

Legal & ethical issues in early childhood and school age programs

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LAWFUL PRACTICES & STANDARDS What can you do daily to prevent problems?

1. **Lawful standards** to measure your practices by: a) Be consistent, b) Follow written policies & procedures, c) Stay objective & act reasonably, d) Document & report facts, e) Do not discriminate vs. protected classes, f) Exercise Due Process (give **notice** of new policy & invite input-**right to a hearing**).
2. **Documentation:** “Just the facts, M’am” (who, when, what, where...not why). Avoid moral judgments, opinion, and commentary. Head start practice: “If it isn’t documented, it didn’t happen.” Keep it simple and concise.
3. **Written policies & procedures.** You don’t have to be Shakespeare to write staff, parent handbooks, job descriptions and new procedures. Written, publicized policies, signed/initiated by the reader demonstrate that notice has been given.

HIRING PRACTICES

What can you say when asked to give a reference on a former employee? At an interview, what questions can you ask?

1. **References: Common practice** “When asked for a reference for a former employee, our policy is to state: a) whether the person worked for us, and b) the dates of her/his employment.”
2. **Consent for employer to give a reference-** “I, _____, an employee of _____ childcare, agree to hold _____ childcare harmless for the recommendation that organization may give me.”
3. **Job descriptions:** “Functional requirements of the job” focus on the task to be accomplished, not the attribute needed, e.g. diapering a baby, not lifting 20 #.
4. **Interview questions:** a) allow the applicant to demonstrate the ability to perform the functional requirement of the job, b) ask same questions of each applicant.
5. **ADAAA (Americans w/ Disabilities Act Amended 2009):** requires that persons with a **handicap** (restriction of a major life activity like breathing, walking) **who otherwise qualify** for the job, be given **reasonable accommodations** to apply for or perform the job, unless doing so will cause the employer an **undue hardship**. Employers may not ask the applicant/employee if s/he he is handicapped.
6. **Equal opportunity** law forbids discriminating against **protected classes** (age, gender, race, religion, national origin (Patriot Act exceptions), and marital status.

TERMINATING AN EMPLOYEE

If I work in at “at will” state, do I need to use progressive discipline procedures?

1. Employees “**at will**” can resign or be fired without notice. Employer says: “It’s just not working out.”
2. **Probation period** is the easiest time to let an employee go.

3. **Progressive discipline's 3 strikes:** a) Verbal warning, b) Probation, c) Termination. All 3 require written notice. Employer's "**Conscientious rescue effort**" includes: a) notice of what is expected, c) plan with timeline for correcting behavior, d) enhanced supervision, d) consequences of failure to improve.
4. "Good cause" **Grounds for termination:** poor performance, inability to deal w/ subordinates, insubordination, violations of employee regulations, refusal to participate in legal investigation. **Immediate grounds:** theft, violence, drug use.
5. **Checklist for termination:** a) followed written policies & procedures, b) could firing be viewed as retaliatory, c) consistent w/ treatment of other employees, d) if employee has been at organization for years, why terminate now, e) any question about employee's responsibility for poor performance/misconduct?
6. **Beginning trend:** Replace Progressive Discipline with "at will" process. The employee can be terminated "at will" without cause. Continue to document process, however.

AMERICANS WITH DISABILITIES ACT (ADA and ADAAA)

What is a handicap? What makes an accommodation reasonable? Should I give preference to an applicant or an employee with a handicap?

Recent legislation, ADA Amendments Act (ADAAA), effective 1/1/09, overrules Supreme Court decisions interpreting the ADA narrowly, and will result in far more conditions qualifying as disabilities.

1. **ADA protects** a person with **physical or mental impairment** that **substantially limits** one or more **major life activities** (**NEW: functioning of immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions** along with eating, sleeping, thinking, communicating, concentrating, lifting and bending)
2. **Impairments** can be: **Physical** (deaf, blind, wheel-chaired), **conditions** (epilepsy, diabetes, AIDS), or **Mental** (bipolar, major depression, ADHD), also **Record of impairment** (cancer in remission), and/or **Regarded as impaired**.
3. "**Who is otherwise qualified for the job**" means person meets job requirements, and is able to **perform the functional requirements of the job** with or without accommodation.
4. **Reasonable accommodations** are adjustments or modifications to enable people with disabilities to enjoy equal employment opportunities (in applying for and performing on the job). Accommodations are individualized, tailored to fit the employee's needs. Ask for the doctor's recommendations.
5. If an **undue hardship** would result from making a reasonable accommodation, the accommodation does not have to be made. Undue hardship includes excessive cost, putting the organization in financial jeopardy.
6. **Direct threat exception** comes about if an employee poses a **significant risk of harm** to him/herself or others on the job. The direct threat must be **likely to occur**, not just speculative.

We, _____ & _____, parents of _____ agree that _____ (parent 1) will pick up _____ Monday-Wednesday; _____ (parent 2) will pick up _____ on Thursday and Friday. If a parent attempts to pick _____ on the other parent's day, that parent must document the consent of the other parent to the change in schedule. If continuous changes occur, both parents will file a revised agreement with the program.

4. Car safety seats required:

Children transported in vehicles must be buckled safely into car safety seats/seatbelts that meet state requirements. Parents will take whatever steps are necessary to maintain and use car safety seats. Another person on the authorized list will be called if this requirement is not met.

5. Authorized list for pick up:

Persons on the authorized list must be at least 18 years of age and able to supply documentation of their identity.

6. Child's safety preeminent:

If we have concern about a child's safety at pick up time, we will contact another person on the authorized list to pick up the child.

7. Release time crisis procedure: If a crisis arises at the end of the day, we will take the following steps to ensure everyone's safety and well being. We will:

- Not immediately release the child. While discussing our concerns with the person picking up the child, we will engage the child with another staff member;
- Contact the other parent or persons on the authorized list to enlist them in ensuring that the child leaves our care safely.
- Offer alternatives. Brainstorm with the family member alternative ways to ensure the child goes home safely.
- Release the child with reservation, notifying the appropriated authorities of our concern.
- Call in the police and/or other authorities if anyone's well being and/or safety is threatened.