

September 2012 EPress

Summer posters!

This summer we mailed new posters and flyers to each program. The poster is a new Family-Centered Practice design that focuses on 10 positive things that parents can do with their children. The flyers include a very appropriate summertime theme of water safety, as well as a new Superhero theme, and a flyer that explains the Family Skill Builder to parents.

If you have not received this mailing tube or need more of any one of these materials, please contact Zachary Summerlin (zsummerlin@fsu.edu or 850-644-1715) and we will mail them to you.

Be sure to check them out on the website, they look great!

FAMILY SKILL BUILDER

The Family Skill Builder was announced in the summer E Press. It is designed to foster healthy interaction between the parent and child based upon age appropriate developmental milestones. Social service providers are encouraged to share this information before and after supervised visits, with clients, and in training with staff and volunteers.

Please complete the survey below and let us know if the Family Skill Builder is a beneficial resource to your agency and clients. Your feedback is crucial in the development of new resources, so please

take one minute minutes to answer questions in the survey below.
Thank You.

https://fsu.qualtrics.com/SE/?SID=SV_eVsBYjBSj3auNBG

NEW RESOURCE – Article Summaries

The Clearinghouse has produced an updated, annotated bibliography with sources related to Supervised Visitation Programs. These sources help provide a clearer picture of how updates in states' laws, unique pilot programs, new safety recommendations, and recently identified gaps in research affect Supervised Visitation Programs.

<http://familyvio.csw.fsu.edu/new-supervised-visitation-research/>

Follow Up to Technical Assistance Call

During the last Phone Conference, we had a spirited discussion about the issue of parents bringing their guests/family members to visits. Below is a summary of the conversation:

When considering this issue, program directors **must prioritize safety** and balance the following important considerations:

- The best interest of child(ren), who may be attached to the additional person.
- The needs/requirements of therapy.
- Family history of additional person/people, which can be positive or negative.

- Criminal history of additional person/people.
- Cultural implications/considerations when the child has an attachment to the additional person/people.
- Sibling relationship (when siblings are the additional person/people).
- The size and structure of the program, which may limit the number of people that the program can accommodate (some programs are very small or situated in such a way that additional people must be limited).

Other Notes:

- Some programs do inquire as to the opinion of the other parent, although in domestic violence cases be sure to consider the risk of burdening a victim with a decision that an abuser will blame on that victim.
- Program efficiency should not trump the best interest of the child.
- Some programs require that the additional person be specifically mentioned in the court order .
- All programs reserve the right to exclude an extra person if that person is deemed to be disruptive or have a negative impact on the visit.
- Some programs require that the additional person sign a form acknowledging the program rules.
- Some programs conduct Intake with the additional person prior to the first visit.
- Other programs conduct a less formal orientation with the additional person so that the person understands the program's goals and limitations.
- Programs are responsible for the safety and monitoring of the site, which limits participants' ability to congregate and remain onsite before a visit begins or after it ends.

- Medical foster parents use visits to train parents on medical procedures and caring for the child, an essential task.
- Case managers should be consulted about additional participants whenever possible to ensure case plan compliance.
- The visit supervisor is still responsible for monitoring the visit, even if a Guardian ad Litem or other professional is present.

The issue of additional participants should be viewed as a way to tailor the case to the interests of the family, so that programs can balance the interests of the child and the needs of the family. Talk with your referring agencies/representatives like judges and case managers about how to best serve the families sent to your program.

Top 10 Problems Experienced by Foster Care Youth

By Jessica L Gambill

Foster care youth are best cared for when they are understood. It is important to be armed with the knowledge of what they have experienced, what issues they could face, and how to address or prevent these problems. Caregivers and supervision providers often have primary contact with foster care youth and may be able to utilize problem prevention strategies. The top ten issues listed below are not an exhaustive list, but they are among the most common problems experienced by those who have experienced foster care. Feel free to share this information with your stakeholders and advisors.

1. Cognitive and Developmental Delays

(Harden & Wittaker, 2011) (Benigno, Carroll, Fox, Koga, Nelson, Windsor, Wing, & Zeanah, 2011)

More than half of foster care youth under the age of 2 years are at risk for developmental delays, especially in language skills. Harden and Wittaker found that these children had more compromised language abilities. Benigno, et al., learned through their study that the later a child is placed in care, the greater the delay and difficulty he or she will have with language.

Strategies for problem prevention:

- Speak to babies by changing pitch of voice from high to low. Use slow and distinct speech, repeating words and phrases, to enhance understanding.
- Ask open-ended questions rather than closed-ended (yes or no) questions. Listen carefully and patiently wait for replies. This encourages language growth.
- Set up an environment and activities that inspire an appreciation for words, storytelling and communication in all their forms. (i.e. language games like making up rhymes)
- Engage children in activities that encourage:
 - grouping,
 - matching,
 - temporal ordering (arrangements of events according to time),
 - seriation (sorting objects or situations by any characteristic, such as its shape, color, or size),
 - and cause and effect.

(PBS)

2. Running away and Homelessness

(Tyler & Melander, 2010) (Soman, Tam, & Ziotnick, 2012) (Chamberlain, Kelban, Mills, Van Ryzin, & Vars, 2011) (Berzin, Curtis, & Rhodes, 2011)

According to research cited in Tyler and Melander, in 2002, 1.6 million American adolescents from 12–17 years old have run away from home and slept on the street.

As documented in a congressional report by Fernandes (2008), a study of 479 foster care youth who had transitioned to adulthood found that “22% were homeless at least one day during the year after they left foster care versus 1% of the general population who were homeless within the last year.”

Strategies for problem prevention:

- Typically there is an underlying problem that drives youth to run away. Encourage open, trusting relationships with foster youth so problems will surface before a run away attempt.
- Do not belittle the problem faced by youth that sparked the intent to run away. Instead, listen carefully and empathetically.
- Do not be intimidated by the threat of youth running away. Instead, emphasize the care you have for him or her and the extent you would go to locate the youth, including reporting to the police and organizing a search.

(Shoemaker)

3. Criminal Engagement/Incarceration

(Tyler & Melander, 2010) (Soman, et al., 2012) (Chamberlain, et al., 2011) (Barn & Tan, 2012)

There is a disproportionate number of foster care youth involved in the department of juvenile justice (as cited in Chamberlain & Leve, 2007). Additionally, according to a survey by the National Association of Social Workers, 80 percent of prisoners in Illinois spent time in foster care as children (Thoma, 2010).

Strategies for problem prevention:

- Get at-risk youth involved in a delinquency prevention program. Florida programs can be located through the following link:
<http://www.djj.state.fl.us/programs-facilities/program-facility-locator>

- Practice Prevent Delinquency Project’s F.A.M.I.L.Y. Model:
 - F: Familiarize yourself with threats against youth.
 - A: Accept that youth need supervision and guidance.
 - M: Monitor their activities.
 - I: Investigate anything that causes suspicion.
 - L: Listen and learn from your children.
 - Y: Yearn to help when problems arise.

(Bartol, C.; Prevent Delinquency Project, 2012)

4. Drug use and Substance Abuse

(Soman, et al., 2012) (Berzin, et al., 2011) (Jones, 2011)

“A recent study using a nationally representative sample of adolescents aged 12-17 years found that those with a history of foster care were more likely to use alcohol and illicit drugs and to have other substance use disorders compared to those not previously in foster care.” (Tyler & Melander, 2010)

Strategies for problem prevention:

- Maintain open communication. Talk about drugs.
- Establish rules and follow through with them.
- Be involved with the daily life of your child and model positive behaviors.
- Encourage wise social choices, including building healthy friendships.

(National Crime Prevention Council, 2012)

5. Victimization

(Tyler & Melander, 2010) (Ahrens, Katon, McCarty, Richardson, & Courtney, 2012)

Foster care youth often are placed in foster care because of maltreatment perpetrated by a caregiver. If this is the case, they are at greater risk for re-victimization in future relationships. As cited in Huefner, Ringle, Chmelka, & Ingram (2007), exposure to and a history of abuse is strongly linked to either becoming a perpetrator or victim of abuse.

Strategies for problem prevention:

- Establish a healthy relationship encouraging victimized youth to trust you and other good-natured adults. Listen carefully to the child's needs.
- Allow him or her to express feelings without additional shame.
- Be cautious of making statements that may imply blame or saying they are lucky their experience wasn't even more traumatic. These statements are not consoling.
- Let youth know that you are sorry that they had been a victim and you want to be able to understand and help them.

(Federal Bureau of Investigation)

6. Teen Pregnancy

(Soman, et al., 2012) (Berzin, et al., 2011)

Foster care youth transitioning into adulthood are 2 times more likely to already have at least one child and be a single parent. (Chamberlain, et al., 2011)

Strategies for problem prevention:

- For some strategies to prevent Teen Pregnancy among foster youth, see The National Campaign to Prevent Teen Pregnancy's Ten Tips for Foster Parents (2006) publication:
http://www.thenationalcampaign.org/resources/pdf/pubs/10TipsFoster_FINAL.pdf

7. Unemployment

(Soman, et al., 2012) (Chamberlain, et al., 2011) (Fernandes, 2008) (Barn & Tan, 2012)

As cited in Chamberlain, et al., a study of youth transitioning out of foster care found that less than 55% were employed and, of those employed, wages generally fell below the poverty line.

Strategies for problem prevention:

- Teach children a strong work ethic. Demonstrate it as a role model and encourage it with opportunities, such as chores for rewards.
- Empower youth to make choices, reach success, and learn from failures by teaching youth to set goals and objectives.
- Show older youth how to document their accomplishments.

8. Overall Mental and Physical Health

(Fernandes, 2008) (Anderson, 2011)

Adults with a history of childhood foster care are estimated to be 1.5 times more likely to experience physical or mental health problems. (Soman, et al., 2012)

Strategies for problem prevention:

- For better mental health, encourage effective and healthy coping methods to deal with the stressors of life.
- If past trauma has lowered the functioning of a child, seek a counseling professional to help the child start healing.
- Provide youth with healthy meal options and opportunities to be physically active.

9. School failure

(Fernandes, 2008) (Jones, 2011)

A little more than half of foster care youth will earn their high school diploma by age 19 compared to 87% of youth nationally. Only 3% will be able to earn a college degree compared to 28% of the general population. (Chamberlain, et al., 2011)

Strategies for problem prevention:

- Build a parent-teacher relationship. The more involved you are in a child’s education, the more involved they will be in their own education.
- Encourage extracurricular activities. These provide incentives to keep grades up.
- Connect the student with a mentor. This can help his or her academic performance.

10. Socio-emotional functioning

(Harden & Wittaker, 2011) (Barn & Tan, 2012) (Eamon, 2001)

Socio-emotional functioning is inclusive of relationships with others, emotions, and personality (Santrock, 2008). Foster care youth are more likely to have elevated behavior problems (Chamberlain, et al., 2011) and experience situations like peer exclusion (Barn & Tan, 2012).

Strategies for problem prevention:

- Model behaviors you want your child to exhibit. For example, be helpful to others and say “Please” and “Thank you.”
- Praise children for what they do right. Pay more attention to good behaviors and less attention to undesirable ones.
- Provide opportunities for play with others. Set-up play dates. This is how children learn to behave with others.
- Teach healthy conflict resolution, coping, and cooperation.

(PBS)

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Question from Directors

If providers of supervised visitation require clients to sign a release of liability prior to the commencement of new cases, will this protect the program from all future claims of liability?

BRIEF ANSWER

No. Although the use of releases of liability has been upheld in some cases, they are disfavored by the courts and are strictly construed against the party claiming to be released from liability. In addition, providers of supervised visitation should not assume that they can abandon their responsibility of carefully determining whether or not it is appropriate or safe to take a case in the first place. Below is a discussion of releases of liability. This is not a substitute

for legal advice: if your program wants specific information about a particular set of circumstances, consult your agency's pro bono attorney or counsel of record.

An Introduction to Releases of Liability

By Andrew Deneen

It is not uncustomary for people to sign various documents before participating in both commercial and non-commercial activities. Sometimes these documents serve the purpose of releasing one party for future negligence claims. Though they come in various forms, "Anticipatory Releases" "General Liability Releases" "Waivers" "Exculpatory Agreements" etc. usually serve one of two specific purposes.

These documents may operate as a contract between two parties not to sue in the event of an injury, and they may also serve as a contract not to hold liable another party for their own negligence. The use of these releases may seem to be on the rise as it is not uncommon for members of the public to sign releases before various physical activities. Despite this trend, there remains a significant question about the application of the liability release.

These releases relate to two different areas of law, torts and contracts. The Law of Torts governs those acts, which result in the injury of another's person, property or some other legally protected right or interest. Usually the remedy for this action comes in the form of damages. When a release of liability is used, the two parties agree prior to the activity, that the injured party will not hold the other party liable for any injuries even those resulting from negligence. A contract is signed prior to the commencement of some activity and the contract serves to release one party from potential tort liability. There is however a tension in this system.

"A basic premise of tort law holds a party responsible for his or her own negligence or intentional misconduct that causes harm to another. An equally fundamental tenet of contract law provides that a competent party has the freedom to construe his or her own bargains and agreements." Releases: Is there Still A Place for Their Use by Colleges and Universities. Mary Ann Connell, Frederick G. Savage. 29 J.C. & U.L 579 (2003).

Essentially, as policy we don't want people to be able to claim that they are free from liability for injuries they cause by negligence, but we also want people to be able to contract for any agreement they hold important.

Courts generally resolve this tension by applying a high level of scrutiny to releases. However, this does not mean that a release will not be upheld. In Florida, “Generally, exculpatory contracts which attempt to relieve a party of his own negligence are not looked upon with favor, however, such contracts have been held valid and enforceable in Florida, where such intention was made clear and unequivocal in such contract.” *Orkin Exterminating Company of South Florida v. Clark*, 253 So. 2d. 884 (Fla. 3d DCA 1971). The Eleventh Circuit elaborated saying that when there is an exculpatory provision, not only will it be looked upon with disfavor by the court, but it will be strictly construed against the party claiming to be released from liability. *Cooper v. Meridian Yachts, Ltd.*, 575 F.3d 1151 (11th Cir. 2009). Various jurisdictions have developed tests to determine the validity of releases.

It is important to recognize that any discussion here is about a hypothetical release. It would be the responsibility of the organization to meet with an attorney when drafting a valid release and determining whether or not to implement specific policy to support that release. **This memo speaks to releases in general and offers a discussion of the various conflicts with a release in the supervised visitation community.**

DISCUSSION

Scrutiny of Releases

When a court applies scrutiny to a release they turn to those factors influence by case precedent. The flagship case for scrutiny of releases is *Dalury v. S-K-I, Ltd.* 670 A.2d 795. Dalury was injured while skiing at a resort operated by S-K-I, Ltd. When Dalury purchased a pass to ski at the resort he signed an agreement, which released the resort from all liability even if injuries were the result of the resort’s negligence. The *Dalury* Court stated three factors that should be considered when determining if a liability release should be considered binding. The court must examine the release document and determine if it is contrary to public policy, if the agreement was made under equal bargaining power, and whether or not the release is drafted in a way that the signing party understands the rights he or she is waiving. It would be appropriate to examine a potential agreement, which would absolve supervised visitation providers from liability and their own negligence by considering each of the three factors.

Public Policy

Public policy is the first issue that one must consider. An exculpatory agreement is contrary to public policy if it is between an employer and an employee, if it is between the public and those charged with a duty of public service, such as a common carrier or a public utility, or if the agreement is between parties where there is a disparity of bargaining power so that the agreement does not represent a free choice on the part of the plaintiff, such as a monopoly.

The court disfavors releases when they are contrary to the public interest. The question of what constitutes a public interest often results in analysis of what are the goals of a particular community. Policy concerns in liability releases were spelled out in *Tunkl v. Regents of University of California* (1963) 60 Cal.2d 92. In that case, a hospital's release of liability was challenged as being against the public interest. Some factors that the *Tunkl* Court considered were, whether or not the service is that of the type generally suitable for public regulation, whether or not the party seeking exculpation is engaged in performing a service of great importance to the public, and one which is often a practical necessity for some members of the public. Should the services or activities relating to the release of liability reflect one of these factors, we should anticipate that the courts will look skeptically to determine if the nature of the agreement violates a public policy.

Concerning social service providers and supervised visitation, it is certainly reasonable to expect a court to determine that the services they provide are in the public interest. There is a clear public importance and in some cases it is a practical necessity for some members of the public. It is thus reasonable to anticipate a court being skeptical of any liability releases in the setting of supervised visitation.

Bargaining Power

The requirement that the parties entering an agreement do so on equal bargaining power is a potential issue in the case of liability releases for supervised visitation. There is a significant question of whether or not supervised visitation is an essential service to the public. If it is, then it is very unlikely that a release would be upheld. One cannot enter an agreement with equal bargaining power if it is an essential service. The need outweighs the ability to negotiate. When a public utility requires a client to sign in order to do business, it is not entered in equal bargaining especially in regards to a monopoly of services. *Ivey Plants, Inc. v. FMC Corp.*, 282 So. 2d 205 (Fla. 4th DCA 1973). The courts treat bargaining as a question of fact. If a court determines participation is voluntary, bargaining power is not at issue. *Banfield v. Louis*, 589 So. 2d 441 (Fla. 4th DCA 1991).

Even if this is not an essential service, courts have considered whether or not there is an opportunity for negotiation, whether the activity was voluntary as opposed to required, and whether minors are involved. Releases: Is there Still A Place for Their Use by Colleges and Universities. Mary Ann Connell, Frederick G. Savage. 29 J.C. & U.L 579 (2003).

In cases where the court has ordered a subject to undergo supervised visitation, it is very unlikely that another court will determine that the waiver meets the equal bargaining power requirement. In cases where a parent must sign a release in order to participate in supervised visitation, or choose to be separated from their children, a court might determine

that the parent had no bargaining power. Cases where a parent is required to bring her children to supervised visitation upon court order, might not have equal bargaining power because she is effectively compelled to allow her children to participate.

Under the requirement that the agreement be met under equal bargaining power I anticipate the potential for contention. Should supervised visitation providers adopt a liability release, it might be important to ensure that signing the agreement is optional for parties that could be considered compelled to participate.

Client Understanding of the Release

Without a specific incident to reference, the issue of whether or not the client would understand the rights that he or she is waiving is purely hypothetical. However, it is important to recognize the effect that it might have on potential litigation. There have been cases in which the courts have found a liability waiver, in part or whole, to be ineffective simply because the signing party did not understand the rights she was relinquishing. A release must be clear and unequivocal so as to explicitly state that the organization is absolved from liability for injuries resulting from its negligence. *Rosenberg v. Cape Coral Plumbing, inc.*, 920 So. 2d 61 (Fla. Dist. Ct. App. 2d Dist. 2005). The first goal of the release would be to make it simple and easy to understand, but it must also include pertinent information. In *Shaw v. Premier Health and Fitness*, a release was upheld because it clearly expressed the intent of the release to absolve liability, and it required the signing party to acknowledge that they understood the release and the implications therein.

A clear and unambiguous release is important, but should an organization incorporate a release, they should also adapt staff policy to include the opportunity to educate the client about the release and the rights they are relinquishing upon signing it. The courts are especially concerned with whether or not the party understands the release. We might consider the sophistication of the parties, their education and their experience in the legal system when we consider whether or not a party can contract to give up their rights. A policy of helping the client understand the release would lend support to a signed releases' validity.

Court Determined Policies for Supervised Visitation Providers

In 1998 the Supreme Court of Florida released the Minimum Standards for Supervised Visitation Program Agreements. This document states the minimum specifications that each organization is required to maintain. The first purpose of providing supervised visitation is to assure the safety and welfare of the child, adults, and program staff during supervised contact. By making this the first purpose, the court has clearly stated that the most important factor is safety. If a provider cannot reasonably ensure safety they should not accept a case. Concerning case acceptance, the court stated that a program shall decline to accept a case for which they

cannot reasonably ensure the safety of all clients, program staff, and volunteers, including but not limited to the following reasons; the volatile nature of the case or client, visitation supervisors are not adequately trained to manage issues identified in the intake, facilities are not adequate to provide the necessary level of security.

One could interpret the court's standards to favor proactive policies to prevent liability. "A visitation supervisor shall intervene or terminate a supervised contact whenever he or she believes that the safety of the clients, program staff, and volunteers cannot be reasonably ensured." Programs are required to have written security policies and a program must have general and liability insurance for staff and volunteers. The implication seems to be that we recognize the risks involved in these difficult cases. The majority of resource should be dedicated to the prevention of situations, which might bring out program liability. One could even interpret the Court's requirement that a program hold insurance as an admission that liability suits are simply a factor that should be anticipated.

Failed Florida Legislation Concerning Program Liability

On January 10, 2012 House Bill No. 557 was introduced to the Florida Legislature. This proposed legislation would have created section 753.08(2) to the Florida Statutes. This particular section would have provided for an immunity for supervised visitation providers and staff. The clause would have altered the presumption of liability in cases involving supervised visitation. A supervised visitation provider would be presumed "prima facie, to be acting in good faith" and would be "immune from an liability, civil or criminal, which otherwise might be incurred or imposed with regard to the provision of such services." The caveat to this immunity is that the organization must certify to the court in its jurisdiction that it abides by the state standards for supervised visitation. However, the bill did not pass the legislature.

CONCLUSION

Given the strict scrutiny the courts apply to liability releases, a provider of supervised visitation **should not rely** solely on a release as a defense against potential liability. The Supreme Court of Florida has provided supervised visitation providers with standards that should serve as the most important guidelines. The Clearinghouse has created Best Practices that help guide programs to make appropriate decisions. Ultimately, a provider might be better served using resources to educate their staff and to further implement those policies, which will help to ensure the safety of clients. If your program wants further or more specific information, consult legal advice locally.

Follow-Up on the Powell Tragedy:

Report: Wash. Could Have Done More in Powell Case

By MIKE BAKER Associated Press
OLYMPIA, Wash. August 2, 2012 (AP)

Social workers tasked with protecting the children of Josh Powell did not consult with law enforcement or explore his potentially violent past before allowing him to host supervised visits at his home, a panel found Thursday.

The report concluded that the Washington Department of Social and Health Services should "make concerted efforts" to check with detectives prior to making changes in parent-child contacts when there is an active investigation. Authorities have been investigating the 2009 disappearance of Powell's wife, Susan Powell, from their Utah home.

During a supervised visit at his Washington state home earlier this year, Josh Powell locked the front door on a social worker, used a hatchet on his boys and then torched the home to kill himself and the two children.

He had been locked in a custody dispute at the time of the killings, and a judge had recently ordered him to undergo an intensive psycho-sexual evaluation. The child fatality review committee also concluded that social workers should immediately reassess visitation policies when someone is ordered to undergo a psycho-sexual evaluation.

Denise Revels Robinson, assistant secretary for DSHS Children's Administration, said the recommendations provided by the committee "will be of great help in our ongoing efforts to improve our practice in keeping children safe."

"The violent death of any child, especially at the hands of a parent, is always a tragedy," Robinson said. "But few of us who have served in child welfare have had to deal with such a horrific experience as the loss of Charlie and Braden."

Social workers were not legally required to consult with law enforcement in a situation like the Powell case, the review committee said. And the panelists did provide some praise for the people involved in the case, saying the work sometimes exceeded acceptable standards for child welfare practices and procedures.

"The conduct and interaction of professionals involved in this case demonstrated the highest concern for the children's health, safety and welfare," the committee wrote.

But while the social workers did follow the law, there were signs that should have led them to be more vigilant, the panel found.

In one finding, the committee concluded that the disappearance of Susan Powell should have prompted the workers to further explore the potential of domestic violence.

Detectives in Utah had shared little about their Powell investigation and had never even publicly labeled Josh Powell a suspect in the case. That was despite the fact that authorities found blood in the family home and a hand-written note in which she expressed fear about her husband and her potential demise.

Josh Powell always maintained his innocence and said he had taken their boys, then 2 and 4, on a midnight camping trip in freezing temperatures the night she disappeared. Investigators had found a gas can, tarps and a shovel in Josh Powell's vehicle shortly after the investigation began. One of the children told investigators that his mother had gone on the camping trip but did not come home with them.

Authorities eventually disclosed to a Washington state court that incestuous images had been found on Josh Powell's computer — a finding that prompted the psycho-sexual evaluation shortly before the killings.

The child fatality panel said that the information Utah authorities had kept private could have helped reassess the length, location and supervision of Powell's visitation rights.