in this article. As discussed above, the term "primary duty" means the "principal main, major, or most important duty that an employee per-

forms." Therefore, in order to fulfill the first requirement of the teachers exemption, the majority of an employee's actual job responsibilities must involve instruction, as opposed to caring for the children's physical needs or any other manual work associated with the program.

"Educational Establishment" Requirement

The second requirement of the teacher exemption is that the teacher must be employed by an "educational establishment." Unlike the primary duty test which evaluates the nature of a specific employee's position, this second test looks at the nature of the employer's child care program as a whole. The applicable law provides a seemingly broad definition of "educational establishment" covering "an elementary or secondary school system, an institution of higher education, or other educational establishment." Under the Act, elementary and secondary schools are defined as those day or residential schools that provide elementary or secondary education as determined under State law. The Federal Regulations go on to state "that under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may

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...Continued from page 3

also include nursery school programs in elementary education" When evaluating whether a post-secondary school fits within the definition of "educational establishment" the Federal Regulations considers factors "includ[ing] whether the school is licensed by a state agency responsible for the states educational system or accredited by a nationally recognized accrediting organization for career schools." The Regulations also state that the term "other educational establishment" includes special schools for mentally or physically disabled or gifted children regardless of any classification of such schools as elementary, secondary or other. Finally the Regulations state that no distinction is drawn between public or private schools for the purposes of the exemption.

Nonetheless, despite the seemingly open meaning of "educational establishment", recent guidance from the US Department of Labor ("DOL") suggests a decidedly narrow application of this definition when evaluating pre-elementary programs. In a recent Non-Administrator opinion letter from the Wage and Hour Division, the DOL suggested that a daycare center in which the teachers spend the majority of their time teaching children between the ages of 3-5, and which is not licensed by the State Department of Education, would **not** qualify as an "educational establishment" under the Act. In reaching this position the opinion letter applied only the portion of the definition pertaining to elementary and secondary school systems, concluding that absent information to the contrary, the fact that a program is not licensed by its State Department of Education indicates that it is not considered part of the elementary or secondary school system under state law, and thus

is not an "educational establishment" under the FLSA. In light of this guidance, it is apparent that the DOL considers the dispositive issue in evaluating whether a program qualifies as an "educational establishment" under the Act to be whether the program offered by the center fits within its State's definition of elementary education. Moreover, it is also clear that DOL looks to the degree to which a program is regulated by its State Department of Education [or equivalent], in making this determination.

A Child care provider, therefore, must look to the law of the State in which it is located in order to determine whether it will qualify as an educational establishment under the FLSA. A simple way for many child care providers to make this determination is to look at their state license. Child care providers offering programs which are licensed by their State's Department of Education or equivalent will likely qualify as Educational Establishments, whereas Child Care providers licensed by other state agencies will most likely not qualify as Educational Establishments. In the event a child care provider offers some programs that are considered part of its State's definition of elementary or secondary education, and other programs which are not, it seems evident that only those teachers in the former classroom may qualify for the exemption while the teachers in the latter will not.

Although seemingly easy to apply, this simplified test is not without exceptions. For example, in some states Head Start programs have been held to qualify as "educational establishments" under their State's Unemployment Compensation law even though there is no requirement that they be licensed by the local Department of Education. As discussed

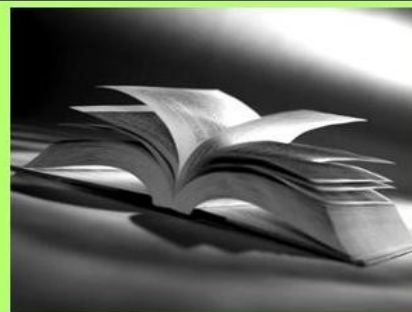
above, the definition of an "educational establishment" as it applies to the FLSA hinges on how each state defines education. It seems apparent therefore that Head Start programs in these states may qualify as "educational establishments" for the purposes of the teachers exemption to the FLSA. Additionally in a number of states the boundaries between what the state considers to qualify as "elementary education" is not so clear. In any event, because of the potentially harsh penalties imposed for violating the standards of the FLSA, child care providers are encouraged to seek the advice of a local attorney before making any conclusions in this regard.

Conclusion

Although the teacher's exemption lacks the salary and minimum education requirements found in the general professional exemption, the US Department of Labor's ridged interpretation of the term "educational establishment" makes the teacher's exemption unavailable to the majority of child care providers not licensed by their State Board of Education. However for those providers who are able to meet this definition of educational establishment, the teacher exemption will be available to employee's whose primary duty in the program involves actual instruction. Finally, because of the determination of whether a program qualifies as an educational establishment under state law can be relatively complicated and varies from state to state, and because the DOL imposes stiff penalties for violations of the FLSA, child care providers are encouraged to seek the advise of local counsel before classifying employees as exempt under this provision.

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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Personal Appearance in the Workplace

By: Dawn K. Martini

When working with agencies across the nation one of the most frequent issues Directors and Owners want to discuss relates to their employee's personal appearance at work. With the ever relaxing standards for personal appearance in our society, it is not surprising that this issue is becoming a problem for employers. As with other employment issues we have addressed in this monthly newsletter; personal appearance seems to be a generational problem. For employers to get a handle on this issue it is important that there be a clearly defined employment policy that reflects the overall mission and corporate culture of the program. In the majority of instances, where the employer and employee are working under the "at-will" doctrine, employers are free to set any and all standards they wish with regard to how employees dress in the workplace.

In general, we prefer to call this a Personal Appearance Policy as opposed to a Dress Code Policy. Since employers find that they have to address more than what an employee wears, the title "Personal Appearance" becomes more appropriate and all encompassing. When drafting your Personal Appearance Policy we find it easiest to begin at the head and work down to the feet taking into consideration each body area so as to leave nothing out.

Today, jewelry, tattoos and piercings have become major issues for many programs. For safety as well as professional appearance reasons you may decide to prohibit employees from wearing jewelry of any kind in the classroom and/or from having any visible tattoos. Ear rings, nose rings, etc. have very small parts that can cause a child to choke. Other jewelry can also be a safety risk. A child can pull a chain and cut an employee or a child can be scratched by a ring. It is important to be clear and to enforce any policy decision you make across the board for all staff in a similar employment classification.

You should consider fingernail length as well. Some employees prefer very long fingernails. There are colonies of germs that live comfortably under fingernails and, in addition, longer nails tend to rip through rubber gloves. Not very long ago a Pediatrics Ward in the Northwestern part of our country made the news. Apparently, the ward had a very high rate of infant mortality. After several months of research it was discovered that a bacteria living under the nails of some of the nurses was the cause of the infections and ultimately the deaths of the infants, although it was not strong enough to kill the nurses or their family members. Bacteria was present under the nails of nurses with both real and fake nails so the issue was related to the length and cleanliness under the nails. Requiring fingernails to be short and/or prohibiting fake nails will help employees keep them clean.

Employers should be careful when drafting this pol-

icy so as not to discriminate against the employees based upon gender. If women are permitted to wear a skirt, so are the male employees. We recommend being gender neutral in this policy to avoid problems in this area.

Employers will be required to provide religious accommodations to employees who, by religious mandate, are required to or prohibited from dressing in certain ways. For example, an employer may require that employees wear khaki pants or shorts to work. If an Orthodox Jewish woman is employed, and presents written documentation from her religious leader that she is mandated to wear a long skirt, the employer must accommodate her. This employee would be allowed to wear a khaki long skirt. Further, the employer may require this employee to wear pants or shorts under the skirt if the pant/short policy is to encourage the employee to get down on the floor with the children. The employee's religious beliefs are accommodated and the agency's needs are met. Likewise, if an agency employs an Islamic woman, it is likely that she will be required to have her head covered. Once written documentation from the religious leader is presented to the employer outlining this mandate, the employer must allow the employee to wear the head covering. The accommodations for employees with religious mandates will not negate your personal appearance policy for all of the other employees.

This policy may need to address issues like: personal hygiene, strong fragrances or perfumes, the use of fabric softener and the like. We are aware of a program that was forced to address the wearing of appropriate undergarments such as bras and underwear. When drafting this policy be sure to look at the unique nature of your employees and address all the issues that have been driving you crazy.

With all that said, we are proponents of having an agency uniform. The typical child care uniform would consist of a polo type shirt (long or short sleeved) and khaki pants/shorts. There are several reasons for our position. First, the uniform sets the employees apart from other adults in the center. This creates an air of professionalism. Secondly, parents and children can clearly identify the adults responsible in the center should there be a safety issue or emergency situation. Finally, employees can quickly identify non-agency adults, and proceed to escort them off the property if they are not identified in some other manner, such as a visitor or parent badge.

You will need to set standards that are acceptable to your agency's philosophy and work environment. Once again, in an "at-will" environment, the employer has the right to decide what is considered acceptable concerning appearance.



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Janice A. Neliwocki, BS, and Jason D. Dalton, Esq.

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SESSION ONE

**Strategic Planning for Business Owners
and Administrators**

June 23, 24 and 25

Long Range Strategic Planning is a process whereby
the Owner/BOD of an agency set out to chart the course
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goals are set in relation to various indicators including:
Agency Mission, Financial Stability, Range of Services
Provided, Facilities, Population Served, and Adminis-
trative/HR Systems.

Participants will learn about the Strategic Planning
Process. Participants will be engaged in goal setting
discussion and will be given strategies for how to as-
semble a Strategic Planning Team, promote the open
flow of ideas and writing a Strategic Plan.

SESSION THREE

**Current Issues for Child Care
Professionals**

July 21, 22 and 23

Supervision of Children in the Early Childhood Classroom
Court Orders and the Release of Children
Media Effects on the Young Child
Kindergarten...Ready or Not Here I Come!
Encouraging Professionalism
Confidentiality

Accommodation Issues in the Early Childhood Setting
Come on Let's Read! (Literature in the Classroom)

Introducing Two new topics related to

Male Roles in ECE:

"No Men in My Center" and Inside a Male
Lead Classroom

SESSION TWO

**Employment Issues and Strategies for the
Advanced Administrator**

June 30, July 1 and 2

Fostering a Harmonious Workplace
Tackling New Trends in Employee Issues: Cyberspace
Identities, "Helicoptering" Parent/Spouses, Cell Phones
and Internet Access in the Classroom, Fashion/Tattoo and
Jewelry Trends

Navigating Wage and Hour Laws: Are Teachers
in ECE Exempt under the FLSA?

Unemployment Compensation Issues and Definitions
related to the Early Childhood Industry

Employee Onboarding...a new definition of New
Employee Orientation

ADA, Workers Compensation and FMLA...The Bermuda
Triangle of Leave/Accommodation Issues

SESSION FOUR

**Your Agency's Personnel Policies
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July 28, 29 and 30

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FATHER INVOLVEMENT:

Understanding the Benefits & Overcoming Barriers

By: Janice Nielowocki

Never before has so much emphasis been placed on "fathering." In recent years, sociologists have spent countless hours researching the father's role within the family and an increasing number of fathers are now taking on an active role in raising their children.

Undoubtedly, the American family as we once knew it has evolved and with it, the role of fatherhood. Although the traditional nuclear family of mother, father and children, still remains, we continue to see a rise in the number of non-traditional families. The unsettling result of these socio-demographic changes is that there's a greater likelihood that today's children will spend part of their life living apart from their father than their counterparts of yesteryear. Although many unmarried parents work to raise their children together, research shows that father involvement under these circumstances is sometimes minimal.

Regardless of whether the family is intact or not, father involvement in childhood years is critical to the development of the child. Whether it is early care within the home, or involvement in the child care center, the value a father's input brings cannot be underestimated. Research clearly shows that when fathers are regularly and frequently involved with their children there are a wide range of positive outcomes for the children.

These positive effects can be seen early in life. One study showed that infants of highly involved fathers were more cognitively competent at 6 months, and by 1 year continued to have higher cognitive functioning. Another study showed that toddlers of highly involved fathers had a more diverse vocabulary and better overall verbal skills.

The resulting benefits of father involvement extend far past these early years.

Children with involved dads are more likely to enter school prepared to learn, tend to be more motivated in the classroom and show higher academic achievement overall. Studies also show that children of involved fathers have higher self-esteem and demonstrate social competency at an earlier age. Over the long term these children are more likely to have higher economic achievement and career success.

But the benefits are not just limited to the children. Fathers themselves profit from being involved with their children as they benefit from a secure father-child attachment. Involved dads seem to be better able to cope with stress and report feeling more competent. Mothers also benefit from father involvement as they report less stress and overall higher life satisfaction. When fathers are actively involved in the family, there is better communication among family members and thus a greater sense of family commitment and unity.

Undoubtedly father involvement is beneficial, however societal barriers exist that may deter fathers from getting involved in their child's early care. The family relationship is perhaps the most influential and can serve as a catalyst or a hindrance to father involvement. Not surprising, if the overall family context is positive, then fathers are more likely to be involved. On the other hand, if strife exists within the family, or if it is a separated family, the mother-father dynamics can certainly have a negative impact on father involvement. In addition, if both parents work outside the home, fathers will often take a more active role in child care out of sheer necessity. Interestingly, studies show that mothers themselves are perhaps the biggest influence as to the role the father takes. The mother often serves as "gatekeeper", either encouraging the father in child care (and thus opening the gate for involvement), or criticizing the job the father does (and thus closing the gate).

There are many personal reasons fathers often don't get involved with raising their young children. It may be the father's fear or perceived inadequacies concerning child care, time constraints, beliefs that child rearing is primarily the mother's job, monetary problems and/or substance abuse. In separated families, the father may no longer live in close proximity to the child, thus making involvement challenging at best. In still other situations, the father may be unaware of his paternity.

Cultural and generational expectations of fathers and their role can also present barriers to involvement. The role a father plays within the family can be very strictly dictated by cultural norms. Different cultures have different ideas concerning the meaning of fatherhood which often guides their behavior and subsequent father involvement, or lack thereof. Often, cultural and generational definitions of woman's work vs. man's work create well defined lines which are difficult for men and women to cross.

Pre-existing attitudes and biases often deter father involvement. We in child care, the very people who should be supportive of fathers being involved, often create barriers because we continue to focus on mothers as the primary care givers. How many times has a concern arisen with a child in your care and your first response is "I'll have to talk to mom about that"? In addition, staff may be ambivalent about father involvement and in many cases our programs and activities are not developed with the male's perspective in mind.

As we acknowledge the benefits of father involvement and take inventory of the barriers to that end, we must also recognize that we, the child care community, are in a unique position to foster father involvement. In promoting father involvement in our programs, we ultimately

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help to facilitate father's involvement in everyday care and support of their children. Child care programs that actively incorporate fatherhood involvement strategies have significantly greater father participation. Some strategies that have proven successful include:

- Setting specific father involvement goals
- Completing a needs and motivations assessment for fathers
- Taking a multi-disciplinary and culturally sensitive approach
- Providing outreach, including multiple recruitment methods
- Working to build relationships with fathers through partnership and patience
- Providing opportunities for engagement at various levels (i.e. individual, both parents, family, community)

It is crucial to create a culture of inclusion by making your center "father friendly." Strategies to help foster a "father friendly" environment include:

- Identifying significant male role models
- Providing training for staff regarding father involvement

- Recognizing and understanding father's legal rights when dealing with custody situations
- Actively recruiting fathers to get involved
- Scheduling activities after work hours or on weekends when fathers are more likely to be able to attend
- Sponsoring programs/activities that teach fathers how to help their children learn
- Offering activities that speak to Father/Male Specific Topics
- Placing pictures of fathers with their children around the day care center
- Educating fathers on the importance of their roles in their children's development.
- Letting dads know you appreciate them and their involvement!

The importance of men in their children's lives cannot be underestimated. Recognizing the benefits of father involvement, striving to overcome the barriers, and "going the extra mile" to encourage fathers to get involved can only help to strengthen the families we serve and will benefit the children to whom we dedicate our professional lives.

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

Not often have I walked into a book store and been so captivated by a children's book that I couldn't wait to share it with others. But so was the case with the book Have You Filled A Bucket Today? A Guide to Daily Happiness for Kids. Written by Carol McCloud and illustrated by David Messing, this book teaches a very powerful lesson about the value of kindness.

The story begins with the simple premise that everyone in the world has a bucket to fill and that we fill each other's buckets through generosity and kind words. As we fill others' buckets and create happiness for others, our own buckets fill up and we ultimately create happiness for ourselves. To the contrary, when we are unkind or unwilling to help others, we are "bucket dippers", thus depleting the contents of everyone's bucket. What an important lesson for children (and adults) to learn!

As preschool teachers and supportive staff, you've probably spent countless hours helping young children develop and refine appropriate social skills. Have You Filled A Bucket Today? A Guide to Daily Happiness for Kids can serve as an important teaching tool, helping children recognize the affect their behavior, both positive and negative, has on others. It stresses the value in treating others with respect and kindness.

Carol McCloud has done a wonderful job in conveying an important, much-needed message in a concrete manner that children can easily relate to. The simple, yet powerful text is supported by colorful, appealing illustrations which clearly convey the character's feelings, so relevant to this book.

Have You Filled A Bucket Today? A Guide to Daily Happiness for Kids will appeal to children of all ages (and adults, too) and should be a "must read" in every preschool and elementary school alike. Why not add it to your library today? Perhaps if we start "filling buckets" at an early age we can truly make a difference in the world in which we live. It can't hurt!!!!

(Carol McCloud has recently written a subsequent book Fill A Bucket: A Guide to Daily Happiness for the Young Child. Although Have You Filled A Bucket Today? A Guide to Daily Happiness for Kids is appropriate reading for preschoolers, if you are working with very young children you may want to consider the subsequent book.)



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March 3: Ocean and Shore County AEYC General Meeting, Toms River, NJ

March 12: Oregon Association of Child Care Directors, Newport, OR. For information email Carol McMurdie at mcmurdie@mac.com

March 13 and 14: CITE, Somerset, NJ. For information contact Helen Muscato at helenmuscato@verizon.net

March 17 and 18: HR BOOT CAMP: Boston, MA. For registration information go to www.childproviderlaw.com and look under Seminars.

March 24: EIRC Directors Training, Sewell, NJ. For information email Elmora Thomas at ethomas@oel.nj.us

April 1 and 2: Pennsylvania Head Start, Harrisburg, PA. For information go to www.paheadstart.org

April 24 - 26: Maryland State Child Care Association, Ocean City, MD. For information go to www.mscca.org

April 22 - 25: National Association of Child Care Professionals, Lake Buena Vista, FL. For information go to www.naccp.org

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May 6: 4C: Community Coordinated Child Care, DeKalb, IL. For information contact www.four-c.org

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

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April 2009
Volume 3 Issue 3

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

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COBRA: Premium Reduction Under ARRA

By: Dawn K. Martini

On Tuesday, February 17, 2009, President Barack Obama signed the "American Recovery and Reinvestment Act of 2009." (ARRA) Among the many programs effected by this act the Consolidated Ominbus Budget Reconciliation Act of 1985 (COBRA) receives its first revisions in its 20 plus year history.

Aimed at reducing the burden of maintaining health care coverage for employees who have lost their jobs in these difficult economic times, the ARRA has added a subsidy to the traditional COBRA continuation of coverage guidelines. If an employee has a "qualifying event" making them eligible for continuation of health care coverage, the ARRA provides for a subsidy of 65% of the COBRA premium for eligible persons for up to 9 months. To be considered eligible for the 65% COBRA premium subsidy an employee must **not** be eligible for health care coverage on a spouse's, parent's or partner's health care plan, or Medicare. There is also a maximum adjusted gross income threshold of \$125,000 for individuals and \$250,000 for married couples filing jointly. If an employee exceeds the maximum adjusted income threshold they may be responsible for paying all or part of the premium subsidy back through an increase in their tax liability on their 2009 Federal Tax return.

The subsidy program is in effect for persons who are COBRA eligible due to their own or a family member's loss

of employment (involuntary termination) which occurred between September 1, 2008 through December 31, 2009. Employees who meet the requirements are only required to pay 35% of the eligible COBRA premium. The 65% balance is paid by either the multiemployer health plan or an employer maintaining a group health plan who would then be eligible to claim a **TAX CREDIT** on their 2009 Federal Tax return for the amount paid to cover the COBRA subsidy.

If a person was offered COBRA coverage between September 1, 2008 and February 16, 2009 and they declined coverage at that time or selected and later discontinued it they may have another opportunity to reenroll in COBRA with the premium subsidy under this ARRA extension.

Employers should be aware of this additional burden and the effect it may have on their bottom line. The amount paid out to cover the 65% COBRA premium subsidy will be repaid in the form of a TAX CREDIT on the 2009 Federal Tax return and will either reduce or negate the total tax due or if the amount paid out is greater than the total tax due, a refund will be issued from the US Treasury. The immediate concern for employers will be paying these funds out through December 31, 2009 and the cash flow issues that it may create.

For more detailed information and FAQ's related to this topic visit www.dol.gov/ebsa/faqs/faq-cobra-premiumreductionEE.html.

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

While on a recent visit to my nephew's house, his two young daughters (ages 2 and 4) asked me to read them a story as their naptime rapidly approached. While browsing through their book collection, I came across *The Napping House*, appropriate for the related activity that was (hopefully) going to take place. I also recalled that *The Napping House* was a favorite of my preschoolers, so I was delighted to revisit this wonderful book.

The Napping House written by Audrey Wood and illustrated by Don Wood tells the story of a quiet house where all the inhabitants settle down for a nap on a dreary, rainy afternoon. However, this is no ordinary nap! All those who partake, from the Granny to the mouse, pile onto one bed, on top of one another. All goes well until the flea bites the mouse and then the ruckus begins! As you can guess, the quiet napping house transforms to a house full of fun and activity! Undoubtedly, the rain ceases and the sun shines once again.

Audrey Wood does a wonderful job in telling this charming story. Her use of simple, repetitive text is richly appealing to young children. Don't be surprised to find your youngsters repeating the text with you as you read aloud. Children are drawn into the story as the scenario of napping individuals builds, anxiously awaiting which character will join the sleeping pile and what will transpire next.

Not to be overlooked, are Don Wood's wonderful illustrations. Colorful, whimsical and engaging, they clearly compliment the storyline. You'll want to slow your pace in turning the pages so that your viewers/listeners can spend some additional time looking at the captivating pictures.

The Napping House is the perfect book to read when settling your youngsters down for naptime. However, don't be surprised if they all want to pile onto one mat to make their own "Napping School"!

"Disability" Definition Expanded

By: Dawn K. Martini

In response to 18 plus years of case law which has chipped away at the rights of the disabled, as intended in the Americans with Disabilities Act, the US Congress looks to force courts into broader interpretations of the term "disability" by passing, in late 2008, the ADA Amendments Act.

In the past, courts have focused a great deal of time and energy on determining whether an individual was covered under the ADA, not whether discrimination occurred. The new legislation redefines "disability" to make it clear that: 1. The courts should favor broad coverage of individuals under the ADA, 2. A condition that substantially limits one major life activity need not limit other major life activities in order to be a disability, 3. A condition that is episodic or in remission is a disability if when active substantially limits a major life activity and 4. Determining if a condition substantially limits a major life activity shall be made WITHOUT regard to health improvements caused by mitigating measures such as medication and hearing aids or other assistive technology. This final point is the biggest change in the ADA Amendments Act.

For more information on the ADA Amendments Act go to www.doj.gov and click on ADA Homepage.

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FMLA: Summary of Recent Changes and Additional Leave

By Dawn K. Martini

Over the last several issues we have included various articles addressing new legislation extending Family Medical Leave coverage and/or changing existing definitions and provisions of the Family Medical Leave Act. This article serves to summarize 9 of the most important changes and additions to FMLA.

1. NEW MILITARY CAREGIVER LEAVE: Employees are now eligible to take up to 26 weeks of unpaid FMLA leave in each 12 month period to care for family members who have suffered a serious injury or illness related to active military duty.

2. NEW LEAVE FOR FAMILIES OF NATIONAL GUARD AND RESERVE SERVICE MEMBERS: Families of National Guard and /or Reserve Service personnel who have been called up to active duty are permitted to take up to 12 weeks of FMLA leave per year to manage the National Guard Member and/or Reservists affairs. The leave must be related to certain qualifying circumstances related to the military service. Rules define this as: I. Short-notice deployment, II. Military events and activities, III. Arranging child care and school activities, IV. Financial and legal arrangements, V. Counseling, VI. Rest and recuperation, VII. Post-deployment activities, VIII. Additional activities in which the employer and employee agree to the leave.

3. 'SERIOUS MEDICAL CONDITION' REDEFINED: FMLA defines a 'serious medical condition' as a condition involving more than 3 consecutive days of incapacity plus 2 visits to a health care provider. The new rules clarify that the 2 visits to a health care provider must occur within 30 days of the period of incapacity. This change was made to

counter a court ruling which required the 2 health care provider visits to occur within the 3 or more day period of incapacity.

4. EMPLOYER MAY DIRECTLY CONTACT THE DR: The new regulations allow employer to directly contact the health care provider to ask for clarification of information on an employee's FMLA Leave Certification Form. The regulation limits the employer to asking ONLY about information contained in the Certification Form. Further, the regulation restricts who may contact the health care provider to: HR professionals, a leave administrator, or a management official.

5. EMPLOYER NOTICE OBLIGATIONS: Employers are required to post, in a conspicuous location the FMLA Leave Policy and complaint-filing procedures. This notice must also appear in the Personnel Policy Manual or must be given directly to the employee at the time of hire. Employers have been given 5 business days to send out FMLA eligibility and

designation forms to employees. This is a change from 2 business days.

6. EMPLOYEE NOTICE PERIODS: With regard to intermittent leave, employees may, in most cases, use the employer's call-in procedures for reporting an absence.

7. SETTLEMENT OF PAST FMLA CLAIMS ALLOWED: Regulations specify that employees may, as part of severance and/or settlement agreements, volunteer to settle their FMLA claims without approval or oversight from the Department of Labor. Waivers of FMLA rights are still prohibited.

8. FMLA AND LIGHT DUTY ASSIGNMENTS: New regulations specify that Light Duty Assignments DO NOT count toward the 12 weeks of FMLA entitlement.

9. PERFECT ATTENDANCE: FMLA regulations now allow employers to count FMLA Leave as an absence from work in relation to attendance records, and employers can deny employees "perfect attendance" bonuses for FMLA Leave related absences.



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Health Insurance Portability and Accountability Act (HIPAA)

By: Janice Nieliwocki

Many Community Action Programs and other multi-service programs, because of the services they offer, must now comply with the regulations as set forth by the Health Insurance Portability and Accountability Act (HIPAA). If your program provides medical, dental and/or mental health services, you may now find yourselves in the position of having to comply with this somewhat complicated law.

HIPAA was enacted by Congress in 1996 with the purpose of providing consumers with greater access to health care, promote more standardization within the health care industry and protect the privacy of health care information. Undoubtedly, HIPAA was a much needed law in light of the drastic changes that have taken place within the world of health care. The days of one physician and "paper" medical records have given way to managed care, health partnerships and electronic storage and transfers of medical information. In addition, prior to HIPAA, State laws offered little protection concerning storing and transmittal of health information. Thus, the HIPAA ruling put into place a method of standardization within the health care industry while providing consumers with a much needed protection of personal health information.

With the enactment of the HIPAA, many entities needed to reexamine their way of doing business and implement procedures to ensure compliance with the new law. The first course of action as a multi-service program, is to determine *if* you need to comply with HIPAA regulations.

The following entities must comply:

- ♦ Health Plans: Individual and group plans that provide or pay the cost of medical care such as health, dental, prescription insurers, HMOs, Medicare, Medicaid, employer or government sponsored health plans, etc.
- ♦ Health Care Clearinghouses: Entities that process nonstandard information that they receive from one format into a standard format (i.e. billing services).
- ♦ Health Care Providers: Health care providers of medical or other health services, who electronically transfer health information in connection with a transaction for which standard requirements have been adopted, must comply. (Typically includes health plans, hospitals, pharmacies, doctors, nurses, social workers, drug counselors, etc).

Some multi-service programs will find themselves in the last category and thus must comply with HIPAA regulations.

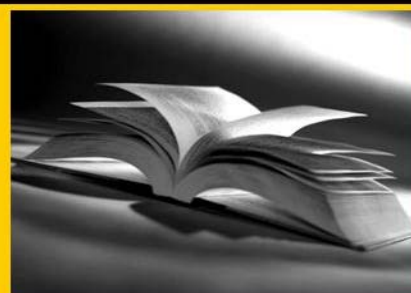
HIPAA covers a number of important health care issues, including **the Portability of Health Insurance, Administrative Simplification, and the HIPAA Privacy Rule**. Each one of these areas requires a closer look:

The Portability of Health Insurance protects health insurance coverage for workers and their families if they change or lose their jobs. Basically, this provision ensures that individuals can take their health insurance with them from one place to another, thus minimizing dilemmas such as waiting periods or non-coverage of pre-existing conditions.

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ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

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



Available at childproviderlaw.com 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.

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Administrative Simplification is meant to streamline the administration of health care and promote uniformity by adopting standards for several types of electronic health care transactions. These transactions (under HIPAA) include claims or information related to claims, specifically: *payment and remittance, *benefit eligibility inquiries, *referral authorization requests *enrollment or disenrollment in a health plan, *health plan premium payments, *coordination of benefits, *claims attachments (pending). Under the Administrative Simplification regulations, all covered entities doing business electronically, must provide the same information in a standard format, using specific code sets and identifiers.

Additional Administrative Simplification requirements include a privacy requirement (meant to oversee disclosure of patient protected health information while protecting patient rights), a security requirement (to prevent unauthorized access to protected health information), and a national identifier requirement (whereby providers, plans and employers must have standard national numbers to identify themselves on standard transactions).

The HIPAA Privacy Rule is perhaps the most publicized aspect of the law and the one which impacts the most individuals. The HIPAA Privacy Rule established Federal standards to protect "individually identifiable health information". It protects medical records and other individually identifiable health information, whether on *paper, in computers or communicated orally*. Before the HIPAA ruling, personal health information could basically be released to anyone, without notification or authorization, for reasons that had nothing to do with a person's medical treatment or health care reimbursement. The Privacy Rule provides patients with specific protections while requiring covered entities to adopt policies and procedures which will protect the confidentiality of their patient's health information.

The specific protections provided patients:

- ◆ Access to their personal medical records
- ◆ Guaranteed Notice of Privacy practices: Covered entities must provide a notice to their patients how they may use their personal medical information and their rights under the new pri-

vacancy regulations

- ◆ Limits the use of personal medical information by setting limits on how health care providers may use personal health information. However, the rule does not restrict the ability of providers to share information needed to treat their patients. In addition, personal health information may not be used for purposes *unrelated to health care* unless the patient signs a specific authorization allowing the release of information
- ◆ Places restrictions on the use of patient information for marketing purposes
- ◆ Does not affect State Laws that offer additional privacy protections for patients
- ◆ Confidential Communication: Health care professionals must take reasonable steps to ensure that communications with the patient are confidential
- ◆ Allows consumers to file complaints regarding privacy practices.

In addition to the patient protections listed above, health care plans and practitioners must:

- ◆ Have written privacy procedures in place: These written privacy procedures must include who has access to protected information, how it will be used and how and when it will be disclosed.
- ◆ Train their employees in privacy procedures and have a designated individual who is responsible for ensuring that the privacy procedures are being followed.

Although HIPAA has put limitations on the release of personal health information, in order to promote quality health care for patients, there ARE permitted uses and disclosures allowed without an individual's authorization. The health care provider can disclose protected health information to the *individual* who is the subject of the information. In simple terms, this means that the health care provider can speak to the individual about his or her own personal health condition. In addition, a health care provider can release information to another health care provider for the *treatment* and related services of an individual including consultation and/or referral between providers. Obtaining written consent from an individual to release his or her protected health information for *treatment* and related services is optional under the Privacy Rule.

Continued on Page 6...

Employee Free Choice Act??

By: Dawn K. Martini

The childcare industry has faced increasing unionization over the last 15 years. New bills in the House and Senate may make forming unions easier.

On March 10, 2009 two bills (H.R. 1409 and S . 560) were introduced into both chambers of Congress. These bills, both referred to as "Employee Free Choice Act" (EFCA), look to amend the "National Labor Relations Act" by making it easier for employees to form unions in the workplace.

There is strident support for and fierce opposition to these proposed changes. The political lines for or against these bills are not limited to pro-union for and anti-union against. Many union supporters find themselves questioning the changes these bills propose.

Under current law, to form a union, employees must receive actual signature cards from non-

management employees showing a desire to form a union. Once 30% of the eligible workforce has signed a union card, the employer or the employees can call for a "secret ballot election." If the "secret ballot election" favors union representation the NLRB will certify the union as the official and exclusive representative of the employees for the purpose of negotiating a collective bargaining agreement.

The EFCA seeks to change this procedure by allowing the NLRB to certify a union as the exclusive representative of the workforce if a majority of the employees sign the signature cards and without holding a "secret ballot election."

Opponents fear that without a "secret ballot election" employees can be coerced into signing union cards by fellow employees and/or union organizers. Many feel that by removing the private and secret voting principal from the process the

employee's "free choice" will be greatly compromised.

Proponents argue that employers will often intimidate and threaten employees who have signed union cards and/or make demands and threats against employees prior to their vote in the secret ballot that would skew the results in favor of NO Union vote.

Additional changes include a mandatory binding arbitration clause for the first contract negotiations if a contract is not agreed upon within the first 90 days following the certification of a union as the employee's exclusive representative.

If you are an employer, an employee or a union representative, you will want your voice heard on this issue. To follow developments and progress you can visit both the House of Representative's and Senate's websites and enter the corresponding bill numbers listed at the beginning of this article.

...Continued from Page 5

However, the use and disclosure of **psychotherapy notes** for treatment and related services require an authorization. (The specific content of the authorization will be addressed later).

The HIPAA Ruling also allows for "use and disclosure with opportunity to object" without written consent. An example of this would be listing a patient in a hospital directory whereby informal verbal permission is acceptable or the patient can simply opt out of being included. In addition, the HIPAA Ruling does not require written consent for certain public interest activities as are required by law, such as public health activities, law enforcement, judicial proceedings, cadaver organ donations, essential government functions, etc.

However, a covered entity **MUST** obtain an individual's written authorization for any use or disclosure of protected health information that is **not** for the treatment (or related services) or as otherwise permitted or required by the Privacy Rule. The authorization must be * written in plain language, * specify what information is to be released, * identify the person releasing and receiving the information, * include an expiration date, * include a right to revoke in writing, and * include any other applicable data.

Also central to the HIPAA Privacy Rule, is the principle of "minimum necessary" when releasing information. Basically, a covered entity must make a reasonable effort to release only what information is *necessary* for the purpose that it is being released. It should be noted, however, that "minimum necessary" does not apply to disclosure to an individual about his or her own personal health care or information or in matters of complaints.

Different aspects of the HIPAA Rule have different dates for compliance, most by were required by October 2003. Thus, it is in the best interest for covered entities to become HIPAA compliant as quickly as possible. The Department of Health and Human Services, (responsible for overseeing the HIPAA rule) is "not out to get you", so to speak, but wants covered entities to exercise "reasonable diligence" in following the HIPAA regulations. Keep in mind that your good faith efforts will go along way as work towards compliance. However, there can be civil and/or criminal penalties for non-compliance.

The Department of Health and Human Services is offering guidance and technical support to assist covered entities as they work to comply. Visit their website at <http://www.hhs.gov/ocr/hipaa/assist.html> or call their information line, toll free at 866-627-7748.

SUMMER TRANSPORTATION SAFETY GUIDE

By: Tymothy Smith

During the summer months, many programs transport children to and from field trips and other activities. Below are some safety recommendations your program can take to ensure quality loading and unloading of children.

Loading and Unloading Vehicle Procedures

- * Children are never allowed to enter or exit the vehicle by themselves.
- * Children should be loaded and unloaded at the curbside of the vehicle or in a protected parking area or driveway.
- * Children should not be allowed to cross a street any time before entering or after leaving a vehicle unless accompanied by an adult.
- * All children exiting the vehicle must be accounted for prior to leaving the vehicle unattended.
- * Never leave a child unattended in a vehicle.
- * The vehicle emergency notebook must be in the vehicle at all times during use and information must be updated before a new child is transported.
- * Staff child ratios must be maintained on vehicles at all times.

Loading:

Step one

- * The vehicle should not be running. Turn off the engine, remove the keys from the ignition and keep in the driver's possession. Set the emergency brake.
- * The driver must exit the vehicle and stand beside the door personally loading the children onto the vehicle.
- * Always hold the door so the wind will not catch it.
- * As children board the vehicle, identify each child by name.
- * Once children have boarded, take roll visually, making eye contact with each child as you check off the children's names on the vehicle roll sheet.
- * Visually and physically check seat belts to see that each child is secure and that there is only one child using each belt.
- * Take a head count to match roll to identify if children are missing or if you have a child that should not be with you.
- * If driving a van, children should never be allowed to sit in the front seat.
- * It is suggested that children under the age of six sit in the front two rows of the vehicle.
- * Lock and close the door. Never allow a child to do this.

Step two

- * Driver is to circle the vehicle to ensure it is free from obstacles-especially children.
- * Enter the vehicle, fasten your seat belt, adjust mirrors, and recheck that the area is free of obstacles using

the mirrors.

- * Always try to park in a manner that will allow you to pull forward and avoid situations in which you must reverse.
- * Always observe all traffic regulations - use blinkers, always make complete stops, never run yellow lights, and drive 5 miles under the posted speed limit.

Unloading at a Elementary School:

- * Pull to the curb and unload at the curbside.
- * The vehicle should not be running. Turn off the engine, remove keys from the ignition and keep them in your possession, and set the emergency brake.
- * Driver opens the exit door. Children should never be allowed to do this.
- * Driver exits the vehicle and stands outside the exit door, holding the door to keep the wind from catching it.
- * The driver assists children as they exit the vehicle.
- * The driver should always remind the children to walk directly into the school.
- * Driver should observe the children entering the elementary school before pulling away from the curb.
- * After dropping off all children, the driver walks the vehicle to see that no children remain on the vehicle.
- * A second adult should come and also walk the vehicle to ensure that no children are left on-board.

Unloading at your program:

- * The driver walks the vehicle, counting children on the vehicle that are to be unloaded. The number should be written down on the bus log.
- * Wake any sleeping children and assist any children that need help unbuckling their seat belts.
- * Assist the children off the vehicle.
- * Have the children form a line on the curb or sidewalk close to the vehicle.
- * Once the children are unloaded, take roll visually, making eye contact with each child as you check off children's names on the bus log.
- * Match the head count number to the total count noted on the bus log.
- * The children are escorted into the building.
- * An adult inside the program then checks roll using the bus log once again.
- * The driver returns to the vehicle, walks the vehicle again to ensure that no children were left on-board.
- * The driver parks the vehicle in its designated parking space.

NOTE: Never rely on verbal responses from the children. Always do visual checks before marking a child present.

For information on training products and seminars, visit www.tymthetrainer.com



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.

April 24 - 26: Maryland State Child Care Association, Ocean City, MD. For information go to www.mscca.org

April 22 - 25: National Association of Child Care Professionals, Lake Buena Vista, FL. For information go to www.naccp.org

April 27 to May 2: National Head Start Association, Orlando, FL. For information go to www.nhsa.org

May 6: 4C: Community Coordinated Child Care, DeKalb, IL. For information contact www.four-c.org

May 14: Osceola County Director's Retreat. Osceola County, FL.

June 14 - 17: NAEYC National Institute, Charlotte, NC. For information go to www.naeyc.org

June 23 - 25: RVM and Associates: 2009 Cape May Training Seminars, Cape May, NJ: Strategic

Planning for Business Owners and Administrators. For information go to childproviderlaw.com under upcoming seminars

June 30 - July 2: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Employment Issues and Strategies for the Advanced Administrator. For information go to child-providerlaw.com under upcoming seminars

July 21- 23: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Current Issues for Child Care Professionals. For information go to child-providerlaw.com under upcoming seminars

July 28 - 30: RVM and Associates: 2009 Cape May Training Seminars Cape May, NJ: Your Agency's Personal Policy Manual and Parent Handbook. For information go to childprovider-law.com under upcoming seminars

The Childcare Professional EXPERIENCE

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July 2009
Volume 3 Issue 4

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

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

By Dawn K. Martini

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

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

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

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

It is our opinion that by limiting the ability to designate alternate pick up individuals to **the enrolling parent** this regulation infringes on the rights of the non-enrolling parent who has not been limited in his/her custodial rights by the court. The United States Supreme Court in *Troxel v. Granville* (June 2000), which, in concert with The Fourteenth Amendment, ruled to assert the fundamental rights of parents, to the exclusion of others. The Fourteenth Amendment's due process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." "Parenting your own child" has always been seen by the courts as a fundamental right. The United States Supreme Court in *Troxel* reaffirmed through it's broad and definitive decision that state laws limiting/restricting ...continued to Page 7

CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

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

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

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

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

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

NACCP Board of Directors

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

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

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SUMMER FUN...Water Play Safety

By Janice Nieliwocki

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

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

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

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

Active supervision is essential

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

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

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

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

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

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

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

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

not to attract children.

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

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

Keep emergency phone numbers readily available.

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

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



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SUMMER PERILS: Heat Exhaustion and Heat Stroke

By Janice Nielowocki

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

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

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

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

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

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

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

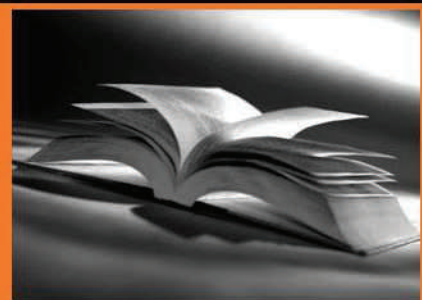
Heat stroke can be life threatening and requires more drastic intervention. **Immediate, emergency medical treatment should be summoned.** Besides moving the individual to a cool environment and loosening clothing, efforts should be made to lower the body temperature by bathing the child in cold water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

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

Because children take longer to adjust to environ-

ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

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



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

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

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

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

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

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

precautions to be taken.

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

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

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

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

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

Playgrounds: How to make them safe.

By: Dawn K. Martini

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

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

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

Safe playgrounds contain four elements:

Proper Supervision.

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

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

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

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

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

Regular equipment and play area maintenance.

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

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

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

...continued from Page 1

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

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

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

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

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

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

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



WHERE IN THE WORLD...

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

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

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

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

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

July 23 and 24: The One Goal Summer Conference, Tampa FL. For information go to: www.onegoalsummerconference.org

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

Sept 24 - 27: ECA of Florida in Orlando, FL. For information go to: www.ecaoffl.org

Sept 24 - 26: TXAEYC in Galveston, TX. For information go to: www.txaeyc.org

Oct 3: Bucks County AEYC at BCCC in Newtown, PA. For information go to www.bcaeyc.org

Oct 10: York Area AEYC at Penn State York Campus. For information go to: www.yaaeyc.org

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

Oct 23 and 24: NJAEYC Annual Conference at the Atlantic City Convention Center. For information go to www.njaeyc.org

Oct 26 - 28: PACCA Annual Conference at State College, PA. For info go to www.pacca.org

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