

THE CAMPLINE

Providing Camp-Specific Knowledge on Legal, Legislative, and Risk Management Issues

FALL 2016 / VOLUME XXVII / NUMBER 2



Photo courtesy of Camp Howe, Goshen, MA

ACA CAMP CRISIS HOTLINE ANNUAL REVIEW 2016

CASE STUDIES AND LESSONS LEARNED

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CAMPER MEDICAL MADE EASY

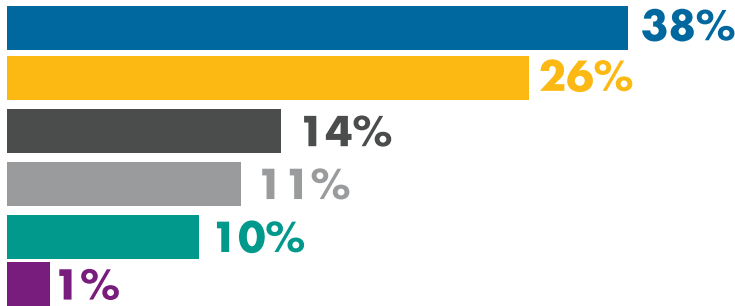


Since 1985, the American Camp Association® (ACA) has provided crisis support to camps through the confidential ACA Camp Crisis Hotline. This service is available 24 hours-a-day, every day of the year. Camps contact the Hotline to receive support, discuss options, or talk to an objective third party.

While Hotline team members do not provide legal or medical advice, we can connect camps with the resources they need and help them think through their options. A review of the summer 2016 calls shows a number of trends, lessons-learned, and case studies that are presented to assist camps in being better prepared should a similar crisis occur at their camp.

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THIS YEAR, THE CALLS FELL INTO THE FOLLOWING CATEGORIES:

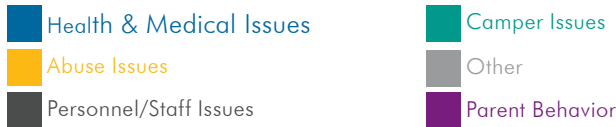


HEALTH AND MEDICAL ISSUES (38% OF CALLS)

- Mental Health Issue (campers and staff) – 42%
- Infestations (lice, bed bugs, etc.) – 22%
- Illnesses – 14%
- Other – 22%

ALLEGATIONS OF ABUSE CALLS (26% OF CALLS)

- Camper to camper – 33%
- At home – 25%
- Staff to camper – 25%
- Other – 17%



TOP TRENDS 2016

HEALTH AND MEDICAL ISSUES

For the eighth consecutive year, the top category of calls was related to health and medical issues. This category grew from 31 percent of calls in 2015, to 38 percent in 2016. However, most notable is the increase in calls related to mental health issues in campers and staff, a category which fell into the “other” category of health-related calls in previous years. Forty-two percent of all the health and medical calls were related to mental health issues. Of these, 57 percent were related to campers and 43 percent were related to staff. In addition to mental health issues, the Health and Medical Issues category includes a broad

Icon Key: The icons below correspond to article topic areas. Use them to find the articles that best match your interests!

-  EDUCATION
-  ISSUES
-  LEGISLATIVE
-  MOBILIZATION
-  POSITION STATEMENT
-  PUBLIC POLICY AGENDA DEVELOPMENT
-  REGULATORY ADVOCACY
-  RELATIONSHIPS



range of topics from the treatment of common childhood illnesses (e.g., chicken pox) and infestations (e.g., bedbugs), to questions about procedures (e.g. how to perform a lice check). Tragically, it also includes ACA being notified of two deaths this summer. The deaths reported were: an adult camper that died in her sleep, and a day camp counselor who committed suicide off camp property.

LESSONS LEARNED – HEALTH AND MEDICAL ISSUES

1. Prepare for mental health concerns for campers and staff. The sharp increase in calls to the Hotline on this topic appears to mirror a societal trend. Camps need to have a mental health support system in place and should add mental health resources and experts to the team and healthcare plan.

2. Have health and medical support systems in place. Before camp starts, identify the health and medical resources necessary to assist in whatever challenges may occur at camp. This plan includes on-site healthcare staff as well as a list of contacts (e.g., mental health professionals, dentist, etc.) who can be reached in the event of an unexpected incident.

3. Distribution of medication laws vary by state. Often a caller will ask, “Can my counselors distribute medication if they are out on a night hike with campers?” Since these regulations vary, determine the rules that apply to your camp and establish appropriate procedures prior to the start of camp. All staff should understand the issues regarding distribution of medication.

4. Lice outbreaks happen. Again this year, one of the most popular health and medical issue calls to the Hotline related to lice outbreaks, specifically whether to treat and keep those impacted at camp or send them home. What is important to remember is not that a lice outbreak occurs but how it is handled. Determine if your camp will be a “nits” or “no-nits” community. Know that new strains of lice evolve that are resistant to over-the-counter remedies, and prescription treatment may be required.

5. It is critical that your healthcare staff be familiar with the most common childhood illnesses, injuries, and infestations. Many calls in this area came from camps that did not have knowledgeable healthcare staff. Camps had trained RNs on staff, but with specializations not regularly treated in the camp environment (e.g., operating room nurses, oncology nurses). If your best choice for healthcare staff is lacking in childhood healthcare, it is imperative that they receive training and support prior to camp opening.

6. Preventing the spread of disease starts before anyone enters your camp. Camps should advise parents not to send sick children to camp. All incoming campers should receive detailed health screenings (taking temperatures, lice head checks, recent exposure to communicable diseases, etc.) prior to arrival at camp, and camps should initiate stringent handwashing and camp sanitation procedures.

7. Communicate, communicate, communicate. In the event of a serious accident, injury, or infestation, a comprehensive communications plan is critical. Many Hotline callers simply want help crafting messages about an incident that they can share with families, the media, and others.

STAFF TRAINING QUESTIONS – HEALTH AND MEDICAL ISSUES

- What would you do if one of your counselors committed suicide on their time off from camp?
- How would you address a medication-management-mishap? For example, one day a camper receives the wrong medication, the next day a camper receives medication at the wrong time.
- What would you do if you discovered four of your cabins had bedbugs and there is no place to put campers until the situation resolves? To add to the challenge, the exterminator can't come for another five days.
- How would you manage the situation if a 14-year-old camper disclosed an attempted suicide the week prior to coming to camp?
- What would you do with a staff person (new to camp) who has a panic attack on the very first day of staff training?
- What if a 16-year-old camper disclosed she was three months pregnant and does not want camp staff to tell her parents?
- How would you respond to a parent who has authorized the camp to give their son Benadryl® to help him sleep?
- What would you do if a staff member noticed a camper with a series of uniform cuts on her thigh while campers were changing for swimming?
- What would you do with a staff member who expresses a desire to commit self-harm?
- How would you respond to a CIT who has not been eating much and recently passed out?
- What would you do if you had a lice outbreak? What is your policy on lice? (Nits vs no-nits?)
- What would you do if your nurse resigned with two weeks remaining in the camp season?

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RESOURCES — HEALTH AND MEDICAL ISSUES



ACA Hotline Resource Page:

[www.ACAcamps.org/
resource-library/camp-crisis-hotline](http://www.ACAcamps.org/resource-library/camp-crisis-hotline)

Association of Camp Nurses:

www.ACN.org

Centers for Disease Control and Prevention:

www.CDC.gov

Healthy Camp Mental, Emotional, and Social Health (MESH) Toolbox:

[www.ACAcamps.org/
resource-library/research/
healthy-camp-toolbox](http://www.ACAcamps.org/resource-library/research/healthy-camp-toolbox)

Management and Administration of Medication:

[www.ACAcamps.org/resource-
library/camp/medication-
management-13-common-questions-
camps-%E2%80%94-their-answers](http://www.ACAcamps.org/resource-library/camp/medication-management-13-common-questions-camps-%E2%80%94-their-answers)

Mental Health Toolkit:

[www.ACAcamps.org/staff-
professionals/core-competencies/
health-wellness/mental-health](http://www.ACAcamps.org/staff-professionals/core-competencies/health-wellness/mental-health)

ALLEGATIONS OF ABUSE

The 26 percent of Hotline calls related to allegations of abuse broke out into three major categories.

ALLEGATIONS OF CAMPER TO CAMPER ABUSE (33% OF CALLS)

Hotline calls related to allegations of camper to camper abuse have shown a marked increase over the past few years, from 3 percent in 2014, to 11 percent in 2015, to the present 33 percent. While most of these calls are to clarify mandated reporter laws and whether or not to call the authorities, often the conversation leads to identifying the need for techniques and tips to manage the way campers treat one another. A number of calls in this category concern alleged consensual sexual acts between two or more campers. This category also includes acts of bullying among campers.

ALLEGATIONS OF ABUSE AT HOME (25% OF CALLS)

Revelations by campers that they are being abused at home are a very difficult situation to handle for any camp. It has been ACA's experience that children who are the victims of abuse or neglect at home (or some other place outside of camp) will sometimes reveal their abusive situation to a caring adult at camp. When this occurs, camp directors have many questions about what to do, whom to call, and so on.

ALLEGATIONS OF STAFF TO CAMPER ABUSE (25% OF CALLS)

Twenty-five percent of the abuse-related calls this summer were allegations of abuse of a camper by a staff member, ranging from aggressive reactions to campers to inappropriate touching. This number has risen over the past few years. While the callers in this category understood and complied with mandated reporting laws, they often wanted to discuss policies, procedures, and staff training ideas that keep their campers safe at camp.

LESSONS LEARNED — ALLEGATIONS OF ABUSE

1. The law is clear. You **MUST** contact authorities if there is an allegation of abuse. All camps fall into the category of a mandated reporter. While state laws vary, camp professionals generally serve in loco parentis (in place of the parent), and must call the proper authorities in their state when allegations of abuse are revealed. Camps have a very clear focus and responsibility to protect the children in their care. Camp professionals can be arrested for disregarding these laws. It does not matter whether the allegation is that the abuse occurred at camp by another camper, by a staff member, or at home. Make the call to

authorities if you suspect that a child is the victim of abuse. If the child lives in another state, you may be asked by your state to contact authorities in the other state as well.

2. Leave the investigating to the authorities. While it is tempting to start your own "investigation" prior to contacting the authorities — especially if you think it is possible that the child is "making it up" — resist this temptation. Let the proper authorities step in and take control of the matter. Documentation is critical. As with any important issue at camp, documentation is key to ensuring that the authorities have what they need to proceed with their investigation.

3. Vigilant staff supervision is key to keeping campers from harming each other. In most of the situations explained by callers, the allegation of camper-to-camper abuse came in those moments when staff were not directly engaged with campers — shower time, trips to the restroom, changing for the pool, and so on. It is imperative that your staff be trained to be even more attentive, active, and involved during these vulnerable times. If your camp does not have staff sleeping in the same room with campers, you must consider what you are doing to ensure no inappropriate behavior occurs during nighttime hours.

4. See something, say something. Teach your staff to question what they see. It takes just one person to step up and question when they see something is not right about the way an adult is interacting with a child. You may be the one who is able to free a child from serial abuse. Always have the best interest of the child in mind!



Photo courtesy of Camp Harlam, Kunkletown, PA

5. Establish and enforce policies regarding staff never being alone with a camper. Your supervision and counseling policies should ensure that one staff person is never alone and out of sight of others with one camper. Is your staff-to-camper ratio high enough to ensure that one staff person cannot be alone with a camper, especially in unique times such as the middle of the night when a camper needs to use the restroom? Develop policies and procedures that support staff in avoiding one-on-one situations, and practice strategies for avoiding these types of situations.

6. Establish clear policies regarding appropriate physical interaction between staff and campers. Staff members need to understand the camp's policies on physical contact between campers and staff. Do you allow contact such as hugging,

lap-sitting, back-patting, high-fiving, tickling? If so, be very clear about what is and is not acceptable. Consider using role-playing during staff training to convey and practice your policies.

7. Because you have created an emotionally safe environment at your camp, children who are in an abusive situation at home may reveal that abuse to you. In these situations, children often say, "Please don't tell anyone." You cannot promise them that. Instead assure them that you care and that you must tell the people who can help.

8. Make bullying prevention a priority from the first day of camp, and let all campers and staff know that bullying behavior is unacceptable. All campers need to feel safe both emotionally and physically. One person's description of bullying is

another person's description of abuse. Set bunk and group rules with explicit examples of acceptable and unacceptable behaviors regarding bullying. Post these rules, and have staff and campers review them together.

9. Teach and model respectful behavior. To prevent bullying and abuse, and to build respect and inclusiveness, staff must commit to matching actions to words. If your staff are overheard "teasing" or bullying one another — what example does that set? Be clear with your staff that you have a no-tolerance policy on any type of bullying, belittling, or physical abuse. Staff orientation should include training on behavior that addresses the types of bullying counselors might see, what to do when they see it, and how to be vigilant with these issues during the season. Ensure staff behavior matches core camp values.

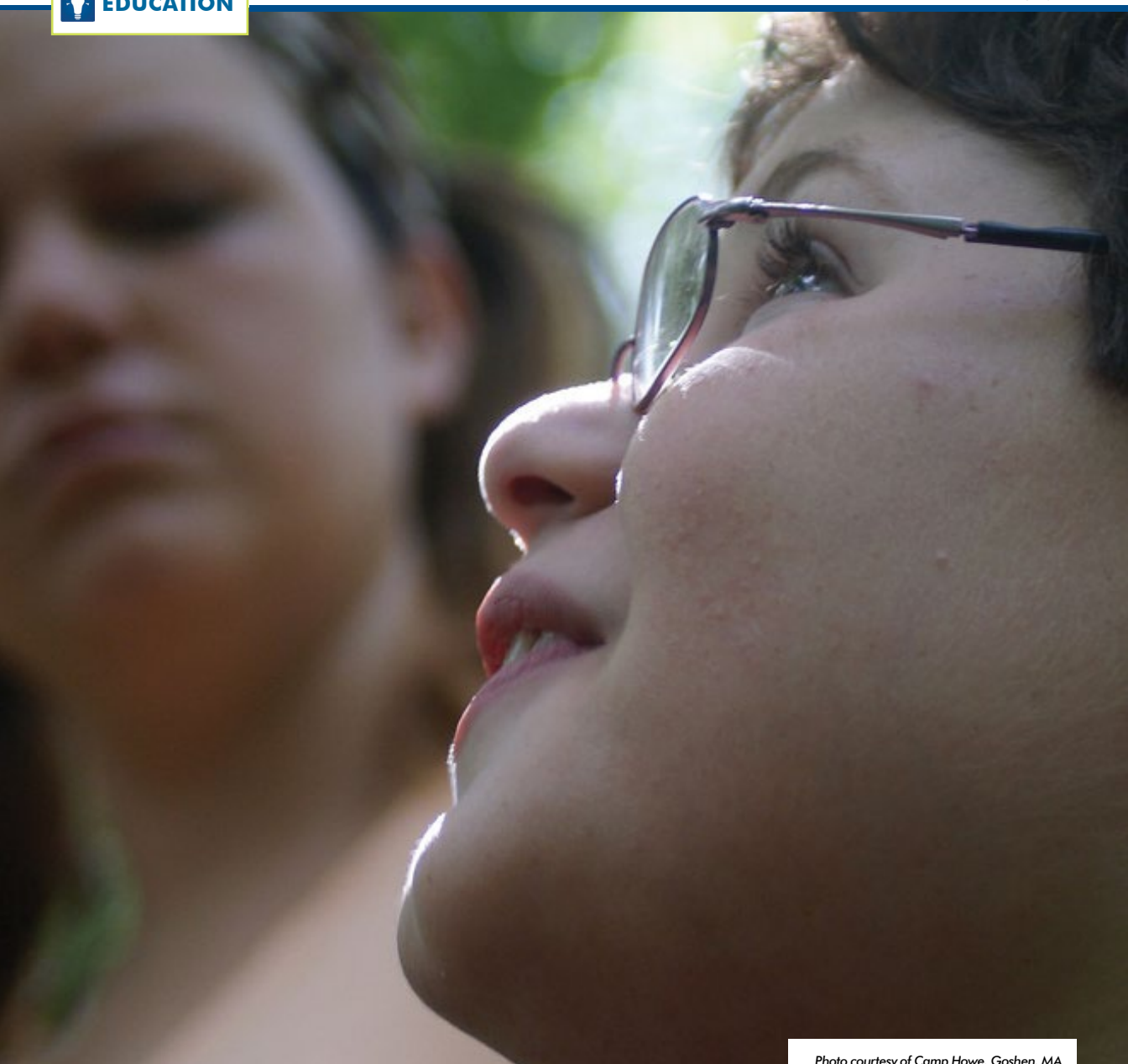


Photo courtesy of Camp Howe, Goshen, MA

10. One in four girls and one in six boys are the victim of abuse before they reach age 18. Many children (and staff) may arrive at your camp already the victims of abuse. The U.S. Department of Health and Human Services has excellent resources to help you recognize the signs of abuse. Become knowledgeable.

11. Keep the phone number of your local child abuse reporting authority readily accessible. Many calls to the

ACA Camp Crisis Hotline are simply to ask for help finding the correct phone number. If you don't know who to call (generally you call the locality where the abuse is alleged to have occurred), don't hesitate to call your own local authority and ask for guidance.

**STAFF TRAINING QUESTIONS
– ALLEGATIONS OF ABUSE**

- What would you do if two junior high female campers kissed? It appeared that the kiss was

consensual as both girls said they wanted to see what it was like to kiss a girl, so they did. Then one of girls expressed that she was very uncomfortable.

- What would you do if you discovered two 15-year-old campers were having intercourse at camp?
- How would you handle a shower-time situation where one 13-year-old boy (Boy A) stuck his head under the shower wall

of another 13-year-old boy (Boy B) and was staring at him? Boy B was very upset and started crying.

- What would you do if you discovered a “rumor” going around camp that two minor campers — one male and one female — had oral sex? Upon further investigation, you were told, “You have a supervision problem. These things are happening all the time.”
- If your camp serves campers with special needs that require personal care (e.g., toileting, bathing), how are you training staff and monitoring interaction to eliminate the risk of abuse?
- If your camp does not have staff sleeping in the same room as campers, how do you prevent your campers from harming one another in the middle of the night?
- If your camp uses a buddy system whereby campers have a buddy to go places such as the restroom, what are you doing to make sure that those buddies are not harming each other when they are alone?
- What would you do if the family of a camper from last summer contacts you because they found out that their daughter is in an “inappropriate relationship” with a child she met at camp? They want to know what the camp is going to do about it, and they want the contact information for the other family.
- What would you do if an older male wrangler has been accused of inappropriate touching of female campers he is working with in the riding program (e.g. shoulder rubs, touching legs, touching an inner thigh, rubbing a camper’s waist) and you’ve learned that he is giving out his card and inviting female campers to contact him outside of camp for private lessons?

- How would you handle a staff member who reacts aggressively to a bear hug from a nonverbal camper?
- What would you do if a camper reported that he woke up in the middle of the night to see his counselor standing by the bunk of another camper, fondling that camper in his sleep?

RESOURCES — ALLEGATIONS OF ABUSE



ACA Resources Related to Allegations of Abuse:

www.ACACamps.org/resource-library/child-abuse-prevention-resources.

Child Abuse Reporting Telephone Numbers by State:

www.childwelfare.gov/organizations/?CWIGFu_nction=rols:main.dspROL&rolType=Custom&RS_ID=%205

Mandated Reporter Issues:

www.acacamps.org/resource-library/camp/remember-camps-are-mandated-reporters

The Safety Zone: Guidelines for Maintaining a Safe Environment When Working with Children.

www.ACAbookstore.org/p-6111-the-safety-zone-guidelines-for-maintaining-a-safe-environment-when-working-with-children.aspx

PERSONNEL AND STAFF ISSUES

Personnel-related calls accounted for 14 percent of the calls in 2016. In some cases, camps are simply looking for resources to hire an emergency staff replacement due to an unexpected resignation or termination. In other cases, camps are searching for resources to help them make legal decisions regarding the hiring or

release of a staff person. However, many calls related to staff behaving inappropriately.

LESSONS LEARNED — PERSONNEL AND STAFF ISSUES

1. Enlist the services of an employment attorney. Identify this person before you begin the hiring cycle. An attorney with experience in labor laws, contracts, and employment issues who can be contacted for help at any time is an invaluable resource.
2. Take any threat of suicide very seriously. As previously discussed in the health and medical section, suicide threats are a serious mental health issue. It is imperative to seek the help of mental health professionals and get the necessary help for the staff member.
3. Set and enforce clear policies regarding acceptable relationships between staff while at camp. Callers frequently wanted to discuss sexual relationships between staff that include both consensual acts and allegations of forced relationships. Understand that if an allegation of force is made by adults, that situation is a police matter, and the alleged victim decides if they want to contact the authorities. If they do, the authorities will help navigate what happens next with the alleged victim and the alleged perpetrator.
4. If you employ international staff, understand your obligations to the U.S. Department of State Cultural Exchange Program. By hiring international staff, you commit to meeting obligations required by law that focus on cultural experiences for those staff. It is critical that you understand and meet the visa requirements for international staff members.

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5. Understand the employment protection afforded in the Americans with Disabilities Act (ADA). ADA laws provide protection from discrimination in hiring people with a broad spectrum of physical challenges. Craft your job descriptions with the assistance of your attorney and get legal advice before beginning your hiring process.

6. If an employee or potential employee shares with you that they are transgender, gender variant, gender nonconforming, or in the process of reassigning their gender, understand all the issues related to employment and privacy. ACA continues to see a rise in the number of calls regarding transgender staff. Camps want to know everything from “how do we accommodate transgender individuals?” to “are they protected by law and are we required to accommodate them?” We’ve also had this same type of call about campers. There are no definitive answers and laws vary by state so be sure to consult with your attorney.

7. Regardless of state laws about marijuana use, it is still illegal according to federal law. Medical marijuana is considered a “Schedule I” controlled substance under federal law. Generally, employers can refuse to hire or choose to terminate an employee, or refuse to allow a camper to attend who is currently using marijuana — for medicinal reasons or otherwise.

8. Have a back-up plan for staff coverage in an emergency or unexpected loss of staff. Supervision ratios are critical to ensuring the safety of your campers. In the event of a necessary staff termination, camps do not want to be stuck between considering not firing someone due to an inability to cover supervision ratios for campers or

firing and risking the safety of campers. Consider what your camp would do if it suddenly lost one or more key staff members — especially those in critical roles such as your nurse or cook. Before the season begins, identify short-term options you can turn to for coverage in an emergency. Consider how properly trained volunteers might help you if you suddenly find yourself short-staffed.

9. Set thresholds for acceptable criminal records BEFORE you conduct your criminal background checks. Protecting the safety of those in your care must be a top priority. Serving in loco parentis, camps and other youth-serving organizations need to use all the information at their disposal to screen applicants who will have access to children, youth, or vulnerable adults. Developing a threshold policy will allow camps to comply with the law and protect the safety of everyone participating in their programs. Although some organizations have set policies not to hire anyone with a criminal record of any kind, ACA’s guidance is to establish a criminal background threshold for each position within your organization. Some states have already enacted laws regarding thresholds for individuals who work with children and vulnerable adults. A threshold policy should always be developed working in conjunction with your legal counsel.

10. Enforce your personnel policies. It’s not enough simply to have personnel policies — they must also be enforced. Establish a clear understanding of what the consequences are (e.g., reprimand, suspension, dismissal) for violation of the policies. If camps do not enforce their own policies, they are left open to a variety of risks, including lawsuits,

especially if policies are not consistently enforced (e.g., treating one staff member differently than another when they have both ignored one of your policies).

STAFF TRAINING QUESTIONS — PERSONNEL AND STAFF ISSUES

What if your staff asked about how to respond to a camper who “comes out” for the first time while at camp? How would you train your staff to talk with campers about being gay?

- How would you handle a staff member who is pulled over for a traffic violation while driving 13 kids in a van and is subsequently arrested for not having a class D chauffeur’s license?
- What would you do if a male staff member who was terminated following inappropriate behavior during a skit (mooning the girls’ village and making inappropriate sexual comments) requested copies of the incident reports regarding his dismissal?
- What if someone reported to you that a male staff person left the camp property during an evening program to go to his car where he proceeded to smoke a joint? He was gone for almost an hour and left his co-counselor alone with all the campers.
- Would you rehire an individual who had been a “great” counselor last summer but was known to use marijuana, which she claimed was for medicinal purposes without having a medicinal marijuana card?
- Would you recognize the signs of depression or other mental health challenges in your staff? If so, how would you support these staff members?
- What are your staff sexual harassment policies? What are your policies regarding relationships between staff?

Does your staff know what to do if they are harassed by another staff member?

- What would you do if a staff member threatens suicide?
- What would you do if several staff members had money stolen from their cabins?



RESOURCES — PERSONNEL AND STAFF ISSUES

ACA Personnel Resources:

www.ACAcamps.org/staff-professionals/events-professional-development/core-competencies/human-resources-management

American's with Disabilities Act:

www.ADA.gov

Camp Director and Day Camp Director Certificate Courses:

www.ACAcamps.org/staff-professionals/events-professional-development/staff-training-certificates

Governmental Agencies Related to Employment:

www.ACAcamps.org/resource-library/governmental-agencies-related-employment

International

Staff Resources: www.ACAcamps.org/resource-library/public-policy/international-staff-best-practices

www.ACAcamps.org/resource-library/public-policy/international-staff-best-practices

CAMPER BEHAVIOR

Calls related to inappropriate camper behavior rose from 7 to 10 percent of total calls over the last year. This category excludes allegations of camper-to-camper abuse, which was previously addressed in this article. Typically, this category focuses on an individual camper's behavior.

LESSONS LEARNED — CAMPER BEHAVIOR

1. Educate staff on the indicators and symptoms of mental health problems. Information breaks down the stigma surrounding mental health issues and enables staff and campers to recognize when to seek help. Your mental health professional network can provide useful information on symptoms of problems such as depression or suicide risk. These symptoms can include acting out, changes in eating or sleeping habits, withdrawal from others, decreased social functioning, erratic or changed behavior, and increased physical complaints.

2. Take all comments about suicide seriously. ACA received an increase in calls from camps regarding campers making suicidal comments. Often the caller thought the comments were "just to get attention" or "just joking." Unless you are a trained mental health professional, assume the threat is serious. Educate staff on the indicators and symptoms of mental health problems.

3. Attentive and engaged staff supervision is the key to reducing negative camper behavior. Almost all reported incidents of alleged bullying and inappropriate behavior occurred when staff members were not alert or in the area.

4. Provide a positive camp environment. Feeling safe is critical to a child's learning and mental health. Promote positive behaviors such as respect, responsibility, and kindness. Provide easily understood rules of conduct and fair discipline practices. Teach campers to work together to stand up to a bully; encourage them to reach out to lonely or excluded peers, celebrate acts of kindness, and reinforce the availability of positive adult support.

5. Camper (and staff) belongings can be searched if you suspect illegal or unsafe activity. It is a common question to the Hotline: "Can we search a camper's belongings?" Generally, the answer is "yes" with a few exceptions. Prior to the start of camp, determine your policies on if and when to search.



Photo courtesy of Happy Hollow Children's Camp, Nashville, IN

STAFF TRAINING QUESTIONS – CAMPER BEHAVIOR

- What would you do if a 16-year-old male camper disclosed to a staff member that he was engaged in “gang” activities at school (guns, selling drugs, etc.) but wants to get out of it? The session ends in two days. He does NOT want this info shared with his very ill mother.
- How would you handle a 6-year-old female day camper who, in the past five weeks, has had ten incidents of soiling herself? The parents think it is “no big deal.”
- What would you do about a camper who grabbed razors (the type for shaving legs) and said she wanted to hurt herself? Then the next day, the same camper used a bug spray cap and cut herself.
- What would you do about a 15-year-old female camper sexting a fourteen-year-old male camper a nude photo?
- How would you manage a day camper traveling on the camp bus who really had to go to the bathroom? The camp’s bus was “stuck in traffic” and couldn’t get to a restroom, or even the side of the road.
- What would you do if a 15-year-old camper enrolled last summer as John was registered for the coming season (still as a male), but with a new name, Lane. After being housed with boys the first session, Lane asked to be referred to as a female and requested female cabin mates. Lane’s parents are out of the country and difficult to reach. Do you honor the camper registration as the parents completed or do you accommodate the teenager’s request?

RESOURCES – CAMPER BEHAVIOR



Behavior Management – Parenting Skills for Counselors:

www.ACAcamps.org/resource-library/camping-magazine/behavior-management-parenting-skills-counselors

Bullying Prevention:

www.ACAcamps.org/staff-professionals/core-competencies/youth-adult-growth-development/bully-prevention

Dangerous Games Every Camp Must Know About:

www.ACAcamps.org/resource-library/dangerous-%E2%80%9Cgames%E2%80%9D-every-camp-must-know-about

Mental Health: www.ACAcamps.org/staff-professionals/core-competencies/health-wellness/mental-health

Time Tested Strategies for Dealing with Challenging Behavior:

www.ACAcamps.org/resource-library/camping-magazine/time-tested-strategies-dealing-challenging-behavior

Understand a Camp’s Right to Search:

www.ACAcamps.org/resource-library/articles/understanding-camp%E2%80%99s-right-search

MISCELLANEOUS ISSUES

Eleven percent of the Hotline calls covered a myriad of other issues. These issues included handling a drone flying over camp, dealing with an active shooter in the area, managing a yellow jacket invasion, evacuating for a wildfire, answering questions about ACA’s Standards, and discussing “hypothetical” questions. The most frequently referenced resources used by the Hotline team to answer these and other questions can be found online at www.ACAcamps.org/resource-library/camp-crisis-hotline.

CASE STUDIES

Each year, the ACA Camp Crisis Hotline Team identifies several case studies for a more in-depth look. These cases serve as examples for other camps to use in staff training and the development of their own risk management plans. Our hope is that by understanding the actual crisis events encountered by other camps, your camp can learn and prepare for the future.

CASE STUDY 1 – VERY THOROUGH CAMP NURSE

A camp director called the Hotline concerned that the camp nurse may have been unnecessarily overextending herself. The camp nurse had a very thorough intake process for medication, which included counting all meds to verify the quantity, color, shape, and imprint of each medicine to make sure meds matched the reference information for the prescription. This process was very time-consuming and required the nurse to work late into the night. The camp director saw it as overkill and wanted to know if ACA had any knowledge of whether this process was a requirement or simply what the nurse judged as a best practice. The main concern was balancing the nurse’s need to feel that everything under her control is accurate against other job duties, overtime policies, need for rest, and so on.

QUESTIONS AND CONSIDERATIONS – VERY THOROUGH CAMP NURSE

- What does state law require regarding medication management?
- Has the camp contacted its on-call medical expert for his or her opinion?
- Has the camp contacted the organization’s governing body for advice, both for their expectation of appropriate medication management and any human resources issues that arise from overtime and/or insubordination?

RESOURCES — VERY THOROUGH CAMP NURSE



ACA Accreditation Process Guide, 2012 Edition. Health and Wellness standards HW 11 and HW 19

The CampLine (Spring 2014, Volume XXV, Number 1): Medication Management: 13 Common Questions from Camps — And Their Answers

www.ACAcamps.org/resource-library/campline/medication-management-13-common-questions-camps-%E2%80%94-their-answers

The CampLine (May 2010, Volume XXI, Number 1): Medication at Camp: Mitigating the Risks

www.ACAcamps.org/resource-library/articles/medication-camp-mitigating-risks

CASE STUDY 2 — APPARENT SUICIDE OF A STAFF MEMBER

The director of a day camp found out from other staff and a Facebook post that a 24-year-old staff member passed away overnight at home from an apparent suicide. The director was shocked, because this staff member always seemed happy and appeared to love camp. He didn't know where to start and the other staff and kids would be arriving soon.

QUESTIONS AND CONSIDERATIONS — APPARENT SUICIDE

- Who will be the camp's one spokesperson?
- Who will write the press statement that might be needed? What content will be shared?
- Will you need a separate statement for camper and staff families?
- How will coverage of the deceased job responsibilities be handled?

- What information should be shared and discussed with the staff, and at what point in time?
- What information should be shared with campers and by whom?
- Will the camp be a part of any police investigation if one is conducted?
- Does the camp have mental health support available if needed, such as on-site or off-site help for staff and campers?
- Who will reach out to the family, including returning any belongings or personal items of the deceased?
- What (if anything) will be done as a memorial? What are the wishes of the family? What about staffing considerations during a memorial if during the camp season?

Once immediate actions are taken, are there any implications from this tragic event for the camp's policies and practices, particularly crisis communication, staff coverage, or staff training? The mental health issues of staff and campers present emerging and challenging questions for camp administrative teams. While camp staff hope never to face a tragic event related to mental health issues, camps may want to focus on mental, emotional, and social health (MESH) information and practices that help promote proactive measures.

RESOURCES — APPARENT SUICIDE



ACA Communications Toolkit:

www.ACAcamps.org/resource-library/aca-communications-toolkit

ACA Risk Management Core Competency Toolkit:

www.ACAcamps.org/staff-professionals/events-professional-development/core-competencies/risk-management

ACA Health and Well-being Core Competency Toolkit:

Mental Health:

www.ACAcamps.org/staff-professionals/core-competencies/health-wellness/mental-health

The CampLine Fall Issues:

www.ACAcamps.org/staff-professionals/news-publications/publications/campline

CDC Suicide Prevention site:

www.cdc.gov/violenceprevention/suicide/index.html

Suicide: At a Glance:

www.cdc.gov/violenceprevention/pdf/suicide-datasheet-a.pdf

Understanding Suicide:

Fact Sheet:

www.cdc.gov/violenceprevention/pdf/suicide_factsheet-a.pdf

Coping with the Death of a Camper or Staff Member:

www.ACAcamps.org/sites/default/files/resource_library/Coping-camper-death.pdf

MESH Area of the Healthy Camp Toolbox:

www.ACAcamps.org/resource-library/research/healthy-camp-toolbox

Mental Health First Aid:

www.mentalhealthfirstaid.org/cs/

Tips to Help Children Deal with Death and Grief:

www.ACAcamps.org/sites/default/files/resource_library/Tips-help-child-deal-death-grief.pdf

With that in Mind, Part 1: What Directors Need to Know About Staff Mental Health (Thurber):

www.ACAcamps.org/resource-library/camping-magazine/mind-part-1-what-directors-need-know-about-staff-mental-health

With that in Mind, Part II: What Staff Need to Know about Their Own Mental Health (Thurber):

www.ACAcamps.org/resource-library/camping-magazine/mind-part-ii-what-staff-need-know-about-their-own-mental-health

CASE STUDY 3 — YELLOW JACKET INVASION

A camp director called for ideas on dealing with yellow jackets (eradication and mitigation). The director wanted to discuss whether the next session of camp should be cancelled due to the number of stings in the current session, which was significantly higher than typically seen by the health care staff. The nests were not close to the main part of camp, but the yellow jackets were attracted to water and had invaded the pool area. The camp talked to a bee expert and was considering poison to eradicate the yellow jackets. The earliest this action could be taken was 7 to 10 days. The camp closed the swimming pool, covered all outdoor faucets and drinking fountains, obtained portable drinking fountains, and was looking for netted canopies to keep the yellow jackets away from the portable fountains.

QUESTIONS AND CONSIDERATIONS — YELLOW JACKET INVASION

- Regarding allergic reactions:
 - Has anyone had an allergic reaction from a sting?
 - Have any of the campers this session or next session had allergic reactions to stings previously?
 - Have any staff members had allergic reactions to stings previously?
- Have you considered that yellow jackets, wasps, and hornets can sting repeatedly, unlike bees?
- Regarding parent communication:
- If the next session is not cancelled, what is the communication to the parents of campers who have had allergic reactions previously?
 - What information will be shared? And by whom?
 - Who will be consulted in making the decision, in writing the letter, and in taking calls from parents?

- Has the camp contacted the physician who signs off on treatment procedures to see if epi-pens could be prescribed for a camper that might have an unanticipated reaction? What does state's law allow? It is also important to consider EMS response time in the event of an emergency. This factor is an important consideration when deciding whether to cancel the next session of camp.
- Have you exhausted local resources for ideas and services for eradication and mitigation of pests? These resources may include a bee, insect, or pest expert, the county agricultural department, or the county extension agent.
- Have you considered partnering with the county health department? They may have eradication and mitigation resources, can share what others in the area have done, and may have thoughts or guidelines regarding the possible cancellation of the next session.
- Has the director contacted the camp's insurance provider? Does the camp have business interruption insurance? Are the expenses that have been incurred because of the yellow jacket invasion covered?

RESOURCES — YELLOW JACKET INVASION



Sample Letter to Parents — This letter is regarding head lice but can be adapted to a variety of situations. www.ACAcamps.org/sites/default/files/resource_library/hottopics/sample-lice-letter-to-parents.pdf

State Laws and Epinephrine Injectors: www.ACAcamps.org/resource-library/public-policy/epinephrine-auto-injectors-accessibility-laws-camps

CASE STUDY 4 — ALLEGED SEXUAL ASSAULT OF FEMALE STAFF

Between two sessions of camp, staff were off duty and off site. As often occurs, two staff members who were romantically involved went to an off-property party one evening. Upon returning to camp, the two were "messing around" and, when it got to a certain point, the female said both "Stop" and "No." The male continued to try to engage in sexual activity. Nothing beyond fondling occurred, yet the female staff member was very upset and felt she had been violated as she had clearly stated her wishes.

The female reported this scenario to the director prior to the beginning of the next session. The director called the Hotline and wanted to talk through the camp's initial plan:

- Talk with the male to get his side of the story.
- If accusation was true, the camp will release him.

QUESTIONS AND CONSIDERATIONS — ALLEGED SEXUAL ASSAULT

- Does the camp have any policies regarding staff relationships, dating, and so on? If this policy has been violated, it is important to address this violation (in the above scenario, no staff policies had been violated).
- What is your camp's policy on sexual harassment, the reporting of such, the consequences of, and how is this policy being shared with all staff?
- Have you talked with both individuals involved to hear "each side of the story" before action is taken (release of either staff member, etc.)?
- Are you able to make an objective judgment?

- What kind of support (medical, emotional, physical) might the victim need or want?
- Is the victim going to press charges?
- Does the age of the individuals require reporting?
- Is there a need to contact legal counsel, especially if charges are filled or the perpetrator is released?
- Have you considered where the alleged perpetrator is (physically) before final decisions are made?
- Have you contacted your insurance provider?
- If the staff person is released, how will the dismissal be shared with other staff? If both staff remain, what actions should be taken to offer a continued positive working environment for both staff members?

As instances of sexual assault and date rape have come to the forefront of discussion in society, the need for camps to address this type of allegation increases. It is important to think ahead regarding how you would deal with this type of situation at your camp.

RESOURCES CASE STUDY 4 – ALLEGED SEXUAL ASSAULT



RAINN (Rape, Abuse & Incest National Network):

www.rainn.org/

Office on Women’s Health, U.S. Department of Health and Human Services:

www.womenshealth.gov/publications/our-publications/fact-sheet/sexual-assault.html

CASE STUDY 5 – INTERNATIONAL CAMPERS PLANNING NOT TO RETURN HOME

A resident camp director called because it has come to his attention that two campers, a 16-year-old female and a 17-year-old male, both from countries in West Africa, have no intention of returning to their home countries after camp is over. The campers shared that this was their plan all along. They see America as the land of opportunity and were simply going to take their chances here. The camp director is supposed to be delivering them to the airport so they can get on their flight home, but he is sure now that they won’t get on the plane. The campers told him that he won’t have to take them to the airport, as they have arranged for someone to pick them up at camp. The director shared that the campers told him he will receive a communication from their parents telling him it is okay to release them to the person picking them up.

The director shared that all communication from West Africa is in a foreign language, and he had never directly communicated with the parents, as it is a school in West Africa that arranged these camper placements for his camp. The campers were here on B2 tourist visas, and the director is in possession of their passports. Other staff at camp pressure him to not worry about it and that he is not responsible for their actions.

QUESTIONS AND CONSIDERATIONS – INTERNATIONAL CAMPERS PLANNING NOT TO RETURN HOME

- What are the safety issue for these campers? Do they have money? Other resources?
- Is there some understanding of other risks related to young immigrants, including the risk of being recruited into human trafficking?
- Can the director legally release them to someone (not known to director or indicated on any camper forms) and not be responsible for what happens afterward?
- Are there placement agencies in this type of scenario since these are campers not staff?
- What are the U.S. Department of State considerations? If the director knowingly allows these campers to not return home, will he be in trouble with the U.S. government?
- Can the director physically force the campers to board a plane? If travel and flights home involve a layover, what can he do to insure they don’t deplane and disappear from that airport?
- How does in loco parentis apply here? These minors are indeed in the director’s care regardless of where they came from and what “the law” would say. What does that mean? ■

RESOURCE – INTERNATIONAL CAMPERS PLANNING NOT TO RETURN HOME



U.S. Department of State, Bureau of Consular Affairs:

Visitor Visas: www.travel.state.gov/content/visas/en/visit/visitor.html#documentation



*Photo courtesy of
Sanborn Western Camps, Florissant, CO*

THE FLSA, OVERTIME, AND CAMPS: FINDING A PATH TO COMPLIANCE

By: Emmanuel Boulukos, IceMiller LLP

On May 18 of this year, the U.S. Department of Labor (DOL) revealed its new regulations concerning the “white collar” overtime exemptions to the Fair Labor Standards Act (FLSA). The changes, as expected, are dramatic from a cost perspective, more than doubling the minimum salary required for most of the white collar exemptions from approximately \$23,660 to \$47,476, on an annualized basis.

Consequently, as the December 1, 2016 compliance date grows near, many employers, including camps, face difficult choices concerning employees currently classified as overtime exempt: Increase salaries substantially? Pay on an hourly basis? Reduce hours? Pay a salary and overtime premiums? What works for one employer may not for another. Cost, legal risk, recruiting, employee relations, and ease of administration must all be considered in negotiating the path ahead. One thing is for certain: misclassifying employees as exempt can prove to be a very costly error.

The good news is that some camps will be unaffected by these changes. As discussed below, many camps can take advantage of the FLSA’s blanket “seasonal” overtime exemption for certain amusement or recreational establishments, organized camps, and religious or nonprofit educational

conference centers (“13(a)(3) exemption”). See 29 U.S.C. § 213(a)(3). A smaller subset of camps (primarily nonprofits) and their employees may not be subject to the coverage of the FLSA whatsoever.

For many other camps (and organizations involved in camping) — especially those with full-time, year-round staff — the new salary requirements are a reality that must soon be addressed. Even camps that believe they are unaffected by these changes would be well-advised to take this opportunity to re-check assumptions about coverage status or the application of the 13(a)(3) exemption. While the task may seem daunting, camp professionals should not despair: With patience, planning, and a full understanding of legal options, achieving compliance with the FLSA’s overtime requirements is well within reach.

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This article intends to provide ACA members with an overview of the key FLSA provisions relevant to determining the overtime entitlements of camp employees, including the 13(a)(3) exemption, updated white collar regulations, and the FLSA's threshold coverage standards, and to address some of the central concerns raised by the new regulations. This article is provided for informational purposes only, and should not be construed as a substitute for legal advice. We strongly encourage members to discuss the matters addressed in this article with their legal counsel.

FLSA OVERTIME REQUIREMENTS — A REFRESHER

Before delving into overtime issues specific to the operation of camps, a brief refresher on the FLSA's basic overtime requirements is in order. Generally speaking, the FLSA requires that covered nonexempt employees (i.e., employees who are ineligible for an exemption from the FLSA's minimum wage and overtime requirements) receive 1.5 times ("time-and-a-half") their "regular rate" of pay for each hour worked in excess of 40 in a single workweek. Hours worked may not be averaged over two workweeks. An employee's entitlement to overtime may not be waived or negotiated. A nonexempt employee must be compensated for unauthorized overtime — but may be disciplined for working overtime in violation of employer policies.

The default presumption under the FLSA is that all covered employees are entitled to overtime. However, the FLSA does provide a number of exemptions to its overtime (and minimum wage) requirements, including the white collar exemptions (which apply on an employee-by-employee basis) and the 13(a)(3)

exemption (which may apply to an entire camp "establishment"). As a general rule, the burden is on the employer to prove the applicability of an exemption. Notably, states and municipalities may institute their own overtime (and minimum wage) standards (including exemption requirements) that are more stringent than FLSA rules. If an employer is subject to both a state and federal overtime standard, the more stringent of the two controls.

For a nonexempt hourly employee (assuming no bonuses are paid), the "regular rate" is simply the employee's non-overtime hourly rate of pay. An hourly employee's overtime pay is 1.5 times the regular rate for each hour worked in excess of 40 per week. For a salaried, overtime-eligible employee, his/her "regular rate" is calculated by dividing the weekly salary by the number of hours that the salary is intended to compensate. According to the DOL "interpretative" regulations, the employee — whether salaried or hourly — then receives 1.5 times of his/her regular rate for all hours worked in excess of 40 per week.

Violations of the FLSA's overtime requirements may result in damages including back pay (the amount of overtime owed), liquidated damages (an amount equal to the amount of overtime owed), attorney's fees, and costs. The DOL may also assess civil penalties for willful or repeated violations of the FLSA's overtime or minimum wage requirements. The FLSA's statute of limitations is two (2) years, but may be extended to three (3) years for willful violations. Because FLSA lawsuits are often brought as "collective actions" (a type of class action specific to the FLSA), they are often expensive and time-consuming to defend.

ARE YOU COVERED?

Stepping back from the overtime rules for a moment, in order for the FLSA to apply at all, certain threshold coverage requirements must be met. In almost all cases, employees of for-profit businesses are covered. As to the employees of nonprofits (and small for-profit employers), however, the existence of coverage should not be assumed or dismissed without consideration of specific facts and circumstances.

Employees may be subject to the FLSA's minimum wage and overtime requirements by two methods: "individual coverage" or "enterprise coverage." Enterprise coverage generally extends to organizations or businesses that have "an annual dollar volume of sales or business done of \$500,000," as well as "hospitals, businesses providing medical or nursing care for residents, schools and preschools, and government agencies." See U.S. Department of Labor, Wage and Hour Division (WHD) Fact Sheet No. 14, Coverage Under the Fair Labor Standards Act. According to the DOL, however, enterprise coverage does not apply to nonprofit organizations (other than those of the type noted above), "unless they engage in ordinary commercial activities that result in sales made or business done, such as operating a gift shop or providing veterinary services for a fee." DOL WHD Fact Sheet No. 14A, Non-Profit Organizations and the Fair Labor Standards Act (FLSA). Moreover, where a nonprofit engages in some covered and some uncovered activities, "enterprise coverage applies only to the activities performed for a business purpose; it does not extend to the organization's charitable activities." DOL WHD Fact Sheet No. 14A.

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However, a finding that a nonprofit is not subject to enterprise coverage does not conclude the coverage analysis. Indeed, employees of nonprofits that are outside the scope of enterprise coverage “may still be entitled to [the FLSA’s] protections if [such employees] are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.” DOL WHD Fact Sheet No. 14A (emphasis added). Although a detailed discussion of the application of the interstate commerce requirement to individual employees is beyond the scope of this article, suffice it to say that the standard is quite broad.

As this general overview indicates, coverage determinations involve a nuanced, fact-specific analysis. It is not as simple as maintaining nonprofit status or having an annual dollar volume of less than \$500,000. Moreover, in some jurisdictions, state or local overtime laws may apply to camp employees despite a lack of FLSA coverage. Consequently, before assuming that coverage does not apply, employers should consult with legal counsel.

WHAT ABOUT THE “SEASONAL” EXEMPTION?

Even if a camp is covered by the FLSA, the white collar exemptions are not the only potential route to properly classifying employees as overtime exempt. As noted above, many seasonal camps have long relied on the 13(a)(3) “seasonal” overtime and minimum wage exemption. Unlike the white collar exemptions, the applicability of the 13(a)(3) exemption focuses on the operations of the organization

itself, not the duties of individual employees. If it applies to a camp’s entire operation, the camp’s employees are exempt from the FLSA irrespective of whether they individually qualify for a white collar exemption — and there is no minimum salary requirement.

Specifically, Section 13(a)(3) provides an exemption from its minimum wage and overtime provisions for any employee employed by an amusement or recreational establishment, an organized camp, or religious or nonprofit educational conference center if (A) the establishment does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 and 1/3 percent of its average receipts for the other six months of the year. While the exemption may seem simple enough at first glance, the fine details of the exemption require careful parsing.

“ESTABLISHMENT”

Critically, in this context, the term “establishment,” as defined in the regulations to the FLSA, refers to “a distinct physical place of business, rather than to an entire business or enterprise, which may include several distinct places of business.” One particular part of a larger enterprise may qualify for the exemption, whereas other parts of the enterprise do not. For example, a summer camp operated by a youth organization that also provides other year round services may still be able to take advantage of the 13(a)(3) exemption as to the camp only.

As to the definition of “camp” in this context, non-binding guidance from the DOL explains as follows:

An organized camp characteristically provides room and board in a rustic setting over a sustained period of time. An organized camp is one with a program of activities and sustained supervision, provided for a set fee. The American Camping Association defines a “camp” as “a sustained experience which provides a creative recreational and educational opportunity in group living in the out of doors. It utilizes trained leadership and the resources of natural surroundings to contribute to each camper’s mental, physical, social, and spiritual growth.” See DOL WHD Field Operations Handbook, at Ch. 25j00.

“FEWER THAN SEVEN MONTHS OF OPERATION”

Many seasonal camps qualify for the first “prong” of the exemption; in that they operate for seven or fewer months each calendar year. The DOL explains that an establishment will be considered to operate for seven months or fewer even if it engages in some activity during the off-season, such as maintenance of its facilities or ordering supplies.

“THE 33 AND 1/3 PERCENT TEST”

Camps that fail to meet the seven-month requirement may still qualify under the “33 and 1/3 percent” prong of the exemption. The DOL provides the following helpful example:

An amusement or recreational establishment operated for nine months in the preceding calendar year. The establishment was closed during December, January, and February. The total receipts for May, June, July, August, September and October (the six months in which the receipts were largest) totaled \$260,000, a monthly average of \$43,333; the total receipts for the other six months totaled \$75,000, a monthly average of \$12,500. Because the average receipts of the latter six months were not more than 33-1/3% of the average receipts for the other six months of the year, the Section 13(a)(3) exemption would apply.

Seems straightforward enough, right? Simply compare your camp's lowest six months of receipts to its highest six months of receipts. So long as your camp's average monthly receipts for its lowest six months are no more than 33 and 1/3 percent of its average monthly receipts for its highest six months, your camp qualifies for the exemption.

But there is a catch. What does the FLSA mean by receipts? Does "receipts" mean revenues accrued during a certain period, or money actually received? Is it up to the employer to decide how to account for its receipts?

Several federal courts have provided guidance on this issue. They have held that "receipts," in this context, means "money actually received" during the period in question. The calculation of receipts does not depend on the particular employer's accounting system. Instead, what matters is when the establishment actually received the money.

Also, for nonprofit organizations, there is no clear rule as to whether donations and pledges count towards "receipts," but at least one federal court has ruled that they do. Given the general legal precedent on the definition of "receipts" for purposes of this exemption, it appears likely that most courts would agree.

THE NEW WHITE COLLAR REGULATIONS

For camps that are covered by the FLSA and cannot take advantage of the 13(a)(3) exemption, the white collar exemptions are generally the most plausible route to lawfully classifying employees as overtime exempt. Unfortunately, in many cases, the new salary requirements may not be financially feasible. Although the changes to the white collar requirements are not particularly complex, the financial impact is substantial. The new regulations increase the minimum salary applicable to most of the white collar exemptions to \$913 per week, or \$47,476 per year — about twice the current minimum (\$455/\$23,660). The minimum salary for the "highly compensated" employee exemption has been increased to \$134,000. The final regulations also allow employers to use certain bonus and incentive payments to account for up to 10% of the new salary level, and contain a mechanism for updating the minimum salary every three years. These changes go into effect on December 1, 2016.

Although the DOL had previously hinted that it might alter the "duties" tests for some or all of the white collar exemptions, the final changes are limited to the salary requirement. Moreover, as was the case under the prior regulations, the minimum salary requirement does not apply to otherwise exempt teachers, lawyers,

outside sales people, and (some) medical professionals. Beyond the changes to the minimum salary requirement, the basic framework of the white collar exemptions remains intact. The exemptions (Administrative, Executive, Professional, Outside Sales, and Computer-Related Occupation) generally require that an employee meet the "duties" test for the particular exemption, and that he or she be paid the minimum salary required on a "salary or fee basis," which is not subject to reduction based on quality or quantity of work performed.

Whether an employee meets the "duties" requirement of a particular exemption depends on the duties they actually perform, not job titles or position descriptions.

WHERE DO WE GO FROM HERE?

As noted above, the advent of the new white collar regulations is an opportunity for all camps to review the overtime status of their employees under the FLSA (and potentially state and local law as well). As to camps that are not covered by the FLSA or an equivalent state law, or are eligible for the 13(a)(3) exemption, the new rules do not alter the status quo.

For camps that must contend with the new regulations, there are three primary areas of concern. First, if meeting the new minimum salary level is feasible, camps should also take this opportunity to ensure that the affected employees also meet the "duties" and "salary basis" requirements of the applicable exemption. If those requirements are not met, increasing salary level is an exercise in futility.

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Second, as to employees who will become overtime-eligible as a result of the new regulations, camps must decide how they will structure pay moving forward. Many employers are unaware that paying an hourly wage plus overtime for hours over forty is but one lawful method of meeting the FLSA's overtime requirements.

Other potential options include a salary plus overtime or a fixed salary for fluctuating hours (known as the "fluctuating workweek" method). And, of course, limiting employees to 40 hours or less per week is always a possibility. As noted at the beginning of this article, cost, the legal requirements of each pay method, impact on recruiting,

employee relations, and ease of administration are all important factors to consider in making this determination.

Third, and finally, camps must consider how they will track the hours of non-exempt employees, and which hours will be deemed "compensable" for the purposes of calculating overtime. Particularly for overnight camps where the line between on and off-duty is gray at best, or where staff are "on-call" at odd hours, making these determinations well in advance of the next camp season or sessions, and adjusting operations and employee policies accordingly, is absolutely essential.

Although these complex and overlapping legal standards—and the tough decisions they sometimes engender—may seem overwhelming, with advance planning and the assistance of counsel, they can be navigated successfully. A key point to remember:

When it comes to complying with the FLSA's overtime requirements, there is no single answer that fits all camps — paying close attention to your particular circumstances is the best way to minimize disruption to your operation and avoid potential liability. ■



*Photo courtesy of
Cheley Colorado Camps, Estes Park, CO*



Photo courtesy of
Cheley Colorado Camps, Estes Park, CO

TRIPPING AND TRAVEL CAMPS:

“THINKING OUTSIDE THE GATE”

By Charles R. Gregg and
Catherine Hansen-Stamp ©2016*

I. INTRODUCTION

Our subject is an increasingly popular phenomenon: the travel camp. “Travel” and “Camp” would seem to be incompatible terms, but the industry has figured it out — camps that travel out of a single site or move at intervals from site to site — urban and front country, and domestic and international. An organization that calls itself a “travel camp” must be diligent in preserving the “campness” of what it is doing. Otherwise, it becomes only another in a long list of adventure travel opportunities for children.

The travel camp combines the important benefits of traditional (fixed—site) camps and adventure and educational travel. Leaving the familiarity and comfort of the traditional camp at the gate, travel campers carry with them the intimate personal relationships and balanced risk taking and adventure

of the traditional camp, and add the excitement and learning that come with new places, new populations, and new activities.

But with these new opportunities come new risk management challenges and, importantly for the purposes of this article, considerations of how these challenges impact the legal duty of care the camp owes to its families. As a reminder, legal duty is to act as a reasonable person (or organization) would under the same or similar circumstances.

The traveling camp will address these enlarged challenges as it would any new set of circumstances: What are we doing and why?; What can go wrong? How do we reduce the chances of something going wrong? When something does go wrong, what will we do?

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Importantly, the camp should keep its eye on the goal of running a quality program. In this endeavor, the camp will take care to identify, consider, and manage the risks — risks that can result in a loss to the camper and to the camp. This means taking into consideration important legal, risk management, and practical elements of the travel program.

II. YOUR DUTY OF CARE

Generally, the camp's legal duty is to act as a reasonable camp would in protecting campers from unreasonable risks of harm. Similarly, a camp staff member's duty is to act as a reasonable camp staff member would act in the same or similar circumstances.

The duty of care owed by a camp (and its staff) weaves in and out of the camp experience, changing with activities, circumstances, relationships, and environments. Whether a duty exists, and the nature and scope of that duty in a given situation, is determined by a court, as a matter of law. Whether that duty is breached is determined by a fact finder (judge or jury).

A camp's duty arises from its decision to provide certain services — an implicit obligation to protect the camper from unreasonable risks of harm. If the camper is a minor, the duty of care owed by a custodian — like a camp — to a child is among the highest recognized in the law ("in loco parentis" — in the place of the parent). However, we have noted that even in jurisdictions that articulate the duty in this fashion, courts emphasize that a camp or other provider is not an insurer of safety and that accidents can happen.



Photo courtesy of
Cheley Colorado Camps, Estes Park, CO

Further, in many jurisdictions, courts hold that providers have no duty to protect persons — including minors — from the inherent risks of recreation and adventure activities. The rationale is that inherent risks — whether the 'good' or the 'bad' risks — essentially come with the territory, and those who voluntarily participate assume and accept those risks. In some courts, that inherency includes the ordinary carelessness (negligence) of the

actor — courts often rationalize that to allow claims for ordinary negligence will spawn litigation, and create a chilling effect, for example, on vigorous participation in the activity or the learning between an instructor and his or her student. It is a powerful doctrine. These and other laws and legal doctrines affecting the camp's duty of care are worth careful consideration by your legal counsel (in your jurisdiction).

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Common duties of care include the duty to hire, screen and train staff, and the duty to supervise campers, and instruct them on how to use equipment or otherwise engage in an activity. When using a subcontractor, the camp is required to exercise reasonable care in the effort to select a competent contractor.

A variety of factors can affect duty of care and a fact-finder's determination of whether that duty was breached. These factors include a camp's representations in its marketing materials, federal and state laws, a staff member's words or conduct, a camp's own policies, and industry accreditation standards or practices. Depending upon applicable law, a camp may eliminate or change its duty of care via a written participant agreement containing a 'release' or other 'exculpatory' language.

A camp can be directly liable for a breach of its duty of care, and alternatively, can be vicariously liable for a camp staff member's breach of duty in the course of his or her employment with the camp. Liability can also arise if the camp is controlling an independent party as it would its employee, or if the camp's actions made it appear to the public that an individual was acting under the camp's direction and control (in the law, termed "apparent authority").

Travel camps that are accredited by the American Camp Association® (ACA) — and those that are not — should carefully consider the application of ACA standards as they develop and implement their programs. U.S. or international programming may create unique

challenges for the camp in its compliance efforts. Camps should provide input in response to ACA's announced goal to revisit these standards in its effort to address the unique nature of these travel camps as compared with a traditional residential camp.

III. CONSIDERATIONS IN THE ENDEAVOR TO RUN A QUALITY PROGRAM

A. WHAT ARE WE DOING AND WHY? MISSION, PROGRAMMING, AND THE VALUE OF INFORMATION EXCHANGE.

The first inquiry may be the most important. What is your mission? Does your "travel" programming serve that mission? Have you shared that mission and appropriately described the nature of your trips and activities? Do the campers and parents understand their responsibilities associated with the camper's participation in the camp?

And, as we emphasized in our Winter 2016 The CampLine article, effective information exchange between the camp and its camper families is a critical element of the bond of trust and understanding important to a successful camp experience. Camper families need honest and accurate information about activities, the inherent and other risks, and their responsibilities — in order to assess and prepare (physically, emotionally, and psychologically) for the camp experience. Similarly, the camp needs accurate information from the camp family to assist in understanding the camper's health and readiness for the experience. A breakdown in this exchange, such as a camp's inaccurate, inconsistent, or unrealistic communications can result in not only disappointment and low quality programming, but in increased risks that can lead to injury or other loss and ultimately, potential legal exposure.

B. WHAT CAN GO WRONG — AND HOW TO REDUCE THE CHANCES OF SOMETHING GOING WRONG? PREPARATION.

This isn't a fatalistic exercise, but a helpful way to consider the "points on the map" in your preparedness effort. What elements of your travel program planning will facilitate 1) staff and camper readiness for the territory and activities, and 2) a quality program aligned with your mission? Consider the following areas, among others:

1. Trip planning and pre-scouting.

This planning component includes developing an understanding particularly if the camp is traveling outside the U.S. — of, among other matters, the local culture, geography, climate, flora and fauna, unusual diseases, social tensions, local rules and regulations, transportation options and the availability and quality of medical care and facilities. The camp should investigate local resources in evaluating these pieces. The careful camp will inquire of local medical clinics and law enforcement agencies to determine unique local issues and other insights that come only with frequent, current, and intimate familiarity with a place. (Reports of the Zika virus in South America, or flesh eating bacteria on a beach in Central American, for example, may be known only locally, but will certainly influence a camp's plans). In addition, national and international sources such as the Centers for Disease Control (CDC), World Health Organization (WHO) and U.S. State Department contain many resources useful for a camp in the context of trip planning, trip delivery and emergency response

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Photo courtesy of
Sanborn Western Camps, Florissant, CO

— particularly for planning taking place in international locations. These and certain government agencies track developments around the globe and can provide information regarding local health, political, and/or travel issues. If the camp hires other organizations to assist with medical care and emergency response (see section B.3.) those organizations may provide additional information.

In this process, the camp will identify reasonably anticipated risks, and determine which of those it can comfortably accept, those that it can reasonably manage, and those that it can perhaps eliminate (by, for example, not conducting a certain activity or avoiding a certain location). The camp can endeavor to shift or transfer certain risks by, for example, hiring a contractor to conduct an activity. Note this risk assessment is a “live” process as conditions and risks in various trip

locations can change over time (permit cancellation, terrorism, disease, natural disaster). A camp should have appropriate methods in place to monitor conditions and risks, and agreements with camper families and contractors that identify the means by which a camp might cancel a program or change locations, for example.

2. Program Delivery

In addition to camp staff who will travel with a group and provide program content, activities and instruction, the camp may consider hiring the services of others who it believes may be better able to deliver a portion of the program content. This may include use of sub-contractors to provide certain services or activities, such as transportation, specific program activities, or accommodations.

In terms of this contracting, the contractor — and not the camp — should be responsible and liable for activities happening under the contractor’s ‘watch’ (preferably articulated in a written contract between the camp and its contractor, identifying the responsibilities and liabilities of each of the parties). However, there are exceptions. As stated earlier, under the law, an organization — including a camp — that utilizes the services of a contractor has a duty to exercise reasonable care in its effort to select a competent contractor. A camp may find that it is more challenging to select and “vet” a contractor located in a foreign location (versus one located in the U.S.) for qualifications, skills, equipment or otherwise. In addition, it may be difficult to secure a written contract outlining the respective responsibilities and liabilities of the camp and contractor (including

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securing insurance form the contractor, with provision to add the camp as an additional insured), or to facilitate communication on roles between attending camp staff and subcontracted staff — considering differences in culture, language, and legal and insurance doctrines. These and other factors must weigh into the program planning and delivery. Certainly, if the camp ultimately believes it cannot adequately screen a contractor and/or does not reasonably believe that the contracted activity will be responsibly run, it should find another activity or contractor.

Transportation deserves special attention. Whether traveling in the U.S. or in international locations, vehicles should meet required laws and regulations. However, when traveling in international locations, particularly in a third world or developing country environment, laws and legal systems will be different than those in the U.S., and vehicles generally do not meet U.S. safety standards. Camps are well advised to investigate these issues via informed sources, to understand transportation issues in-country and determine an appropriate way to transport campers. Importantly, camps should inform camper families of these issues and risks — typically in a participant agreement, signed by the camper and/or parent (see below).

3. Emergency and medical response

The camp must consider emergency and medical response — particularly in remote locations — and coordination with local authorities. Staff should have appropriate knowledge, medical training and certifications to handle

medical emergencies whether in front country or back country settings. If operating internationally, or even in areas of the U.S., the camp may consider hiring a service such as International SOS or Global Rescue to coordinate or handle emergency and medical response, where specialized knowledge of — and access to — transportation, evacuation services, medical resources, and facilities may be appropriate for the location.

4. Camper registration, forms and other information

The camp's 'messaging' should be internally and externally consistent. The camp's website may contain a 'statement' regarding risk management and safety — identifying some of the unique aspects of the program, but clarifying, for example, the presence of inherent risks and the fact that the camp cannot assure the camper's safety or eliminate all risk. Variations on this theme should flow throughout the camp's messaging.

terms of payment, cancellation, trip insurance, camper separation and other provisions; participant agreements containing (among other important provisions) information regarding activities, risks, an acknowledgment and assumption of risks, and depending upon the applicable law, a release of liability. (Other key provisions include choice of law and venue (the law to be applied to a dispute, and the location or 'place' of any suit or legal proceeding)). If traveling internationally, the minor camper must carry a passport, and will likely need a signed parental consent to travel outside the U.S.

The camp would be wise to have the camper and parent sign a 'behavior contract' — informing the family of expected behaviors and conduct, and identifying, as well, those that are unacceptable, including for example — considering age or cultural norms — limitations on certain dress or jewelry. The camp must be clear with camper families about local or in-country cultural norms and laws.

The camp should consult with its legal counsel or other experts in developing these documents and agreements in an informed and thoughtful manner consistent with applicable law.

Effective information exchange, discussed above, includes items such as registration and emergency contact information, collection of appropriate camper health and medication information, and consent to treat; trip itineraries; terms of agreement detailing

Behavior acceptable "back home" may not be well-received — or allowed — elsewhere whether in certain parts of the U.S. or in international locations. And, importantly, it may simply be dangerous.

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In addition to articulating camper and camp family responsibilities in your messaging and written agreements, consider ways to involve your campers — regardless of age — in ongoing risk management. For example, while traveling and engaging in activities, develop ways to engage campers in a discussion of risks and risk management. Campers need to understand that they are a part of the risk management equation and actively share in the responsibility for their own wellbeing — and the wellbeing of the group.

In the camp's collection of health and medical information, camper families should understand the importance of honest disclosure — and the ramifications of submitting information that is incomplete, inaccurate, or untrue (no interest is served by deliberately misleading the camp in these important matters). Families should understand the purpose for the camp's collection of that information (what the camp is — and importantly, is not — doing), and the family's responsibilities in considering, in conjunction with the camper's physician, whether the camp is an appropriate fit for the camper.

A camp will want to understand — and stay current on — the nature of a trip location's health and security risks. So too, camper families should be clear about their responsibilities in investigating travel resources (such as the CDC, U.S. State Department or WHO), particularly when travelling internationally. Camps can recommend or require that campers sign up to receive STEP (Smart Traveler Enrollment Program) notifications — sent to travelers by

the U.S. State Department, regarding in-country safety and security issues. A camp may choose to notify campers and their families of known and recent health threats in the planned trip location (being careful, of course, to articulate that other problems can occur, and that camper families should consult other sources). This can be done in the registration process or otherwise, before trip departure. This announcement alerts camper families to the issues (and may ultimately influence a camp's decision whether or not to travel in certain locations). However, rather than dictate or recommend a particular prophylaxis for in-country travel ("you should definitely get x vaccine") the camp will want to inform camper families that they should see their own medical professional or a travel doctor (who should be appropriately informed via CDC, WHO and other sources), well before the start of camp, to consider in-country prophylaxis (e.g. vaccine or other medication) appropriate for the camper, considering the camper's unique health and medical condition. The camp should have a method to receive documentation from the camper, informing the camp of any prophylaxis the child will be taking to address in-country health issues.

The camp should have a clear protocol for the administration of camper medications outside the residential camp setting, understand the 'street' value of certain drugs, and be clear about which medications the camper can and cannot carry on his or her person during the program. The camp should have an adequate system in place to assure the security of these 'held' medications over the course

of the trip. Several organizations are now available that facilitate the ordering and receipt of camper medications directly from the pharmacy in a prepackaged and pre-dosed container — assisting the camp with these issues during trip and travel. International locations may pose problems in obtaining, carrying, or resupplying certain medications, another critical element of a camp's preplanning.

5. Crisis Response Plans

The camp should examine the unique aspects of its trip locations, and investigate (including local, regional, and global resources) how those locations inform and direct its immediate incident/emergency response, and, how that response interacts with the camp's larger serious incident/crisis response plan.

If the camp is operating trips in many different locations, there should be a central response plan that identifies and describes, for example, a camp spokesperson, communication with the family of the injured camper, and media response. However, the geographic location, culture, laws (including permitting requirements), or other factors unique to a particular trip, specifically those in international locations, may raise specific issues that require differences in response (see, e.g. B. 3, above). These elements might be addressed in a supplemental piece, with clear direction to staff on how the in-country plan meshes with the camp's larger response plan. Crisis response plans should provide appropriate direction to camp office staff (those in the office receiving communications and facilitating portions of the response) and field staff (those dealing with the incident in the field) to facilitate a smooth and coordinated response.

6. Insurance

The camp should work closely with its insurance broker/representative and legal counsel to consider important aspects of its insurance coverage, and importantly, any gaps or exclusions in that coverage — whether operating in the U.S. or internationally. A camp must understand that insurance coverage is very different when operating in international locations. The camp should investigate ahead of time, for example, the application of workers' compensation coverage to its staff working in foreign locations, and any unique application of its liability insurance coverage for injuries or loss occurring in foreign locations. In addition, foreign contractors may not offer up insurance and additional insured status to the camp (for a variety of reasons) — and even if they do — that insurance may

be difficult to interpret and in the event of an incident — difficult to track down or enforce. Further, in the event of a U.S. based lawsuit, it may be impossible to legally force a foreign contractor into a U.S. court. A camp should endeavor to obtain sufficient coverage from its own liability insurance carrier in the event it is ultimately held responsible for incidents occurring to campers on a contractor's 'watch.'

C. IF SOMETHING DOES GO WRONG — WHAT WILL THE CAMP DO?

As discussed above, in its preparation, the camp will have developed an incident and emergency response plan, sufficiently unique to the trip location, but feeding into the camp's larger crisis response plan, as needed. This plan will likely

reflect a variety of local resources (appropriately scouted) and their limitations, and among other things, address communications with camp management, families and local authorities, evacuation, and other key issues. Again, the plan may be implemented in conjunction with a specialized organization such as International SOS or Global Rescue. The camp will implement this plan as needed via both its field staff and office staff.

Of the camp addresses the areas discussed in this article, among its other preparation, it will likely be better able to: 1) reduce the risk of incidents occurring to begin with, 2) appropriately respond if an incident does occur — whether serious or minor — including response that sensitively considers loss to the camper and camp family and



Photo courtesy of
Cheley Colorado Camps, Estes Park, CO

3) limit the camp's exposure to financial, reputational or other loss. These suggestions include for a camp to:

- engage in a pragmatic and informed process in its endeavor to understand the inherent and other risks (those both common to all trip locations as well as unique to various locations);
- develop a culture of risk management — including an approach that recognizes campers as team players in the risk management equation;
- engage in appropriate information exchange with camper families;
- conduct thoughtful staff training;
- obtain insurance sufficient in types and amounts;
- endeavor to secure responsible contractors (and obtains appropriate protection from them);
- craft informed incident and emergency response plans.

IV. CONCLUSION

Align with your mission, and learn the laws, standards and prevailing practices pertinent to your planned activities, environment and client population. Understand — and communicate to your camper families — the risks, inherent and otherwise, and be clear with them regarding their responsibilities.

Develop a culture of risk management. Adhere to the standard of “reasonable care under the circumstances” and your camp will travel, teach, and play with some confidence that you are reducing the risk that something bad will happen, and that if it does, your camp is prepared to handle it well in its ongoing effort to run a quality program. ■

*This article contains general information only and is not intended to provide specific legal advice. Camps and related organizations should consult with a licensed attorney regarding application of relevant state and federal law as well as considerations regarding their specific business or operation.

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Photo courtesy of
Whippoorwill Farm Day Camp, Fairview, TN

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STANDARDS AND PRACTICES IN THE INDUSTRY

In addition to considering ACA Standards, a prudent trip planner or leader will research and carefully consider standards and common practices of similar organizations. The leader should exercise caution, for the standards and practices by which the travel camp will be judged must be appropriate to the age group being served, its activities, and environments (with special attention to home stays, if any). This will be a unique set of components.

LEGAL, RISK MANAGEMENT, INSURANCE, MEDICAL CONSULTANT, OR OTHER EXPERTS

Consider the value of utilizing appropriate experts or specialists to assist with various aspects of your preparedness. It is worth the investment of the camp's time and money to seek appropriate advice from these experts in their area of specialty. Talking with other camps can be very constructive, but avoid cutting and pasting wholesale from another camp's documents or plans. Seek the right counsel and have your preparedness fit your mission and operation.



ACA STANDARDS AND ACCREDITATION

– Things to Know!

ACA has completed another successful accreditation year visiting over  **650 CAMPS** and reviewing close to

1000

Annual Accreditation Reports (these reports were from camps not visited in 2016 in nine areas of ACA).

With another “accreditation year” behind

US, we continue to move forward working to make ACA accreditation more relevant and assessable to all types of camps. It is a busy world when it comes to ACA standards and accreditation!



Photo courtesy of Camp Killoqua
Everett, WA

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KEY REMINDERS

- It is the responsibility of the camp owner/director to make sure they are following the most current ACA standards! All updates to the standards since the original published date in fall 2011 can be found at:
www.ACAcamps.org/staff-professionals/accreditation-standards/tools-resources/standardsrevisions-clarifications

CHECK YOUR ACCREDITATION PROCESS GUIDE TO VERIFY YOU ARE DOING SO.

- If four or more mandatory standards are missed during the accreditation visit for your camp, a visit will be required the following year even if all of the mandatory standards are brought into compliance within the specified time-frame (7 days). This decision

was made by the National Standards Commission in fall of 2015 based on the fact a camp should be fully aware of all applicable mandatory standards prior to their visit.



Photo courtesy of Eagles Landing Day Camp
North Brunswick, NJ

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NEWS

- Beginning in 2017, all currently accredited camps will either have an on-site visit OR will be required to complete an Annual Accreditation Report (AAR). Requiring an AAR allows ACA to move to a 5-year visit cycle and all areas in ACA will be included in this operational change. All camps that were originally scheduled for a 2017 visit should have heard if their visit year remains 2017 or is moved. Random selection was used to determine what camps would have their visit year moved.
- At its meeting in May, the ACA Board voted to accept the report of the Accreditation Task Force and the recommendations contained therein. The Accreditation Task Force was charged with the following: Determine how the ACA Accreditation Program and process can be more open and appropriate for a variety of groups without sacrificing the goals, intent, and integrity resulting in a more universal and flexible enterprise. There are four recommendations associated with this report. To learn more, check out: www.ACACamps.org/news-publications/hot-topic/aca-accreditation-looking-future

If you have questions about any of these topics, please contact Rhonda Mickelson, ACA Director of Standards at 765-349-3306 or rmickelson@acacamps.org ■



Photo courtesy of Cheley Colorado Camps, Estes Park, CO



Photo courtesy of
Happy Hollow Children's Camp
Nashville, IN

THE CAMPLINE

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Click any of the links throughout **The Campline** to be sent directly to a Web browser where you can research and learn more about specific topics. It's just one more way **The Campline** can help you.

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