



EARLY CARE & EDUCATION LAW PROJECT

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GUIDELINES FOR RELEASING CHILDREN

As a child care provider you have a legal obligation to protect and care for each child in your care. This obligation encompasses who you release a child in your care to and under what circumstances you release a child. Releasing a child to an unauthorized individual could pose legal problems for a child care provider and result in revocation of a provider's child care license. On the other hand, not releasing a child to a legal parent could result in similar trouble. Child care providers are often forced to make difficult and case by case decisions about releasing children. This handout is intended to help clarify the guidelines for releasing children and assist child care providers in making reasonable decisions.

AUTHORIZED AND UN-AUTHORIZED PICK-UPS

- Providers are legally responsible for the safety of every child, and can be held liable for releasing a child to an unauthorized person.
- Providers can only release a child to those having a legal right to remove a child or someone who was previously authorized by a parent or legal guardian. Children can also be released to civil authorities (i.e, police, paramedics, and child welfare workers).
- Parents can properly "authorize" individuals with an "authorization card" (different from an emergency card) to permit those persons to pick up their children.
- If parent tells provider they want a person for whom they have not previously filled out an authorization card to pick up their child, the parent should be asked to immediately provide authorization in writing prior to pick-up. The written authorization should include the person's address, telephone number and a brief description of the individual's physical appearance.
- Providers may want to obtain photographs of authorized pick-up persons to ensure child safety and decrease mistakes.
- **If an *unauthorized* person shows up & demands release of child:**
 - Take steps to avoid criminal/civil liability by resisting demands.
 - Providers should stay calm. Ask for the person's name and for ID. Explain to the person that the law and facility rules prevent release to unauthorized persons. Explain that the only exception would be if the enrolling parent has signed a written authorization and it has been verified with the provider.
 - Immediately call custodial parent and inform him/her about the situation. If the parent denies authorization for the child to be released to this person or if you are unable to

contact the parent, refuse to release the child. Consider contacting the police if the individual does not stop demanding the child's release.

- If the person abducts the child by force, obtain a detailed description of the person and the vehicle, take note of the direction in which they went, and immediately call the police.
- **OR if an unauthorized person claims to be a parent but provider has never seen him/her before:**
 - Same procedure as above. Look through records to see if this other parent is named.
 - BUT if it is legal parent, provider can NOT refuse release unless there is a court order limiting that parent's rights to custody.
 - Get additional information: where child is being taken, phone number, vehicle type & license plate number.

SPECIAL SITUATIONS OR CIRCUMSTANCES TO CONSIDER

Intoxicated or Impaired Parent (or Authorized Individual) Comes to Pick Up Child

- CA state law: Provider can deny *access* to an adult whose behavior presents a risk to children present *in* the facility. However, it is unclear whether this standard permits a provider to deny releasing a child to his/her legal parent.
- If an intoxicated or impaired parent comes to pick up the child, you should follow these recommended steps:
 - Attempt to delay departure until you can call the other parent or another authorized person to pick up the child.
 - If the person refuses to cooperate/acts in threatening manner, make a judgment as to what a reasonable person would do under similar circumstances concerning release (i.e. possibly calling the police).
 - If child is taken by the person, write down the vehicle type and the license plate number & immediately report situation to police and/or other parent.
- According to the California Department of Social Services and the Child Care Advocate Program, if a parent comes to pick up their child while inebriated or under the influence of drugs, child care providers must:
 - Make every effort to prevent the parent from taking the child by taking the recommended steps mentioned above. If the facility is closing, this would include staff staying with the child and attempting to call another relative or adult who has been identified by the parent to assume responsibility for the child. If finding someone to stay with the child is impossible, local law enforcement should be immediately notified and provided with information including the address of the parent and the vehicle they are driving. The parent should be advised when bringing the child to care on any subsequent day that this situation will not be tolerated, and you are prepared to notify law enforcement again if the situation recurs.¹

¹ Found at <http://www.cclid.ca.gov/res/pdf/HowtoMakeChildCareCenterSafe.pdf>, viewed on April 13, 2010.

- Providers should assess each situation and act reasonably. The provider should make it known to the parent or authorized individual that the behavior is unacceptable and may result in the provider calling the police and cancelling enrollment of the child.
- Providers should report the incident to Community Care Licensing as an unusual incident.

CAR SEATS

- Providers may not be able to refuse to release a child to a parent who is driving a vehicle without a car seat.
- BUT providers should contact other parent/authorized person to see if they can provide a car seat.
- If problem continues, discuss with parent. Explain that if corrective steps are not taken, you may choose to terminate the child from your program.
- Consider inserting a clause in your parent-provider contract that states that you have the right to cancel enrollment if a parent fails to use a car seat when transporting his or her child.

FAILURE TO PICK UP CHILD

- Providers should wait a reasonable amount of time with child since the parent may just be late.
- The provider should stay calm and first attempt to reach the parent. If unable to reach parent, the provider should contact other individuals authorized to pick up the child.
- If “authorized person” is unavailable, and provider can not wait any longer, he/she can contact law enforcement to take child into protective custody.
- Providers should have a policy on late-pick-up as part of their child care contract with the parents. Many providers have a policy where they reserve the right to immediately terminate the child from their child care after a certain number of late pick-ups or for failure to pick-up the child at all, or have a fine which must be paid immediately upon late pick-up. Usually a reasonable conversation with the parent will rectify the problem or prevent it from getting worse.

CLARIFICATION OF PARENTAL RIGHTS

- At the time of enrollment for each child, make certain to obtain:
 - Clarification of the existing parental relationship of each parent and any other parental relationship (i.e. adoption, remarriage) to child. As a preliminary matter, child care providers should ensure that the enrolling parent has the ability (i.e. has custody rights) to enroll the child.
 - A copy of any court documents that affect or describe existing parental rights (i.e. court custody order) and keep on file. Be sure that any court orders are signed (or stamped) by a judge, especially if a guardian provides a restraining order that denies access to a parent. The provider should also inform the enrolling parent that the parent must

- provide a copy of any updated custody orders that he/she expects the provider to comply with.
- Name, address, phone number of non-enrolling parent, even if there is no contact with that parent.

Assure parent that all family related information will be kept confidential to the extent allowed by the law; and that obtaining such information is part of the enrollment procedure and is ultimately intended to protect the child.

- If a parent comes unannounced and asks to observe, the provider can NOT refuse entry if (1) it is the “legal” parent, (2) the parent does not pose a risk to other children, and (3) it is during ordinary business hours. However, providers are allowed to suggest that parents come during certain hours, so children are not disturbed.
- Providers *should* explain to enrolling parents that unless there is a court order stating otherwise, a provider *must* release the child to either “legal” parent. A court of law is the only entity with the authority to legally limit parental rights.

Rights of Separated and Divorced Parents

- Separated or divorced parents that had legal custody during the marriage still retain legal custody of their children unless there is a court order terminating or changing their rights. Each “legal” parent has the right to pick up their child and child care providers cannot deny the release of a child to a legal parent. Additionally, each “legal” parent has the right to authorize persons to pick up the child.

ADDITIONAL RESOURCES

For further information regarding guidelines for releasing children, please refer to:

1. Department of Public Social Services Child Abuse Hotline: (800) 540-4000
2. National Highway Traffic Safety Administration (car seats): (888) 327-4236
3. City of Los Angeles Community Development (car seats): (213) 744-9099

This document was prepared by Public Counsel’s Early Care & Education Law Project in May 2010 and is meant to provide general information. This document is not all-inclusive and is not intended to provide any individual or entity with specific legal advice. Receiving this document does not create any lawyer-client relationship. For questions or comments, please call the ECE Law Project Intake line at 213/ 385 2977 ext. 300.

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