

# THE CAMPLINE

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

WINTER 2015 // VOLUME XXV // NUMBER 3



## WHO'S IN CHARGE?

### In This Issue

- |  |   |
|--|---|
| <b>1</b> Who's in Charge                                   | <b>11</b> Voluntary Disclosure Statements |
| <b>8</b> Federal Public Policy Updates and Emerging Issues | <b>14</b> Emergency Preparedness          |

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



**A reality of today's society is that many campers have parents who are separated, divorced or otherwise in a relationship that creates uncertainty for the camp regarding who is in charge of the child in camp matters.** At issue is the confidence with which a camp can rely on one parent's authority to, among other things, enroll (and remove) a child, specify activities, receive notice in the event of emergencies, consent to medical care, and permit visitors.

This article discusses strategies for protecting a camp from conflicting claims of parental authority. While many parents deal well with these issues, the camp should be prepared for those who do not. Involvement in these conflicts may jeopardize a camp's relationships with its families, its reputation and its finances.

*continued on page 2*

The number of strained and broken marriages and relationships in our society is sufficient to have produced some solid learning, and a good body of law, regarding the legal rights of parents in various stages of separation and divorce. And the problem of conflicting authorities is not limited to split families. While we may predict that conflicts may be sharper in those unfortunate situations, camp parents in more secure relationships may also disagree about who has what authority to act for the camper.

We offer only general suggestions below, which are not intended as a substitute for the advice of local counsel regarding laws applicable to a camp's families in these situations. Practices and laws vary from state to state, of course. A camp will also be guided significantly by its core values and familiarity with its camp families and their expectations.

## THE ISSUES

**While a court order clearly describing authority in favor of the enrolling/signing parent should provide some degree of confidence in moving ahead without the other parent's signature, a camp should proceed cautiously.** If a non-signing parent who claims some parental rights fights vigorously against the other parent's authority, the camp could incur significant legal fees if it becomes a party to the dispute. In addition, a child who is already at camp will likely be confused, hurt and embarrassed by the situation. Ultimately, a "victory", if there is such a thing in these circumstances, will be expensive and time consuming and certainly hard on the child and both parents. The assistance of legal counsel and an acute sensitivity to the camp's culture and reputation for caring for the child will be important in deciding how to deal with a conflict that happens after the child is already enrolled or actually attending the camp session.

Divorce decrees and temporary orders pertaining to the custody of a child vary but, over the years, have become more comprehensive in scope and anticipate many of the issues pertinent to a child of camp age. Courts take these matters very seriously and are not willing to leave issues affecting a child's welfare solely to the parents. Well established in our jurisprudence is the concept of *parens patriae* – the State acting as "parent" on behalf of those unable to protect themselves, including protecting a child from foolish decisions of his or her actual parents. Paramount to this concept is the principle that a court presiding over a divorce or other proceeding affecting a child will carefully consider the parents' custody rights and responsibilities to assure that the best interests of the child are being served. >>

### 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





Modern orders now frequently provide for joint physical and legal custody, whereby the parents share equally in the responsibilities and rights of parenthood, some of which may shift as the child moves from the home of one parent to the home of the other. This relatively new form of custody is considered to be a more orderly and collaborative approach to the issues. A variation of the joint custody arrangement described above might be an agreement of "shared custody." For example, the parents may have joint legal custody, but a different allocation of physical custody – say 60-40 – ultimately sharing parenting responsibilities in a meaningful way that is consistent with the best interests of the child.

A detailed "joint parenting plan" will often be incorporated into or appended to a divorce decree or custody order, outlining pertinent details of the shared arrangement. As an example, a divorce decree or temporary orders pending the divorce might include any or all of the following rights and responsibilities pertinent to our discussion:

- The "joint managing conservators" (under Texas law, those in a relationship of joint custody) are each entitled to receive information from the other, and to confer, regarding the health, education and welfare of the child;
- Each parent has access to the health and education records of the child and is entitled to consult with medical care givers and educators;
- When the child is in a parent's possession (physical custody), that parent has the duty to care for, control, protect and discipline the child, and to consent to medical care;
- The parent in possession must promptly notify the other of a medical emergency, and authorize health care providers to disclose protected health information to the other parent.

**"Courts take these matters very seriously and are not willing to leave issues affecting a child's welfare solely to the parents."**

*continued on page 4*

With respect to camps, custody forms recommended by specialists in the field and commonly used in Texas, for example, include a provision that the parties (parents) are to agree (agreement not to be unreasonably withheld) upon a camp and a camp term, and that a party will be designated as responsible for payments including transportation and necessary camp expenses. A careful attorney, wary of the prospect of future disagreements, will include in the Decree (or other orders) the name of the camp, its term, any restrictions on activities, permitted visitors and other matters better not left for future determination and potential dispute.

Despite these constructive developments in matters of family law and the handling of custody orders, divorce decrees and associated paperwork, a growing number of separated or divorced parents (including separations in same sex relationships) increases the potential for disputes. Camps do not want to be placed in the position of interpreting a legal document – whether a joint agreement or court order – that allocates the relative rights and responsibilities of two angry and conflicted parents, after the child has already enrolled in camp. >>



Photo courtesy of First Best Step WCA St. Paul, Indiana

## SOLUTIONS

### So, what can a camp do to reduce or eliminate the chances of a conflict of parental authorities?

Areas of possible dispute include financial responsibility, medical consents and notices in the event of emergencies, activities allowed, removal of the child from the camp premises, permitted visitors, and a participant agreement containing an acknowledgment and assumption of risks and waiver of claims.

The best and most obvious tactic is to require that both parents sign the enrollment documents. Securing signatures of both parents can be difficult, however, even in happy families.

### What is Plan B?

A camp will have a variety of options, depending on how aggressive it wishes to be in reducing the chances of conflict.



A camp may intentionally leave the issue of authorities undressed, trusting in its relationships with its families to resolve differences if and when they arise.



A camp seeking more protection might require the (one) signing parent to represent in a camper enrollment agreement (containing other terms and conditions, of course) that he or she has the authority to enroll the child and execute the required documents and that he or she has obtained any and all other pertinent consents or authorities (including those required by a court decree or order). Even with these provisions, however, if the non-signing parent subsequently disputes the child's attendance at camp, the camp might be faced with a battle in court (or mediation or arbitration if called for in the agreement).



A more aggressive camp might ask the parent if a court order or agreement exists which is pertinent to camp enrollment, so that the camp can properly consider next steps to satisfy itself that the authority exists. (These next steps might include an examination of the document, and consultation with its own and the parties' legal counsel.)



Still more aggressive would be, in addition to requiring one or more of the representations described above, to ask the signing parent to agree that if the other parent challenges the signing parent's authority: a) the child will be sent home promptly without refund of enrollment and fees and, b) the signing parent will protect the camp from the claims of the other parent, including paying all costs of resolving the dispute.

**“The best and most obvious tactic is to require that both parents sign the enrollment documents.”**

In varying degrees, these strategies should discourage a parent from signing if his or her authority to do so is in doubt, and provide a roadmap for determining proper authority if a decree or order is in place.

*continued on page 6*

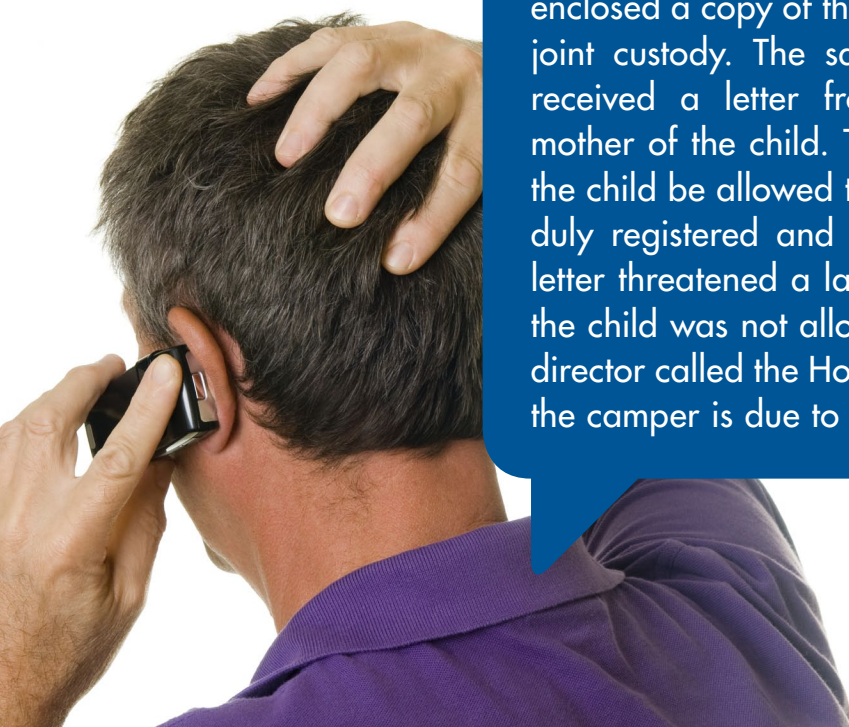
## EXAMPLES

Ultimately, a well drafted custody order or divorce decree containing provisions such as those described in Section II, above, should guide reasonable persons in resolving their conflicts before the camp becomes involved in the controversy. And one would hope that, however strictly the decree, order or agreement is written, parents will work together with the best interests of their child in mind, and that any grievances they have that might negatively affect their child will be put aside for the summer. But don't count on that. Some strange situations can arise.

### CONSIDER THIS,

#### FROM A RECENT ACA HOTLINE REQUEST FOR HELP:

The mother of a camper enrolled him in camp and paid the registration fee. Prior to the opening of camp, the director received a letter from the attorney for the father of the child demanding that the child not be accepted at camp because the father had not given his consent. The attorney wrote that the father said that the child could not attend camp if his grades did not improve. The grades did not improve so now the father says that the child cannot attend. The father's attorney threatened a lawsuit if the child is allowed to attend and enclosed a copy of the divorce decree granting joint custody. The same day, the camp also received a letter from the attorney of the mother of the child. This letter demanded that the child be allowed to attend camp as he was duly registered and the fees were paid. This letter threatened a lawsuit against the camp if the child was not allowed to attend. The camp director called the Hotline to discuss options, as the camper is due to arrive in one week.



## Faced with these competing demands, what should a camp do?

The suggestions provided in Part III, above, demonstrate how proactive language contained in the enrollment agreement could assist the camp in this situation. For example, consider an enrollment agreement signed by only one parent and providing that the camp will promptly send the child home in the event of a controversy and that the signing parent will protect the camp from the consequences of the controversy, including costs. In the Hotline scenario, the result of these provisions would hopefully provide incentive to the signing parent to resolve the dispute so that the child is able to stay at camp. And, these provisions, early on, should have caused a thoughtful signing parent to confer with the other parent before enrollment, to avoid a later conflict.

## But what if, faced with the Hotline scenario, the camp has not set up any of these provisions in its enrollment agreement? How then can it best resolve the issues?

If the camp must rely on a court order or the terms of an agreement between the parents – or if neither exists – the camp may need assistance from its legal counsel. The language of an agreement or order is rarely clear enough to allow a camp to act decisively in reliance on it, without counsel. Further, if there is no document which might address the problem, it is even more perilous for the camp to proceed on its own. The cost – to the family and to the camp – of being wrong is simply too great. The prime concern for the camp and the family should be the welfare of the child, but in these strained circumstances, the arguing parents may not see that as the priority. When the camp, whether or not it has relied on representations of the signing parent, is challenged by the non-signing parent, a sensible reaction is to notify the signing parent and urge an amicable resolution of the dispute. If the camp cannot reach resolution with the parents, or that appears unlikely, the camp should seek assistance from its legal counsel, who may be able to resolve the matter in negotiations with the other party or his or her attorney.

## CONCLUSION

Divorce, separation and split families are an increasingly frequent part of today's culture. Good communication with your camper families and developing (with assistance from the camp's legal counsel) appropriate camper agreements which draw on the strategies described above, will reduce misunderstandings and disputes that can hurt the child, jeopardize the camp's relationships with its families and impact the camp's financial resources.

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**“The prime concern for the camp and the family should be the welfare of the child, but in these strained circumstances, the arguing parents may not see that as the priority.”**

*\*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.*



# FEDERAL PUBLIC POLICY UPDATES AND EMERGING ISSUES

THE AMERICAN CAMP ASSOCIATION'S  
PUBLIC POLICY AGENDA FOR THE 114TH  
CONGRESS MAKES THE HIGHEST PRIORITY  
OF TWO SPECIFIC GOALS:

1

Protect the safety of  
children, youth, and  
adults participating  
in the camp  
experience

2

Achieve recognition  
that camp is an  
expanded learning  
opportunity



While it has been challenging to make progress in previous sessions of Congress, ACA is optimistic for the future! At the time of this writing (January), Congress was not back in session, but updates on any of these issues are always available on our public policy page online at [www.ACAcamps.org/publicpolicy](http://www.ACAcamps.org/publicpolicy). For real-time updates of all of our public policy calls to action and news updates, sign up for our public policy RSS feed online at [www.ACAcamps.org/rss/publicpolicy.xml](http://www.ACAcamps.org/rss/publicpolicy.xml).



Among the items we intend to focus on in the near future are:

- **Child Protection Improvements Act:** A bill to close the gaping hole in federal law that prevents camps, children's groups, and other organizations that work with children from gaining access to federal criminal background checks on employees and volunteers.  
[www.ACAcamps.org/publicpolicy/cbc](http://www.ACAcamps.org/publicpolicy/cbc)
- **No Child Left Inside Act:** A bill that addresses environmental education and achieving environmental literacy for all children.  
[www.ACAcamps.org/publicpolicy/NCLI](http://www.ACAcamps.org/publicpolicy/NCLI)
- **Americans with Disabilities Act:** ACA continues to work with others to provide educational information to camps regarding this law and subsequent updates in accessibility regulations.  
[www.ACAcamps.org/publicpolicy/ada-revisions](http://www.ACAcamps.org/publicpolicy/ada-revisions)
- **Community Parks Revitalization Act:** A bill to support rebuilding, remodeling, expanding, or developing existing or new recreational areas and facilities; and to provide matching grants for innovative programming.  
[www.ACAcamps.org/sites/default/files/images/publicpolicy/documents/CommunityParksRevitalizationAct.pdf](http://www.ACAcamps.org/sites/default/files/images/publicpolicy/documents/CommunityParksRevitalizationAct.pdf)
- **Federal Motor Carrier Safety Administration Commercial Regulations:** We continue to partner with others to ensure that camps will not be deemed commercial carriers, such as Greyhound bus lines, when utilizing 15 passenger or less vans to transport staff and campers.
- **The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act (HCERA) —** Health Care Reform: ACA continues to monitor these laws and resulting regulations and their impact on camps as employers.  
[www.ACAcamps.org/publicpolicy/health-care-laws/health-insurance](http://www.ACAcamps.org/publicpolicy/health-care-laws/health-insurance)
- **Relationship Building and Other Issues:** ACA also continues to partner with others to achieve shared public policy goals. For more information on any of these organizations or issues, visit the main public policy page at [www.ACAcamps.org/publicpolicy](http://www.ACAcamps.org/publicpolicy).  
Current partnerships include: Afterschool Alliance, Healthy Out-of-School Time Coalition, MENTOR, No Child Left Inside Coalition, National Human Services Assembly, Outdoors Alliance for Kids, Urban Parks Coalition, and the YMCA of the USA.

Contributed by Susan E. Yoder

“While it has been challenging to make progress in previous sessions of Congress, ACA is optimistic for the future”



# PROFESSIONAL DEVELOPMENT CENTER

## RESOURCES YOU NEED, WHEN YOU NEED THEM\*

### SELECTIONS FROM UPCOMING AND RECORDED WEBINARS:

[www.acacamps.org/pdc/catalog](http://www.acacamps.org/pdc/catalog)

- **Talking Transgender 201: You and Your Staff with Nick Teich**  
(Available 3/18/15)
- **How Camp Professionals (Who are Not Nurses) Oversee Camp Health Services**  
(Recorded Webinar with Linda Erceg )
- **Hiring, Firing, and Everything in Between: Business Practices You Need**  
(Recorded Webinar with Ann Sheets and Dave Thoensen)
- **Identify, Analyze, and Take Control of Your Risks**  
(Recorded Webinar with Connie Coutellier)
- **Lessons Learned from Another Year of the ACA Crisis Hotline- 2014**  
(Recorded Webinar with the ACA Camp Crisis Hotline Team)

### FREE WINTER COFFEE BREAK WEBINAR SERIES

(Only 20 Minutes)— Focusing on Standards:

[www.acacamps.org/pdc/catalog](http://www.acacamps.org/pdc/catalog)

#### WHAT DO YOU MEAN?

(Available 3/5/15)

Standards HW.11 asks for a camp's Healthcare Policy. Learn more about what to include in the policies and why certain information's is requested.

**PRESENTER:** Tracey Gaslin, Executive Director Association of Camp Nurses

### ONLINE COURSES

(Approximately One Hour):

[www.acacamps.org/pdc/catalog](http://www.acacamps.org/pdc/catalog)

- **An Ounce of Prevention: Collecting & Using Camp Injury-Illness Data for Program Improvement** (Linda Erceg)
- **Critical Facts Staff Need to Know about Risk Management** (Connie Coutellier)
- **Effective Supervision Skills for Senior Staff** (Bob Ditter)
- **Recognizing and Reporting Child Abuse and Neglect** (Mary Fuller Everhart)

### STAFF TRAINING CERTIFICATE COURSES:

Comprehensive ACA Staff training that address all

13-core competencies targeted to job levels:

[www.acacamps.org/pdc/certificates-of-added-qualification](http://www.acacamps.org/pdc/certificates-of-added-qualification)

- **Entry Level Program Staff**
- **Experienced Program Staff**
- **Middle Manager**
- **Camp Director**
- **Day Camp Director**  
(NEW in February, 2015)

\*LEARNING ACTIVITIES RESULT IN  
**CONTINUING EDUCATION  
CREDITS (CECS)**  
RECORDED ON YOUR ACA  
EDUCATIONAL HISTORY!





# VOLUNTARY DISCLOSURE STATEMENTS

## EMERGING ISSUES AND LAWS



Child protection is a top priority for the American Camp Association (ACA). Therefore, it is a mandatory ACA Accreditation standard for camp staff to complete a voluntary disclosure statement as a step in staff screening. Because of this requirement, ACA receives many questions about voluntary disclosure statements, including: What is it? When should it be completed? What questions should be asked?

This article will give an overview of these statements – and remind camps that their own legal counsel should be consulted as they determine what voluntary disclosure statement they choose to use, what to include, and how and when it is completed.

### What is Required of ACA-Accredited Camps?

#### ACA standard HR.4, Annual Staff Screening states:

Does the camp require annual screening for all camp staff based on camp property (directors, counselors, administrative staff, and support staff; seasonal and year-round) — paid, volunteer, and contracted that includes:

- A voluntary disclosure statement (completed in compliance with state regulations)?
- A check of the National Sex Offender Public Website or verification that a check of the sex offender registry of all fifty states has been completed?

### What is a Voluntary Disclosure Statement?

#### The “Contextual Education” for ACA standard HR.4 provides the following:

- A “voluntary disclosure statement” is a statement signed by the staff member attesting, at minimum, to the non-conviction of violent crimes and crimes against children. It may also include information about other criminal behavior, previous addresses, and other data relevant to the camp and position. It should be reviewed by legal counsel.

*continued on page 12*

## What is Included in a Voluntary Disclosure Statement?

The sample voluntary disclosure statement available from ACA (and reviewed by ACA legal counsel) asks the following:

- Have you ever been arrested and/or charged with a crime? (This includes all arrest and charges whether or not they were dismissed, deemed “nolle prosequi” (we shall no longer prosecute), deferred adjudication, or found not guilty.)
- Have you ever been convicted of any crime relating in any manner to children and/or your conduct with them? If yes, explain.
- Have you ever been convicted of any crime including, but not limited to, those listed below and/or any crime similar in any manner to those listed below?
  - » Indecent assault and battery on a child under fourteen
  - » Indecent assault and battery on a mentally retarded person
  - » Indecent assault and battery on a person who has obtained the age of fourteen
  - » Rape
  - » Rape of a child under sixteen with force
  - » Assault with intent to commit rape
  - » Kidnapping of a child under sixteen with intent to commit rape
  - » Distribution and trafficking of narcotics or other controlled substances
  - » Intent to commit any of the above crimes.
- Have you ever been adjudged liable for civil penalties or damages involving sexual or physical abuse of children? If yes, explain.

>>



Photo courtesy of Teen Services Camps, Inc., Alhambra, CA

- Are you now or have you ever been subject to any court order involving sexual or physical abuse of a minor, including, but not limited to a domestic order or protection? If yes, explain.
- Have your parental rights ever been terminated for reasons involving sexual or physical abuse of children?

Not all of these questions are required on a voluntary disclosure statement, yet these can serve as an example of the types of questions you and your legal counsel may want to consider.

## When To Require the Completion of the Disclosure Statement

**A critical factor in the use of voluntary disclosure statements is when state law allows it to be completed; that is, if it is allowed to be completed prior to the offer of employment, or if asking these questions must be done post-offer.**

**Consideration of Arrest and Conviction Records in Employment Decisions**  
Under Title VII of the Civil Rights Act of 1964 (1), some states require employers to wait until late in the selection process to ask about convictions or arrests. In order to protect workers rights. Other states are not so inclined. However it is critical to assess employability/volunteerism fairly. The issue for camps and other youth serving organizations is how to balance the rights of ex-offenders with child protection issues. It is important that camps understand the laws in their state, and guidance from the Equal Opportunity Employment Commission (EEOC). For example, the EEOC recommends that employers not ask about convictions on job applications and that when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job-related for the position in question and consistent with business necessity.

ACA and other youth-serving organizations support child protection as a business necessity, as well.


- To help camps navigate this issue, ACA offers guidance on setting thresholds for acceptable criminal records in the publication, *Criminal Background Check Thresholds - Guidance for Camps and Other Youth Serving Organizations*. <http://www.acacamps.org/sites/default/files/images/publicpolicy/documents/Criminal%20Background%20Thresholds%20Guidance.pdf>
- Every state is different in their approach to this issue. For resources on what your state law requires, visit: *State Laws on Use of Arrests and Convictions in Employment*, <http://www.nolo.com/legal-encyclopedia/state-laws-use-arrests-convictions-employment.html>
- The bottom line is that child protection is the top priority for ACA and the reason we require a voluntary disclosure statement per Accreditation Standard HR.4.1. Camps must also comply with their state employment law as to when this statement is obtained.
- *Consideration of Arrest and Conviction Records in Employment Decisions*. Under Title VII of the Civil Rights Act of 1964 [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

Contributed by Kim Brosnan, Rhonda Mickelson, and Susan E. Yoder.



# EMERGENCY PREPAREDNESS

## NEW RESOURCES FOR SEVERE WEATHER

 Severe weather used to have a season. Now, severe weather can happen at virtually any time of the year. Camps need to be prepared.

The American Camp Association (ACA) standard OM.8 requires that a camp have site-specific emergency procedures established to appropriately respond to natural disasters typical of the area and other reasonably foreseeable emergencies. The “Contextual Education” for this standard goes on to state:

### THE PHRASE

#### **“NATURAL DISASTERS TYPICAL OF THE AREA AND OTHER REASONABLY FORESEEABLE EMERGENCIES”**

includes natural disasters such as storms, earthquakes, wildfires, and floods, as well as emergencies such as power outages and other local threats (e.g., train derailments, escaped prisoners, chemical/refinery plant issues, compromised drinking water, camp access restricted due to an emergency event occurring elsewhere).

Often, immediate action to address the emergency and activate an emergency plan can help prevent an emergency from turning into a crisis. An example of this might be the occurrence of a fast-moving lightning storm, which may catch you and your staff outdoors off guard and without shelter. The immediate response is to activate your emergency plan for lightning storms and find a makeshift shelter. The emergency might become a crisis if someone is struck by lightning and severely injured. If no one is injured and nothing is damaged, the emergency is over. (1)

It is important that camp leadership take the time now, in the pre-season, to identify potential emergencies and establish plans to deal with them. They might include severe storms (during any season) and the impact of such storms (flooding, wind or hail damage, etc.). Emergencies might also be those that deal with non-weather related situations, such as those described in the “Contextual Education” above.

*continued on page 16*

As a camp prepares its emergency plans, some questions to ask include:

**What immediate action should be taken to protect campers/staff?**

**Who, if anyone, should be called?**  
Authorities?  
Camp families?  
Neighbors?

**What is the potential impact?**

**What follow-up action is necessary?**

**What communication strategy is in place?**

**TO ASSIST YOU WITH YOUR EMERGENCY PLANS,**

ACA has some excellent resources for those weather-related contingencies and many other potential disasters.

**These can be found at:**

<http://www.acacamps.org/hottopics/severe-weather>.

While this resource list on the ACA website will help you plan ahead, access to technology can also help a camp to be better prepared should the worst occur. Use of the NOAA radio, Doppler radar, and social media allow anyone to have up-to-date forecasts of potential storms. Lightning detectors are now widely used by golf courses and swimming pools, and by some camps.

With the extremes in weather that many areas of the country have experienced, being prepared for anything is the best advice.

Contributed by Rhonda Mickelson and Susan E. Yoder.

[1] Risk Management: Contingency Planning – The Art of Developing Plan B by Ed Shirick, 2003 January/February Camping Magazine. <http://www.acacamps.org/content/risk-management-contingency-planning-art-developing-plan-b>

## THE CAMPLINE

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The digital issue of *The Campline*, available at [www.ACACamps.org/campline/winter-2015](http://www.ACACamps.org/campline/winter-2015) allows you to utilize this publication online more readily. 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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