

Managing Legal Risks in Early Childhood Programs

Presented by Tom Copeland, JD

Sponsored by Early Childhood Investigations and Rasmussen College

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Welcome!

- This webinar will help you –
 - Manage the risks of running your business
 - Custody disputes
 - Transportation issue: Parents show up drunk
 - Parent lawsuits
 - Privacy
 - Defending your program from attacks on the Internet

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Instructor

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Resources

- * For child care centers: Managing Risks in Early Childhood Programs
- * For family child care providers: Family Child Care Legal and Insurance Guide
- * Both books: www.redleafpress.org



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Disclaimer

“I am not rendering legal, tax, or other professional advice. If you require this type of assistance, please consult a professional to represent you.”

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Manage Risks

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The Risks of Caring for Children

- * Injuries to children
 - * 18 month old scratched by cat: \$5,000
- * Damage to property
 - * Tornado destroys all household property: only \$2,000 covered
- * Lawsuits
 - * Court awards \$800,000 in SIDS death
- * Car accidents
 - * Two children killed in van fire

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Can't Eliminate Risks

- * You cannot eliminate all business risks
- * These risks can be managed
- * Manage small risks – establish and follow common sense policies
- * Manage large risks - insurance

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Liability Waivers

- “Child care program/provider will not be held liable for any injury suffered by child in my program.”
- Such waivers are not recognized by courts
- Child can sue you later
- You can protect yourself by following safe practices and purchasing insurance

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POLL #1

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Price Fixing

- * It's illegal for competitors to discuss rates
- * All of the following activities are illegal!
 - * You ask another center/provider in class about her rates
 - * You call another center/provider and ask if she's raising her rates this year
 - * Association surveys its members about rates and shares results at an association meeting
- * If one party doesn't know the other is a competitor, it is not illegal

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Custody Disputes

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Custody Disputes

- * Biological parents have equal rights to child until court takes away their rights
- * One parent cannot limit the rights of the other
 - * You cannot agree to mother's request that father not pick up child
- * Mother cannot restrict rights of father by leaving him off pick-up list

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Parent Rights

- Legal custody
 - Who has power to make decisions about child's health/welfare, including right to enroll child in care
- Physical custody
 - Who lives with child and is responsible for food, clothing, shelter
- Joint custody
 - Sharing of legal and/or physical custody

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Single/Divorced Parents

- Ask parent at enrollment who has legal/physical custody
- Get copy of court order
- If parent will not give copy of court order
 - Tell parent that other parent will be allowed to take child

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Handling Custody Disputes

- * Divorce decree gives father rights to pick up child on Tuesdays and Fridays
 - * He arrives on Wednesday
 - * Ask him to leave
 - * Call 911
 - * Mother says it's ok for father to pick up on Wednesday
 - * Get request in writing

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Difficult Situation

- Man shows up to pick up child and says he is the father (child recognizes man)
- Provider does not know him. What to do?
 - Call mother. Ask man to wait
 - Follow instructions of mother
 - Man will not wait and starts to take child
 - Call 911

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Transportation Issue: Parents showing up drunk

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POLL #2

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Transportation Policy

- Parent shows without a car seat, drunk, or otherwise impaired
- Center/Provider faces two risks
 - Mandated reporter responsibility
 - Parent/child suing if child is injured
- Pickup policy
 - Others pick up, get car seat, cab, other
 - Call police if parent insists on taking child

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Vehicle-Related Issues

- * Never charge parents to transport children
 - * Include in regular fee
- * If parent is transporting daycare children in her car
 - * Her insurance will cover children
 - * Get parent permission
 - * Make sure parent has insurance
- * If your employee transports children
 - * Get "hired and non-owned liability" coverage

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Parent Lawsuits

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Protecting Yourself from a Lawsuit

- * Can't prevent a parent from suing your program
- * Keep detailed notes about parent conflicts/threats
- * Inform your licensor of unhappy parents who you believe may complain to licensing or sue you
- * Keep your business liability insurance agent fully informed of all incidents

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If You Are Under Investigation

- * Two key articles
- * How to Prepare for an Investigation
 - * <http://tomcopelandblog.com/how-to-prepare-for-an-investigation>
- * You are Being Investigated -Now What?
 - * <http://tomcopelandblog.com/youre-being-investigated-now-what-2>

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Privacy/Confidentiality

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Privacy/Confidentiality

- Parents expect you to hold confidential all info about their family unless they give specific permission otherwise
- State laws may restrict what you can share about families in care
- You should keep family info confidential
 - Professional, good business practice
 - Can reduce risk of parent lawsuit

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Privacy Situations

- You post child's photos around center/ home
- School counselor asks about child's behavior
- You overhear info about private family matter
- Parent wants to know who bit her child
- Parent wants addresses of other parents to invite to church bazaar

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Privacy on the Internet

- * Facebook
 - * Posting of photos of children in your care at center/home vs. posting of photos on Facebook or Internet
- * Family child care homes
 - * May not want to share address on Craigslist or website.

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Defending Your Program From Attacks on the Internet

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Protect Your Business

- * Parent review sites: Yelp, About.com, Yellow Pages
- * "I would never send my kids here"
- * "The staff are lazy and careless"
- * "Stay Away! Health is not the owner's priority"
- * Not used much now by parents, but may grow

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How to Respond

- * Talk to your licensor
- * Respond online
 - * Parents can post positive comments first
 - * Website may take down negative comments if in violation of their terms and conditions
- * Sue the parent?
- * Monitor your online reputation
 - * Google Alert
 - * Reputation.com

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Summary

- * You cannot eliminate the risks of running a business but you can manage them
- * Keep careful records of incidents and keep licensor and insurance agent informed
- * Create a transportation policy

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Further Information

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Good luck!