

# Parent-Provider Contracts in Family Child Care Part I



Public Counsel provides representation for low income child care providers with a variety of licensing zoning, child abuse reporting and other concerns. The project developed out of the profound need to support affordable, quality child care children of poor working parents and to help combat the phenomenon of latchkey children.

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# Introduction

In 1986, Public Counsel created the Child Care Law Project (CCLP) to respond to the critical shortage of quality affordable child care spaces in the County of Los Angeles. Since that time CCLP has provided free legal services to thousands of low income licensed child care providers and non profit child care centers. Our goal is to increase the quantity of spaces as well as improve the quality of care by advocating on behalf of the child care community.

CCLP is dedicated to ensuring that existing and future child care providers have access to the legal tools necessary to open child care facilities and operate them successfully. To that end, CCLP has provided free legal assistance and representation to child care providers on a variety of legal matters, including: licensing, landlord/tenant, insurance, liability, disability, contract, and zoning, to name a few. Many more have benefited from our outreach programs and publications.

One of the first steps in launching a successful family child care business is writing a parent-provider contract. Your contract will not only allow you to put the details of your program in writing, but will also help protect you from possible disputes. This booklet includes a checklist of items to include in your contract, a detailed explanation of each of these items, and a sample contract. For more information on the general principles of contract law, please see Appendix A.

As child care providers you render an extremely valuable service to your community. We hope that this booklet will assist you in preparing a contract that will reduce the likelihood of problems in the future. For specific questions, please call CCLP at (213) 385-2977 ext. 300

# Why should I use a contract?

*The parents of one of the children in your care announce that they will take a two-week vacation next month, their first since you began caring for their daughter a year ago. You remind them that they need to pay you the full fee in advance for those two weeks. A dispute ensues, with the parents insisting they were never informed of this policy, and you clearly remembering having told them.*

To avoid problems like the one above, all family child care providers should have a contract with the parents. The contract is an agreement in which the provider agrees to care for the child and the parent agrees to pay for the services and both agree to fulfill these promises according to the terms of the contract.

## **Family child care is a unique business situation.**

In a family child care home, the children effectively become part of the provider's extended family for the time spent in care. The home setting is less institutional than a nursery school or day care center. There are fewer children in attendance and the ratio of adults to children is often higher. Although the provider-parent relationship is typically more informal in a family child care home than in a center setting, there is no less need to exercise good business practices.

## **A written contractual agreement is an important element of any business relationship.**

Although a verbal agreement is sufficient, the Child Care Law Project highly recommends that the agreement be in writing. Most disputes between parents and providers arise not over *whether* a contract was formed, but over differing interpretations or understandings of particular *terms* of the contract, which can arise long after the agreement was made. During these disputes, you and the parent will remember the agreement in a different way typically, the way most favorable to yourselves.

If you each have a signed copy of the original agreement, you will both know what is expected of you and what you can expect of each other. Should the argument escalate such that you end up in court, a written contract is clearer evidence of your original agreement with the parents than is your recollection of your verbal agreement.

**A written contract also serves as a checklist.**

During the enrollment process, make sure you go over all of the critical rules and policies of your program with the parents before they sign the contract. Discuss each item in the contract with the parents to make sure that they understand it. This process can help prevent problems that may arise later.

A written contract demonstrates to parents that you take your work seriously and that you command respect for it. You should enforce all terms of the contract consistently and fairly. Be sure not to discriminate against any child or family for any reason.

**Remember this is your contract and you can make changes.**

Be sure to include a provision that explicitly allows you to make changes to the contract. Remember, the changes must apply to everyone and parents should be given written advance notice of all changes. The notice should include the date when changes to the contract become effective.

**CHECKLIST OF PARENT/ PROVIDER**  
**CONTRACT PROVISIONS**

BELOW IS A LIST OF THE MOST IMPORTANT PROVISIONS FOR A FAMILY CHILD CARE CONTRACT. SEE THE FOLLOWING PAGES FOR A DETAILED EXPLANATION.

- 1.NAME OF FAMILY CHILD CARE BUSINESS
- 2.HOURS OF OPERATION
- 3.FEES
- 4.ABSENCE POLICY
- 5.CHILD ILLNESS POLICY
- 6.VACATION
- 7.TERMINATION OF AGREEMENT
- 8.HOLIDAYS, PROVIDER’S SICK TIME AND VACATIONS
- 9.DISCIPLINE POLICY
- 10.DUTY TO REPORT CHILD ABUSE
- 11.IMPORTANT CONSIDERATIONS
- 12.MODIFICATION/AMENDMENT
- 13 - 16.ENTIRE AGREEMENT, SEVERABILITY, WAIVER, GOVERNING LAW
- 17.SIGNATURES & DATE, ASSIGNABILITY

# Explanation of Contract Terms

Following is an explanation of the contract provisions listed in the checklist as well as others. The importance of each provision and suggestions on ways to personalize your contract are also discussed.

## 1 NAME OF FAMILY CHILD CARE HOME

Make sure you include the name of your program in your contract. Most providers use their last name (for example) Jane Hanson might call her program Hanson Family Child Care, which emphasizes the family home nature of her service. Some providers use names that sound like nursery schools, i.e., "ABC Nursery," or "Tyke Heaven." If you choose this type of name for your business, make sure you also have your name on the contract.

## 2 HOURS OF OPERATION

List exactly what days and hours child care is available. Try not to make the hours any longer than is comfortable for you. It is better for your family and the children in your care if the hours are not too long. Often parents whose work hours are longer than yours can make arrangements to have an authorized person drop off or pick up the child.

However, increasing your hours is one way to get more business. Another option is to provide care during hours outside of the standard workday such as in the evening and/or weekends.

In this section you should also include rules affecting when the parents may drop off or pick up the children. For example:

- You may request that parents not bring children after a certain time or pick them up before a certain time, because it may interfere with organized activities.
- You may request that parents not bring or pick up children during lunch or nap time, and list the hours for those activities.
- Although you must allow parents to visit unannounced at any time, you may request that they plan to pick the child up whenever they do visit. Children feel a certain relief when their parent comes back to the child care home, and may become very upset if the parent leaves again without taking them along.

**NOTE:** Providers should be aware that State law affords parents and guardians the right to enter and inspect the facility without giving advance notice. (Cal. Health & Safety Code, 1596.857. ) The regulations require providers to inform the parent or guardian of the right of inspection. In addition, the provider must have the parent sign and date the notice form furnished by the Department describing that right, and must post a copy of the notice in a prominent place in the family day care home. 22 Cal. Code of Regulations, 102419(b).

- Consider whether a parent’s failure to pick up the child on time on numerous occasions (be specific about the number of occasions) will be grounds for termination from the program. If so, include it in this section as well as in the Cancellation by the Provider section of the contract.

### **3 FEES**

If you are just starting out and wondering how much to charge, call your local resource and referral agency (R&R). They can tell you what the going rates are in your community. They can also help you get in touch with providers or family child care associations in your area, so that you can learn more about the local rates. If you do not

know which R&R services your area, check the listing in Appendix B of Part II.

3.1 ***Part time Care.*** If you provide child care services on both a full and part time basis, list them separately. Part time care may include less than five days a week or less than a full day. Be sure to specify what you mean by part time care and whether or not parents may substitute one day for another. You will also want to list separately what fees are charged for before-school or after-school care if you provide this.

- Substitutions. For example, if the contract is for care on Monday, Wednesday and Friday and the child does not need care on Monday, the parent may want to bring the child on Thursday instead. You should decide in advance if parents will be allowed to substitute one day for another or if this will be considered an extra day. Include this rule in your contract.
- Hourly Rate Considerations. Some providers offer half day or hourly rates. This is convenient for parents but not for providers. It makes it more difficult to keep accurate records, and to stay within your license capacity. Your license capacity is the number of children you may care for at one time in your home. The number appears on your license and includes your own children under the age of 10.

**NOTE:** If you do allow for substitutions, make it clear that a parent can only choose a substitute day that would not put you over your legal capacity for that day. To ensure that you will be able to control your capacity, require that the parent give you advance notice of the substitute day.

- 3.2 ***Additional Fees.*** Include a late pickup fee and early drop off fee policy if desired. Be fair, but firm. Make sure your policy discourages parents from being too early or too late, but that your policy is reasonable as well. Consider your clientele carefully when selecting an amount.
- 3.3 ***Payment Policy.*** The contract should clearly state when the fees become due. Examine your options, and stick to the policy you choose.
- **Advance Payment.** Fees are often payable in advance (payment due on Friday morning for the following week for example), or as care is given (payment due on Friday for the week just ending for example). You should also be clear as to when payment is due if the designated day is a holiday.
  - **Payment of Late Fees.** Decide whether late fees, if any, can be collected on the spot when the parent is late or included in the next regular payment and include this in your contract.
  - Decide whether late payment of fees on numerous occasions (specify the number of occasions) will be grounds for termination from the program. If so, state it in this section and in the Termination of Agreement section of the contract.

# 4

## ABSENCE POLICY

Most family child care providers require parents to pay the fee when the child stays home sick or when the child is on a family vacation. In other words, parents pay for the space in your enrollment whether or not they use it on a given day.

Parents should be required to give you notice when their child is out whether due to illness or vacation. The amount of notice will depend on the situation. Many providers require two weeks written notice prior to a child's absence due to vacation.

- Parents may take a long vacation, (i.e. the entire summer). You may want to charge them the full fee for the first couple of weeks and part fee for the rest of the time. If you make such a policy, include it in the contract.

# 5

## CHILD ILLNESS

### POLICY

Part of your responsibility to the children in your care is to protect them from illness whenever possible. All children get colds and ear infections. These illnesses may not be serious enough to require the child to stay home, but chicken pox, a fever, a serious case of diarrhea, etc., may be good cause to send a child home.

- Make sure you explain this policy carefully to parents during the enrollment process. It may be a hardship, but it is necessary to protect children in your care. If a parent complains, explain that the policy also protects his/her own children when others get sick.

If you do send a child home, you will want to treat it as an absence due to illness. The parent still pays for the day, as described in the absence policy, even though taking the child home was your idea.

- If you are equipped to do so and are able to provide adequate supervision, you may allow a sick child to continue in care by keeping them isolated from other children. You could list this under services available and you may only charge extra to care for children with short-term acute illnesses. Be careful however not to violate a law called the Americans with Disabilities Act (ADA). The ADA prevents you from charging more to care for a child with a long-term or chronic illness, or a disability. If you are not sure if a child's illness would fall under the ADA, call the Child Care Law Project at (213) 385-2977 ext. 300

- For notice requirements, see above section on absence policy.

## **6 YOUR VACATION**

The purpose of this section is to schedule in for yourself a time for rest and relaxation or continuing education in child development and/or the provision of early education. You may choose not to take a paid vacation, or decide that the needs of your business or the parents and children you serve require that you not take a vacation. However, including a section in your contract regarding your paid vacation allows you to give notice to your families so they can plan for your absence, and may serve to fund a conference or other continuing education for yourself in your area of specialty. Parents may appreciate your continuing professional development which contributes to their child's well-being, especially if you share with them what you have learned during your time off.

Since parents may have to make separate arrangements for the care of their child while you are on vacation, be sure to discuss this provision with them in detail, and give them notice as soon as it is practically possible for you to do so which dates you will not be providing care. It would be reasonable to give parents at least 6 weeks notice of your vacation. You should consider reserving paid

sick time for yourself as well. Most parents' employers do not dock their pay on days they become ill, even if they have to hire a temporary replacement. Parents may be willing to provide a similar benefit for you.

## **7**      **TERMINATION OF THE AGREEMENT**

There are many situations in which parents or the provider may wish to cancel a contract altogether for a certain child. This provision is a very important one in your contract. Provisions covering withdrawal of a child by the parent(s) and cancellation by the provider are suggested in the Sample Contract at the end of the book.

In the case of withdrawal by a parent(s), it is important that you require that the parent give you two weeks notice in writing. This means that parents must give you notice before they remove their child, *and* helps to ensure that you will be paid if they fail to give you the required notice.

The provision in the Sample Contract states that you will refund a portion of the monthly fee to the parents if they give you notice in the middle of the month. This is fair to the parent(s), because if they give you two weeks notice that they are removing their child, you refund them for the days they do not have their child in your care. The Sample Contract also provides that if the parent(s) fail to give you the required notice, you can minimize the financial harm to your business by either keeping their security deposit, or accepting two weeks payment even though they have withdrawn their child.

In the Sample Contract, you as the provider have the option of *immediately* terminating the contract with the parent(s), *also upon written notice*, if you have the serious problems listed in the Sample. The Sample also includes a provision for a fair refund to the parent(s) of fees paid to you and not used to pay for the child's care or to compensate you as listed in the Sample provision.

If you wish to terminate the contract, but it is not a situation allowing you to terminate immediately, or where you choose not to terminate

immediately, the Sample Contract provides that you give two weeks written notice to the parent(s), and a refund of the deposit and unused monthly fee. Note the Sample speaks to what happens if you have tried to make reasonable accommodations for a child with special needs and feel you are unable to continue. You should consult an attorney before terminating an agreement for care of a disabled child or a child with special needs. You will need to learn your rights and obligations under state and federal law concerning the care of children with special needs. ( See CCLP handbook, Caring for Children with Special Needs).

## **8**                    **PROBATIONARY PERIOD**

This section allows you or your parent(s) to change your minds about whether the child care arrangement is going to work without the penalties discussed in Section 7. You should not terminate an agreement to care for a disabled child or a child with special needs under this section without first consulting an attorney and obtaining the agreement of the parent(s) of the special needs child.

## **9**                    **DISCIPLINE POLICY**

It is a good idea when discussing this policy with parents to let them know what the practice will be in your family child care home. For example, the parents should understand that you will respect the individual rights of the children as required by Title 22 governing Family Child Care Homes. (See p.17 of Part II) You should also consider discussing these with your parent(s) and including them in your contract provisions which will help ensure peaceful discipline in your child care, such as limitations on television viewing and video games.

This is a good time to discuss policies related to car seats, such as never having a child remain in a car seat while they are inside your family child care home. Contact your licensing program analyst at Community Care Licensing if you have any questions related to the

discipline of children in your care.

## **10 DUTY TO REPORT CHILD ABUSE**

As you probably already know, as a child care provider, you and your employees are considered mandated reporters. This means that you must report any known or reasonably suspected instance of child abuse or neglect to a child protective agency. You may also report any known or reasonably suspected instance of emotional abuse inflicted upon a child.

If you have reasonable suspicion of child abuse or neglect, you need to call the child abuse hotline at (800) 540-4000 ( in Los Angeles County). This call must be made as soon as you suspect the abuse, no matter what other circumstances may exist. If you have confusion over whether a situation constitutes reasonable suspicion of abuse, you can call the CCLP at (213)385-2977, ext.300.

It is important for parents to be aware of this requirement. Some providers include this section in their contract or hand out a separate information sheet to parents or post it in their homes.

## **11 PHOTOGRAPHS**

You should secure parent(s) permission to have photos of their children taken in your program.

## **12 DAMAGE TO PROVIDER'S FACILITIES**

Consider having such a provision in order to keep your family child care home in good repair.

# 13 ADDITIONAL CONSIDERATIONS, SUCH AS GUIDELINES FOR RELEASING CHILDREN

You can use this portion of your contract to make sure that parents understand that their child will only be released to them or a person specifically authorized by them in writing to pick up the children. You may experience some difficulties with parents who are separating and/or divorcing. If you do not know whether or not to release a child to a parent, contact Public Counsel's Child Care Law Project at (213)385-2977, ext.300.

**The following may be included in your written contract either above the signature lines, or simply attached to the contract as a separate list. If you choose to attach the list, remember you must at least refer to the list in the body of the contract itself in order for it to be legally binding and enforceable.**

## 13.1. *Hours and Fees*

- Do you provide a discount (e.g., 10%) for caring for the second child in the same family?
- May payments be made by check? If so, is there any penalty for returned (bounced) checks?
- Do you have a waiting list? Is there a fee (e.g., \$10.00) for being placed on the list?
- Do you want to charge an enrollment fee or security deposit?

This fee can be refundable and serve as a deposit to protect you against losses. For example, if parents withdraw their child from

your program while still owing you money, you could subtract the amount owed from the deposit and refund the balance along with a statement explaining the deductions made.

If you decide to charge this type of fee make sure you explain it in your contract. Also examine your potential clientele to determine if this fee would be appropriate for your program.

### 13.2 *Special Considerations*

- Do you have a rule for dispensing prescription medication? (e.g., prescriptions require prior written authorization by the parent). Medication must be in its original container in order for you to dispense it. If you are willing to give medication to children in your program, you should have a standard permission form for parents to fill out and sign that gives you specific instructions and permission.

See the Appendices in Part II of this booklet for forms related to parent's consent for you to authorize emergency medical and dental treatment for their child. You should have in your file for each child the Department of Social Services form, and also the CCLP Suggested Form.

- Do you want to include a provision covering immunization requirements?
- Do you require the parent to notify you whenever he/she will be away from the office in case of emergency?
- Are the children required to wear closed shoes at all times?
- Must the children's clothes be labeled? You may want to specifically disclaim any responsibility for lost articles of clothing, or at least those that aren't labeled.
- Articles to be (and not to be) supplied by the parent.

- Do you require the parent to leave two complete changes of clothing for each child in your care?
- Must parents supply the child's lunch?
- Conversely, are any items (e.g., candy, special toys, etc.) prohibited because they result in fighting or may be broken?
- Do you want to include a provision covering your discipline policy?
- Your policy if a child breaks or damages something in your program. ( See Chapter 12. Damage to Provider's Facilities).
- Provisions which limit the number of children in your program at one time ( See Sample Contract Section 13.) Be sure to make arrangements so that you NEVER go beyond the number of children in your home that you are licensed to care for, not even for a little while.

Lastly, note that a written contract with a parent does not mean that you can never change the terms of the agreement or increase your rates at a later date. A Modification/Amendment provision allows you to do so as needed by giving written notice as called for in the contract. See the Sample Contract, Section 17. *If you care for children under a subsidized child care program, be aware that modification and amendment are subject to rules set by your government-funded public child care program.*

- It is advisable to keep all of your parents on the same contract and rate schedule and give the same notice increase to everyone at the same time. This will help to avoid allegations of unfairness or discrimination.

# 14 ENTIRE AGREEMENT

The Entire Agreement provision and the three provisions that follow are included for your additional protection in the unlikely event that a contractual dispute between yourself and a parent ends up in court.

An entire agreement provision will prevent either party from asserting that, at the time the contract was entered into, the other party made verbal or other written representations that should have been included in the contract and that somehow alter the written obligations of the parties.

# 15 SEVERABILITY

If for some reason one paragraph or provision of your contract were found to be invalid or unenforceable, it would be severed from the rest, and the remainder of your contract would not be affected by the invalid or unenforceable provisions. That means they would still be valid and enforceable.

# 16 WAIVER

A "Waiver" provision says that if a part of the agreement is not followed or a right is given up, that the parties still retain the other rights and responsibilities provided for in the contract. However, it is a good idea to stick to the terms of your contract and enforce the provisions fairly and consistently.

If you make an exception to your contract for a parent one time, the waiver provision means that the exception was valid only that one time, and does not change the contract.

# 17 GOVERNING LAW

A "Governing Law" provision ensures that any dispute over this contract will be governed by California law, even if, for example, a parent later moves to another state.

# 18 FORMS

Note there are several forms required by the California State department of Social Services which licenses family child care. All of the forms contained in the back of this handbook under Appendices need to be signed by the child care provider and the parent(s). Check with your licensing program analyst to see if there are any new form requirements. It is a good idea to go over the forms with your parent(s) at the time they sign your contract.

# 19 SIGNATURES

It is very important that the parent(s) have an opportunity to read the contract carefully before signing it. A request to have it reviewed by their attorney is reasonable and should not be discouraged. Both you and the parent(s) should have a copy of the signed contract; but you should keep the original.

- If the parent is a single parent, his or her signature alone is sufficient.
- If the child is living with both parents, ask both of them to sign the contract. This will bind both parents to the agreement, which could come in handy if they separate or divorce.
- If the parent is a minor (under 18 years of age), you may need the signature of their parent. There is a

number of conditions that are used to determine if a minor parent may sign a contract. If you are entering into a child care agreement with a minor, call the CCLP to find out if you will need to get an additional signature.

## **20** ASSIGNABILITY

**You may transfer the parent'(s) contract for family child care to someone else licensed to run your family child care business, but the parent(s) cannot transfer the contract to another parent to require you to take care of another family's child.**

Public Counsel, the public interest law office of the Los Angeles County and Beverly Hills Bar Associations, is the largest pro bono law firm in the U.S. and is the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Public Counsel coordinates the contributions of thousands of volunteer lawyers each year. Public Counsel serves those in need -- such as children and the elderly, literacy projects and low-income housing providers, refugees and the homeless -- by matching financially eligible clients with volunteer attorneys.

*This pamphlet is one of a series prepared by Public Counsel's Child Care Law Project to provide the Los Angeles County child care community with general information on a variety of legal issues.*