

## Legal & ethical issues in early care & education

Copyright©2006 Holly Elissa Bruno, MA, JD hollyelissabruno.com hollyelissab@comcast.net  
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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 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 a 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. **ADA (Americans w/ Disabilities Act):** requires that persons with a **handicap** (restriction of a major life activity like breathing, walking) **who otherwise qualifies** 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), 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?

## AMERICANS WITH DISABILITIES ACT (ADA)

What is a handicap? What makes an accommodation reasonable? Should I give preference to an applicant or an employee with a handicap? What resources are available to help employers learn more about the ADA.

1. **ADA protects** a person with **physical** or **mental impairment** that **substantially limits** one or more **major life activities**.
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.
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**, and **cannot be based on generalizations** about the person’s condition, **unsubstantiated fears**, or **remote and or speculative possibilities**.
7. **Websites** with helpful ADA information include:
 

<a href="http://www.jan.wvu.edu">www.jan.wvu.edu</a>	Department of Justice
<a href="http://www.dol.gov">www.dol.gov</a>	Department of Labor
<a href="http://www.resna.org">www.resna.org</a>	Technical assistance
<a href="http://www.eeoc.gov">www.eeoc.gov</a>	Equal employment commission

**RELEASE TIME POLICIES & PROCEDURES.** See Bruno, Holly Elissa, “At the end of the day: policies, procedures, and practices to ensure smooth transitions” *Child Care Information Exchange*, Sept/Oct 2005, pp. 66-69.

## Standing for quality under stress

Quality has many faces. One federal law, the Americans with Disabilities Act's (ADA) aim is to raise our ethical quality as a nation by requiring equal rights for the disabled. As we saw in Chapter \_\_, the ADA, as a relatively "young" law, sets a broad standard open to interpretation. Each case that is decided on an ADA issue furthers our understanding of ethical quality. How would you promote quality and what is your ethical responsibility as you approach each of the cases that follow?

**The ADA does not require employers to hire or continue to employ a person because of his/her disability. The ADA ensures that anyone with a disability is provided what s/he needs to have an equal chance at being hired, promoted and to perform the job.**

**A disability does not justify poor performance.** However, employers must make "reasonable accommodations" to enable the disabled employee or applicant to interview for and/or perform the job. The key question, when hiring, is: "Can the applicant perform the functional requirements of the job?" Once the employee is hired, the key question is: "Is the employee performing the functional requirements of the job" and "Have I made reasonable accommodations to help her/him perform her job?"

**Nothing in the ADA condones an employee's violation of a workplace policy or releases that employee from disciplinary processes** like progressive discipline.

Directors must determine:

- 1) Does the employee have a disability covered by the ADA?
- 2) Is the disability the cause of the poor performance?
- 3) What reasonable accommodations can we make?
- 4) Have I documented everything?
- 5) If I discipline this employee, can I show that s/he violated a workplace policy and knew the consequences for her actions?

With these points in mind, consider how you would approach the case studies below.

### Case studies

#### Bonita

**Bonita**, head of your school age program and summer camp, confides she is a recovering alcoholic and member of AA. Bonita asks your permission to call her AA sponsor whenever she feels she is "slipping" into old, unhealthy behaviors like isolating herself or engaging in "stinking thinking".

Bonita cannot predict when she needs to call her sponsor. She is clear she cannot work for you if she does not have this "pressure release valve".

1. What are your responsibilities to the program, children, parents, and Bonita?
2. Is Bonita's disease covered by the ADA?

3. If Bonita were still drinking, would she be covered by the ADA?
4. What steps would you take with Bonita?
5. How will your choices affect the quality of your program?

### **Maryanne**

**Maryanne's** pungent body odor offends everyone. Children whisper: "pee-you". Teachers keep their distance or gossip about Maryanne. Parents frown. When teachers complain to you, they say: "I don't want to hurt Maryanne's feelings, so I can't talk with her about this."

1. Name all the issues you see in this case.
2. What opportunity does this situation give you to enhance quality?
3. Might the ADA be involved? If so, how?
4. What steps would you take with teachers who gossip about Maryanne?
5. What do you say to parents and children who are bothered by the body odor?

### **Gracie**

During her initial 12 years with your program, **Gracie**, toddler teacher, performed well. This year, however, the quality of Gracie's work has plummeted. Gracie complains she doesn't have patience or energy to complete "all those nit picking" classroom portfolio tasks. She has started to call in "sick" most Fridays and Mondays. She brushes parents off instead of taking time to answer questions.

Melvin, Gracie's team teacher, is exhausted from attending to all the things Gracie neglects. Today, you found Gracie nodding off during the children's naptime. When you bring these issues to Gracie's attention, she sniffs: "I'm depressed, that's all. What's a few bad months compared to years of giving my heart and soul to the children?"

1. What are your responsibilities to the program, parents, children, yourself and Gracie?
2. Might Gracie's have a disability covered by the ADA?
3. What questions can you ask Gracie?
4. What steps would you take with Melvin?
5. What can you share, if anything, with parents or colleagues who want to know what's going on with Gracie?
6. What action will you take with Gracie?

### **Hugo**

**Hugo**, recently granted US citizenship after serving in Afghanistan, brings bilingual skills and a wealth of cultural competencies to share from his childhood in Guatemala. Children and families adore Hugo for his creative lesson plans, energetic playfulness, and compassion for anyone in need. Hugo is loyal, hard working and punctual.

You notice at times, Hugo appears anxious and disoriented. He gets red faced, gasps for breath, forgets where he is, and panics. Hugo dismisses these incidents as “no big deal”. He says his ADD helps him understand how to work with Annie and Angel, children in his class with ADHD. You know war veterans can suffer from post-traumatic stress disorder (PTSD). You are concerned for Hugo’s wellbeing and worried he may neglect the children during one of these “panic attacks”, “flashbacks”, ADHD moments or all three.

1. Name the ethical and/or legal issues in this case.
2. What are your responsibilities to everyone involved?
3. What questions can you ask Hugo?
4. If Hugo tells you he doesn’t need medical help, what are your options? If quality is your goal, what steps would you take?