

THE CAMPLine

Winter 2014
Volume XXIV
Number 3



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Photo courtesy of Camp Max Struss, Los Angeles, California.

CURRENT TRANSPORTATION CONSIDERATIONS FOR CAMP PROGRAMS

An Interview with Doug Brockman, Kline Van and Specialty Rental

 **Camps have traditionally used a variety of types of vehicles to transport campers, staff, and gear — cars, light trucks, passenger vans, 12- and 15-passenger vans, buses, and motor coaches. Are there any vehicle types that camps now are banned from utilizing? If yes, what vehicles and in what situations?**

That is an excellent question. Unfortunately, there is no real clear answer. First we would need to identify “who” you are referring to when you ask if certain types of vehicles would be banned: the federal government, the state government, local authority, the camp’s insurance company or risk management group, or the ACA accreditation standards?

For example, the federal government does not prohibit a resident summer camp from using a 15-passenger van, but certain states may have state regulations that do, depending on the use of the vehicle. But then, in states where there may be no federal or state regulations prohibiting that use, you may have a camp with

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an insurance company or a risk management group that won't allow it. Or you may be OK with all of the above, but then find that you cannot get a state health inspection sticker (in states that require it) because the vehicle you want to use is not properly equipped with a fire extinguisher, flares, backup alarm, etc. When camp directors get together and compare notes from across fifty states, it's easy to see where information becomes jumbled on exactly what is legal and what is not. Here is what I can tell you:

Federal Government

The federal government does not currently have any general bans for camps on vehicle types such as factory-produced cars, minivans, buses, passenger vans, trucks, etc. However, there is a mandate on *schools*. Federal law prohibits the sale of large passenger vans to schools for the purpose of transporting students. Large vans, those which hold ten or more passengers, do not meet federal standards for school transportation. Specifically, federal law prohibits the sale of large passenger vans to a school for the purpose of transporting students if the vans do not meet federal standards for school bus manufacture. But this does not mean large vans are unsafe, nor does it mean their use is prohibited for transporting children in other industries (be aware that camps and schools are often confused and are not the same thing under the federal definition of "school").

And to be clear, there are many types of cars and trucks that are banned from being used in many areas for any purpose, including camps — but these types of restrictions have more to do with the condition of the vehicle or its registration than it does with its "type."

State Government

State government is where things start getting a bit trickier. We often

have conflicting laws between federal and state governments — and camp vehicles are no exception. Some states will prohibit certain types of vehicles for certain uses. Sometimes the rules conflict with other legislation and create "gray areas" of interpretation. It's probably one of the biggest reasons you cannot find a chart or publication that would bullet point what vehicles

The time to find out is not after your van full of kids has been pulled over by the local sheriff or after you have rented a number of vehicles only to find you cannot get an inspection, pass compliance with the vehicles, or gain insurance.

can be used in what states. In the private sector, depending on who you talk to, you are likely to get different answers on what's legal and what's not.

It will take some investigation on the camp director's part — but it's important to dig it out and understand what is required and what is not. Many times, much of what gets misconstrued is what the insurance industry says they will cover and what they will not. Coupled with the negative media surrounding 12- and 15-passenger vans, it's easy to see why there is so much confusion. Ask for the facts — beware of recommendations or self-imposed limitations of your insurance providers being presented as legal benchmarks or legislation. You need to also look around you on the local level — will there be any compliance issues in your county or township?

Are camps considered "commercial ventures" that must comply

with commercial venture regulations related to transportation? If so, what are the situations and implications?

Again, this is a question that camp owners have to look at in the states and jurisdictions they will be operating in. The answer also depends on how camps are operating their business. If you are conducting a "tour" and charging people for a ride (canoeing and rafting return trips qualify here if that is your primary business), you fall under many livery and commercial driver's license (CDL) laws. Your vehicle and drivers will have to have special licenses and display department of transportation and CDL requirements. However, if you are a camp or adventure group, again, depending on jurisdiction, you may not always qualify under livery rules, as transportation is secondary to your overall camp experience. Travelling to a rock climbing outing, zip line adventure, or (using the previous example) a rafting or canoeing outing for a day as *part* of your session, would be exempt from being considered a commercial livery application in many locales. If in doubt, camps should always plan ahead and find out how their business will be viewed by the local authorities before they begin operation. The time to find out is not after your van full of kids has been pulled over by the local sheriff or after you have rented a number of vehicles only to find you cannot get an inspection, pass compliance with the vehicles, or gain insurance.

I want to caution camp directors: Don't count on every rental and leasing agency out there to know all the specifics surrounding your intended use of equipment. While it may not be illegal to rent a 15-passenger van, what you intend to do with it may or may not be subject to further rules outside of the agreed terms of your rental or lease. We all know that if you get caught speeding on an unfamiliar highway in a rented vehicle where maybe you



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didn't know the speed limit, it's still a violation. You are not exempt just because you rented the vehicle, nor is it the rental company's responsibility for your error in judgment on speeding. The same is true for all levels of legislation and regulation. Just because you "didn't know" is not a good defense or operational practice. An example of thinking ahead along these lines might be a resident camp in the east that sends excursions out west. That camp director will want to check with authorities wherever his excursions will travel to see if they will face special regulations depending on the nature of their trip and type of travel they will be doing.

Here's an equally important question: Do your drivers understand how to operate the vehicle in accordance with the policies and procedures you have established? All too often I see inexperienced and undirected, uneducated drivers get into trouble because they didn't know what lane to use at the airport pickup drop off areas (e.g., being ticketed for using a livery lane or commuter lane without proper license) or what kind of trip permit they needed at state lines, permit stations, or

national parks. Trips to Canada require even more diligence — so plan ahead to train and instruct your drivers.

What, if any, tests are required for the drivers of camp vehicles?

If your camp or use application does require a CDL-licensed driver, this can be obtained by contacting the local DMV in your camp's state (or driver's home state). eHow's "How to Get Your CDL Driver's License" page has a good checklist for getting prepared for your license. (See the resource section on page 5.) Camps will want to check with their insurance provider, as this may change the type of policy they will need to carry.

What, if any, training is required for drivers of camp vehicles?

Unless a CDL is required, there is no official training required by the federal government. Camps should check with their state and local authorities to see if any is needed for their area. In states where health inspections are conducted, find out if the drivers must know CPR or have any other health/rescue training.

A lot of camps use young drivers. In many cases, these drivers are

twenty-one years old (and some are even younger). Driving vehicles that these young drivers probably have not had a lot of experience with — especially including the distractions of a load of children — can create new challenges and unfamiliar environments . . . even for the best of drivers. I recommend that anyone operating a camp vehicle be given some instruction and training. There are any number of safety and training programs out there — check with your local DMV for any programs in your area. (Some additional resources can be found in the sidebar on page 5.)

What, if any, maintenance checks are required for camp vehicles?

ACA has accreditation standards that camps must use a vendor who can supply maintenance records on the vehicles they rent/lease, and camps must have the same for vehicles they own. But camp directors need to be aware that while daily rental companies like Hertz and Enterprise have periodic schedules allotted for their vehicles, these vehicles are rarely serviced beyond fuel, washer fluid, and a car wash between rentals. It's common practice around peak periods of high demand for vehicle rental companies to override a maintenance hold on a vehicle when they reach maximum capacity. So ask yourself, "How did the last person treat this vehicle before I received it, took it to camp, and loaded kids into it?" Many times, it's the next user who has to find out when a vehicle was abused and report it to the company. Do you want to take that chance with kids in the vehicle?

When selecting a company, try to pick one that will do more than just a physical walk around of the vehicle. Ask for a complete maintenance inspection. In many cases, camps have vehicles for eight weeks or more and will put a lot of miles on them. Start off with fresh knowledge of each vehicle's condition. For example, my company

supplies brand-new vehicles to a majority of customers, and we rarely keep vehicles over two model years old. In cases where an existing vehicle has been used prior to a camp, we conduct a complete service inspection, fresh oil change, and fluid service on the vehicle (regardless of when the last service was done, even if it was only done a few hundred miles prior). I recommend you ask for the same service!

Can camp staff who are foreign nationals with an international driver's license drive camp vehicles?

This again will depend on each situation and the state the camp is in. The camp will need to know if the potential driver is a short-term visitor; here on a J-1, student, or work visa; or if residency rules will be applied to the person in that state depending on length of stay. The international staff placement agency you work with can help you

with this. Then, contact your local DMV to find out what the requirements will be for using an international driver for your camp (or on an adventure trip that crosses state lines). A good resource for finding your local DMV is listed in the resources section on page 5. And then you'll want to find out if the vehicle vendor you use will allow it. Not all do. At the very least, before your international staff comes to the U.S., they should obtain an international drivers permit, which translates the information contained on their official driver's license into ten languages.

If a camp was considering hiring a firm to handle the camp's transportation needs, what questions should they ask the potential vendor?

If you are considering a buying club or discount broker, be careful and make sure you are not compromising safety in the interest of price. Make sure the price club is taking into consideration

the value of things like full service and safety inspections or twenty-four-hour roadside assistance. A couple questions you should ask of the buying club are:

- When you shop rental/lease companies, what questions are you including in your quote?
- Who are you gathering bids from? (Make sure they are gathering bids from competitive businesses offering similar services so that the price differences are accurate.)

The best thing to do is get references from other camps that have used the buying club and find out about their experiences regarding transportation. Also, there are groups of camps out there that have formed their own clubs to pool their buying power without having to pay a broker or buying club to get the best prices. They often will have Web sites that show their partnered vendors, which might be a good way to see who others in your local

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area are using. You can do an Internet search for camp associations in your state or region, and then look for their business member/partner listings.

What advice do you give to camps to help them understand and comply with the appropriate regulations?

The best defense is a great offense! Don't wait until you are in trouble to try to figure out what rules apply to you and your business. It's your business! Act sooner rather than later, and spend whatever resources are necessary to get the correct understanding of what regulations you need to be in compliance with and how to conduct your business accordingly. It can be daunting for sure — and countless people, departments, and government offices all seemingly with conflicting answers will impede you along the way.

But if you are proactive and do your research in advance, you'll have much more confidence that what you're doing is correct. You'll be better prepared for an encounter with an unfriendly inspector or law enforcement officer. As I've just demonstrated in all that we have talked about, matter of interpretation can vary greatly. If you find yourself in a bad situation on compliance and don't really know the answer, the worst time to deal with it is in the middle of a camp session!

What changes in regulations do you see on the horizon?

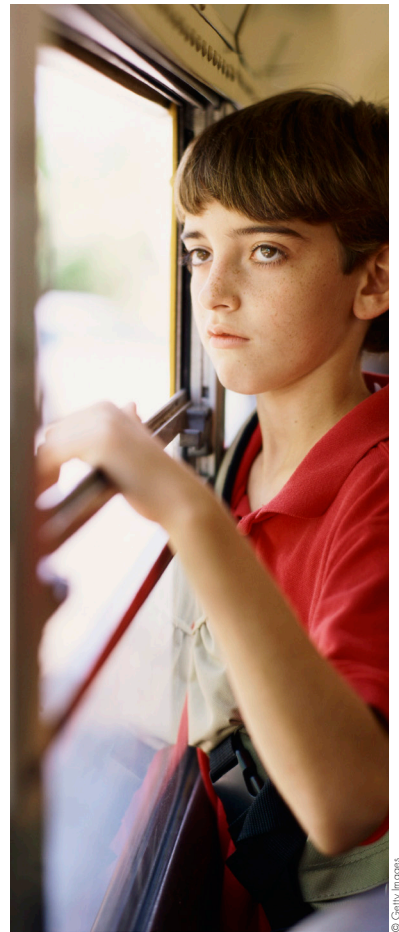
There has been much activity on this very topic. There is federal legislation pending with the current highway bill in Congress now, which has failed to pass this provision in the Senate repeatedly. The Commercial Motor Vehicle Safety Enhancement Act of 2012 that was passed has the provision of section 32709. This provision is for a study to be conducted regarding the feasibility of making nonschool and nondirect compensation operators (camps and other private sector

operators) comply with CDL and other federal mandates. For more information and updates on this, visit ACA's Federal Motor Coach Laws page (listed in the resources section below).

Is there anything else you would like to share with the camp community about transportation issues?

For now, 12- and 15-passenger vans are not subject to federal mandates outside of preprimary, primary, and secondary schools, as well as those companies operating interstate commerce or direct compensation for hire (taxi and limo companies). That means it is not federally illegal to lease vans to camps.

*Operating a commercial rental and leasing division for Kline Corporation since 2006, **Doug Brockman** has over thirty-one years in the national automotive rental and leasing industry. Kline serves customers in more than thirty-six states from coast to coast and has the ability to serve anywhere in the forty-eight mainland states. Kline is an ACA Business Affiliate and sponsor. Visit www.klinevan.com.*



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Resources

ACA. "Transportation Resources." www.ACAcamps.org/knowledge/transportation

ACA. "Federal Motor Coach Laws." www.ACAcamps.org/publicpolicy/motorcoach-laws

eHow. "How to Get Your CDL Driver's License." www.ehow.com/how_4470794_cdl-drivers-license.html

DMV. "DMV Office Finder." www.dmv.org/dmv-office-finder.php

Safety Instruction and Training

- Van Safety. "15-Passenger Van: Driver Improvement Course." <http://vansafety.com/>
- Oregon State University. "Van Safety." <http://motorpool.oregonstate.edu/drivers/training>
This site includes a free video and safety test. If you want to use the free test, make sure to print it and make your own answer key. Submitting the test online does not return results to you.

FOCUS on SPECIFIC STANDARDS: SF.3 and OM.7

National Standards Commission



School shootings, damage by trespassers, tornadoes during what is not considered to be tornado season, watershed and water systems compromised — all are situations that have occurred in the past several months. If something similar impacted your camp/property, would you be prepared?

In response to these (and other emerging issues), the National Standards Commission highlights ACA standards that address such issues and shares ideas of what a camp might consider as they prepare not only to “meet the standard” but develop the best plan/practice for their situation. As a reminder, these areas (along with others) should also be considered in a camp’s risk management review and plan.

The two standards being highlighted in this article are *SF.3 Contact with Local Officials* and *OM.7 Intruders*.

Contact with Local Officials

SF.3.1 — Does the camp make annual contact with applicable local emergency officials to notify them of the camp’s dates of operation (seasonally or year-round) and to verify appropriate emergency response information?

While a letter written to the local emergency officials notifying them of the dates of a camp’s operation would technically meet the standard, camp personnel should consider some of the following recommendations:

- Identify all the local emergency officials that might be involved should something occur at your camp or during one of your programs. This might include fire, law enforcement, public land administrators (e.g. forest service), EMS, etc. Make contact with all of them.
- Consider inviting those most likely to be involved with emergencies to come visit your site, both prior to the start of the season and during the season as well. Whether it is for lunch, a special event, or something else, always involve a tour of the facility. The more familiar authorities are with a site and the programs conducted, the better they will be able to serve and respond.
- Provide a tour of your camp/facility to the local community.
- Make sure authorities know what resources you have available on site with regards to both equipment and personnel.
- Invite local personnel to assist with staff training in their area of expertise.

- Get involved in the community in which your camp is located! Do you have staff that might volunteer with local EMS / fire departments? Having someone on the “inside” can be valuable in many situations.
- The bottom line — in addition to “making contact” develop a relationship with authorities so they know and are familiar with your camp, your camp personnel, your site, and your program. It can pay dividends if/when the need arises.

Intruders

OM.7.1 — In order to address possible intrusion of unauthorized persons onto the camp site, does the camp:

- A. Conduct a periodic review of security concerns of the site, and
- B. Provide training for staff, campers, and rental groups (when applicable) about steps to take in the event of an intruder?

Does your staff know what to do when they see an unfamiliar face on property? Do you have a “check in at office” sign posted at the entrance to your camp? Does it work? The potential of intruders seems to be a concern of most camps and is an area where preparation and training can be of great value. Owners/directors should determine what steps they need to take to best minimize their risk with potential intruders.

- When was the last time you had an external review of potential security concerns? Consider having those same local authorities who might be the ones to respond involved in this review.
- What type of training do you provide to staff regarding an intruder? Do you rehearse this training?
- Have “safe zones” been identified? In what situations would they be used? Is this information shared with all staff?

The American Camp Association has a significant number of resources and ideas, which can be found at: www.ACAcamps.org/hottopics/camp-security

Most importantly, as you prepare for your upcoming summer season — whether it is an accreditation year or not — now is the time to review your policies and procedures on these two standards, as well as others. Determine what is required to meet the standard as well as what best addresses the potential risks at your site and in your program. Don’t wait until a crisis occurs to have plans in place.



Photo courtesy of Tom Sawyer Camps, Alhambra, California.

ESSENTIAL FUNCTIONS OF A CAMPER

Analysis and Determination

Tracey C. Gaslin PhD, CRNI, CPNP, FNP-BC

Introduction



It is a sunny camper arrival day, and Simon and his mom present for check-in. Simon is giddy with excitement about the fun he will have during his first camp experience. Mom shares a few things with staff regarding the care and needs of Simon.

Simon needs:

1. Someone to assist in him getting dressed, especially to help with socks and shoes and make sure he does good oral care every morning.
2. A modified gluten-free diet — mom wants him to have limited access to products containing wheat but is OK with foods containing barley and rye. She wants him to have salad or vegetables with his meals.
3. A night light to go to sleep as he does not do well in the dark. He may also need to watch movies on his DVD player to help him get to sleep occasionally. Mom will leave his DVD player at camp.
4. Someone to manage him when he has outbursts of anger. As

an only child, Simon has not learned much about sharing and collaboration with others and will “loose it,” according to mom, if asked to do something against his will. He does not typically hit, but he has been known to throw things during these events.

5. Access to a phone and the ability to call mom in the event he feels homesick.

Do any of these requests give you concern? For some of the

requirements above, do you feel overwhelmed and maybe lack the skills, funding, or staff to accommodate the child? Are there things you may not be able to accomplish within your camp setting? What are those essential camper functions that are needed (or expected) in order to provide a positive camp experience?

The intent of this article is to help camp leadership and staff analyze, identify, and proactively share the essential functions of a child who wants to attend camp. In order to do this, camps must first:

1. Identify the physical requirements for camp.
2. Identify the behavioral requirements for camp.
3. Correlate these requirements (physical, behavioral) with the camp structure and programmatic activities.

Physical Requirements

Each summer and throughout the year, camps offer a variety of activities and experiences to spur education, growth, and connectedness to others. Some camps have more vigorous physical requirements, such as basketball camps and sports-related adventures. Other camps may have a more relaxed physical demand, such as art camp or special needs camp. Screening children for basic physical functioning is helpful. Physical aspects of camp to consider might include:

1. Does the camper need to be ambulatory?
2. Does the camper need to be able to self-toilet and provide his or her own self-care?
3. Does the camper need to have a certain aptitude in communication? What if the camper is nonverbal?

4. Can the camper with Asperger's participate in your basketball camp?
5. Is the camper who wears a leg brace able to do the hiking expeditions as part of your camp experience?
6. Is the camper with food allergies able to attend the all girls' camp?
7. What are the cognitive requirements of a camper? Can a child with developmental delay manage your camp experience?

There are innumerable questions that camp staff are asked each year regarding physical requirements for camp. The questions address mental functioning (i.e. developmental delay), heart and/or lung function (i.e. asthma), gastrointestinal disorders (i.e. hypoglycemia, food allergies), orthopedic challenges (i.e. cerebral palsy, casted broken leg, use of splints/braces), and many others. It seems crucial for leadership to have a good understanding of the physical demands of camp and be able to share those proactively with parents and families prior to arrival.

Behavioral Requirements

What seems to be more challenging than essential physical function is the behavioral requirements. Campers of all ages are challenged by different environmental influences and experiences and may react differently depending on their coping skills and learned behaviors from home, school, and neighborhood environments. If a child observes an angry parent react with strong verbal outbursts, they are most likely to "learn" this as normal behavior and respond in turn. If a child is bullied at school, they may find the opportunity to "be the bully" in a camp experience with other smaller campers. Positive experiences also help mold childhood behavior. The teacher who assists after a frustrating score on the math test or the after-school counselor who



Photo courtesy of Tom Sawyer Camps, Alhambra, California.

encourages self-determination and provides the tools to succeed can help to create positive coping strategies.

Many individuals have researched information regarding the behavioral aspects of children and implications related to making friends and social connections at camp. Lipof (2010) addressed issues related to self-esteem and that our response to situations in life and relationships are a reflection of how we see ourselves. How we see ourselves directly affects our ability to develop relationships with others. Arizala (2012) discussed challenging behaviors (i.e. freaking out, home-sickness, power plays) and that we all make choices affecting how we relate with one another. Although we may not know a great deal about a child's family, their home situation, or school performance, we need to be able to facilitate effective functioning in the camp setting and, hopefully, create connections with others. Thurber (2013) presents brilliant insight regarding the "dumb things" kids do and how much of our behavior is driven out of sheer curiosity. Sometimes that curiosity becomes genius, but this accidental learning can also lead to injury or death. Camp can be a breeding ground for curiosity and what we have learned over the years about childhood behavior is to "expect the unexpected."

What does this mean for camp? What are the essential behavioral functions of a camper needed at your facility? Should a camper be able to do the following?

1. Sleep in a room with six to eight other people or fall asleep without assistance. This may be a challenge for the only child, especially if this is the first time he or she is away from home for an extended period.
2. Follow a structured schedule. This may be challenging for the ADHD camper.
3. Follow verbal directions. If your camp is a "hands off" facility, how

will you manage a child who has been physically manipulated by parents or guardians to do what they require at home?

4. Self-manage frustrations or emotional outbursts. How do we promote positive coping skills in children?
5. Understand camp rules regarding being safe, loved, and respected. A child from a dysfunctional home may not have an appropriate understanding of these terms, especially if they come from situations where they have been physically hit or assaulted because they are "loved."

Unlike physical function, behavioral activities are a learned response and change over time. When someone has a physical alteration to their gait or ability to walk, we can often find ways to accommodate that challenge. Behavior is more complex in that we

may not get the same response to an emotional encounter on different days. In one experience, a child might respond to bullying by retreating to a safe place and crying. On the next event, the child may lash out and strike at the individual causing him or her harm. Learning how to manage these evolutions in behavior and give staff "tools to tackle" them is often a continuous effort. Each camp should address the essential behavioral requirements for their facility in order to establish a baseline of understanding and provide a springboard for growth.

Camp Structure and Function

While there are many physical and behavioral needs of children, camp leadership must try to identify the essential camper functions needed to be successful in their facility. What are some of the questions that we need to consider when doing an analysis of the

ADVOCACY CALL to ACTION — CHILD PROTECTION IMPROVEMENTS ACT

Contact your legislators today to help protect kids!



The American Camp Association and more than twenty other youth development partners have been working to close a gaping hole in federal law that prevents camps and other youth-serving organizations from gaining access to federal criminal background checks on employees and volunteers.

The bipartisan *Child Protection Improvements Act* (S. 1362 and H.R. 3902) has just been reintroduced in both the Senate and the House of Representatives! We ask you to become an advocate and contact your legislators to urge their support of this critical child protection bill. Advocacy is quick and easy! ACA has an online tool and sample messages so you can advocate in just a few minutes.

View ACA CEO Peg Smith's video blog on this important topic: www.ACACamps.org/blog/aca-camp-blog/advocate-child-protection-improvement-act

Advocate Today: www.ACACamps.org/publicpolicy/CPIA

camp site and the camp structure to make determinations about essential physical function of children?

1. Does the camp have many steps? Unpaved walkways?
2. How much walking is required daily? Is it a large, hilly facility or a smaller organization on flat land?
3. What are your sleeping accommodations, and is there opportunity to make adjustments to these arrangements?
4. How is your nutritional program organized? Do you have the kitchen staff, funding, or ability to provide food alternatives?
5. What does camp staffing include? Do you have flexibility in your camper-to-staff ratios?
6. What training is provided to camp staff for behavioral challenges? Is this included in orientation?
7. Are there accessible healthcare services? What level of care can you offer to camp participants?
8. Is the camp program a structured or unstructured schedule? How might your schedule impact children with attention deficit issues, heat intolerance, or developmental delays?

There are numerous questions that can be generated in each camp setting. Often, just doing walking rounds of the camp and having a discussion about some of these elements brings to light potential challenges. Through examining the camp and analyzing different situations, camp should be able to make a determination of what essential functions are for their campers. One camp might decide to have significant

Find a downloadable checklist with the suggested questions from this article at www.ACAcamps.org/campline/winter-2014/checklist.

physical requirements (i.e. campers must be able to walk at least a mile, engage in daily team sports, or tolerate hours of heat) while another camp may have minimal physical requirements (i.e. a camper can be nonambulatory, does not have to provide self-care, and can have assistance with feeding). Obviously these two facilities would have very different programs, structures, and expectations for camper performance. No decisions about essential functions are right or wrong, but rather made to identify what is best suited for the facility and the camper alike.

For behavioral functions, camp leadership may give stronger consideration to safety of the camp community and creating a positive experience for each camper. Identifying essential behavioral functions may be more challenging but is helpful to families. Behavioral functions may include items such as:

1. Camper can self-calm following an event that causes frustration, sadness, or anger.
2. Camper can sleep without sleep aids (lights, music, movies, etc.).
3. Camper can follow verbal directions from counselors.
4. Camper does not wander.
5. Camper is not impulsive.

There are an assortment of behavioral expectations a camp can provide to parents. It may also be helpful to ask questions of parents or guardians in the application process that will provide insight regarding the child. Some of these questions might be:

1. Can your child sleep in a room with other children?
2. Does your child have problems with anger?
3. Can your child follow directions?
4. Has your child had any behavioral issues at school?
5. What would you consider to be your child's greatest social challenge?

6. Does your child seem to get along with peers? Do they have close friends?
7. How does your child respond when they become frustrated? Do they wander off to be alone?

There are many ways to ask questions that identify potential behavioral issues. Having parents provide this information allows for discussion, questions, and understanding prior to camper arrival day. Giving parents essential behavioral functions will also allow them to assess if the camp is a "good fit" for their child and the support that may be needed.

How many of us want to have the experience with Simon and his mom as we described earlier? Most of us prefer to be educated, prepared, and ready to handle potential challenges instead of receiving a daunting list of requests when they check in. Provide parents information regarding these essential camper functions through the camp Web site, application, brochure, or other applicable documents. Proactively sharing essential physical and behavioral functions will help families better prepare their child, themselves, and staff for a great, quality camp experience.

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Photo courtesy of Cheley Colorado Camps, Estes Park, Colorado.

THE LAW SAYS “YES” TO ADVENTURE

Charles R. Gregg and Catherine Hansen-Stamp © 2014*

Introduction



In this article, we will discuss recent developments in case law that reflect a new understanding and appreciation of the value of participation in “adventurous” activities. In the event of an injury or other loss, this acknowledgement — by the courts — of the social value of vigorous participation in sports and recreation may protect a camp from liability, as we describe below.

These developments notwithstanding, a camp’s priority should continue to be its focus on running a quality program, which includes an ongoing endeavor to identify and manage the risks of the camp experience. This risk management strategy will address issues of, for example, the camp

premises and environment, staff training, camper supervision, and emergency response. Importantly, the camp should engage in fair, informative, and accurate information exchange with camper families about the camp’s activities and associated risks so that parents and campers can make informed decisions about the camper’s participation. We have discussed these matters in some detail in past issues of *CampLine*, including “A Camp’s Duty of Care — In Good Times and Bad,” (Winter 2009), and “Camp Risk Management: Sources and Strategies” (Winter 2010). We urge you to reread those articles and, as always, consult with informed legal counsel regarding the law applicable to your operation.

Over the years, the U.S. courts have become increasingly aware of the inherency of the risks of camp life (and other adventure activities) and their contribution to a child’s development and to society as a whole. This awareness has significant implications for matters of legal liability. To punish risk taking would alter the character of the camp experience, and it would hamper the development of a productive member of society.

Background

Experts tell us that the human brain usually matures in the late twenties or so. Until then, and particularly in teenage years and younger, the business of the brain is gathering information,

including, pertinent to our discussion, by active play. This “camper brain” is wired for adventure. It collects experiences and data (and takes risks) in order to learn and serve as a resource for the later adult brain, with its greater capacity for reflection and thoughtful decision making. The camper brain, by its very nature, is less likely than the mature brain to analyze and to rationally assess risk and consequences. These are generalizations, of course. Youth development professionals tell us that a certain amount of judgment and strategic thinking can in fact be taught and retained by even the very young.

At camp, perhaps better than anywhere else, a child can encounter risks of play in an environment that is managed conscientiously for the personal development of the child. Experimentation, successes, and failures in this supportive community set the child on a path to becoming a healthy, secure, and productive member of society.

The risks of camp, emotional and physical, include issues of supervision, assessment of competencies and comprehension, and potential carelessness of the camper, camp staff members, and other campers. Many risks of camp activities are inherent; that is, they are such a reasonable and integral part of camp life that without them the camp experience would lose its basic character, value, and appeal. There is, however, a difference between “inherent” risks and what the law may consider “unreasonable” risks.

Inherent Risks: Generally speaking, a service provider (a camp, for example) has no legal duty to protect a participant from the inherent risks of an activity. More to the point, a camp will not be liable for an injury or other loss arising from an inherent risk of the activity that produced the loss. A participant in the activity — even a camper-age child — is legally deemed to have

assumed such risks, whether or not those risks are actually known and understood by the camper. This is known in the law as the Doctrine of Primary Assumption of Risks (the “inherent risk doctrine” or “doctrine”). This is what we call the “classic rule,” developed through general case law. However, each state handles this doctrine differently, and may or may not subscribe to the doctrine in the manner described above. The doctrine may be defined by state statute(s), a state’s law may require that a participant have actual knowledge of the risk causing injury, a state may reject the doctrine, or other permutations. Nonetheless, defining the doctrine in its purest form is helpful for this discussion.

Unreasonable Risks: The camp *does* have a legal duty to protect its campers (and staff) from *unreasonable* risks. In calculating this duty

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of care, a court will consider the probability and severity of a loss that might occur and, important for our discussion, whether the interests of society are best served by tolerating or punishing exposure to those risks.

The courts in some states — with respect to activities deemed important to societal interests — have been more explicit than in the past in including the “simple carelessness” (but not the reckless or intentional misconduct) of a service provider, coparticipant, and others in the inherent risk doctrine. Perhaps that notion has been a part of the doctrine since its inception, but it is getting more attention, and that is good news for camps. Courts so inclined announce that they will not discourage (“chill” is the word often used in these courts’ decisions) active and vigorous participation in certain sports and recreation by finding liability for simple carelessness.

As we will see in the case studies below, not all camp activities qualify for application of the doctrine. The analysis of a court favorably inclined to the doctrine will be specific to the activity that produced the physical or emotional loss, in circumstances where imposing liability would chill active participation. As a result, a camp cannot presume that everything to which the camper is exposed will qualify for this treatment.

Sampling of Recent Case Law

Courts around the country have ruled to dismiss lawsuits based upon this general doctrine. Here are a few examples:

Case Study 1: *Shivers v. Union School*, 2013 N.Y. App. Div. LEXIS 5962

Seventeen-year-old Dawn Shivers participated in a school “competition night” held in her high school

gym — specifically, a relay race known as the “human railroad.” In this race, student teams line up at a starting point and the first member of each team lies down on the gym floor and stretches his or her hands up. The second team member then straddles the first, and lies down in front of the prone participant, who then grabs and holds onto the feet of the second team member. This linking is repeated by all of the team members until they eventually return to the starting point. The winner is the team that first returns all of its members to the starting point. Shivers claimed that the girl behind her “dove down too early” and made contact with Shivers’ head, which then hit the floor. As a result, Shivers sustained a deviated septum. Shivers filed a lawsuit against the school, claiming that its negligence caused her injuries. The school asked the court to dismiss the suit before trial, claiming that Shivers voluntarily assumed the inherent risks by participating in the recreational activity and that the school was therefore not responsible or liable for her injuries. The appeals court agreed, dismissing the complaint. The court found:

“Athletic and recreation activities possess enormous social value, even while they involve significantly heightened risks. These risks may be voluntarily assumed to preserve these beneficial pursuits as against the prohibitive liability [that] otherwise [occurs]. The doctrine of primary assumption of risk provides that a voluntary participant in a sporting or recreational activity ‘consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation.’”

The school here was able to demonstrate that Shivers had played the game before and clearly understood the inherent risks, not to mention the court’s comment that “any reasonable person” who had played or

observed before would have understood the risks. The court dismissed Shivers’ claim.

Case Study 2: *Trupia v. Lake George Central School District*, 2010 N.Y. LEXIS 344

Compare Case Study 1 with Case Study 2, in which Luke Trupia, age twelve, was seriously injured during a summer school program. He fell while sliding down a banister, unsupervised. The banister sliding was not a scheduled activity. Luke’s family sued the school district on his behalf, claiming negligent supervision. The school district denied the school was negligent and claimed that Luke had assumed the risk that caused his injury; therefore, his claim should be dismissed.

On appeal, the court recognized the doctrine of primary assumption of risk, but rejected its application to the case. The court recognized that a minor child’s voluntary participation in recognized athletic and recreation activities had “social value” and thus justified the application of the doctrine as a bar to a claim brought against the activity provider in that context. The court stated: “. . . athletic and recreative activities have enormous social value even while they involve significantly heightened risks” and these risks “. . . may be voluntarily assumed to preserve these beneficial pursuits as against the prohibitive liability to which they would otherwise give rise.” The court noted that primary assumption of risks as a bar to recovery is most justified for its role in “facilitating free and vigorous participation in athletic activities.” However, the court identified that banister sliding was a form of “horseplay” and did not fall into the category of recognized “athletic and recreative” activities worthy of protection under the doctrine. The court emphasized that the school district had a duty to supervise the children in its charge, and little would be left of that duty if the doctrine were applied in this case.

Case Study 3: *Morgan v. Ohio Conference of the United Church of Christ et al.*, 2012 Ohio App. LEXIS 385

Morgan agreed to attend a camp as a teacher chaperone for a group of sixth grade students. As he had done in all previous years, Morgan agreed to chaperone a "night hike," led by Marsh, one of the camp's leaders. Marsh described the purpose of the night hike was to "use your other senses when your eyes were not as heightened as during the daylight." For the night hike, Marsh picked an established trail (the same trail he had chosen for other groups over the last several months). Marsh told the group that the clear evening and moon would allow the trail to be seen. Marsh stood in the middle of the creek bed with his flashlight and helped every child cross by holding their hand, and then helped Morgan cross. While Marsh was counting the kids on the other side of the creek, he saw Morgan shift his weight and fall. Morgan severely injured his shoulder and arm in the fall.

Morgan sued the camp owner, claiming that the camp was responsible for Marsh's (the leader's) negligence, which caused his injuries. The camp sought dismissal of the suit before trial, claiming that Morgan's injuries resulted from the inherent risks of the activity, and that as a result, the camp owed

no duty to protect him from those risks. The court found that the doctrine applied to bar Morgan's claim. The court explained that primary assumption of risks applies in cases involving sport and recreation activities and that under the doctrine, a plaintiff who voluntarily engages in a recreational activity or sporting event "assumes the inherent risks of that activity" (whether those risks are known to the plaintiff or not) "and cannot recover for injuries sustained in engaging in the activity unless the defendant acted recklessly or intentionally in causing the injuries." In other words, the defendant owes no duty to protect the plaintiff from the inherent risks; and without a duty, there can be no negligence. The court stated that the rationale behind the doctrine is that certain risks are so intrinsic to some activities that the risk of injury is unavoidable. The court found that the inherent risks of a night hike included tripping, slipping, and falling, as well as the leader's subjective judgment (including any assessment errors) in choosing the specific trail. Since Morgan hadn't claimed that the leader's conduct was intentional or reckless, the court didn't address that issue.

Case Study 4: *Eriksson v. Nunnick*, 2011 Cal. App. LEXIS 29

The parents of seventeen-year-old seasoned competitor Mia Eriksson

sued her coach after Mia died during a jumping competition when her horse tripped, causing Mia to fall and the horse to fall on Mia. The lower court dismissed the case based on, among other things, primary assumption of risks. The appeals court reversed, finding there were questions of fact regarding whether the coach had "increased the risks beyond those inherent in the sport," thus making primary assumption of risk inapplicable to the case. Apparently, there was evidence that the coach was aware that the horse was injured and not fit to ride, but convinced the teen and her mother otherwise. Citing to other case law including the seminal California Supreme Court case of *Kahn v. East Side Union High School*, 31 Cal. 4th 990 (2003), the court noted the policy reasons for applying primary assumption of risk in cases involving the important learning that goes on between participants and their coach or instructor:

"A significant part of an instructor's or coach's role is to challenge or 'push' a student . . . to advance in his or her skill level . . . and . . . fulfillment of such a role could be improperly chilled by too stringent a standard of potential legal liability . . ." Application of primary assumption of risks is appropriate if the ". . . instructor's alleged liability rests primarily on a claim that he or

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Published three times a year by the American Camp Association.

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she challenged the player to perform beyond his or her capacity or failed to provide adequate instruction or supervision before directing or permitting a student to perform a particular maneuver

“That an instructor might ask a student to do more than the student can manage is an inherent risk of the activity. Absent evidence of recklessness, or other risk-increasing conduct, liability should not be imposed simply because an instructor asked the student to take action beyond what, with hindsight, is found to have been the student’s abilities. To hold otherwise would discourage instructors from requiring students to stretch, and thus to learn, and would have a generally deleterious effect on the sport as a whole.”

However, in this case, the court found that if in fact Mia’s coach failed to provide a fit animal (or misrepresented the animal’s condition) to begin with, she increased the risk to Mia beyond that inherent in the activity — in other words, the coach had a duty, at a minimum, to provide a fit horse. Again citing to other case law: “To look at the situation another way, requiring the defendant to provide a safe horse . . . could have no chilling effect on the activity itself, nor would it interfere with the ability of the instructor to teach the student new or better skills.”

The court found that these principles were in line with the underlying policy of not creating a “chilling effect on the activity itself, nor . . . interfer[ing] with the ability of the instructor to teach the student new or better skills.”

The case was returned to the lower court for a finding, among other issues, on whether or not the coach was liable on claims of negligence or whether primary assumption of risks applied to bar the parents’ claims.

Case Study 5: *Cann v. Stefanec*, 2013 Cal. App. LEXIS 497

In a more recent case, the court cited to the California Supreme Court case

of *Nalwa v. Cedar Fair*, 290 P.3d 1158 (2012) in its opinion applying the doctrine: “Allowing voluntary participants in an active recreational pursuit to sue other participants or sponsors for failing to eliminate or mitigate the activity’s inherent risks would threaten the activity’s very existence and nature Active recreation, because it involves physical activity and is not essential to daily life, is particularly vulnerable to the chilling effects of potential tort liability for ordinary negligence.” The *Nalwa* court found the doctrine applies to both sport and nonsport activities — in this case, bumper cars. A finding of liability against the defendant because bumper cars “bump,” the *Nalwa* court concluded, would alter the fundamental nature of the activity.

Case Study 6: *Anglund v. Mountain Creek Resort*, 2013 N.J. LEXIS 570

This involved a claim between a colliding skier and snowboarder as opposed to a claim against a provider, but nevertheless, resonates with our discussion. The New Jersey court, in applying a standard that only reckless or intentional conduct is “actionable” as between sporting participants held:

“One might well conclude that something is terribly wrong with a society in which the most commonly accepted aspects of play — a traditional source of a community’s conviviality and cohesion — spurs litigation. The heightened recklessness standard recognizes a common-sense distinction between excessively harmful conduct and the more routine rough-and-tumble of sports that should occur freely on the playing fields and should not be second-guessed in courtrooms.”

Conclusion

Again, these developments in the law are encouraging, but they are no substitute for the risk management strategies described above and elsewhere. Camp managers have

long understood the value of the adventures they offer, well managed and well communicated to families. Those managers can continue their good work knowing that the courts are coming to a shared understanding of the value of the camp experience. So, ultimately, a camp is still best served by diligence in the development of its risk management strategies, including, for example, addressing issues of staff training, activity supervision, and effective information exchange with camper families — whether or not the laws likely to be applied to a camp tend toward the interpretations discussed here. Information — on a Web site, in a brochure, in a camper agreement — should be thoughtfully considered to impart sufficient perspective to campers and parents on the activities, risks, and, importantly, their responsibilities. This information, including any camper agreement, should be carefully reviewed or crafted by legal counsel familiar with applicable law. So, as the law evolves to support camp life and activities, a camp should continue in its ongoing effort to run a quality program, including the endeavor to identify and manage the risks in the best interests of its campers and staff.

**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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Myra Pravda, RN, MSN
www.ACAcamps.org/campline/00j-emotionaldisorders
2. Criminal Background Checks for Staff and Volunteers
www.ACAcamps.org/campline/s-2010/criminal-background-checks-staff-and-volunteers
3. How Am I Covered? The Use and Misuse of Additional Insured Status in Camp Liability Insurance
Edward A. Schirick, CPCU, CIC, CRM
www.ACAcamps.org/campline/f-2004/how-am-i-covered
4. Insurance 101: Your Insurance Policy — What Does It Really Mean?
Gaetana De Angelo
www.ACAcamps.org/campline/s-2011/insurance-101-your-insurance-policy-what-does-it-really-mean
5. Medication Management Articles
www.ACAcamps.org/knowledge/health/medicationmgt-articles
6. International Staff Working in American Summer Camps — Best Practices and Resources
www.ACAcamps.org/international/practices
7. Americans with Disabilities Act
www.ACAcamps.org/publicpolicy/ada-revisions
8. Camp Employment Taxation
James R. Betley
www.ACAcamps.org/campline/winter-2012/camp-employment-taxation
9. Contracting with User Groups/ Rental Groups, Revisited
Charles R. Gregg and Catherine Hansen-Stamp
www.ACAcamps.org/campline/w-2011/contracting-with-user-groups
10. Medication at Camp: Mitigating the Risks
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