
DDSD's Residential Training presents

ETHICAL AND LEGAL ISSUES

Participant Manual



State of Oklahoma Department of Human Service
Developmental Disabilities Services Division

Ethical and Legal Issues

RESIDENTIAL TRAINING

LEARNING OBJECTIVES

Primary Objective:

Upon completion of this training and given the appropriate materials, the participant will be able to recognize and identify the ethical values and observe the legal responsibilities that guide their behavior as residential staff members.

Secondary Objectives:

- *List ten rights that all people enjoy.*
 - *Identify situations involving risk and support individuals in safely exercising their rights without overprotection or unnecessary restriction.*
 - *Define the term “Choice” and differentiate between choices and rights.*
 - *Describe the role of the guardian and list five alternatives to guardianship.*
 - *Recognize and report the signs of abuse and neglect.*
 - *List eight methods of preventing mistreatment.*
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Ethical and Legal Issues

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ETHICAL AND LEGAL ISSUES

In your Foundation training, you were exposed to some of the ethical and legal aspects involved in working with people with developmental disabilities. We discussed such issues as how labeling individuals is detrimental to the individual's self concept as well as how it hinders meeting the goal of community inclusion.

We discussed risk and whether it is appropriate to allow people to take reasonable risks even if it means they might fail at something. We also discussed the questions of abuse and neglect and the ethical issues surrounding them. In this training, we will expand on these subjects and explore the ethical and legal issues involved.

ETHICS AND VALUES

Primary Objective:

Recognize and identify the ethical values that guide your behavior as a residential staff member.

Webster defines **ethics** as

"A set of moral principles or values..., the principles of conduct governing an individual or a group."

Values are defined as

"A degree of excellence . . . , to rate or scale in usefulness, importance or general worth . . . , to consider rating highly."

Webster defines ethics as:

"A set of moral principles or values... the principle of conduct governing an individual or group."

Values are defined as:

"A degree of excellence..., to rate scale in usefulness, importance or general worth..., to consider to rate highly."

I. VALUES

Working in a residential setting with people who might require assistance from others dictates that we have a clear set of values that governs our ethical behavior, whether the work we do involves medical care or support of people with behavioral issues. The primary guiding principle to follow is the Golden Rule (applied in this case to our work):

We should treat people as we would wish to be treated if we were in need of the same types of services.

THE GOLDEN RULE

We should treat people as we would wish to be treated if we were in need of the same type of service

The philosophy of service delivery in Oklahoma is based on fundamental values and ethical behavior concerning all people. These values include the following:

- Every human being has dignity and worth.
- People need to have opportunities to achieve their potential through a variety of means including education and skill development in a safe and supportive environment, both physically and emotionally.
- People benefit from making their own decisions.
- People need to live, work, and play in natural settings appropriate to their stage of life.
- People are entitled to enjoy the company of family and friends.
- Adults should live in their own homes and be able to make choices about where and with whom they live.
- Children need to live with families and are entitled to a free and appropriate public education in non-segregated settings.
- People have the right to privacy.
- People need necessary health services.

Fundamental Values

- Every human being has dignity and worth.
- People need to have opportunities.
- People benefit from making their own decisions.
- People need to live, work, and play in natural settings.
- People should be enabled to enjoy the company of family and friends
- Adults should live in their own homes.
- Children need to live with families.
- People have a right to privacy.
- People need necessary health services.



The Personal Value Statement (PVS)

John E. Oliver

Instructions: For each of the following groups of three words place a 3 by the word that is most important to you and a 1 that is least important to you, place a 2 by the remaining word.

- | | | | |
|----|------------------------|----|------------------------|
| 1 | a. Power _____ | 11 | a. Conquest _____ |
| | b. Style _____ | | b. Art _____ |
| | c. People _____ | | c. Sympathy _____ |
| 2 | a. Thinking _____ | 12 | a. Learning _____ |
| | b. Practicality _____ | | b. Production _____ |
| | c. Winning _____ | | c. Strength _____ |
| 3 | a. Taste _____ | 13 | a. Harmony _____ |
| | b. Unselfishness _____ | | b. Giving _____ |
| | c. Reason _____ | | c. Solutions _____ |
| 4 | a. Tangibility _____ | 14 | a. Prosperity _____ |
| | b. Overcoming _____ | | b. Struggles _____ |
| | c. Appearance _____ | | c. Form _____ |
| 5 | a. Helping _____ | 15 | a. Understanding _____ |
| | b. Science _____ | | b. Logic _____ |
| | c. Efficiency _____ | | c. Wealth _____ |
| 6 | a. Control _____ | 16 | a. Influence _____ |
| | b. Charm _____ | | b. Elegance _____ |
| | c. Kindness _____ | | c. Charity _____ |
| 7 | a. Knowledge _____ | 17 | a. Explanation _____ |
| | b. Utility _____ | | b. Profit _____ |
| | c. Position _____ | | c. Authority _____ |
| 8 | a. Culture _____ | 18 | a. Symmetry _____ |
| | b. Warmth _____ | | b. Freedom _____ |
| | c. Analysis _____ | | c. Theories _____ |
| 9 | a. Usefulness _____ | 19 | a. Effectiveness _____ |
| | b. Command _____ | | b. Privilege _____ |
| | c. Refinement _____ | | c. Beauty _____ |
| 10 | a. Aid _____ | 20 | a. Assistance _____ |
| | b. Information _____ | | b. Research _____ |
| | c. Application _____ | | c. Earning _____ |

Personal Value Statement Scoring Sheet

Instructions: Enter your scores from the PS form in the spaces below. Then add the scores in each column and enter the total for the column in the space provided.

VALUES				
Political	Aesthetic	Social	Theoretical	Economic
1a _____	1b _____	1c _____	2a _____	2b _____
6a _____	6b _____	6c _____	7a _____	7b _____
11a _____	11b _____	11c _____	12a _____	12b _____
16a _____	16b _____	16c _____	17a _____	17b _____
2c _____	3a _____	3b _____	3c _____	4a _____
7c _____	8a _____	8b _____	8c _____	9a _____
12c _____	13a _____	13b _____	13c _____	14a _____
17c _____	18a _____	18b _____	18c _____	19a _____
4b _____	4c _____	5a _____	5b _____	5c _____
9b _____	9c _____	10a _____	10b _____	10c _____
14b _____	14c _____	15a _____	15b _____	15c _____
19b _____	19c _____	20a _____	20b _____	20c _____
Total _____	Total _____	Total _____	Total _____	Total _____
Rank _____	Rank _____	Rank _____	Rank _____	Rank _____

Personal Values Statement

Values Description

Political:

- Likes to control situations
- Enjoys power
- Wished to be seen as an authority figure
- Conquest is ultimate goal
- Does not mind struggle if it leads to ultimate goal

Aesthetic:

- Prefer beauty- both physical and spiritual
- Enjoys nature and symmetry
- Seeks refinement
- Dresses with style and class
- Prefers harmony in relationships

Social:

- Gregarious
- Enjoys working with all kinds of people
- Has great tact
- likes to give assistance
- kind and giving

Theoretical:

- Thinker, prefers theory to reality
- Prefers reasoning to hasty judgement
- Believes in the effectiveness of science
- Enjoys finding rational solutions to problems
- Enjoys analysis of situations

Economic:

- Sees the utilitary nature of objects
- Profit seeking
- Is practical and rational
- Wealth is ultimate goal
- Concerned with immediate and future earnings

Rights, Choices, and Plain Common Sense

Secondary Objective

List ten rights that people enjoy.

II. Rights

People with developmental disabilities who receive services in our system enjoy the same constitutional and legal rights as all other citizens of our free society. The following rights are outlined in the *Citizenship Rights Training Manual*:

- **The right of the person to information that helps that person (or his or her legal guardian) understand his or her rights in greater detail. This includes the availability of resources or programs to help non-English speaking persons, person with hearing disabilities, persons with visual disabilities, etc.**
- **The right to know the risk of a particular program or treatment.**
- **The right to refuse a treatment or program and to be provided with alternatives, and the right to consider the effects of that refusal.**
- **The right, as well as the opportunity, to manage financial affairs.**
- **The right to be free from the threat of physical, sexual, verbal, or psychological abuse and or punishment.**
- **The right to be free from unnecessary drugs and physical restraints.**

-
- **The right to personal privacy and confidentiality. (This includes the right to privacy for activities involving personal care and private visits.)**
 - **The right to be compensated for work.**
 - **The right to communicate, associate, and meet privately with persons of one's choice and to send and receive unopened mail (with assistance if needed).**
 - **The right of access with privacy to make and receive personal and private telephone calls.**
 - **The right to participate in social, religious, cultural, and community activities, based on personal preference.**
 - **The right to own and use personal possessions.**
 - **The right of husband and wife to co-habitate (live together).**
 - **All other rights as citizens of the United State; including the right to file a complaint and the right to due process.**

For further information, contact the Area Office, Developmental Disabilities Services Division, in your area:

<p>AREA I 729 Overland Trail Enid, OK 73703 (580) 237-0995 1-800-522-1064</p>
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<p>AREA II Laura Dester Center 1427 East 8th Street Tulsa, OK 74120 (918) 560-4831 1-800-522-1075</p>
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<p>AREA III 311 South Chickasaw Pauls Valley, OK 73075 (405) 238-9367 1-800-522-1086</p>
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- **BALANCING RIGHTS WITH GOOD JUDGEMENT**

Good judgement is required in determining an individual's ability to responsibly exercise his or her rights. It is often difficult to balance the right to make choices with our obligation to provide protection from harm.

Example: A staff member was heard to say, "It's his right to walk right out in front of a speeding truck if wants to – I can't violate his rights by trying to stop him. It's a matter of choice." Obviously, the person lacking judgement in this case is the staff member.

This represents an irresponsible viewpoint in allowing people to make their own choices. It ignores our obligation to protect a person from harm. It also is an example of paid staff people hiding behind the concept of choice is a way of avoiding responsibility.

Restrictions of rights do sometimes occur and when used appropriately, are intended to protect the individual and his or her interest. It is your responsibility to ensure the person is safe. It is also your responsibility to bring the individual's ability to exercise certain rights to the attention of your supervisor or other members of your team.

Sometimes the people you work with have not yet learned to exercise all their rights responsibly. However the inability to independently exercise in one area does not restrict the individual in making other choices. It is our responsibility to work with the person, his or her parents, guardian, the case manager, and the program coordinator to identify rights that the person may not yet be able to safely exercise.

The inability to independently exercise one's right in one area does not restrict the individual in making other choices.

III. RISK

Secondary Objective

Be able to identify situations involving risk and to support individual in safely exercising their rights without overprotection or restriction.

Consequences of choices must be weighed. The benefit of trying a new choice or exercising a right must be balanced against the possible risk of danger to that person if failure occurs. The consequences of unsuccessfully choosing today's clothing are not as dangerous as the consequences of choosing to disobey traffic signals.

Taking risks allows us to grow and develop as individuals. Without such risks we would never stretch ourselves to become as much as we can be. In the following sections, we will discuss three ways to support individuals in risk-taking. They are:

- **Do not protect from ALL risk**
- **Support effort**
- **Use Least Intrusive Measures**

- Do not protect from all risk.
- Support effort
- Use least intrusive measures.

Let's talk about each of these measures in more depth...





THE DIGNITY OF RISK

What if you never got to make a mistake?

What if your money was always kept in an envelope where you couldn't get it?

What if you were always treated like a child?

What if your only chance to be with people different from you was with your own family?

What if you never got to make a decision?

What if the only risky thing you could do was to act out?

What if you couldn't go outside because the last time you went it rained?

What if you took the wrong bus once and now you can't take another one?

What if you got into trouble and were sent away and you couldn't come back because they always remember you're "trouble"?

What if you worked and got paid \$0.46 an hour?

What if you had to wear your winter coat when it rained because it was all you had?

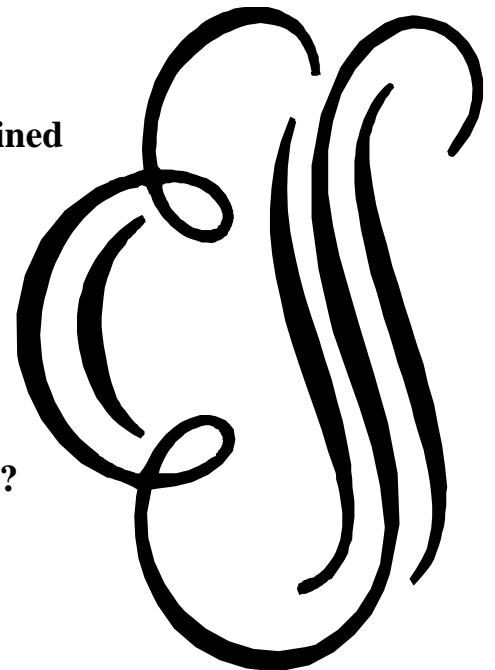
What if you had no privacy?

What if you could do part of the grocery shopping but weren't allowed to do all the shopping?

What if you spent three hours every day just waiting?

What if you grew old and never knew adulthood?

What if you never got a chance?



• Do not protect from ALL risk

An irresponsible approach to an individual's rights is to try to protect the person from all risk. Without the opportunity to try new tasks, even if an element of risk is involved, a person cannot learn to adjust to new situations or to overcome obstacles.

Helping a person to effectively and safely exercise his or her rights can be a lot of trouble. It may seem easier not to let that person do something or, conversely, to let him do whatever he wants to do.

Example: There were three people living in a residence. One of them had epilepsy. Because of fear that the person with epilepsy might have a seizure in bed and be suffocated by his pillow (not likely anyway), the other two individuals had their pillows taken away "just in case something might happen."

This is called the Principle of the Lowest Common Denominator – imposing restrictions on everybody because of one person's needs.

You should allow a person to encounter new situations – even when risk is involved – if it is a reasonable risk. One means of doing this is following a person while he or she is learning a new skill (such as using public transportation) but not intervening unless the individual is in need of help or is in danger.

You need to know what people can do, not what they can't do. Parents sometimes complain they aren't asked about the skills their sons or daughters do have. They often discover staff either doing things for the person (encouraging helplessness), or re-teaching skills that person already has achieved.



• Support Effort

You also should be prepared to support that person if the attempt does not turn out as desired. Failure at one task does not equal failure as a human being. We all fail. We are all better at some things than at others. Failing is often another way of learning – it can teach us about ourselves and about the world we live in.

Should people be allowed to risk something if we know they have a chance of failing? What are the pros and cons of risking failure?

Get agreement with the person, parents/guardians, and case manager about the amount of staff assistance that should be provided with a task. The guardian must be consulted if a person's choice might result in a high degree of risk or danger.



• Least Intrusive Measures

Any restrictions that are applied when an individual is exercising his or her rights should use the least intrusive measure possible. For example, assume a young man spends all his money. An intrusive step would be to remove his personal funds and manage them for him. A less restrictive alternative would be to provide instruction on money management and positively reinforce him when he begins to use it wisely.

Example:

Choice: *Chris would like to a movie alone but you are afraid that he might get lost.*

Intrusive: *Go and sit with Chris at the movies*

Less Restrictive Alternative: *You and your friend go with Chris and his friend to the movies. You sit in different parts of the theater where you can make sure Chris doesn't get lost but you are also not "breathing down his neck."*

Example:

Choice: *Cheryl wants to color her hair. You are worried that the chemicals in the dye may get in her eyes and damage her already poor eyesight. In addition, the process is time consuming and sometimes difficult to manage.*

Intrusive: *Tell Cheryl "no" she cannot color her hair.*

Least Restrictive Alternative: *Buy a rinse that shampoos in (and off) – be sure to check for any allergic reactions.*

CHOICES

Secondary Objective:

Define the term “Choice” and differentiate between choices and rights.

I. CHOICE

According to Webster’s Ninth Collegiate Dictionary, a **choice** *indicates or implies an end or purpose which requires exercise of judgement*. In other words, making a choice requires an individual to make a decision about something based on the facts acquired about that situation.

Choice means making decisions about one’s life and is critical to the feeling of self-worth in all people. Our job is to support each person we serve in the choice(s) he or she might make concerning the life he or she wants to live.

You work in a person’s home. In this role you should always look for ways to help people you serve make their own choices concerning daily activities. Choices might include:

- How we arrange our furniture
- Who we want as friends
- Where we wish to be employed
- Foods or clothes we prefer

Often, it is easier for staff to routinely make decisions and take care of what goes on in a residence. If you impose your own preference on the people you serve, you may soon encounter problems. You may encourage dependency or worse, the perception fostered may be that they are bossing me around.”

It becomes, again, “learned helplessness” – when people are not allowed to take responsibility for even such simple things as getting up on time or dressing appropriately for work.

Because of these “learned” attitudes, people may accept things the way they are and/or feel powerless to change circumstances.

Getting to know people very well will help us help them learn to make their own choices and decisions and therefore, avoid “learned helplessness.” It will also help us make sure that people have the proper adaptive equipment that will allow them to communicate their choices and have the freedom of movement to accomplish the choices they make. They will have the “power” to make their own decisions in matters where choice is an issue.

II. DECISION-MAKING

Secondary Objective:

Identify two or more ways to support an individual in decision-making.

● WHY DECISION-MAKING IS DESIRABLE

You must always empower the people you serve to make their own choices and their own decisions whenever possible. There are at least two good reasons why decision-making (choosing from alternatives) is desirable:

- First, as already mentioned, it has to do with respecting the rights of people.
- Second, it's how we grow and develop. We learn from experience.

Choice-making skills are developed; they do not just automatically appear. People must develop the process of making informed choices as well as the ability to distinguish the difference between what is a right and what is a choice

You need to look for opportunities to help people learn to make responsible choices and to become aware of their rights. As you have said, decision-making is a learned skill, not one that is innately "just there." As teachers, you have the ability, and the responsibility, to encourage the learning process of choice making.

● WAYS TO ENCOURAGE AND SUPPORT DECISION-MAKING

We will discuss three methods of encouraging and supporting individuals in the decision-making process. These are:

- Making Informed Choices
- Supporting Without Taking Over
- Awareness of Probable Outcomes

And, in more depth...

● Informed Choices

One way to develop and encourage decision-making is by making **informed choices**. All information and options about a subject must be presented before an individual can make a real and valid choice.

If a person is living in a segregated, protected setting and has never known anything else, can that person possibly make an informed choice about whether or not he or she wants to stay there? If you ask that person if he or she would like to leave that dependent setting, are you offering a real choice?

Three ways to support decision making

- Making informed choices
- Supporting without taking over
- Awareness of probable outcomes

Pretending that choices exist when circumstances say they do not is a copout. You must work to make the right of choice real.

However, choice does not mean unlimited freedom. There are responsibilities that go with our choices, as well as limits imposed by our society. Just as you make sure there are opportunities for choice available to the people you work with, you also need to help them recognize their responsibilities, become aware of their limitations, and understand the consequences of their actions.

You should encourage informed choices that help foster the inclusion of the people you serve into the community as well as into our society at large. Choices that result in segregation of citizens with disabilities from citizens who are not disabled undermine all our efforts at inclusion.

• **Supporting someone without "TAKING OVER"**

Another way to support decision-making is to give support to a person without "taking over" the process. Picture the way you might feel if someone came into your home and "took over" if you needed care. You can then understand why so often people who are elderly or HAVE disabilities may resent the well-intentioned efforts of staff to "see things run smoothly" and have the situation "under control."

The easiest way to figure out what support(s) a person needs to help them make choices is to:

- Put yourself in that individual's situation.
- Ask yourself, "If I was in the same situation, what assistance would I want and/or need?"

Choices about when, where, and what should be made by the person living there whenever possible instead of the staff "taking over."

• Determining probable outcomes of choices

The third way of supporting decision-making is by discussing the probable outcomes of various choices. **Many probable outcomes associated with certain choices are unclear.** Make every effort to help the people you work with think through and understand these choices by clearly defining and discussing the possible results of each choice. For example, individual responsibility with regard to using the telephone might include asking the following questions:

- What happens if I monopolize the phone when there are others living with me who also may want to use it?
- What happens if I call my uncle or friend to the point it becomes annoying to him?
- What happens if I call people who are working just to socialize with them? What happens to them? To their jobs? To our friendship?
- What happens if, at the end of the month, I can't pay the bill on the phone calls I have made?

Discussing probable outcomes helps people make informed decisions. Taking a totally hands-off attitude toward all choices made by people is abdicating your responsibility as a residential employee.



Case Studies on Choices and Decision-Making

Scenario #1:

John, a 32-year-old man, resides in his own home with one other roommate. John works in a department store part-time with little supervision or assistance and takes care of most of his needs at home. He does require transportation when destinations are beyond walking distance and he is not very good with money, requiring assistance to make purchases. On this particular evening, John is heading out his front door. The residential employee in the home, who is helping John's roommate prepare supper, asks John where he is going. John replies, "To the ABC grocery store up the street." The staff continues to question John on why he is leaving and then tells him to wait until after supper and he (the staff) will go with him. John is angry about this but agrees to wait.

Question:

1. What is your initial impression of the situation?
2. What additional information would you like to have?
3. How would this additional information affect your behavior if you were the staff member helping John?

-
2. Bill is a 23-year-old man with severe mental retardation who recently moved to a group home from an institution where he lived for 18 years. He has a small, clear plastic bag full of tiny toys and toy parts (such as miniature cars, plastic animals, and crayons). He keeps them with him at all times including at the workshops he attends, during meals, and on trips to the store. In his spare time, he seems to enjoy taking them out of the bag and arranging them and playing with them. Bill is allowed to take his toy sack everywhere because he got very upset when staff tried to make him leave it home in the past. Staff now says that it is his choice to carry the toys.

Questions:

1. What is your initial impression of the situation?
2. What additional information would you like to have?
3. Why do you think Bill is doing what he's doing?
4. If Bill is making a true 'choice,' how could you support that choice within the concept of "age appropriateness?"

Scenario #3

Assume that Bill in the above scenario is not carrying toys around but has stuffed into his shirt and shoes every letter or postcard given to him over the years.

Questions:

1. *What is your initial impression of the situation?*
 2. *What additional information would you like to have?*
 3. *Why do you think Bill is doing what he's doing?*
 4. *If Bill is making a true "choice," how could you support within the concept of his "rights?"*
-

Scenario #4

Mark is a 27-year-old man who resides in his own apartment with the support of a residential employee. Mark is generally an independent person and seems capable of making a lot of decision for himself. He does not have a guardian but does have parents who are very involved in his life. Mark generally goes along with their wishes, such as keeping his hair short, attending a particular church, and letting them handle most of his money. Mark has confided to you that he doesn't always agree with their choices for him but he loves them and wants to please them. Mark tells you he has met a girl and want to date her. You know that his parents will not approve because they have fears about sexuality, exploitation, etc. And, they might even consider moving Mark to another agency if they don't like what you are doing.

Questions:

1. What would you do?
2. What additional information would you like to have?
3. Would it be appropriate to support Mark's choice, and if so, how could you do so in a responsible manner?

LEGAL ISSUES

Primary Objective

Recognize and observe the legal responsibilities you have as a residential staff member.

I. Informed Consent

- Consent Issues

We have talked about choices in one's life. The opportunities for choice-making occur every day, at work, at home, and during leisure time. In addition, there are times when the consequences of a choice or a decision take on legal status. Agreeing to a life-threatening operation, to a major purchase of some sort, signing contracts -- these are all examples where legal consent is required.

All adults in our society are citizens and therefore, have the right to give consent to issues that involve legal considerations. **All adults, even adults with mental retardation, are presumed to be competent under our laws unless declared to be incapacitated by a court of law.** Only then can one or more legal rights be restricted or delegated to others.

All adults, even adults with mental retardation, are presumed to be competent under our laws unless declared to be incapacitated by a court of law.

Let's talk about the role you have as a residential staff member in helping a person give informed consent . . .

● The Role Of Staff

To assure informed consent, you may need to help a person understand options. You may need to explain or teach the person to make necessary decisions **after you have provided sufficient information about the options available**. Informed consent requires that:

- the person has the capacity to make decisions after receiving information that is relevant to that decision, and that;
- if the person with mental retardation cannot, in your opinion, give informed consent in important decisions, you need to discuss that issue with the person's case manager who may in turn ask the person and his or her family to consider the need for guardianship.

What about guardians? What are their roles in informed consent issues?

GUARDIANSHIP

Secondary Objective:

Describe the role of the guardian and list five alternatives to guardianship.

Guardianship is a legal procedure intended to protect the rights of a person who does not have the capacity to give informed consent. The inability to always make **wise** decisions does not by itself show the need for a guardian. Otherwise, each of us who has made poor choices (a bad marriage or the overuse of credit cards) would now have guardians.

Guardianship is a legal relationship established by a judge. It can be general; allowing the guardian to make virtually all major decisions for that person, or it may be specific, giving decision-making capabilities to the guardian only in a few



areas in which the person obviously needs help, at least for the time being. It may be ordered for only a limited time or even a single decision. **It need not be lifelong.**

The areas for which guardians are most often appointed to assist people are:

- **the management of finances;**
- **the management of health care issues.**

Being appointed a guardian is a serious responsibility. All guardians are responsible for . . .

- assuring that the rights of the person are protected;
- encouraging people to participate (to the maximum extent of their abilities) in all decisions which affect them, and to act on their own behalf in any decision-making that involves them, within the limits of the court;
- assisting people with disabilities to develop or regain, to the greatest extent possible, their capacity to meet essential requirements for their own health and safety.

Again, guardianship is not an "all or nothing" proposition. There is an unlimited array of choices a judge may select from. Some guardians are paid individuals but the current trend is toward volunteer citizens acting on behalf of people. Remember that guardianship is required to be reevaluated at least annually in court.

● Alternatives to Guardianship

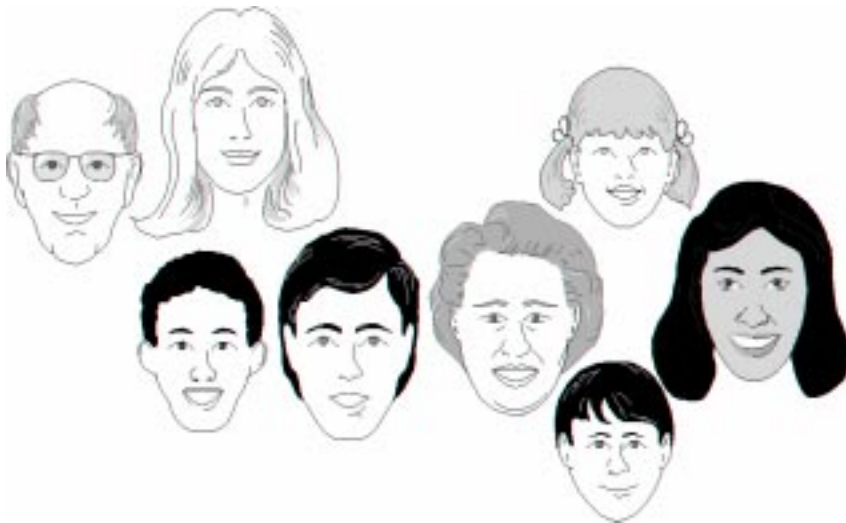
There are many other ways to support people in safeguarding their rights that are less restrictive than guardianship. Alternatives may exist that meets the person's need for assistance as well, or better than, guardianship. Some of these are as follows:

The areas for which guardians are most often appointed are:

- The management of finances.
- The management of health care issues

● Family and Friends

Family and friends can provide the person with guidance and support in decision-making. For example, a sister can explain the risks, advantages and disadvantages to someone with a developmental disability just like you do with your friends or relatives about an amazing number of decisions every day. As long as these things are explained to the person in a way that he or she understands, the person has a basis to make their own decisions.



Alternatives to Guardianship

- Family / friend provide guidance.
- Involving person in a citizens' advocacy program.
- Provide skill development in the exercising of rights and self-advocacy.

● Citizen's Advocacy Program

Involve the person with a citizens' advocacy program. A trained volunteer is matched with the person to serve as a guide and advisor to help with a number of activities that family or friends might do if available. Programs like this can be found through the Donna Nigh Foundation and some local ARCs.

● Training

Involve the person in training in the skills of exercising their rights as well as techniques for speaking out for themselves (self-advocacy). Programs like this are available in many areas through organizations such as People First.

Alternatives involving money include establishing a trust fund to manage the money and property of the person; creating power of attorney for the person; establishing limited bank accounts; and designating someone as a representative payee

for the person. While you will probably not be involved in establishing these alternatives, you should be aware of them as you will often be involved in assisting the person in money management within these alternatives. These alternatives are described below.

● **Trust Funds**

Trusts may be set up in a variety of ways, depending on the individual needs and circumstances of the person. Generally, the trust is managed by a trustee - either a person or a financial institution such as a bank. The trustee manages the person's funds and may act as advisor about financial matters.

● **Power of Attorney**

Power of attorney transfers the right to make decisions about property to someone else without giving those rights up. Power of attorney requires that the person understand what he is authorizing the other person to do.

● **Limited Bank Accounts**

Limited bank accounts may be set up in a number of ways. These accounts restrict access to funds in the bank. For example, an account may require two signatures on checks or withdrawals or it may limit the amount of money a person can withdraw. Not all banks will establish such accounts so someone needs to check first to see what the options are.

● **Representative Payee**

If the need for assistance has to do with income or managing money and the only income the person has is Supplemental Security Income, Social Security or some other federal supplement, another person may be designated to receive and manage these federal benefits. Details about this program are available at your local Social Security office.

Alternatives Cont.

- Trust Funds
- Power of Attorney
- Limited Bank Accounts
- Representative Payees

Let's look at some agencies that are involved in safeguarding people's rights. . .

In addition to the alternatives to guardianship listed above, there are other agencies which may assist people to safeguard their rights in specific or limited situations. Some of these are:

- **Office of the Guardian Ad Litem**

As you recall from your Foundation training, this office was established by the Court Order of December 23, 1988, to serve as advocate for Hissom class members whose parents or guardians were not actively involved with them. The phone number for the Office of the Guardian Ad Litem is

(918) 561-1306

- **Office of Client Advocacy (OCA)**

This office, which is located in the Department of Human Services, investigates allegations of abuse, neglect, or mistreatment of people who reside in one of the Department of Human Services operated facilities. The OCA also investigates allegations of abuse, neglect, or mistreatment of custody or non-custody children in out-of-home placements, including but not limited to specialized community homes, detention centers, hospitals, psychiatric facilities and treatment programs, and any child care facility (whether licensed or unlicensed) excluding day care centers and day care homes.

The OCA does not investigate allegations of the mistreatment of adults or children in foster homes or those living with relatives.

The OCA is assigned the responsibility of resolving grievances and investigation of allegations of mistreatment of Hissom class members.

The phone number for OCA is

1-800-522-8014

or

(405) 521-3491

- **Oklahoma State Department of Health**

The focus of the State Department of Health (SDH), as well as local health departments, is the prevention of disease, illness, accidents, disabilities, and other health problems. These agencies include immunization and educational programs. This agency investigates complaints regarding situations which violate licensure standards in group homes. Any person who feels a violation may have occurred may request an investigation. The phone number is

(405) 271-6868

- **Disability Law Center**

The Oklahoma Disability Law Center advocates for services and promotes the rights of adults and children with mental illness who are in hospitals, detention centers and other facilities as well as people with developmental disabilities regardless of where they live. They provide legal representation only to clients in these facilities at no cost when other no cost legal services are not available. The number of the Disability Law Center is

(918) 664-5883

or

1-800-226-5883

- **Indian Tribal Offices**

People who are on the tribal rolls can be provided assistance through their tribal offices. (A list of addresses for tribal offices is attached which can be made into a handout.)

One of your most important responsibilities as a residential staff member is the health and welfare of the person you serve. That includes the recognition and prevention of abuse and neglect.

INDIAN TRIBAL OFFICES

Absentee Shawnee
PO Box 1747
Shawnee, OK 74801

Apache Tribe
PO Box 1220
Anadarko, OK 73005

Caddo Tribe
PO Box 487
Binger, OK 73009

Cherokee Tribe Office
PO Box 948
Tahlequah, OK 74464

Cheyenne-Arapaho
Tribal Office
PO Box 38
Concho, OK 73022

Chickasaw Nation
PO Box 1548
Ada, OK 74820

Choctaw Tribal Office
PO Drawer 1201
Durant, OK 74701

Citizens Band of Pottawatomie
Rt. 5 Box 151
Shawnee, OK 74801

Comanche Tribal Office
PO Box 72
Lawton, OK 73501

Cherokee-Shawnee
4957 N. St. Louis
Tulsa, OK 74126

Creek Nation
PO Box 1114
Okmulgee, OK 74447

Delaware Tribe of East
Oklahoma
108 S. Seneca
Bartlesville, OK 74003

Eastern Shawnee
PO Box 350
Seneca, OK 64865

Ft. Sill-Apache Tribal Office
Rt.2 Box 121
Apache, OK 73006

Iowa Tribe of Oklahoma
PO Box 190
Perkins, OK 74059

Kaw Tribal Office
PO Box 45
Kaw, OK 74641

Kickapoo Tribal Office
PO Box 58
McLoud, OK 74851

Kiowa Tribal Office
PO Box 361
Carnegie, OK 73015

Miami Tribal Office
PO Box 636
Miami, OK 74354

Modoc Tribal Office
PO Box 939
Miami, OK 74354

Osage Tribal Office
PO Box 178
Pawhuska, OK 74056

Oteo-Missouria Tribe
PO Box 68
Red Rock, OK 74651

Ottawa Tribal Office
PO Box 110
Miami, OK 74354

Pawnee Tribal Office
PO Box 470
Pawnee, OK 74058

Peopria Tribal Office
PO Box 939
Miami, OK 74354

Ponca Tribal Office
PO Box 2, White Eagle
Ponca City, OK 74601

Quapaw Tribal Office
PO Box 765
Quapaw, OK 74363

Sac & Fox Tribal Office
Rt. 2 Box 246
Stroud, OK 74079

Seminole Nation
PO Box 745
Wewoka, OK 74884

Seneca-Cayuga Tribal Office
PO Box 1283
Miami, OK 74354

Tonkawa Tribal Office
PO Box 70
Tonkawa, OK 74653

United Keetoowah
PO Box 1329
Tahlequah, OK 74464

United Indian Tribes of
Western Oklahoma and Kansas
PO Box 1382
Shawnee, OK 74801

Wyandotte Tribal Office
PO Box 217
Wyandotte, OK 73005

Wichita Tribal Office
PO Box 729
Anadarko, OK 73005

Native American Center
2830 S. Robinson
OKC, OK 73109

Native American Center
6539 E. 31st
Tulsa, OK 74145

Northeast Eight Inter-Tribal
Council
PO Box 1308
Miami, OK 74354

ABUSE AND NEGLECT

Secondary Objective:

Recognize and be able to report the signs of abuse and neglect.

As you probably remember from your Foundation training, there are certain factors that are important to consider when discussing abuse and neglect. Individuals who have developmental disabilities are often very vulnerable, and therefore are at a high risk of being abused and neglected and must rely on others to protect them. You must be able to recognize the types of abuse and neglect and you must be able to be responsible for the safety of those you serve.

ABUSE

The term "Abuse" means the intentional infliction of physical pain, injury or mental anguish or the deprivation of food, clothing, shelter, or medical care by a caretaker of other person responsible for providing these services.

I. PHYSICAL ABUSE

Physical abuse is the intentional (non-accidental) use or offer of physical force by a person responsible for an individual's health or welfare, aimed at hurting or injuring the individual; or knowingly causing or permitting any person to intentionally injure an individual.

Examples of physical abuse are:

- Hitting, shoving, tripping, pushing, scratching, cutting, biting, etc.
- Using physical or chemical restraints

Some signs of physical abuse are:

- Bruises and welts
- Cuts, punctures, scratches
- Broken bones and fractures
- Burns
- Human bite marks
- Internal injuries
- Suspicious scars
- Unexplainable fear of caregiver
- Unexplained injuries that do not add up

Some examples of physical abuse are:

- Hitting, shoving, tripping, pushing, scratching, cutting biting, etc.
- Using physical or chemical restraints.

II. SEXUAL ABUSE

Sexual abuse is a form of physical and/or emotional abuse in which sexual activity is initiated toward an individual by a person who is in a position of power over the individual.

Examples of sexual abuse may be:

- Incest
- Lewd or indecent proposals to a child
- Child pornography
- Rape

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Examples of sexual abuse may be:

- Incest
- Lewd or indecent proposals to a child
- Child pornography
- Rape

Some signs of sexual abuse may include:

- behavioral changes
- recurrent nightmares, night fears
- infantile behavior
- unusual interest in or knowledge about sexual matters
- self-destructive behavior
- overheard sexual remarks concerning rape or abuse

Physical signs may include:

- torn or stained underclothing
- vaginal or rectal bleeding, pain, itching or swollen genitals, vaginal discharge
- vaginal infection or disease

III. EMOTIONAL ABUSE

Emotional abuse results from subjecting an individual to an atmosphere in which that person does not feel wanted, secure, or worthy

Emotional abuse results from subjecting an individual to an atmosphere in which that person does not feel wanted, secure or worthy.

Examples of emotional neglect and abuse may include:

- Constant negative atmosphere
- Extreme teasing or humiliation
- Talking down to the individual
- Threatening with physical harm
- Withholding emotional support

Signs of emotional abuse may include:

- changes in behavior
- expression of fears
- expression of suspicion
- unwillingness to talk

IV. Exploitation

The term "Exploitation" means the unjust or improper use of the personal resources of an individual for the profit or advantage, pecuniary or otherwise, of another person.

Exploitation includes but is not limited to prohibited business transactions such as follows:

- Buying or selling any item or items for money or items of trade to persons served
- Trading articles by force from a person
- Taking any article by force or stealing from a person
- Bartering with a client for articles or money
- Borrowing money or any item of value from an individual
- Accepting articles in the form of a gift from a person

The term exploitation means the unjust or improper use of the personal resources of a person for the profit or advantage, pecuniary or otherwise, of another person.

Let's look at the difference between abuse and neglect. . .

NEGLECT

Neglect of persons under the age of eighteen years is defined in Title 21 of the Oklahoma Statutes as a willful omission rather than commission of an act. It is influenced by the community and cultural norms and ranges from mild to severe in form.

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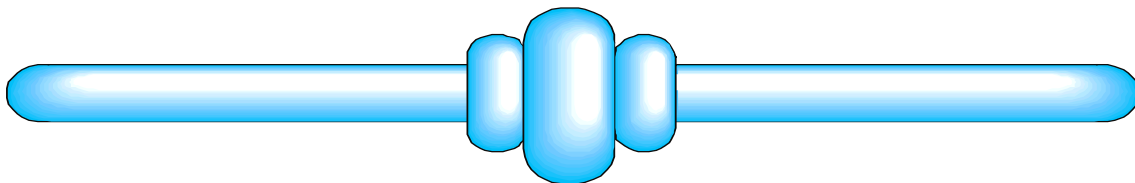
The term "neglect" means the failure to provide protection for a person who is unable to protect his or her own interests. It may also be the failure to provide adequate shelter or clothing or the harming or threatening with harm through either action or inaction either by another individual or through the person's own action or inaction because of his lack of awareness, incompetence or incapacity. This action or inaction either results or may result in physical or mental harm.

Examples of neglect may include:

- Insufficient diet
- Insufficient opportunity for personal hygiene
- Inadequate shelter and clothing
- Medical neglect
- Inadequate supervision

Some signs of neglect may be:

- provider has an alcohol or drug problem
- individual is fearful of a provider
- health problems - related to failure to provide care
- dehydration
- open sores



MISTREATMENT / MALTREATMENT

Mistreatment/Maltreatment" means harm or threatened harm to a child's or resident's health or welfare by a person responsible for that individual's health or welfare. It may be caused by any violation of statutes, regulations, written rules, procedures, directives, or accepted professional standards and practices, which is not found to be abuse or neglect. Mistreatment results in, or creates the risk of, injury of a child or resident including (but not limited to) the following situations:

1. Conduct which evidences a reckless disregard for the health or safety of a child or resident (such as leaving someone unsupervised who requires supervision).
2. Acts or omissions which contribute to the delinquency of a child (such as not following up on a call from the school or other authorities).
3. Excessive or unauthorized use of force (such as physical restraints when not necessary).

MISTREATMENT

Includes:

1. Conduct which evidences a reckless disregard for the health or safety of a child or resident.
2. Acts or omissions which contribute to the delinquency of a child.
3. Excessive or unauthorized use of force.

I. Reporting Mistreatment

State of Oklahoma law requires that "any person having reasonable cause to believe that a child is experiencing abuse or neglect, or an elderly person or incapacitated adult is suffering from abuse, neglect or financial exploitation is mandated to make a report to either the Department of Human Services (Child Protection Services, Adult Protection Services, or Office of Client Advocacy) or the office of the district attorney in the county in which the suspected incident occurred.

"Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation shall, upon conviction, be guilty of a misdemeanor. Any person who willfully or recklessly makes a false report or a report without a reasonable basis shall be liable in a civil suit for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury."

The law also provides that any person exercising good faith and due care in making a report... "shall have immunity from any civil or criminal liability that might otherwise be incurred."

In other words, no one is excused from reporting signs of mistreatment. You must make an immediate report. This includes all direct care staff, police, doctors, nurses... everyone.

It is safe to report!

You cannot get into trouble with the law or at your work if you make a report and it turns out to be wrong. However, if you do not report something that should be reported, your job may be in jeopardy and under certain circumstances, you may find yourself the subject of an allegation of neglect for failure to report.

To make a report call:

- **the local DHS office;**
- **or the local office of the District Attorney;**
- **the DHS Abuse Hotline
1-800-522-3511**

**You may also call the Office of
Client Advocacy at**

1-800-522-8014

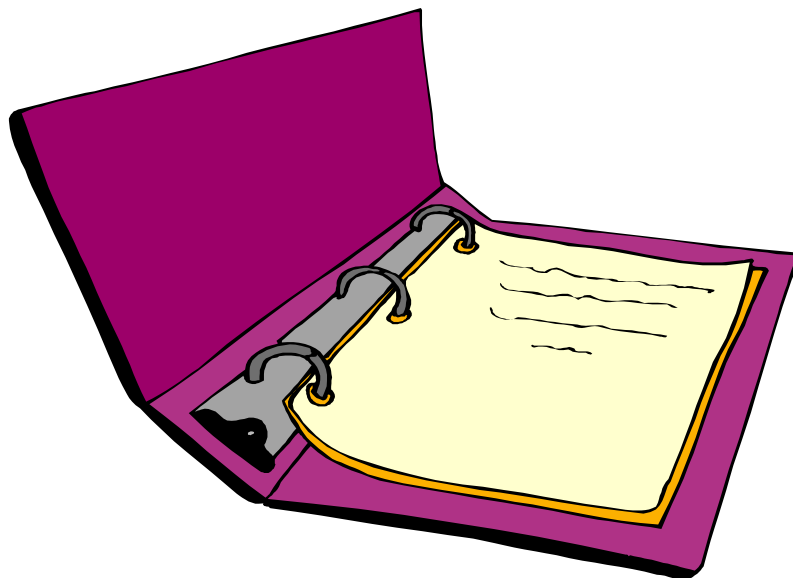
or

1-405-521-3491

II. Content of Reports

All reports of abuse and neglect should include the following information:

- **The name and address of the individual being abused or neglected;**
- **The name and address of the caretaker, if any;**
- **A description of the situation.**



III. General Rules For Preventing Mistreatment

*Secondary Objective:
List eight methods of preventing
mistreatment.*

Wise care givers take precautions to prevent situations that may lead to mistreatment occurring. Some of these are;

- **Treat all people with dignity and respect.**
- **Do not make verbal threats. Words can turn into actions.**
- **Call for help if you are in doubt about how to handle a situation.**
- **Admit when you have made a mistake. The people you serve can be right about issues, just as you can be right.**
- **Get enough sleep so you are alert on the job and so your patience will remain intact.**
- **Never drink alcohol or use tranquilizing or stimulating drugs before coming to work.**
- **Don't be so preoccupied with orderliness and good behavior that control and authority are the only means used to teach appropriate behavior.**

Most Importantly. . .

Send a clear message to those around you that you will report mistreatment.

To make a report call:

- The local DHS office
- The local office of the District Attorney
- The DHS Abuse Hotline:
1-800-522-3511

We just mentioned that "control" and abuse of authority are not acceptable methods to support people. The State of Oklahoma is committed to eliminating the misuse of authority as well as other potentially abusive methods.

● Elimination of Aversive Behavior Techniques

All behavior is purposeful. The key is not to blame people for what is not under their control. You need to accept the responsibility to try and figure out why the person is responding with that particular kind of behavior. You may need to teach people less destructive methods of communication. You may need to read the environment to understand why people do what they do and act the way they act.

You have learned that behavior that may appear dysfunctional or destructive is, for some people, their only means of communicating their needs. Self-injurious behavior is almost always communicative; it may express such things as

- the need to get away from something or someone,
- pain or discomfort such as a toothache or headache, or
- anger and frustration when no other outlets are allowed.

● Non-Aversive Methods

Sadly, the past has held a long history of abuse for people with disabilities. Aversive methods and behavior modification techniques, including the use of punishment, were often used to change certain behaviors. The term "aversive" is defined as causing the avoidance of an unpleasant stimulus. In other words, hurtful or degrading methods were used to change unwanted behaviors.

Untrained staff were allowed to use such approaches as holding or pushing or putting individuals in restraints without supervision. As a result, people had bones broken when they were pushed or grappled down to the floor. This is a sad part of history and one that you must make sure will never happen again.

Earlier we talked about programs and staff that are preoccupied with control, authority, and making sure that "clients" know who is in charge. Such attitudes are indicators of staff who may either lack adequate skills or whose values are not consistent with those of the Developmental Disabilities System.



Oklahoma has committed itself to eliminating aversive methods. The use of physical punishment in any form is grounds for termination and possible prosecution under the law.

SUMMARY

Our ethical values guide us in our work with individuals with developmental disabilities. They also shape the legal system we work within. It is our responsibility to be aware of our responsibilities, both ethically and legally, and to conduct ourselves in a manner that demonstrates that responsibility.

