

# The CAMP LINE

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

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## Americans with Disabilities Act Update

Utilizing the Civil Rights Law to Better Include Participants with Disabilities

Jennifer Skulski



According to the U.S. Census Bureau, there are 2.8 million school-aged children with disabilities in the United States. Their functional limitations range from effected hearing and vision to diminished mobility and cognition.

For children diagnosed with disabilities, participation in recreation and camp activities becomes paramount in positively contributing to physical, cognitive, social, and emotional development. For camp staff attempting to meet the needs of children with disabilities, staying up-to-date on the developing regulations of the Americans with Disabilities Act (ADA) while implementing an accessibility management program within the camp organization has become essential. At the National Center on Accessibility (NCA) at Indiana University ([www.ncaonline.org](http://www.ncaonline.org)), we provide training and technical assistance to recreation practitioners, administrators, planners, designers, and consumers. They have many questions on how the ADA applies to recreation programs, services, activities, and

facilities. The purpose of this article is to highlight recent changes to the ADA and outline an accessibility management program for camp administrators, all with the goal of successfully including children with disabilities in all aspects of camp programming.

Camps conducted by municipal park and recreation departments and state agencies are covered under Title II of the ADA as units of state or local government. Most camps, such as those conducted by the YMCA or Boys and Girls Clubs, are public accommodations and covered under Title III of the ADA. Private camps, such as those owned by a family or private entity, are also considered public accommodations covered by Title III as well. While the ADA was enacted in 1990, much has happened in the last three years regarding updates to the regulations and accessibility standards.

## Revised ADA Regulations Implementing Title II and Title III of the ADA

In 2010, the U.S. Department of Justice (DOJ), the designated federal agency charged with enforcing Title II and Title III of the ADA, issued revised regulations that went into effect March 15, 2011 ([www.ada.gov/regs2010/ADAREgs2010.htm](http://www.ada.gov/regs2010/ADAREgs2010.htm)). The most substantive changes affecting camps deal with service animals, power-driven mobility devices, and the design standards for facilities.

### Service Animals

Over the last twenty years, it had become common for people with disabilities to use different animals to perform disability-related tasks and also serve as emotional support. Use of “exotic” animals had brought attention to many policy issues. As such, in the revised ADA regulations, the DOJ has limited the definition of service animal to “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” It is becoming very common for children with disabilities to be paired with service dogs to help them in their daily life activities. For a child using a wheelchair, the service dog might assist to pick up an item out of reach. For a child with a cognitive impairment, the service dog might be specially trained to help the child focus his/her attention. Camp administrators should have a policy in place regarding camp registrants with service animals. Camp operating procedures should address where supplies like food can be stored, location of an animal relief area, and handling the animal when the child is actively engaged in activities such as swimming or a ropes challenge course. The revised regulations can be used as guidance in policy development, such as requiring the service animal to be house broken and under the control of the handler.

### Wheelchairs and Other Power-Driven Mobility Devices

Wheelchairs and assistive mobility devices have also changed over the last twenty years due to advancing technologies. Wheelchairs are becoming larger to accommodate people who

are obese. In addition, there is a growing population of people who are ambulatory but use other power-driven mobility devices, such as Segways. The DOJ’s revised regulations provide camp administrators with guidance on how to assess the use of such devices within a facility, considering the device size, weight, and speed with the volume of pedestrian traffic.

### 2010 ADA Standards for Accessible Design

Along with revising the regulations in Title II and Title III, the DOJ issued revisions to the former ADA Accessibility Guidelines. The new 2010 ADA Standards for Accessible Design cover new construction and alterations to existing facilities. Most notable for camps, the accessibility standards now also contain scoping and technical provisions for recreation facilities, including swimming pools, playgrounds, sports courts and fields, fishing piers, boating facilities, and golf courses. Camp administrators should consult the standards prior to plan development for all new construction and any alterations or renovations to existing facilities.

**The new 2010 ADA Standards for Accessible Design cover new construction and alterations to existing facilities.**

One of the biggest misconceptions about the ADA is when managers say their facility is “grandfathered” or not covered by the ADA and, as such, they are not required to make the facility accessible. This is false. There is no such grandfather clause under the ADA. In fact, both Title II and Title III require organizations to take proactive steps to make their facilities accessible to people with disabilities. Title II has a “program access standard” requiring structural barrier removal or policy modification in order to make the program accessible to people with disabilities. In many instances, this requires facilities of state and local government to be assessed, barriers identified, and corrective actions assigned with timelines in an ADA transition plan (see Title II Section 35.150[d]). Although Title III does not have the same strict “program access standard” of Title II, it does require public accommodations to take proactive steps toward making their goods and services accessible. Title III requires barrier removal in existing facilities where such removal is “readily achievable” or “easily accomplishable and able to be carried out without much difficulty or expense” (see Title III Section 36.304). Both the “program access” and “readily achievable” standards are ongoing responsibilities for public entities and public accommodations. Barrier removal should continue to be prioritized annually until all programs, goods, services, and activities are fully accessible when viewed in their entirety.

Another misconception about the revised ADA regulations is the “safe harbor” provision. Within the revised regulations, the safe harbor clause states if existing facilities already comply with the 1991 standards and there are no plans for alterations,

they are not required to be modified to comply with the new 2010 standards. The safe harbor clause does not apply to the new recreation facilities since these areas were not previously covered in the 1991 standards.

### Swimming Pools

Probably one of the most common facilities among camps is swimming pools. The new 2010 standards require newly constructed swimming pools and existing pools that are altered to either have a swimming pool lift, ramp, or zero depth entry as the primary means of accessible entry for people with mobility impairments. The compliance date requirements of this particular provision were extended. Since January 31, 2013, pool operators should be using the scoping and technical provisions for swimming pools whenever a new pool is constructed or when an existing pool is altered. The compliance date is not a deadline, nor does it mean a pool operator must have a lift installed by this date. It simply means from this date forward, the new standards should be referenced for new construction, for alterations to existing facilities, and to achieve the “program access” or “readily achievable standards.”

Say, for example, you have an existing pool where no alterations are planned. The proactive part of the ADA regulations for “program access” under Title II and “readily achievable” under Title III apply in this situation. By way of these two sections of the regulations, public entities and public accommodations are to identify where lack of access to the pool is a barrier for participants with disabilities. To do this most efficiently, camp administrators should assess each existing pool to identify corrective actions. The plan for proactive corrective actions should be outlined in a transition plan with a timeline for completion. Accessibility improvements could include the installation of a ramped entry or swimming pool lift. Nonetheless, each pool should be assessed individually and then prioritized with the collectively needed accessibility improvements for the entire camp.

## Future Accessibility Standards for Outdoor Recreation Areas

In addition to the development of accessibility guidelines for recreation facilities, the U.S. Access Board has been working on standards for trails, picnic areas, campgrounds, and beaches that are managed by federal land management agencies ([www.access-board.gov/outdoor/](http://www.access-board.gov/outdoor/)). The scoping and technical provisions will be the most comprehensive to date and will create much greater access for people with disabilities than ever before seen in outdoor recreation areas. This rulemaking is expected to be issued within the next eighteen months under the Architectural Barriers Act (ABA). While this applies to federal land management agencies, camps receiving federal funding, such as in the form of grants, may be required to comply with these accessibility guidelines in the terms of the grants or contracts. It is recommended that camps constructing new outdoor features or altering existing features consult the developing guidelines from the onset of the planning process and follow them as best practice.

While this applies to federal land management agencies, camps receiving federal funding, such as in the form of grants, may be required to comply with these accessibility guidelines in the terms of the grants or contracts.

### Next Steps

Keeping on top of the scores of standards and regulations can be a daunting task for any camp administrative team. At NCA, we recommend a comprehensive approach to accessibility management. Creating access for people with disabilities is not simply one person in the organization’s job. Everyone must be involved for inclusion of participants with disabilities to be effective and ultimately successful. The accessibility management approach is similar to the risk management approach used by many organizations. One person may be the risk manager or accessibility coordinator, but EVERYONE is responsible for safety and accessibility. NCA recommends the following for implementation of an accessibility management program:

1. Establish an accessibility team. The team should consist of decision makers across departments from facility management, maintenance, programming, customer service, etc.
2. Assign an accessibility/inclusion coordinator. This person is responsible for overall coordination of the team and implementation of priorities.
3. Review policies and procedures. All policies and operating procedures should be reviewed to ensure they do not prohibit participation by people with disabilities. Modifications should be made to policies and procedures to achieve compliance with the ADA regulations.
4. Conduct an accessibility assessment of existing facilities. Through this assessment process, physical and communication barriers should be identified, along with solutions to improve facility access.
5. Develop a transition plan. This public document should include a timeline for the removal of barriers and improved access for people with disabilities.
6. Seek input from people with disabilities. Local disability advocacy groups should be invited to give feedback on the transition plan, solutions, and priorities.
7. Evaluate progress. Semiannually, at a minimum, the progress on the transition plan should be evaluated and reprioritized, if necessary. In addition, completed barrier removal projects should be evaluated.
8. Celebrate success. As accessibility improvements are made to programs and facilities, this information should be marketed, shared, and celebrated through publications and social networks. These efforts will further attract and encourage participation by more people with disabilities.

If you have more specific questions on the application of the revised ADA regulations or the 2010 ADA standards, please feel free to contact the National Center on Accessibility.

## Additional Resources

National Center on Accessibility: [www.ncaonline.org](http://www.ncaonline.org)

U.S. Department of Justice: [www.ada.gov](http://www.ada.gov)

Revised ADA Regulations Implementing Title II and Title III of the ADA: [www.ada.gov/regs2010/ADAregs2010.htm](http://www.ada.gov/regs2010/ADAregs2010.htm)

Future Accessibility Standards for Outdoor Recreation Areas:

[www.access-board.gov/outdoor/](http://www.access-board.gov/outdoor/)

U.S. Access Board: [www.access-board.gov](http://www.access-board.gov)

American Camp Association: [www.ACAcamps.org/publicpolicy/ada-revisions](http://www.ACAcamps.org/publicpolicy/ada-revisions)

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## Important Regulatory and Legal Updates from Washington DC

### PROPOSED Child Protection Improvement Act — Update



ACA's background check bill that would finally close the loop hole in state laws that bar youth-serving organizations in thirty-seven states from having access to background checks from the FBI's database was not passed in 2012. However, significant progress was made by securing bi-partisan support in both the House of Representatives and the Senate! (In 2011, the bill was passed by the House by an overwhelming 412-4 vote.) After reintroduction in the 113th Congress, we anticipate swift movement through both Houses. We will keep camps and other youth-serving organizations posted as to when to contact your legislators to ask for their support. Visit [www.ACAcamps.org/publicpolicy/cbc](http://www.ACAcamps.org/publicpolicy/cbc) for updates.

### Health Insurance and Your Camp — Patient Protection and Affordable Care Act Impact

The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act (HCERA) were signed into law in 2009 and 2010 respectively. Included in these new "health care reform" laws was a mandate on certain large employers to provide health insurance to their employees beginning in 2014 (or pay a penalty of \$2,000 per employee). The law requires employers with fifty or more "full-time employees or full-time equivalents" to provide health insurance to employees that meet minimal coverage requirements. The calendar year of 2013 is important as it is the time that employers are required to track information about their employees, which will then be used to determine if they meet the requirement as a large employer. In preparation for this tracking, the Internal Revenue Service (IRS) has just released new proposed rules to help employers determine if they are included in the mandate (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-31269.pdf>). For camps with seasonal operations, the law excludes employers whose workforce exceeds fifty full-time employees for 120 days or fewer during a calendar year if the employees in excess of fifty who were employed during that period of no more than 120 days were seasonal workers. As each organization is different, it is important that you determine now if you will be required to meet the mandate. For additional information, visit ([www.ACAcamps.org/publicpolicy/health-care-laws/health-insurance](http://www.ACAcamps.org/publicpolicy/health-care-laws/health-insurance))

### American Taxpayer Relief Act Impact on Small Business

When the American Taxpayer Relief Act (ATRA) was signed into law by President Obama on January 2, 2013 it included a number of extensions of small businesses tax incentives that could be utilized by camps. The tax incentives include:

- Section 179 Deduction. Permits small businesses to deduct the cost of certain new and used property placed in service for the year rather than depreciate those costs over time. The new law extends the maximum deduction to \$500,000 for the 2012 and 2013 tax years for companies with under \$2 million in qualifying capital expenditures.
- Bonus Depreciation. Enables small businesses to recover the costs of qualified new equipment faster than the ordinary schedule by permitting the depreciation of 50 percent of the cost in the first year. The provision was set to expire at the end of 2012, but has been extended through the end of 2013 (and 2014 for certain types of property).
- Work Opportunity Tax Credit. Extends through 2013 the tax credits for employers who hire military veterans or individuals from underserved communities that have faced barriers to employment.

For more information on how ATRA might impact your small business, visit the Small Business Administration at [www.sba.gov/community/blogs/official-sba-news-and-views/open-business/small-business-tax-incentives-fiscal-cliff](http://www.sba.gov/community/blogs/official-sba-news-and-views/open-business/small-business-tax-incentives-fiscal-cliff).

### Children's Online Privacy Protection Act — Update

In December 2012, the Federal Trade Commission expanded the rules concerning the requirements for Web sites that are directed at children. While the majority of camp Web sites most likely are not included in the law, the new rules expand the definitions, so it is important that your camp assess applicability to your Web site. For the details, visit [www.ACAcamps.org/publicpolicy/childrens-online-privacy-protection](http://www.ACAcamps.org/publicpolicy/childrens-online-privacy-protection).

For more information on any federal regulatory or legislative issue impacting the camp community, visit [www.ACAcamps.org/publicpolicy](http://www.ACAcamps.org/publicpolicy).

*Contributed by Susan E. Yoder*

# Anatomy of a Lawsuit

Charles R. Gregg and Catherine Hansen-Stamp ©2013\*

## Introduction



Running a quality operation is the best way to reduce the risk of injury or other loss that may lead to camper families or others taking legal action against a camp. And camps, as an industry, are not frequently named in litigation. Prudent camp operation and strong, sometimes multigeneration loyalties often produce an amicable resolution of issues or incidents that avoids litigation. Importantly, if a lawsuit is filed (and this is true of lawsuits generally), most suits result in settlement before a trial.

However, incidents will and do occur. An incident could involve a child bitten by a snake, a bullying incident between two children, or a head injury resulting from rock fall. Other incidents may be more serious, such as a drowning death or a fall from a horse resulting in some paralysis. And, not surprisingly, lawsuits can arise from a range of something that may be perceived as minor all the way to more serious incidents. Camp management should have a working knowledge of what happens when an incident produces a claim that ripens into a lawsuit. This knowledge can assist camp management in its legal and risk management planning, and importantly, in the event the camp is faced with legal action against it. No lawsuit is pleasant, but some basic knowledge can reduce misunderstandings and misplaced anxieties.

Most camps purchase liability insurance, which generally gives the insurance company a significant role in handling reported claims. Control notwithstanding, camp management is best served by meeting and working with its insurance representatives to understand and obtain any needed clarification regarding the camp's coverage and to understand the process in the event of a reported claim. In addition, the camp should inform insurance representatives of the camp's risk management and emergency response plan. If the camp has its own independent legal counsel, he or she can work with the camp and insurance company to identify how they can all work efficiently in the event of an incident and resulting claim. These steps increase the rapport and understanding among the camp, the insurance company and legal counsel, and assist in keeping staff and families informed regarding developments.

The focus of this article is the anatomy of a typical lawsuit against a camp. We will begin with an event, and move through predictable subsequent developments, including the assertion of a claim, the potential for settlement without suit, the suit, and its components and outcome.

The process we describe below will apply to matters brought in state or federal courts. However, because claims against camps most frequently involve an alleged broken promise or the breach of a duty of care (negligence), we will focus on civil claims.

## Background

There are two basic types of law in the U.S. — criminal and

civil. Published legal cases create precedent in a particular jurisdiction (whether in a state or region). The law is governed by statutes (laws) interpreted by judges in published legal cases or established by judges' opinions under "common law" also articulated in published cases. Both judges and attorneys rely on this case precedent (authority) to interpret laws or identify legal doctrines in other cases.

Criminal law is defined by local, state, or federal statutes and codes that basically identify public crimes or crimes against the community at large. Someone accused of a crime must be investigated, charged, tried, and convicted — potentially paying fines and serving jail time for a proven crime. Criminal law is focused on punishing a perpetrator for a proven crime.

Civil law is the most common source of liability for camps and their leaders. Civil law focuses on the award of compensation to someone who proves they have suffered a civil wrong. Civil law is generally divided into two categories: contracts (enforceable promises) and torts (private wrongs to a person or his/her property).

## The Process of a Civil Lawsuit

Our starting point is a fictional event, or incident, sufficiently serious to produce a lawsuit (see paragraph two for examples). Whatever the incident, camp management may feel the claim is not justified, but if the camper or family (a child's parent, for example) ("claimant") is serious about it, the camp and its insurance company must take it seriously as well. Although the specific nature of the incident and the alleged loss will influence decisions made in the case as it develops, we have not chosen a specific incident. Instead, we have opted to discuss the general process to cover a broader range of issues.

As noted, most insurance contracts allow the insurance carrier to control the claim and lawsuit, including, in large part, the final decision regarding payments made, if any. Camp managers and their independent legal counsel should discuss these issues with their insurance representatives before an incident occurs and in the context of their insurance review. As mentioned above, establishing a rapport with insurance representatives early on will assist a camp in understanding its role in the event of a claim and resulting lawsuit. It will also give the camp some confidence that insurance representatives will heed the camp's concerns regarding matters that may profoundly affect its reputation and finances.

If an incident occurs and the camp has reacted to it — including being appropriately cooperative with the injured party/family — the camp may be alerted to the possibility of a lawsuit. The camp may receive a letter or phone call from the claimant or the claimant's attorney seeking some compensation for the injury suffered. The insurance company should generally be advised of the claim, and plans should be made for the camp's response. A camp may choose to respond directly if contacted by a claimant. However, legal counsel, typically approved by the insurance company, should respond to communications from a claimant's lawyer. The camp and its legal counsel may engage in efforts to settle the matter before (or without) the filing of a lawsuit. These

settlement efforts can include various forms of alternative dispute resolution (“ADR”), including mediation or other resolutions less formal than litigation. In fact, ADR is generally available to the parties at any point in the resolution of dispute, before or after the filing of a lawsuit.

## More about ADR

ADR (chosen either before or after a lawsuit is filed) allows the parties to resolve the dispute outside the traditional legal system. Forms of alternative dispute resolution can include arbitration and mediation. Mediation is generally not binding on the parties (that is, they can go to court if they are not satisfied with the result). Arbitration, on the other hand, is generally binding on the parties. These more informal means to resolve disputes have become popular in recent years, as, oftentimes, parties obtain a quicker and more constructive result with less animosity. Sometimes voluntary mediation or binding arbitration is included within the terms of a contract that a camper or camper parent may sign as a condition precedent to participation — before an incident occurs. In the event of an incident and resulting lawsuit, the camp may endeavor to hold the claimant to their contractual agreement, and, for example, enforce an agreement to enter into binding arbitration. Courts also support the use of ADR to resolve disputes (to assist in reducing heavy case loads in the court system) and, in some cases, order mandatory ADR before parties can proceed to trial. Rules regarding ADR vary from jurisdiction to jurisdiction.

If the matter is not resolved by discussion or other means, the dispute moves to the next phase — the filing of a lawsuit against the camp.<sup>1</sup> The claimant (“plaintiff”), presumably with the assistance of legal counsel, files a “complaint.” The complaint must be filed within a certain period of time (“statute of limitations”). The complaint contains the plaintiff’s statement of the events, the various legal claims asserted against the camp (“defendant”), the losses the plaintiff has allegedly suffered resulting from the defendant’s wrongs, and the compensation the plaintiff seeks. The plaintiff’s complaint is filed in one of various courts, depending upon the amount of the plaintiff’s alleged damages (the “amount in controversy”), the nature of the plaintiff’s claims, and other factors. These courts include county, district, or federal courts. The location for the filing of a lawsuit (“venue”) is also dependent on certain factors. The plaintiff may file the complaint for himself and/or on behalf of another (for example, by the parent, for himself, and for and on behalf of his minor child).

After receiving the complaint, the defendant, with assistance from legal counsel, must respond by filing an “answer” within a required period of time. The answer sets out the defendant’s reply to the plaintiff’s allegations and includes its defenses to the claims asserted in the complaint.

The suit is now underway — each party has had an opportunity to tell the court its side of the story. The original complaint and

answer may be amended as the parties discover new facts or enlarge — or reduce — their theories of recovery or defense.

The case is then set for a trial before a judge or jury. In the latter case, the jury determines factual matters and the judge determines what law applies to the facts. The complexity of the case, the number of cases before the court, and the court’s (and the attorneys’) schedules will determine the time required to get to trial. Cases can be heard in months, but others may not get to trial for years.

The parties now begin to prepare for trial. Preparation includes studying applicable law, investigating facts, searching for credible witnesses to put those facts before the judge and jury, and collecting and assessing relevant information<sup>2</sup> or physical items. In addition to independent investigation, the lawyers obtain facts and information through a process called “discovery.” According to the rules of civil procedure, each lawyer may ask written questions (“interrogatories”), obtain live testimony (“depositions”), and seek information and documents from the other party in order to develop their side of the case and their respective legal theories. Some materials may be protected from the discovery process (“privileged”). For example, correspondence moving between a client and his attorney is protected (by the rules in a particular jurisdiction) by what is called the attorney/client privilege. Another privilege provides limited protection for documents or materials developed in anticipation of litigation (the work product privilege).

Lawyers for each party may hire one or more experts in a relevant field to assist in trial preparation or serve as a witness at trial to provide opinions on complex matters relevant to the case.

The filed lawsuit is governed by a variety of procedural rules, primarily the rules of civil procedure and the rules of evidence. Either lawyer may file motions or written briefs with the court regarding some aspect of the case. Commonly, following some discovery, either lawyer may file a motion to dismiss or a motion for summary judgment. These motions attempt to dismiss all or part of the lawsuit before a trial or ask the court to make other rulings. Sometimes, the plaintiff will file this type of motion to limit a defendant’s defenses to the suit. The lawyers file written materials in support of or against the motion. The judge usually has a hearing with the attorneys present and subsequently rules on the motion. A motion for summary judgment, for example, requests the court to dismiss a claim before trial on the grounds that there are no factual disputes regarding the matter, and the claim should be dismissed as a matter of law.

Here are a few examples of common pretrial motions to dismiss or for summary judgment:

- A camp’s lawyer may urge that a participant agreement, containing a release of liability for negligence and signed by the plaintiff, bars the plaintiff’s claims or that the injury suffered by the plaintiff resulted from an inherent risk of the activity (and, as a result, the organization and/or instructor have no duty and no corresponding liability to the plaintiff).
- A camp’s lawyer may claim that the plaintiff agreed in a camp contract to binding arbitration and has thus waived his or her right to pursue court action.

- A camp’s lawyer may ask the court to dismiss the case and allow it to be refiled, claiming the suit has been filed in the wrong place. For example, in an enrollment agreement or participant agreement, the plaintiff may have agreed to the place of suit in a certain jurisdiction (“venue”). The judge may agree to dismiss the suit and direct that the plaintiff, if he or she wishes to continue the suit, must refile the case in the correct jurisdiction. Including a venue provision in a contract identifying the place of any future suit is often done so that a camp or organization can direct litigation to be filed in the state/county where it has its principal place of business (and where it may be more favorably treated).

Other motions can be made by legal counsel at various points in the trial — for example, during trial, at the close of the presentation of evidence, and following the court decision or jury verdict.

As noted above, the case can settle before (or anytime during) trial. For example, the plaintiff may decide to drop the case if the defendant agrees to pay the plaintiff a certain amount of money to settle the alleged claims.

The case may be tried before a judge or jury. If the case will be tried before a jury, each lawyer assists in picking the jury through a process called *voir dire* (literally meaning “to tell the truth”). In this process, each lawyer asks questions of potential jurors and has an opportunity to dismiss a certain number of potential jurors in the endeavor to come up with a jury who will be fair or, potentially, (in the lawyer’s opinion) empathetic to the lawyer’s presentation of the case. Ultimately, there are usually twelve jury members, but there can be as few as six, depending upon the court.

If the case proceeds to a judge or jury trial, each side will present their case. The plaintiff is allowed to present his or her case first, followed by the defendant. Usually, this is then followed by the plaintiff’s rebuttal. Generally, the plaintiff has the burden to prove (typically by a preponderance of the evidence) the defendant’s liability; however, the defendant usually has the burden to prove his or her defenses or other matters. The parties

may make opening statements to explain what the party intends to prove or disprove and, importantly, endeavor to establish a rapport with the jury to gain its support.

The trial proceeds with lawyers for each of the parties providing evidence in support of their respective positions. This might include written, electronic, or physical evidence; deposition testimony; or live witnesses testifying in court. Each party has the right to cross-examine the other’s witnesses. The proceedings are interlaced with objections to, among other things, questions (“leading” or “presumes facts not in evidence,” for example), answers (“not responsive” or “not within the witness’s knowledge,” for example), introduction of documents or other evidence, and testimony of experts. The court will rule on these objections and the trial continues. At the trial’s conclusion, the plaintiff and defendant each have an opportunity to present their closing statements. These statements usually include a summary of the evidence and how it supports the plaintiff’s or defendant’s position.

In the case of a jury trial, both lawyers meet with the judge, usually toward the end of the presentation of evidence, to agree on jury instructions, definitions, and questions. These instructions and other directives are given to the jury before the jury’s deliberation. If either lawyer disagrees with some aspect of these directives (sometimes referred to as the “charge”), he or she can voice an objection, which is then preserved for any subsequent appeal.

In responding to the charge, the jury “deliberates” to reach a verdict, including determinations about liability and fault, any comparative fault, and the amount of any damages awarded to the plaintiff — unless the judge determines that the evidence presented is capable of only one conclusion under the law and thus “directs” the verdict. Once a verdict is reached, the judge reads the jury’s responses to counsel and the parties. If the judge determines the jury findings are accurate and in accordance with the law, he or she enters an order consistent with the jury’s findings. If not, the court may make other rulings, with or without a motion by counsel.

## Crisis Help Available Twenty-Four Hours a Day

We remind you that the ACA Camp Crisis Hotline is available to you twenty-four hours a day. We encourage you to use this service when you need help in a crisis. Be sure to remember the Hotline page on the ACA Web site, which lists resources and links related to the most common types of calls we receive. Take a look at the broad range of resources now — before you need them: [www.ACAcamps.org/camp-crisis-hotline](http://www.ACAcamps.org/camp-crisis-hotline). Consider using the case studies as a staff training tool!

The Hotline phone number is

**800-573-9019**

Again, the lawyers have an opportunity to make objections or file any posttrial motions.

In the case of a judge (“bench”) trial, at the conclusion of the case, the judge announces his or her decision to counsel and the parties. This decision is recorded in the court minutes, and the judge may follow it with a written opinion setting out his or her findings and the reasons for the ruling. Some of these opinions are officially published and may be used as precedent in other cases. As with a jury trial, following the conclusion of a bench trial, counsel have opportunities to make objections and file motions.

The judgment in either a bench or jury trial becomes final after a prescribed period of time — customarily thirty days — and may then be appealed.

If the plaintiff wins the suit, he or she must attempt to enforce the judgment. This may be as simple as serving a demand on the defendant that is subsequently paid, or it may be more difficult and involve securing the defendant’s property or attaching one of the defendant’s bank accounts. If the judgment involves something other than money damages (specific performance, for example), the plaintiff takes other steps to enforce the judgment.

If the losing party decides to appeal the case, a higher court will review the lower court’s findings. The appeal must be filed within the required time period allowed for appeal. For example, in Colorado, decisions made by the state’s district courts are appealed to the Colorado Court of Appeals. From there, cases can be appealed to the Colorado Supreme Court. Wyoming, on the

other hand, has no intermediate state appeals court, and Wyoming state district court decisions are appealed directly to the Wyoming Supreme Court. Federal district court cases are appealed from a state’s federal district court to a circuit court of appeals, which hears cases from a number of states. For Colorado and Wyoming, that is the 10th Circuit Court of Appeals. Appeals courts can choose to affirm (uphold) the decision of a lower court, reverse the decision, order the lower court to conduct a new trial, or make a variety of other directives. If an appeal is filed, any judgment secured against a defendant is typically delayed (“stayed”) until the matter is finally resolved.

## Conclusion

Once a lawsuit is filed, it can take many months or years — and a large financial outlay — to resolve the dispute. Lawsuits can also take an emotional toll on the organization and its employees, as well as interfere with ongoing operations. In most cases, a camp is better served if a lawsuit is avoided. If a lawsuit does occur, a camp that is informed and aware of the process is an invaluable asset to staff, camp families, and legal counsel. As a result, understanding the process — and discussing these matters with legal counsel and insurance company representatives — will better prepare a camp in the event of litigation.

*\*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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## Notes

1. In some cases, a plaintiff may claim to be adversely affected by an agency action. In such a case, the plaintiff is required to lodge his complaint with the agency first, before ultimately proceeding to a court to resolve the dispute. The process of the dispute is governed by the federal or state Administrative Procedures Act, and the claimant must “exhaust” his or her administrative remedies (that is, pursue the required path to dispute the matter before the agency) before ultimately appealing the matter to a court.

2. Information can include paper, electronic, or other materials. Recent laws make clear that it is critical for camps to work with legal counsel to develop a document retention and destruction plan, including procedures for a “litigation hold,” to halt the routine destruction of the camp’s records in the event of litigation. This plan will assist the camp in responding to appropriate discovery requests in the event of litigation — particularly those involving electronic information.

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# Debriefing after Critical Incidents at Camp

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Camp is often associated with fun, friends, and nature. However, there are times at camp when very serious events occur that may take away from the fun campers and staff experience. Sometimes those events are so emotionally intense that an emotional debriefing is recommended. The purpose of this article is to identify aspects of incidents that may require debriefing in the camp situation, discuss differing approaches to debriefing individuals involved in the incident (i.e. campers, counselors, directors, site managers), and describe two specific tools that can facilitate effective debriefing.

## Critical Incidents: What Are They and Why Is Debriefing Important?

According to Critical Incident Stress Management International, “critical incidents usually involve the perceived threat to one’s physical integrity or the physical integrity of someone else. Most importantly, critical incidents are determined by how they undermine a person’s sense of safety, security, and competency in the world” (CISM, 2010). Often defined as “crisis situations,” critical incidents are emotionally significant events. Because of the emotional nature of the events, debriefing is necessary. In relation to critical incidents, debriefing refers to therapeutic techniques used to assist a person in reframing the critical incident in a more positive manner, providing information, and analyzing feelings (Boyd, 2012; Regal & Roberts, 2002). Debriefing is often used

in military situations to formally question a soldier to obtain important mission information. In the camp setting, debriefing provides an outlet to assess potential risk management issues and potential emotional impact on those involved.

During a presentation of this information at the 2012 Association of Camp Nurses’ Symposium, several camp nurses shared critical incidents that have occurred in camps around the world. Examples of such critical incidents include: suicide attempt, health crisis of counselors or staff members (fainting, heart attack), campers threatening one another with weapons, camper self-amputation with a saw, natural disasters (tornadoes, flooding, and hurricanes), and near drowning. Though some critical incidents can be prepared for, other incidents are unexpected and emotionally ravaging to all persons involved. Debriefing needs to occur so persons involved may obtain the true facts about the situation, in contrast to the viral rumors that overtake camp; put the incident into perspective and honestly evaluate personal safety and security; and assist persons involved in developing healthy coping mechanisms.

## Debriefing Needs at Various Developmental Levels

Campers and staff come to camp with varying levels of psychosocial development. Developmental levels are important to consider when developing a debriefing plan for critical incidents. Campers and staff will range in age from school-aged children to adults.

School-aged children, in Erikson’s stage of Industry vs. Inferiority, need to feel a sense of self-confidence and thrive with recognition of their accomplishments (Boyd, 2012). During this stage, debriefing may be most beneficial if the nurse uses techniques such as art, games, and storytelling. It is important to

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acknowledge what each child brings to the discussion and instill in the child a sense of safety and security.

Adolescents, in Erikson's stage of Identity vs. Role Confusion, need to feel secure in their sense of self (Boyd, 2012). During this stage, the nurse may be most effective by providing privacy and discretion when speaking to participants involved in the critical incident. It is vitally important to avoid communication styles that may be viewed as confrontational or accusatory by the teen. Adolescents need to know their viewpoint is valued while their emotional well-being must remain the priority of the interaction.

Adults, in Erikson's Intimacy vs. Isolation or Generativity vs. Stagnation stages, need to feel secure in meaningful relationships with others and a sense of achievement (Boyd, 2012). Adults involved in critical incidents are most often in leadership and supervisory roles such as camp directors, counselors, or staff members. Feelings of guilt are very common for this developmental level. To help adults gain valuable knowledge in the aftermath of critical incidents, the camp nurse must help adults make sense of their relationship to campers and the critical incident. During the process, the camp nurse must help adults work through feelings of guilt while focusing on what has been learned and how to apply that knowledge to prevention or management of future incidents.

## Asking All the Right Questions

Debriefing after critical incidents requires the camp nurse to ask the right questions. Not only is it important to obtain valuable information for risk management functions, it is also important to gain a clear understanding of the incident and potential impact it may have on the campers and staff involved. The table outlines important questions to ask during debriefing. This resource can serve as a guide to camp risk management personnel as they develop a written debriefing guide. Writing out a debriefing guide helps the administrator in charge stay focused during often emotional debriefing sessions (see Table 1 on page 11).

### Who

When determining who to debrief, asking who was involved in the incident is critical. The camp administrator or risk manager should ask who was involved, both directly and indirectly. Campers who are not directly involved but witness the incident will require debriefing and may be able to provide valuable information related to precipitating factors that lead to the incident. One must also determine who should be informed of the incident. Those who need to be informed may include cabin mates, counselors, camp or site directors, insurance company or legal representatives, parents, etc. Based on the information gained from answering all the "who" questions, the nurse must determine who will be debriefed and who should do the debriefing. The person doing the debriefing may be the camp nurse or another person trained in therapeutic communication techniques.

### What

The camp risk manager must ask what occurred that led to the critical incident. Evaluating precipitating factors can help prevent similar incidents from occurring in the future. It is important

to find out what happened before, during, and after the critical incident. Gaining input from multiple persons involved often helps fill gaps in the report. Different people may remember the incident differently. By debriefing everyone involved, a more complete picture of what happened emerges.

### When and Why

Finding out when critical incidents occur and tracking that information can help in making programming changes that may prevent future incidents from occurring. Often times, critical incidents occur during periods when campers or counselors are low on energy or nutrients, during periods of limited supervision ("free time"), or when unfamiliar materials or equipment are being used. Pinpointing trends can lead to policies and procedures specific to high risk timeframes.

### Where

Where did the incident occur? What physical surrounding factors may have led to the incident in question? For instance, in one Midwestern camp, a child went to the kitchenette, took a knife, and threatened another camper. What those involved in the camp failed to consider was the set-up of the cabin, normally used for all-adult groups. Items that were regularly used in this cabin were not protected prior to sleeping children in the cabin. Until the incident, no one had thought such a situation would occur.

### How

The "how" of an incident often requires those involved to put together the Who, What, When, Where, and Why of the incident and develop a logical conclusion. Considering all the factors involved and rewriting policies or procedures can prevent future incidents from occurring or limit the damage if the incident can't be prevented. During this stage of questioning, camp officials may develop a plan to communicate about the incident to camp stakeholders. It is often most beneficial to alert others to the situation and what is being done to remedy it rather than allowing second- or third-hand accounts to go viral in the virtual world we live in. Social media and connectivity of campers often lead to delicate handling of critical incidents.

## Debriefing Tools

Tools used in debriefing may vary with the type of incident, age of those involved, and abilities of the camp nurse in psychosocial interventions. Reflective journals and group or individual debriefing are some of the most common tools currently utilized. In the following sections, each tool will be briefly described. Additional information on each method is available from Critical Incident Stress Management International and a variety of online mental health resources.

### Reflective Journaling

Reflective journaling allows all parties involved in the critical incident to evaluate the situation and their personal reaction to the incident. Hubbs and Brand (2005) describe reflective journals as "a mirror" into one's heart and mind. Following a critical incident,

there can be much conflict in both the hearts and minds of all involved. This tool allows people to put on paper what is in the heart and mind, put those thoughts away, and go back to reflect at a future time. Putting one's thoughts into a reflective journal can release the brain and help with post incident difficulties such as anxiety, insomnia, and excessive worry. The key to using reflective journaling as a debriefing tool is to allow participants free reign on how the journal looks and whether or not to share the contents with others. For instance, young campers or more artistic persons may prefer to use drawings, art, and doodles; adults or more analytical persons may prefer narrative or timeline journals.

### Group vs. Individual Debriefing

Debriefing involves the camp nurse or other qualified professional interacting with each person involved in the critical incident. Using Table 1 below, the person in charge of debriefing can ask questions to gain information and help everyone involved begin to mentally “work through” the impact of the critical incident. Sometimes these sessions are with individuals and sometimes in a group setting. Deciding whether to use an individual or group setting depends on several factors: age of individuals, how many individuals are involved, emotional distress of the individuals, and available support from other camp staff. Often times, in our technologically connected society, it is necessary to debrief more indirectly involved individuals before rumors become the accepted truth about a critical incident. A large group setting is ideal for conveying true information about the incident (protecting specific names and details as necessary) and often squelches the rumor mill from expanding so quickly. Likewise, depending on the nature of the incident, it may be necessary to provide parents and others outside the camp environment with truthful information about the incident and actions that are planned or have taken place as a result.

The key to debriefing after critical incidents is to be methodical; debrief everyone involved in the incident, directly or in a group setting; and return to ask questions and continue debriefing over several days or weeks if possible. Often times, emotions related to a critical incident take days to surface. As individuals begin to reflect and interact with others involved in the incident, different emotions may emerge.

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**Table 1: Important Questions to Ask During Debriefing Sessions**

<b>WHO?</b>	Who was involved? Who needs to be informed about the critical incident? Who will be debriefed? Who will do the debriefing?
<b>WHAT?</b>	What occurred to cause the critical incident? What can be done to prevent such an incident from occurring in the future?
<b>WHEN?</b>	When did the incident occur? Was appropriate supervision provided? What circumstances led to this being the time of the incident?
<b>WHERE?</b>	Where did the incident occur? What circumstances can be altered to prevent future incidents from occurring?
<b>WHY?</b>	What events led to the critical incident? What can be changed to decrease chances of another similar critical incident?
<b>HOW?</b>	How did the incident occur? How can we prevent similar incidents from occurring in the future? How do we work with staff, volunteers, campers, and families in regard to the incident and our plans to prevent future incidents?