

# Preventing Legal issues from flaring up

**In early childhood programs**

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## Issues we'll cover:

- ◆ ADA as amended, January 1, 2009
- ◆ Staff babysitting for program families
- ◆ Substantive references for job applicants
- ◆ Preventing custody issues at pick up time
- ◆ Confidentiality
- ◆ Privacy
- ◆ Preventing online difficulties
- ◆ Your questions \_\_\_\_\_

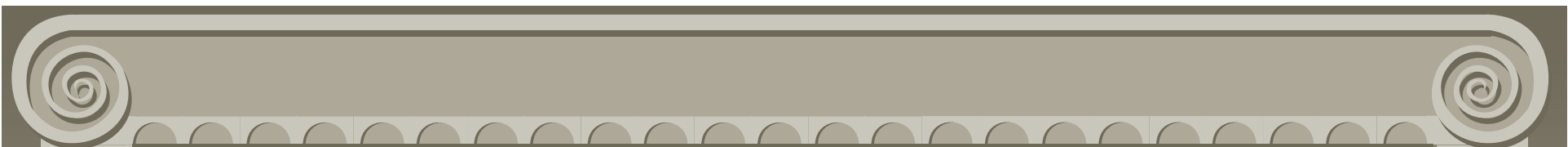
## Gertrude, preschool teacher

Gertrude's body odor is interfering with her work. Parents take all their questions to Gertrude's team teacher. Children don't want to get near her and other staff gossip about her. Her lesson plans are creative and she works harder than most staff.

As Gertrude's boss, how would you approach this challenge? Would the ADA apply?

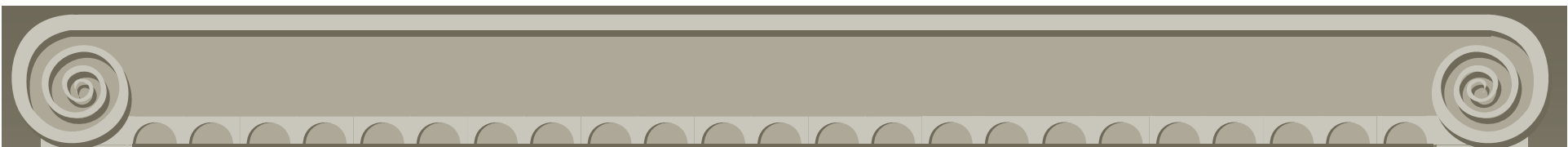
# ADAAA

- **Persons with disability**
  - **Who otherwise qualify for job**
  - **Be given reasonable accommodations to apply for, perform, enjoy benefits of job**
- ◆ **Disability- restricts major life activity- breathing, sleeping, standing\*\*\***
  - ◆ **Unless Undue hardship results- endangers business**
  - ◆ **Unless a Direct threat of significant risk is likely to occur**



Expanded Major bodily functions list now includes  
(Identify all the conditions covered in this list that may now  
be protected under the ADA)

- Immune system
- Normal cell growth
- Digestive, bowel, bladder
- Neurological
- Brain
- Respiratory
- Circulatory
- Endocrine
- Reproductive functions



**Employers cannot ask an applicant or employee if s/he has a disability.**

Once employee says s/he has a disability, employer :

1. Requests doctors description and recommended accommodations
2. Works w/ employee to agree upon reasonable accommodations.

# Vernon

- ◆ Is an Iraqi war veteran whose passion is educating young children. He completed his Associates Degree, and appears well qualified. When he arrives for his interview, he shrugs off his coat, revealing he has 1 arm. He wants to be an infant teacher. What do you do and say?

## Tune in online

*Heart to Heart  
Conversations on  
Leadership:*

*Your Guide to Making  
a Difference*

BAMradionetwork.com  
Hollyelissabruno.com or

**Send me your  
name & email  
address to receive  
announcements of  
new programs**



# Wanda the toddler teacher

Babysits for the Williams twins who are in her class. One evening, while the Williams are enjoying a date night, Wanda trips and injures both children.

What are the issues when staff babysit? For children? Teachers? The program?

Who is responsible?

Do you have a babysitting policy?

## No Babysitting Policy

Teachers may not babysit  
for children enrolled in  
our program.

# Consent to hold program harmless

We/I, \_\_\_\_\_ (parents/legal guardians) of  
\_\_\_\_\_ (child/ren) agree to hold \_\_\_\_\_ (program)  
harmless for any injury that may befall our children when  
we hire teacher \_\_\_\_\_ to babysit.

We understand this consent takes exception to the program's  
No Babysitting Policy.

_____ Parent//Guardian	_____ Date
_____ Program Director	_____ Date
_____ Teacher	_____ Date

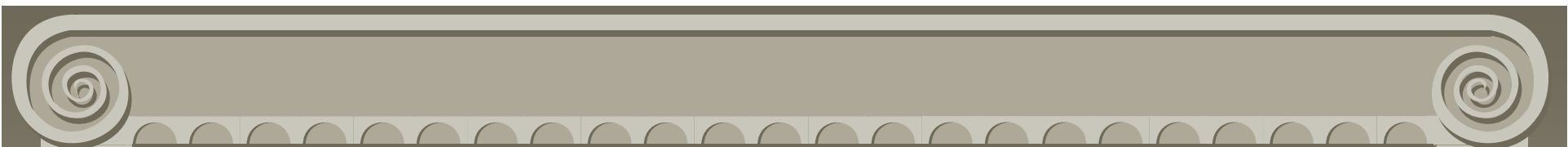
# *Due process*

◆ **Notice:** tell  
people  
about  
changes that  
affect them

◆ **Right to a  
hearing:**  
provide  
opportunity  
for feedback

## Case study on “due process”

- ◆ Teacher Trixie hears “through the grapevine” you may take away their right to babysit for program families. She starts a rumor mill riling up parents and teachers to fight you “tooth and nail” on this.
- ◆ Describe due process steps you could have taken to both prevent and now address this new challenge caused by Trixie?



What does your program's current Reference Policy allow you to say if you are called by another Director asking you to give a reference on a former employee?

Does your policy allow you to provide and receive the information you need?

# Current practice

- ◆ When called for a reference on a former employee, you may only provide:
- ◆ "Yes" or "No" when asked if the employee worked for our organization
- ◆ The dates of her/his employment
- ◆ "Yes" or "No" when asked: "Would you rehire this person?"

## Job reference for teacher Mona

Director Veronika would have fired infant teacher Mona if Mona had not resigned. Mona was late everyday and had a short fuse with crying babies. Mona gossiped viscously about her team teacher.

Mona gives Veronika's name as a reference when she applies to Busy Bee preschool. What can/should Veronica say when called?

# Hold Harmless Reference Policy

- ◆ I, \_\_\_\_\_, employee of \_\_\_\_\_(program) agree to hold the program harmless for a reference they provide on me in the following areas (Initial each area selected):
- ◆ Classroom management
- ◆ Developmentally appropriate practices
- ◆ Inclusiveness
- ◆ Building partnerships with families
- ◆ Embracing diversity
- ◆ Timeliness
- ◆ Preparation

At the end of the day

Legal and ethical issues at  
**release time** when families pick  
up their children

# Who is liable?

- ◆ You buckle toddler Tyrone into his car safety seat?
- ◆ You provide safety seats for families that can't afford them?
- ◆ You hear parents aren't using safety seats?
- ◆ A volunteer bus monitor buckles children into seats?

# Case study: Babysitter Amanda

◆ Age 12

◆ Parents want to put her on  
Authorized List

◆ Your state's regulation?

◆ Your program's policy?

## Authorized List for pick up

◆ *Persons on the Authorized List for picking up a child, must be at least 18 years of age and able to supply documentation of their identity.*



Case study

*Lupe & Buster's children Yvette & Milagros*

# Shared custody parental/family agreement

◆ *We, \_\_\_\_\_ & \_\_\_\_\_, parental custodians of \_\_\_\_\_, agree that \_\_\_\_\_ will pick up \_\_\_\_\_ on Mondays-Wednesdays; \_\_\_\_\_ will pick up \_\_\_\_\_ on Thursdays and Fridays. If a parent attempts pick up on the other parent's day, that parent must document the other parent's consent. If continuous changes occur, both parents will file a revised agreement with the program.*

# Privacy Policy, Program Reputation, Price Fixing

Tom Copeland, JD

Author, trainer, advocate

# Privacy Policy

# Privacy/Confidentiality

- Parents expect you to hold confidential all info about their family unless they give specific permission otherwise
- You should keep family info confidential
  - Professional, good business practice
  - Can reduce risk of parent lawsuit

# Privacy Situations

- You post child's photos in classroom or child's name on artwork posted on the wall
- School counselor asks about child's behavior
- Parent wants to know who bit her child
- Parent wants addresses of other parents to invite to church bazaar

# Privacy Policy

- A privacy policy should tell parents you will:
  - Abide by your state's privacy laws
  - Keep all information about their family confidential
  - Only release information with their written permission
  - Identify common practices you want parent permission

# Privacy Issues

- Giving references to other programs
- Sharing information on the Internet
  - No posting of children's photos, names, etc without written parent permission
- Staff confidentiality policy
  - No taking of pictures by staff
  - No posting of negative comments about children or program on Twitter, text messages, or any Internet site

# What to do if Your Reputation is Attacked on the Internet

# Parent Online Reviews

- “The director brought me to tears, yelling at me in front of everyone about how awful and horrible my child was.”
- Internet parent review sites:
  - <http://www.yellowpages.com/>
  - <http://www.yelp.com>
  - <http://tinyurl.com/4y5k4ft> (About.com)
  - <http://www.insiderpages.com/>

# Responding to an Attack

- Talk to your licensor
- Respond online
  - Report reviews that violate website rules
  - Ask current parents to write positive review
- Sue the parents?

# Monitor Your Online Reputation

- [www.google.com/alerts](http://www.google.com/alerts)
- Ask parents to report any negative postings
- Companies that can help restore your reputation
  - [www.reputation.com/](http://www.reputation.com/)
  - [socialmetrix.com/en/](http://socialmetrix.com/en/)

# Price Fixing

# Price Fixing

- What's wrong with these activities?
  - You call up another center director/teacher/provider and ask about her program's rates
  - You visit another center and ask if they will be raising their rates next year
  - Your association surveys its members about rates and shares the results at next meeting
- All of the above activities are illegal!

# Competitors

- It's illegal for competitors to discuss rates
  - Violation of Sherman Antitrust Act
- It's not illegal unless both parties know they are competitors
- Okay to call another program: "I'm a parent looking for child care, what do you charge?"

# How to Get Rate Information

- CCR&R can share any rate information with the public (including child care programs)
  - Post on your website, brochures, Craigslist
- You can collect rates information: from current and past parents, classified ads, public surveys, Internet, other centers (without identifying yourself)

# Further Information

- Feel free to contact Tom Copeland with your questions
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