

MEMORANDUM OF UNDERSTANDING

INTRODUCTION AND BACKGROUND

This Memorandum of Understanding is entered into between the Department of Early Learning, (formerly a division of the Department of Social and Health Services), hereafter Department, and Lynda Waring as part of the comprehensive settlement agreement between the parties. The purpose of this Memorandum is to clarify the Department's policy as to the employment of blind and visually impaired workers at day care facilities under the Department's jurisdiction.

APPLICABLE NON-DISCRIMINATION LAWS

It is the policy of the Department that persons shall not be discriminated against (in employment, licensure, or service) because of race, color, creed, religion, national origin, age, sex, presence of any sensory, mental or physical disability, or use of a trained dog guide or service animal by a person with a disability; and (in employment only) because of marital status, disabled veteran status or Vietnam Era veteran status; and (in state employment only) because of sexual orientation. It is a violation of the Department's Nondiscrimination Policy when inequitable practices, based on the above mentioned factors, occur in licensure, service delivery and/or employment. The Department's objective is that its policies and procedures are to be consistent with Titles VI and VII of the Civil Rights Act of 1964, as amended in 1972; Executive Order 11250,- Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967, the 1974 Vietnam Era Veteran Readjustment Assistance Act, as amended; the Americans With Disabilities Act of 1990, the Civil Rights Act of 1991; the Washington State Law Against Discrimination, RC W 49.60,- the Affirmative Action RCW 49.74, and the Washington State Governor Executive Orders 89-01, 93-07 and 96-04.

Specifically, the Department's objective is that its policies are in compliance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. The Rehabilitation Act of 1973 as amended, 29 U.S.C. 794, 45 C.F.R. Part 84, prohibits a recipient of financial assistance from the federal government generally and United States Department of Health and Human Services specifically from discriminating on the basis of disability. Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 et seq., provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The Department is a "public entity" under the ADA because it promulgates policies and regulations regarding early education programs. To prevent disability discrimination, the ADA requires that where disability is at issue, every situation will

be addressed on an individual, case by case, basis where reasonable accommodations and modifications will be explored.

SPECIFIC UNDERSTANDINGS

It is the understanding of the parties that The Department's focus in promulgating child care center regulations is the health, safety and welfare of children who are in the care of individuals other than their parents. The Department is obligated by statute to establish minimum licensing standards that safeguard the health, safety and well-being of children receiving care away from their own homes – RCW 43.215, formerly RCW 74.15.010 (1); RCW 74.15.030. Given this mandate, the Department's position is that the needs of children can only be met with continuous and vigilant supervision. In most cases, this includes the ability to observe and respond to emergent situations, (i.e., a child leaving the classroom or play area on his or her own, medical emergencies, such as choking, inappropriate behaviors by or between children, etc).

The Department recognizes that not all child care staff are the same and that not all circumstances are the same. Specifically, blind and visually impaired child care workers can provide the appropriate level of supervision and vigilance even though a blind or visually impaired worker is incapable of physically viewing the child in the same way as a worker with normal vision. Blind and visually impaired workers may use reasonable accommodations and other alternative techniques to monitor safely the activities of children under their care.

The Department's regulations do not prohibit blind or visually impaired child care workers from working at day care centers. The regulations also do not prohibit blind or visually impaired workers from being counted toward the staff-to-child ratios: the staff-to-child ratios are licensing standards that are necessary for proper supervision of pre-school age children, toddlers and infants. There are various ways that a child care center can meet these standards.

Child care centers can make arrangements on a case-by-case basis to ensure safety mandates are being met, while accommodating the specific needs of staff. While WAC 170-295 requires that staff keep children in continuous visual and auditory range at all times, the implementation of this rule is typically handled locally and on a case-by-case basis. Keeping the child in "visual and auditory" range does not require that a child care worker possess normal vision.

Before any permanent action is taken by Department staff, the employer and the staff person will be given the opportunity to demonstrate how they will ensure that the licensing standards are being met. Accommodations implemented by the employer and the blind/visually impaired worker may encompass a wide range of possibilities. Examples of accommodations that may be sufficient, depending on the case by case circumstances include, but are not limited to, access to child care rooms actively controlled by the blind/visually impaired worker to keep

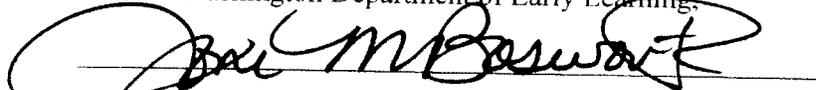
more effective track of the children, the use of audio devices to track children, cooperation and team work with sighted staff members or volunteers to monitor safely children, and the use of other methods of electronic supervision. It is primarily incumbent on the employer and employee to provide suggestions or proposals for accommodations appropriate for the particular day care facility and that will not jeopardize the safety of children. In some circumstances, the Department may offer suggestions and recommendations about accommodations and techniques to be employed.

Before taking any permanent adverse action: 1) the Department will consult with the employer and the individual to determine how compliance with the Department's regulations can be achieved; and 2) the Department will provide the employer and the individual contact information for outside entities such as the Washington Department for the Blind and the National Federation of the Blind.

This memorandum will be posted on the Department's website and a message will be sent by e-mail, using the departments "listserv", to notify those in the agency and the public that this memorandum is posted on the agency website.

Dated this 23 day of October, 2007

State of Washington Department of Early Learning.

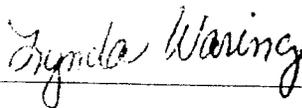


JONE BOSWORTH, J.D.

Director, Department of Early Learning

(formerly DSHS Division of Child Care and Early Learning)

Dated this 15th day of October, 2007



LYNDA WARING