



How to Effectively Use Contracts & Policies in the Age of COVID-19

Presented by Tom Copeland

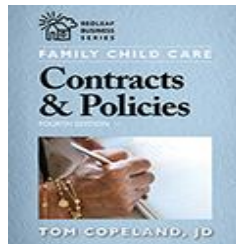
For Child Care Resource and Referral agencies in
Camden County and Monmouth County, New Jersey

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Instructor

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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.”

You Are Your Own Boss

- One of the many benefits to being a family child care provider is – you can run your business as you want
 - Highly structured vs. informal program
 - Religious vs. non-religious activities
 - Care for or exclude infants
 - Many field trips, dramatic play everyday, vegetarian food, etc.

Limitations

- You must follow New Jersey licensing rules
- You must follow subsidy program rules
- You must follow Food Program rules
- You cannot discriminate based on:
 - race, religion, gender, sexual orientation, disability, national origin, gender identity or expression
- Other than this, you can do what you want!

Parents as Clients

- Many parents have little experience with child care
 - Last generation of parents who were not in child care as children
- Parents may have difficulty understanding child care as a business

Home vs. Center

- Center
 - Easier to relate to as a business
 - School for small children
- Home
 - Harder to understand as a business
 - Doesn't look like a business, no cashier, no checkout, private home (scary for some parents)

Different Rules

- You can have different rules for different parents
 - Rates
 - Pickup times
 - Other
- Reasons for different treatment should be defensible
 - Age of child, parent longevity, “special circumstances”

You Must Set Your Own Rules

- As owner of your own business, it's up to you to define your program
 - “Why do some parents not treat providers like a business?”
 - “Because some providers don't act like a business”
- No classes for parents: “How to Pay your Child Care Provider on Time”



- **New Rules
for COVID-
19**

If You Are Closed

- If you are closed you can't charge parents unless your contract says they must pay in the event of a public health emergency, or words to that effect
- Parents can voluntarily pay you or you can ask parents to pay
- You can get the parents to sign a new agreement that says they must pay
 - They must sign it for it to be enforceable
- You can charge a holding fee to hold the spot until you reopen

If You Are Open

- You can charge parents if your contract says they must pay if you are open
- You can charge your full rate, reduced rate, or no rate
- Be clear if parent is terminating or will come back

Your Rules

- During the COVID-19 pandemic you are free to set your own contract rules and policies
- You can change them whenever you want
- A change to a contract must be in writing and signed by the parent to be enforceable
- You can make a change in your policies whenever you want, without a parent signature
- You can have different rules for different parents

Can You Refuse Care to a Child?

- Before refusing to care for a child who you believe is sick or you are concerned might get sick, consult your contract and policies
- You can deny care to a child as long as it doesn't violate federal or state anti-discrimination laws
- Declining care because of COVID-19 is not against the law
- So, you can refuse care using stricter rules than you currently have, if you change your policies

Can You Exclude a Child to Care for Another?

- Can your program kick out one child to make room for a child of an emergency worker/health care worker?
- Yes. It's not illegal discrimination
- Follow your contract procedures if you are terminating
- You can ask parents to voluntarily keep their child at home
- You can set whatever policy you want by giving the excluded family special treatment when they return

Subsidy Parents

- How to handle loss of subsidy parents?
- Your contract should always say that subsidy parents are fully responsible for their bill, even if the subsidy program won't pay
 - It will be difficult to collect directly from subsidy parents
- Contact the subsidy program to see what their policy will be if you or parents are quarantined
- Otherwise, you can set your own rule as long as it is applied consistently to all parents
 - If you are not sure about changing your policy to subsidy parents, ask your subsidy program for advice

Liability Waivers

- “Parent promises to hold harmless the ABC Child Care Program if their child contracts the COVID-19 while enrolled in our program”
- Asking parents to sign a liability waiver won’t protect you
- Judges will throw out liability waivers because a parent can’t give up their right to sue in this situation

Protect Yourself

- Your program clearly has a duty to keep everyone safe
- Best practice is to follow the Centers for Disease Control (CDC) guidelines and New Jersey state health department guidelines
 - By doing so it will be hard for parents to prove negligence
- It will be extremely difficult for a parent to prove where their child contracted COVID-19



More on Contract and Policies



Parent Enrollment

- You don't have to accept all parents
- References
- Can say "no" for no reason, or any reason (except illegal discrimination)
- Trial period

How to Say "No"

- "I don't think this is the best place for your child at this time"
- Don't put reasons in writing
 - Parent may be insulted
 - Illegal discrimination danger

What is a Contract?

- Legally enforceable agreement between two parties
- Terms of time and money are enforceable in court
 - Hours of operation, open/close for holidays, vacations, sick days, etc.
 - Fees for care, terms of payment, other fees

Basic Contract Terms

- Names of all parties to contract
- Hours of operation
- Terms of payment
- Termination procedure
- Signatures of all parties

Two Key Contract Terms

- To avoid problem of parents owing money when the leave –
 - “Client will pay at least one week in advance”
 - “Client will pay in advance for the last two weeks of care”

Pay One Week in Advance

- Never provide care unless it has already been paid for
- You have expenses during the week (food, supplies)
- Payment can be on Monday or on Friday for the next week
- Parent can pay a little extra per week as a transition

Pay Last Two Weeks in Advance

- Most common contract problem: Parents leave without paying
- Advance payment covers last two weeks even if rates have gone up
- Parent can pay a little extra per week as a transition
- You should offer refund if terminating parent immediately
- Easier to enforce other rules if paid in advance

Holding Fees

- You promise to hold slot open until a future date
- If you do promise to hold slot it is reasonable to ask parent to pay
 - Payment can be flat fee, % of regular fee
 - Holding fee is nonrefundable
- It is reasonable not apply holding fee to the first or last weeks of care

What are Policies?

- Rules that spell out “how” care will be provided
- Policy rules are not enforceable in court
 - Parent doesn’t bring extra change of clothes
 - Provider doesn’t take scheduled field trip
- Your policies can be simple or extensive

Key Policy Terms

- Provider information
- Client responsibilities
- Child care program description
- Illness, health, and safety policies
- Policies for transporting children

No requirements for any policies (unless mandated by the state)

Transportation Policy

- Parent shows without a car seat, drunk, or otherwise impaired
- 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

Two Separate Documents

- Contract and policies should be two separate documents
- Contract can only be changed with parent signature
- You can change your policies at will

Contract- Policy Negotiation

- Providers set their own rules
 - They can negotiate with parents to change them
- Parent wants to renegotiate late fee
 - Response: No, Raise regular rate, Make exception
- Parent can't afford to make weekly payment
 - Response: Repayment plan, Forgive debt, Terminate

Collecting Parent Payment

- Common time of stress
- “I forgot my checkbook”
 - Go home and get it (late fee will be due)
 - Use blank check obtained earlier from parent
 - Some providers use electronic bank transfer apps: Zelle, Venmo, PayPal, KidKare, GooglePay, and more

Enforcing Agreements

- You are always responsible for enforcing your contract and policies
- You can enforce your rules, renegotiate them, or ignore them
- If you decide not to enforce a rule you should take it out of your contract or policies

Consequences

- Despite COVID-19 providers should not hesitate to enforce their rules when necessary
- To enforce your agreement you must set a consequence
- Consequences to parents
 - Money
 - Termination of agreement

Late Pick-Up

- Parent is regularly late in picking up child
- Possible consequences:
 - Late fee
 - No late fee if notified by phone within 1 hour
 - 15 minute grace period, then \$.50 minute
 - \$1 minute
 - Termination
 - 2 late pick-up in a month, then termination
 - Immediate termination

What's the Worst That Can Happen?

- Providers are often worried that parents will leave if they put their foot down and enforce their rules
- Sometimes parents do leave – not the end of the world
- Providers rarely regret it when they do enforce their rules

Before Ending the Agreement

- Clearly state the problem and its consequences
 - “Pay me on time or I will terminate the contract”
- Give the parent a written warning
 - “The next time you pay me late I will terminate the contract”
- Give the parent a termination notice

Conflict Resolution

- Providers often feel stuck in trying to resolve conflicts with parents
- Find a coach to help you deal with parent conflicts (spouse, another provider, etc.)
- Job of coach is to get you to choose one of the 3 Choices of Life to resolve the conflict

3 Choices of Life

- Choice #1: "I am happy"
- Choice #2: "I am not happy. This is what the parent must do to make me happy. If the parent doesn't do it, I will terminate the parent"
- Choice #3: "I quit my business"

3 Choices of Life Explained

- Choice #1: “I am happy”
 - Life is too short to worry about it. Let the parent do what they want
- Choice #2: “I am not happy”
 - If the parent won’t follow the rules, end the agreement
- Choice #3: “I quit my business”
 - I’m not happy and I can’t deal with the stress, so I’m going out of business

Deciding What to Do

- It's acceptable for you to choose any one of the 3 Choices of Life
- Many providers bend their rules and remain happy
- Some providers are better off moving on to another job – why be unhappy and make a small amount of money?
- If you are not happy you need to take action

Ending the Contract

- Reasons for terminating the contract
 - Disruptive behavior
 - Violation of the contract
 - High anxiety
 - Any reason
- Before terminating, you should ask yourself – “Is there anything the parent could do that would change my mind?”

Termination Procedure

- “Parent must give a two-week written notice. Payment is due for this notice period even if child is not brought to care.”
- “Provider may terminate at will.”
 - You may give a notice

Termination Notice

- “Your last day of care will be _____. Under our agreement you are required to pay for my services until then, whether your child attends my program or not.”
- Don’t explain reasons for termination in the notice
 - Parent will not agree
 - Parent may believe you are illegally discriminating

Collection Agency or Go to Court?

- When trying to collect from a parent – use collection agency or go to small claims court?
- Collection agency
 - Will take a % of fees they collect
 - Google “Collection Agency”
- Go to court
 - No guarantee of winning
 - Takes more time and must pay filing fee

Before Taking a Parent to Court

- Send a “demand letter” that includes:
 - Dates you cared for child
 - Amount owed you under your contract
 - Enclose copy of contract
 - Demand for payment by a specific deadline
 - Notice that you will take legal action if they do not meet the deadline

Summary

- You are your own boss – design your program to meet your needs
- Use a written contract and policies
- Enforce your rules with consequences

- Good luck!

Ask Tom

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