

WILD

children in childcare

American children are being expelled from children's services more frequently than from schools. While there is no research to verify this trend in Australia, aggression and conduct problems in young children seem to be on the rise. **Mimi Wellisch** explains that although there are relatively few children who behave violently in childcare services, their impact can cause trauma to children, parents and staff when a service finds itself unprepared.

Frequent violent behaviours can be classed as a disability in a child—whether a child is diagnosed or not—and a child in NSW is protected under both Federal and NSW anti-discrimination laws. Parents do not have to disclose that their child can be highly aggressive when they enrol the child just as disclosure is not necessary when a child with HIV is enrolled. Instead it is an expectation that the service is adequately staffed and trained. For example, in the latter case the expectation is that safe hygiene practices are implemented at all times.

There would be a legal expectation that the service practices inclusion through the provision of adequate programming, so that children can participate without being disadvantaged in comparison with other attendees. The service demonstrates this by adapting to the needs of the child and the effects caused by his or her inclusion as far as is reasonable, for example, by providing programming, special equipment and/or staff.

Additionally, in the case of a child with violent behaviours the legal concept of duty of care would involve the expectation that childcare professionals take all reasonably practicable steps to ensure the safety of all children, as they may be placed at serious physical and psychological risk. As well, federal occupational health and safety legislation requires a safe working environment for staff and prevention of accumulated stress through continued dealings with a child who exhibits unpredictable and violent behaviours.

play with the aggressive child is important information for social insight, as is the coaching of strategies for entering play, sharing, taking turns and being a willing and respectful follower of the rules of other children's play. It is also important to point out negative thinking in the child and demonstrate reality, for example, 'you said nobody wants to play with you just after Elsie asked you to help her push the pram!'.

Terminating enrolment

A re-evaluation of the placement should be made if the violence persists or even increases over time despite all the child's needs having been addressed as far as is reasonable, while risks to staff and children are mounting.

Despite the best efforts on everyone's part, terminating the enrolment could be the only remaining option.

Examples of this would be when your documentation demonstrates that other children may have started to copy some of the aggressive behaviour, that children may be suffering from nightmares, staff members are thinking about resigning, and even the employment of an additional staff member has been insufficient in preventing a string of accidents suffered by other children. In this case a service may be excused from any discriminatory action based on unjustifiable hardship.

Transition to a more suitable setting that specialises in behaviour difficulties or other childcare options such as in home care may be explored amicably in consultation with the family.

Terminating the child without such discussion and action may cause resentment and perhaps legal action under either the *Anti-Discrimination Act (NSW) 1977* or the *Disability Discrimination Act (Commonwealth) 1992*. Equally, however, the continued enrolment of a child whose behaviour is unpredictable and dangerous may lead to neglect of duty of care towards other children and perceived neglect of responsibilities under the *Occupational Health and Safety Act* towards members of staff.

Although the enrolment of a child with violent behaviour may provide an interesting challenge to dedicated childcare professionals, it can also be a legal balancing act requiring good will, planning and level-headed decision-making. ■

Mimi Wellisch has over 20 years early childhood teaching experience, has published extensively, and holds a Masters in Early Childhood from Macquarie University.

References:

1. S. Tarrant, *Managing OHS in Children's Services*, Sydney, Lady Gowrie Child Centre, 2002.
2. M. Vassili, 'Managing anaphylaxis: A legal perspective', *Rattler* 61, pp.11-14, 2002.

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