“Above all, we shall not harm children.”

There is no disagreement about this fundamental point—the safety of children is the number one mission of your organization. It’s the first principle of the NAEYC Code of Ethical Conduct and Statement of Commitment (P-1.1). It’s also the first principle of the NAEYC Code of Ethical Conduct Supplement: “We shall place the welfare and safety of children above other obligations. . . .” (P-1.1)

In this chapter we discuss how to keep your child care center safe for the children, your staff, and the families you serve. We will pay particular attention to the preventative steps you can take to reduce the risk of accidents and ensuing lawsuits. We will also discuss how to handle child abuse allegations.

YOUR LEGAL DUTY

Keeping children safe is also your primary legal duty. Failure to fulfill this duty can result in fines, the loss of your center’s license, and even jail time for you and your staff.

State child abuse laws and criminal statutes prohibit the maltreatment of children. The most extensive description of your responsibilities toward children can be found in your state’s child care licensing rules, where safety issues dominate. Although the particulars of each state’s rules vary, most of them cover the following:

- Rules that limit the number of children a staff person can care for
- Staff training requirements in first aid, cardiopulmonary resuscitation (CPR), and child abuse
- Policies to address emergencies, sick children, and behavior guidance
- Indoor and outdoor physical space requirements, water hazards, locks, fire extinguishers, smoke detectors, and so forth
Managing Legal Risks in Early Childhood Programs

- Transportation issues—child safety restraints, parent permission, and so forth
- Sanitation and health standards—pest control, hand washing, food safety, diapers, and so forth

If you are the administrator of a child care center, you are very familiar with these rules. Your primary job is to see that your staff follows them. There may be obstacles in your way: your board of directors is not fulfilling its oversight role, you have high staff turnover, or your state licensor has not inspected your program for many years because of state budget cutbacks. None of these obstacles, however, is an excuse for you to not meet your ethical and legal responsibilities to the children in your program.

As we discussed in Chapter 2, if your center is out of compliance with your state’s licensing rules, you face a greater threat of a lawsuit and the likelihood of a higher damage award in a lawsuit.

Let’s say that a toddler in your program falls from a swing set and injures her face. The teacher calls 911. Unfortunately, the child’s face becomes infected and is permanently scarred. The doctor later says that the scar would have been much less noticeable if the teacher had applied first aid to slow the initial bleeding. The licensing investigation uncovers the fact that the toddler’s teacher did not have the required first aid training.

The fact that your staff records have not been checked in the past 2 years is not going to prevent licensing from finding your center guilty of violating this licensing rule and imposing a sanction. The child’s parents may use this rule violation as a reason to ask for more monetary damages against your center in their civil lawsuit.

Therefore, take all child care licensing rules seriously. They help protect children, your staff, and your center. Being in compliance is no guarantee that children won’t be injured, but it can reduce the likelihood of allegations of staff negligence and decrease the damages awarded in a lawsuit.

Because child care rules can change, you want to be sure you are receiving notification of new rules. Find out how and where new rules are made public. As a backup, contact your state’s licensing office at least once a year to make sure you have the most current information.

AN OUNCE OF PREVENTION

The risks of caring for a group of children are real: injuries, property damage, vehicle accidents, and lawsuits. Although you can never
eliminate these risks, you can take a number of steps to reduce the risks to a manageable level.

Let’s first look at a series of preventative steps you can take. Then we will describe how to handle special situations: caring for sick and injured children, keeping children safe on field trips, and child abuse.

After complying with your state’s child care licensing rules, taking steps to prevent injuries is probably your best way to reduce risks. Never underestimate the power of commonsense precautions. In fact, failure to use common sense can lead to allegations of staff negligence. Here are some examples of the many preventative measures your program can follow:

- **Teacher walk-around**—Looking for safety hazards should be a never-ending task. Train your staff to regularly walk around the room they teach in and look for any potential hazards. Periodically, have a different teacher than the one normally in the classroom look for safety hazards through a fresh lens. The most common injury suffered by children in child care is falling down, so pick up or put away items on the floor. Closely examine things that children can climb to ensure that they will not be injured if they fall.

- **Sanitary standards**—The cleaner your program is, the lower your risk of illness for children and your staff. The most important practice to follow is hand washing on a regular basis. Following daily intra-day sanitizing and disinfecting processes for toys, diaper-changing areas, and table surfaces is an excellent way to reduce the spread of illness.

- **Third-hand smoke**—There is a risk to children and your staff from being exposed to smoke from parents, and even from children who live with parents who smoke. Child care centers may regulate smoking with stronger regulations than state and local laws. However, some laws/regulations require providers to inform parents of such stricter policies in a specific manner. For example, some policy guidelines may require you to clarify the purpose of the policy, develop a strategic enforcement and implementation plan, or educate parents and/or staff about the health risks.

- **Potluck suppers/food allergies**—Your program will be held responsible if a child becomes sick from the food served in your program. This includes food brought by parents to a potluck at your program. If children have food allergies, notify parents not to bring certain foods for the potluck (without identifying which children have allergies).
• **Communicable illnesses**—Every child care program should be guarding against the spread of communicable illnesses (flu, HIV, blood-borne pathogens, etc.). The NAEYC Code of Ethical Conduct requires centers to inform families if their child has been exposed to a communicable disease that might result in infection (P-2.9). State and county health agencies can offer resources. In Chapter 6 we will discuss how to comply with the Americans with Disabilities Act (ADA).

• **Emergency planning**—Preparedness includes creating plans for anticipated emergencies such as a fire, tornado, hurricane, earthquake, flood, or a violent parent. Do you have written procedures for how to handle each emergency?

• **Sudden Infant Death Syndrome (SIDS)**—Although the exact cause of SIDS is unknown, child care programs can reduce this risk by training staff to put babies to sleep on their backs, not confining them with blankets or other objects, and checking on them often. Years ago a child died of SIDS in a child care center in Minnesota. Because the program had good records showing how often staff checked on the baby, child care licensing took no negative action and the parents did not sue. In another case in Connecticut, the judge awarded $800,000 to the parents of a baby who died of SIDS in the home of a licensed family child care provider who saw the baby lying on her stomach and did nothing. Many states have laws relating to SIDS. In 11 states, child care center staff must have special training about SIDS: Arizona, California, Florida, Indiana, Minnesota, Nebraska, Tennessee, Texas, Washington, West Virginia, and Wisconsin. (For a detailed list of SIDS-related laws, see Appendix: Helpful Websites.)

### CARING FOR SICK AND INJURED CHILDREN

Unfortunately, regardless of your prevention efforts, there is a good chance that children will become ill while in your child care program. When this happens, some parents may want you to care for their child while recovering from an illness or to treat their child’s illness. Caring for children who are ill creates new risks that can be handled by establishing clear policies and procedures.

Your center is not obligated by any federal law to care for children who are sick. Therefore, your first policy in this area should cover under
what conditions you will or will not accept children into your program who are sick. Your state child care licensing laws may set conditions under which you may not accept children who are ill (e.g., a child has a contagious illness). You may also be required to report certain illnesses to your state agency.

But, beyond these limitations, your center can set its own standards. Most centers will observe children when they arrive to detect signs of illness. You could refuse to accept children with a minor illness (e.g., a mild cold), or you could accept children suffering from most illnesses and provide special care for them.

If a child becomes sick while at your center, your responsibility is to see to it that the child receives appropriate medical care. This may mean giving medications to the child, providing a space for the child to lie down, calling the parent to pick up the child, or calling 911. Your first decision will be whether or not to allow the child to stay in your center. Whatever your decision, you want your actions to closely follow a written policy about how to handle these situations. You want your policy to spell out when you will refuse a child, how you will provide temporary care for a child who is ill, and under what circumstances you will call the parents or 911.

Giving Medications

Your state licensing rules will probably set out guidelines for when and how you can give medications to children in your center. This may include first getting parental permission by phone or in writing, as well as permission from the child’s doctor. Because of the potential serious consequences of failing to properly issue medication, your policy should always be to get written parent and doctor permission, regardless of your state regulations. Put in writing the following information about each medication you are administering:

- Date medication was prescribed
- Name of the medication
- Dosage
- Time and dates medication is to be given
- Period of time over which the medication is to be given
- Prescribing physician’s name and phone number
- Additional information about possible side effects, whether to give the medication with food, storage instructions (is refrigeration required?), and so on
You can get into legal trouble if you fail to follow parents’ wishes or a doctor’s orders. But, what if the doctor and one of the parents signs your medication permission form, but the other parent won’t? Without the signature of the second parent, you should not administer the medication.

**Nonprescription Medications**

To be on the safe side, you should follow the same guidelines for nonprescription medications. Let’s say a parent wants to leave a bottle of Tylenol with her child’s teacher and is willing to sign a blanket medication authorization allowing the teacher to give it if the teacher thinks it’s necessary. We don’t recommend using such blanket authorizations. Any medication your staff is going to administer should be at the direction and authorization of the child’s doctor.

**Immunizations**

Your state child care regulations likely require that children be immunized against illnesses such as measles, mumps, chickenpox, diphtheria, and whooping cough. Without such immunizations, your program could refuse to accept a child. A conflict can arise, however, when a parent refuses to allow her child to be immunized because of the parent’s religious, medical, or philosophical beliefs. Some states allow parents to opt out for some of these reasons. All states and the District of Columbia allow medical exemptions. The District of Columbia and all states except Mississippi and West Virginia allow religious exemptions. Only 20 states allow philosophical exemptions: Arizona, Arkansas, California, Colorado, Idaho, Louisiana, Maine, Michigan, Minnesota, Missouri, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Vermont, Washington, and Wisconsin.

Because of fears about the side effects of immunization, increasing numbers of parents are refusing to have their children immunized, especially for religious reasons. Some parents, who fear the possible side effects of a shot, may be raising a religious objection because that is the only way they can ensure their child does not get the shot. Although you can encourage parents to have their children immunized, do not try to challenge parents if you believe their objection is philosophical, rather than religious. Questioning parents’ motives is likely to create more trouble. Talk with your licensing worker for help in resolving these disputes.
Injuries

It’s almost impossible to prevent children from ever becoming injured in your center. Your state’s child care licensing rules will spell out your responsibilities to treat injured children and contact parents. They will also indicate your responsibility to report injuries to the proper authorities. If your state doesn’t already require it, keep careful records of all injuries. Contact your liability insurance agent immediately so the insurance company can conduct its own investigation. If the injury is minor and you aren’t sure whether this should be reported to your insurance agent, contact your agent anyway. Let your agent give you guidance about when to report injuries to him or her. By contacting your insurance agent immediately, it will increase the chances that the matter can be settled quickly, without a lawsuit. This can help keep your insurance premiums stable and maintain the reputation of your center. (See Chapter 10 for more information about insurance.)

Biting

If there is a child who bites in your center, it is not appropriate to share this child’s name with the parent of the child who was bitten. It can’t help the situation. But it could make it more likely that one or both sets of parents will be unhappy and make complaints. Having a general policy of not sharing confidential information about children or their parents will go a long way to defusing this situation. (See Chapter 7 for details.)

Next, tell parents the steps you are taking to decrease the likelihood of the biting to reoccur. If parents are worried about the potential for biting to spread HIV, you should help parents understand that this is extremely unlikely. The blood of two children needs to be exchanged for the risk of HIV to increase. You may also advise parents of their rights to contact a bitten child’s doctor. Although it is unlikely, bites can sometimes lead to infection. Your primary concern is the health and safety of the child, so suggesting medical attention should never be avoided because you are afraid you may be liable.

KEEPING CHILDREN SAFE WHEN OUTSIDE AND AWAY

Your program’s responsibility to keep children safe continues when children are on a playground, field trip, or in a vehicle under your center’s control.
Child care centers must check outside daily to make sure playground equipment and the area is in good shape. This may include picking up trash, raking mulch back into proper places, and so forth. A few state licensing agencies comply with Consumer Product Safety Commission rules on playground safety, which can be found in the CPSC Public Playground Safety Handbook (see References at the back of the book).

Your duty to keep children safe while on a field trip is the same as when the children are in your building. The risk of injury may be greater on a field trip because of the potentially unsafe environment at a park, children’s museum, or other destination. The steps you can take to reduce risks include vigilant supervision by your staff, carrying first aid kits, obtaining signed permission forms from parents, and an emergency plan to deal with injuries that occur away from your building. You want to have a signed authorization form from parents to provide emergency medical treatment for their child when a parent cannot be reached immediately. This authorization form should also allow for emergency medical treatment when a child is on a field trip.

It’s likely that your business liability insurance policy will cover your center for injuries suffered by children on field trips. Discuss with your insurance agent all possible circumstances when you will be supervising children away from your building to be sure your center is covered.

Field trip permission forms and emergency medical treatment forms are not a shield against a parent suing you if his or her child is injured. Liability waivers are also not a guarantee that you won’t be sued. Following your state licensing rules regarding field trips, practicing commonsense safety standards, getting parental permission, and having adequate business liability insurance are your best safeguards against a lawsuit. See Chapter 10 for a discussion about insurance.

**CHILD ABUSE**

Perhaps the most important legal responsibility of a child care worker is to fulfill his or her duty as a mandated reporter of child abuse or neglect. We first discussed this in Chapter 2.

The NAEYC Code of Ethics directs child care programs to protect children by reporting suspected cases of child abuse or neglect to the appropriate authorities (P-1.9). The Code also directs child care workers to take “appropriate action in order to protect the child” when told of suspected child abuse or neglect by someone else (P-1.10). There is also an ethical duty to inform parents in these situations (P-1.11).
Your state child care licensing rules address how to respond to suspected cases of child abuse and neglect that you must follow. Failure to report suspected child abuse or neglect will result in severe penalties. Therefore, you want to follow a three-step approach to help prevent child abuse or neglect:

1. Develop and implement policies that reduce the risks: careful supervision of children, staff background checks, and staff training on child development, sexuality, and positive guidance techniques (as well as cultural influences on these issues).
2. Document and keep records about child behavior, parent communication, and accidents and conflicts with parents or staff.
3. Educate your staff about child abuse and reporting laws to be sure they clearly understand their obligations as mandated reporters.

One practice some child care centers follow to be on the alert for signs of child abuse is to fill out a daily drop-off form for each child and ask parents to sign it. A staff person will examine the child for signs of physical bruises or marks and ask the parent a few questions about the child’s medical condition. After the parent signs the form, the staff person puts it into the child’s files.

What if your staff person, Maureen, does notice a bruise and the child’s mother, Kay, admits hitting the child? Maureen should explain to Kay that she must follow your center’s policy on reporting child maltreatment. Maureen may want to also consider asking Kay to join her in reporting the incident to child protection as a sign that she is open to receiving help.

Your center may also want parents to fill out a daily pickup form that states the condition of the child at pickup. This can help protect your staff against child abuse allegations. Let’s say Nedra signs a pickup form that says her child, Tasha, had no marks on her. The next day, Nedra calls you to complain about a bruise on Tasha’s right arm, claiming that her teacher caused the bruise by roughly grabbing the child during the previous day. You can use the signed pickup form as a defense.

Because each state has its own child abuse laws, they vary. Corporal punishment is permitted by parents in the home; however, some states and localities have enacted laws limiting or defining the practice. For example, excessive spanking or spanking children under a certain age may be illegal.

In 2008, the Minnesota Supreme Court ruled that spanking does not constitute abuse. The court found a man innocent who spanked
his 12-year-old son 36 times with a paddle (Olson, 2008). On the other hand, if corporal punishment results in the death of a child, it is likely that parents will be found guilty of criminal laws. In 2006, a father was convicted of murder when the beating of his daughter with an electrical cable was called “torture” and led to the girl’s death (Coen, 2006). Throughout the world, 29 countries have completely outlawed spanking in school or at home.

If you are ethically opposed to spanking, do not hesitate to forbid it in your center, even though it’s not against state law. On the other hand, what should you do if Mrs. Jordan wants her child spanked even if state law prohibits it? Obviously, you cannot spank the child and you will probably have to discuss with Mrs. Jordan how you may be required to report her if you have a reasonable belief that she is spanking the child.

Child Abuse Investigations

Being accused of child maltreatment or abuse is everyone’s worst nightmare. Let’s look at how to handle an investigation by a child care licensor, a child protection worker, or the police.

Whenever a child is injured in your center, an outside agency will investigate your program. If you take a child to the hospital, medical professionals are required by law to notify child protection agencies if they suspect child abuse or neglect. Outside agencies may also ask the police to undertake their own investigation. The parents of the injured child may also call on these agencies or the police to get involved.

Accusations of child abuse and neglect can lead to the arrest of you or your employees and the shutting down of your center. You or your employees could be put in jail if found guilty in extreme cases. Because of the seriousness of these accusations, it’s important for you to understand your legal rights at the beginning of any investigation. For purposes of our discussion, we will not make a distinction between whether your employee did or did not commit child abuse or neglect.

State Investigations. How you handle a licensing or child protection investigation may determine whether there will be a criminal investigation. Your state’s child care rules probably require you to participate in the investigation. Your refusal to participate will likely cause your center to be shut down.

Therefore, you want to be prepared to be interviewed by your state child care agency. It’s critical that you be truthful and consistent in your answers to questions from investigators. Do not assume, however, that if you are truthful, the persons asking you questions will believe you.
If your answers don’t appear to make sense or are confusing or too inconsistent to be believable, it’s extremely likely they will notify law enforcement authorities to conduct a criminal investigation. This is often how the police become involved in child care–related accidents.

Plan ahead by anticipating questions that may be asked of you and practice your answers. Here is a checklist of questions you should be prepared to answer:

- At what time and how did the accident happen?
- Where did the accident occur?
- Describe what happened to the child (nature of injuries, etc.).
- What time did you first learn about the incident?
- What did you or your staff do to help the child?
- What are the names of the people who were present when the incident happened?
- Did you notify the parent(s)? If so, when?
- Have you talked about this incident with anyone? Who (names, addresses, phone numbers)?
- What actions have you taken to make sure that a similar accident won’t happen again?

Be consistent in your answers. This will be easier to do if you have kept clear documentation of all incidents in your program. Inconsistencies will be perceived as lies, even if you are not lying. Practice speaking your answers out loud to help you come across as confident and professional. Lying during an investigation carries its own criminal penalties (obstruction of justice). You could be jailed for lying even if you are found innocent of child abuse!

Whenever a child is injured in your center, notify all your employees that they should not talk to anyone about what happened other than to the proper authorities. This means not talking to other staff or to their spouses. If the investigator finds out that you or an employee told an inconsistent story to someone else, they may assume you are lying.

If there is any news media interest in the accusations of child neglect or abuse, designate one person among your staff to respond to all news media. Usually, this person will be the director (or your attorney). Anticipate what you will say if a reporter shows up at your center. Because of your confidentiality policy, you can tell reporters that you will not share any information about staff or families. You can say that you are cooperating with child care licensing or police investigations.

*Criminal Investigations.* If the police start asking questions of you or your staff, be aware of your rights. Most state child care licensing
agencies require programs to cooperate with law enforcement investigations; however the Constitution provides individuals with protections, which do include the right to refuse to talk to officers. As a thousand TV shows have told us, “Anything you say can be used against you.” Do not assume that if you do not talk to the police they will perceive that you have something to hide. The job of the police is to collect the facts. If they believe you have committed child abuse, they will arrest you.

If a police officer shows up at your center to talk with you, he or she is not required to read you your Miranda Rights (“You have a right to remain silent . . .”). You can ask the officer to leave, or you can have someone else in the room with you when questioned, or you can ask the officer to talk with your attorney. If the officer asks you to come to the police station to answer questions, you can refuse. You do not have to explain your reasons for why you are refusing. Even if you do go to the police station and answer some questions, you can change your mind at any time and refuse to answer further questions.

If you are arrested, you can also refuse to answer any questions. The best way to stop police questioning is to say, “I want to speak with an attorney.” At that point, all questions must stop and anything you say after this point cannot be used against you. One reason it’s a good idea to have another person with you whenever the police question you is that they can be a witness to your request for an attorney. If you agree to go to the police station to answer questions, the police can prevent you from having another person with you during the interview. This is why you usually don’t want to go to the police station voluntarily.

Note: It is a good idea to develop a positive relationship with your local police before there is any accusation of child abuse. Meet with local officers and ask them what they will do if they receive an accusation of child abuse and what they would expect from your center. Share with the police your understanding of your responsibilities under the law and ask for advice on any questions you have about reporting child abuse.

**Consulting an Attorney**

An attorney can be helpful in many ways. He or she can coach you on how to respond to questions from investigators. An attorney can help you get your facts straight and speak clearly. He or she may help you think of facts you have not considered. Working with an attorney can definitely help you reduce the stress of an investigation.
If a parent is suing your center, it’s likely that your business liability insurance policy will pay for any legal fees. However, your policy is unlikely to pay for an attorney to represent you in a criminal matter (where the consequence is you going to jail). In any case, it’s always a good idea to contact your insurance agent whenever your program is under investigation.

Ideally, you want to consult with an attorney at the early stages of any criminal investigation of an injury. We recommend hiring an attorney before talking to the police. This may not be possible because many child care centers have difficulty paying for legal assistance. Contact your board of directors to see if any member can help you find an attorney. See Chapter 2 for more information about how to find and work with an attorney.

**Suing Parents**

Let’s assume that a parent has made a false accusation of child abuse against your program. After the investigation clears your program, you may feel like you want to sue the parent (assuming you know who made the accusation). Without an independent witness who can testify that this parent knowingly made a false accusation, it will be extremely difficult for you to succeed in court. Consult with an attorney about your chances of success.

**SEX OFFENDERS**

Unfortunately, all children are at risk of exposure to sexual abuse. Besides complying with child abuse and neglect laws and monitoring your own employees, your center will also want to protect the children in your care from sex offenders. Talk to your local police officers about how to gain access to public records of sex offenders who live near your building. Some state laws prohibit sex offenders from living within a certain distance of a school or child care center. Assign a staff person to regularly check such public records to be sure no one is violating the law by living too close.

What if you discover that a parent of one of the children in your program is a sex offender? If the offender would be violating the law if he or she shows up at your program, you should alert your staff to call the police if he or she does appear. Even if the offending parent is not picking up his or her child, you can still legally refuse to provide care.
You could also terminate care when the offender does not have custody and lives separately from the child. Remember, it’s legal to discriminate as long as the reason for the different treatment is not based on a person’s protected class (race, sex, religion, etc.). Most child care centers would go out of their way to try to provide care for a child in a family with a sex offender, as long as they can do so in a way that does not put the children in their program at risk.

The health and safety of the children in your care is your most important mission. Establishing preventative policies will reduce the risk of injuries. When injuries do occur, handle them in a professional manner and seek legal help when necessary.