

# Managing Liability

Buildings and Grounds



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# Camps on Campus

The information in this monograph is intended to help school administrators understand and manage the risks associated with camps on campus. It is not a substitute for legal advice, nor does it provide a complete and up-to-date analysis of legal rules or requirements in any specific state or locality. Institutions should consult their own legal counsel concerning such matters.

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## Introduction

Every year, thousands of camps are held at colleges, universities, and independent schools across the country attracting campers ranging in age from three to over 55. The camps may offer outdoor activities or classroom programs. They may be day camps or residential camps. The campers may be students with physical or learning disabilities, students identified as gifted-talented, or in the case of Elderhostel, retirees over the age of 55. Camp activities range from team sports, rock climbing, and wilderness survival to band, theater, and computer instruction.

Camps have become a popular way for many educational institutions to use their facilities year-round. One university with an academic year enrollment of about 12,000 students hosts as many as 18 different camps over the summer involving approximately 4,300 participants. An independent school reports that it typically offers 24 summer programs attracting more than 1,200 campers and producing approximately \$225,000 in revenue. Not only do camps generate income for institutions, they can also strengthen community relations by providing high-quality programs for local residents, and they can be a valuable marketing tool. What better way is there to learn about a school or college than to stay on campus for a week or more?

Along with their educational value and potential for producing revenue and goodwill, camps are also potential sources of liability for schools and colleges. Camp liability can arise out of property ownership, specific activities of the camp, and general camp operations. If the camp is for minors (as most of are), the school must be aware that its conduct will be judged under the legal doctrine of *in loco parentis* (in the place of the parent), which holds institutions to a higher degree of accountability than when they are dealing with students 18 or older. Independent schools (K-12) may already be aware of the risks associated with the *in loco parentis* doctrine, but colleges and universities may need to carefully review their operating procedures when hosting minors. Just how much liability the institution assumes with a camp depends on the school's relationship to the camp. Is the school the camp sponsor or co-sponsor, or does it simply provide the facilities for the camp?

This monograph will look at the formal relationships between host institutions and camps, the legal responsibilities associated with each relationship, and practical steps to take—including having proper insurance—to effectively manage the risks of hosting camps on campus.

# Camps on Campus: School-Camp Relationships

The potential liability that a school may incur from a camp will depend on its relationship with the camp. Schools can structure their relationship to a camp in one of three basic ways:

- Tolerance
- Encouragement/support
- Sponsorship/co-sponsorship

## Tolerance

In a “tolerant” relationship, the institution leases facilities to the camp but is not otherwise involved in camp operations or management. For example, a private organization that offers cheerleading camps contracts with a university for the use of certain athletic fields and gyms for a two-week period during the month of July. Under this type of relationship, generally the only liability for the university is premises liability as the lessor/licensor. In some situations, the university may contract with the camp operator to provide certain services of personnel, such as food service or athletic training personnel. The university could be held liable if it is negligent in providing those services.

## Encouragement/Support

The college may choose to actively support or promote a camp run by another organization. For example, a university allows a camp for learning disabled children to recruit counselors through the university’s school of education and gives the camp special privileges and access to university resources and facilities. In order to limit its liability, the university should include in its contracts with the camp operator provisions stating that the university has no operational control or responsibility for the camp. If the university takes an active role in promoting the camp, both the contract and promotional materials should state that the university supports the goals of the camp but is not a co-sponsor of the camp. This is particularly important if the camp uses the university’s name as part of the camp name.

## Sponsor/Co-Sponsor

The institution assumes the duty to operate a camp in a reasonably safe manner if it sponsors or co-sponsors the camp. In a co-sponsorship situation, the institution has, in effect, formed a joint venture with the other sponsor, in which all liabilities are shared.



## Supervisory Concerns

### Free period supervision

At a soccer camp for teenagers run by the head soccer coach of your university, the counselors are primarily soccer players chosen for their soccer abilities. During a free period, two counselors accompany 50 campers to the university's outdoor pool for an hour of recreational swimming. There is one lifeguard on duty. The counselors remain at the pool, but they view this time as their free period, also, and do not pay close attention to the campers. Horseplay ensues and a 14-year-old camper in the water is injured when another camper jumps onto him from the edge of the pool.

### Level of skill and competition

A 13-year-old is injured at a cheerleading camp held on your campus and run by your cheerleading coach. The girl was injured when she was thrown into the air during a maneuver for which she was not properly prepared. The supervisor had no training in the progression of activities suitable for novice cheerleaders.

### Emergency medical procedures

At a science camp sponsored by your university and held on campus for elementary school children, a 9-year-old child gets acid in her eye during a chemistry experiment. The supervisor is not trained in first aid, and the child suffers a vision loss because the acid remained in her eye until the EMTs arrived.

# Camps on Campus: Legal Responsibilities for Camps



## Premises Liability

### Maintenance

A summer soccer camp sponsored by your institution uses grassy, open fields for drills. One of the campers suffers a debilitating knee injury when she steps into a hole in the field.

### Dangerous conditions

A tennis camp leases space and facilities on your campus. There are no other formal ties between the camp and the college, and the camp director has no connection to the college. There is a sign at the climbing wall on your challenge course requiring the use of spotters. During a free period, an unsupervised 8-year-old camper falls while trying to climb the wall.

### Security

The head football coach at your university runs a very popular summer football camp on campus for boys ages 10-16. The campers are housed in a dormitory on the edge of campus near an unsafe neighborhood. The counselors, primarily volunteer high school football coaches from the area who want a chance to work with this highly-regarded coach, are also responsible for supervision in the residence hall at night. Shortly before “lights out” at 10 p.m., a counselor notices that one of the exterior doors to the building is propped open. Assuming that the door was intentionally left open by a camper in order to get in after curfew, the counselor adopts a “boys will be boys” philosophy and leaves the door propped open. At 11:30 p.m., a stranger enters through the open door and assaults a 10-year-old camper in the restroom.

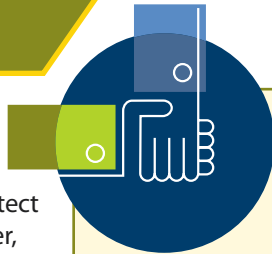
## When the School is the Property Owner

Whether the school is the sponsor or co-sponsor of the summer camp or merely leases facilities to a camp operator, as a landowner it is responsible for the maintenance and security of its premises. A college may be liable if a camper is injured due to unsafe or poorly maintained premises.<sup>1</sup> Facilities used for camp activities should be inspected and maintained prior to use and regularly inspected during the operation of the camp. Inspections should be particularly rigorous when the campers are children, who are not likely to be as cautious as adults. College and university facilities are generally designed for adults, and some facilities may not be safe for children. Security must also be tighter when campers are minors. Child molesters are frequently drawn to locations where young children are gathered.

As a property owner, the institution is also responsible for warning campers of any reasonably foreseeable dangers and informing them of off-limits areas. In some circumstances, it may be responsible for eliminating a foreseeable danger. For example, if a soccer camp uses a movable goal post, the university may be found negligent if it does not properly secure the goal post to prevent it from toppling.

Premises liability can also be based on an “abnormally dangerous condition” and the school’s duty to warn of the danger. This situation typically arises with excavations or temporary construction, but the rationale can be extended to a facility such as a campus climbing wall, which may not be abnormally dangerous for university students, but may be so for underage campers, some of whom may not even understand a warning sign. Swimming pools, lakes, and ponds can also be abnormally dangerous for minors, who are likely to be drawn to the water unaware of possible hazards.





## Staff-to-Camper Ratio

American Camping Association's recommended staff-to-camper ratio for resident camps:

- Campers 6-8 years of age, 1 counselor to 6 campers
- Campers 9-14 years of age, 1 counselor to 8 campers
- Campers 15-18 years of age, 1 counselor to 10 campers

*See Standards for Day and Resident Camps in Resources.*

As a general rule, an institution has no duty to protect against the criminal acts of third persons.<sup>2</sup> However, the school has responsibility to provide reasonably safe premises, especially in residence halls. Liability exposure may increase, for example, if a residence hall has a history of one or more break-ins. The institution should recognize the potential security problem and either eliminate the problem or not allow minors to stay there. Also, if an institution's employees are aware that students are propping open residence hall doors but don't take steps to stop this practice, a court may view this as negligence.<sup>3</sup>

## When the Institution Sponsors the Camp

When a school sponsors or co-sponsors a summer camp, it assumes responsibility for assuring an appropriate program of activities, the proper supervision of activities, and the general operation of the camp. If the camp is for minors, the institution must operate the camp keeping in mind the doctrine of *in loco parentis*, under which the standard duty of care is based on the children's ability or inability to care for themselves.<sup>4</sup> Some state laws may establish a higher duty of care, i.e., that of a "prudent parent," for very young children.<sup>5</sup>

### The Instructional Program

The camp's instructional component should be appropriate to the skill level of the participants<sup>6</sup> and realistically presented in promotional materials. Warnings of risks and safety instructions should be clearly understandable to the campers. Instructors should consider the age and experience<sup>7</sup> of the campers, and technique demonstrations must be done correctly.<sup>8</sup> In contact sports, participants must be appropriately matched for size, maturity, and skill level to reduce the likelihood of injury. Drills and activities should be selected by a camp counselor or organizer with a background in physical education or coaching to ensure the proper progression of skill level. Participants who are not physically competent or who are fearful of a particular activity should not be pushed to participate in the activity.<sup>9</sup> Athletic equipment must be in safe condition and suitable to the intended use.

### Supervision of Activities

Inadequate supervision of campers presents a serious potential liability. A reasonable ratio of supervisors to campers is needed at all times. What is "reasonable" will depend on the activity and the age and special needs of the participants. The courts have looked at what constitutes a reasonable ratio based on a variety of factors, including the age of the participants, their maturity level, their propensity for rowdy behavior, their skill level, and the type of activity in question. Supervision is necessary for instructional activities, recreational activities, "free time," and—for residential camps—night time. For minors, special attention must be paid at "check-in" and "check-out" times to be sure the campers enter and leave the camp premises safely with a parent-approved adult. Having two adult supervisors accompany campers to restrooms, on overnight trips, or in any other situation when supervisors might otherwise be alone with a child may help prevent instances of molestation or abuse and protect counselors from false accusations.

# Legal Responsibilities for Camps

## Qualifications and Training of Supervisors and Instructors

Qualifications and training are important for supervisors and instructors. Counselors should be trained in the specific academic or recreational activities they teach or supervise.

In particular, they should understand the level of skill required for the activity and know how to judge a participant is ready to learn a new skill. Counselors also must recognize when a particular activity requires a level of expertise they don't have. For example, recreational swimming is frequently a part of camp life. Water-related activities have accounted for more deaths than any other camp activity,<sup>10</sup> and counselors must understand the importance of having certified lifeguards supervising swimming activities.

In addition to being qualified to teach and supervise specific activities, counselors must also be able to recognize and stop campers' unsafe behaviors. This is a critical aspect of supervision in camps, since counselors are often chosen for their competency in a particular sport or activity and not their ability to supervise campers. Counselors who are asked to be resident hall supervisors should have the appropriate training and maturity to deal with campers in this setting.

Counselors should also be trained in the general operations of the camp. They should understand the routines for greeting and dismissing campers, mealtimes, and restroom breaks; know the procedures for responding to emergencies such as fire, injury, weather hazard, or a lost person (camper or staff); and be familiar with the facilities—including knowing which areas are off limits to campers.

## Emergency Medical Care

A camp should have an adequate number of counselors trained in emergency medical procedures. There are two basic obligations for providing medical care to an injured camper:

- To provide emergency first aid assistance until medical personnel arrive; and
- To exercise reasonable care in obtaining medical treatment for the camper.

These obligations are best met by having emergency procedures well documented and understood by all personnel and by making sure that activity supervisors are proficient in CPR (for children, if appropriate) and emergency first aid.<sup>11</sup> It may be helpful to post charts showing the steps in various emergency procedures and have telephone scripts for relaying emergency information near the telephone. Cellular phones or two-way radios can be very useful in emergencies.

## Other Operational Risks

General operational risks include the transportation of campers and unforeseen problems with employees and volunteers. A serious risk related to camps for minors is potential abuse of campers—sexual, emotional, or physical—by a camp employee, volunteer, or another camper. Camp employees must be aware of state reporting requirements when there is a reason to suspect a child has been abused at camp or at home.



## Risk Management for Coaches

- Know the specific risks of the activity.
- Assure that the playing environment is free of all known or obvious hazards and safety equipment is in good repair.
- Have an appropriate number of supervisors for the activity.
- Properly prepare athletes. Clearly explain potential risks and safety instructions for the activity in age-appropriate language. Make sure athletes are in proper physical condition and at the appropriate skill level. When matching teams and individuals for play, consider skill level, size, and strength.
- Be prepared for an emergency. Know emergency medical response procedures. Prepare your players and staff through training and drills. Locate the nearest telephone. In remote locations, have a cellular phone or two-way radio if possible.





## Operational Risks

### Transportation

As part of a science camp run jointly by your school and a local museum, the campers are scheduled to visit the museum. One of the camp counselors runs a red light while driving a university van and seven campers are injured in the resulting crash.

### Sexual abuse

Your school's tennis coach operates a tennis camp under an informal arrangement with the college. The camp has the use of tennis courts, dormitory rooms, and food service facilities. The camp counselors include members of the college varsity tennis team. A counselor reports to you that she overheard two of the male counselors bragging about drinking and having sex with one of the campers, a 14-year-old girl.

### Transportation

The risks associated with transporting campers both on and off campus are exacerbated when camp employees responsible for transporting campers do not have proper training or sufficient practice in operating buses or vans. Only qualified drivers should be allowed to drive. At a minimum, drivers should have a valid license, be insured, and be trained in operating the vehicle. Vehicles should be regularly inspected for safety, and vehicle keys should be stored so that only approved drivers have access to them. (For guidelines on transportation issues, see the United Educators monograph, *Vehicle Safety*.<sup>12</sup>)

### Acts of Employees

In addition to liability imposed upon the university because it assumed a duty of care in sponsoring a summer camp, the university may be held vicariously liable for the acts of its employees when they are acting under the control of, or for the benefit of, the institution. Thus, negligence on the part of an institution's camp employee may be imputed to the university under vicarious liability principles.

The legal concept of negligence can be the basis for liability if an injury to a camper can be tied to the institution's negligence in hiring, supervising, retaining, or reassigning a dangerous employee. This theory is often used in cases of sexual misconduct by an employee, especially if the misconduct was reasonably foreseeable. The negligent hiring doctrine applies to volunteers as long as the person is acting as an agent of the institution. Also, organizations that recommend potential employees may have a duty to use reasonable care in making recommendations. (See *Golden Spread Council, Inc., #562 of the Boy Scouts of America v. Akins* in the Case Law Review, page 12.)

Institutions also should be alert to the risk of institutional liability arising from a criminal act or intentional tort committed by an employee. This issue often arises in conjunction with allegations of sexual abuse of a camper. (See *Dismuke v. Quaynor* in the Case Law Review on page 13.)

# Legal Responsibilities for Camps



## Reporting Suspected Child Abuse

Those who work with minors have a responsibility to report suspected child abuse. The reporting criteria vary from state to state. Check your state's reporting requirements for:

- Who must report abuse
- What kinds of incidents or observations should trigger a report
- When to report
- Where to report
- What information to include in the report

For information on your state's specific reporting requirements, contact the Child Protective Services Agency in your state, or contact the National Center for Child Abuse at (202) 385-8586.

*(Note: The camp operator should document the necessary reporting procedures before the camp begins and train camp personnel in following those procedures.)*

## When the University Assumes a Duty by Contract

If the institution is not a sponsor or co-sponsor, and if an incident arises that is not related to premises liability, the university may still have assumed a duty of care through a contract with the camp sponsor. If the university has agreed to provide certain services for the camp, such as food or health services, then the university must offer those services in a prudent manner.

## Independent Contractors

Camp operators should be careful when designating someone an "independent contractor." Calling someone an independent contractor does not create an independent contractor relationship, and sometimes those described as independent contractors are actually employees. Whether someone is an independent contractor or an employee hinges on whether the entity has direction and control of the individual's activities. For example, if a camp retains an individual to run its sailing program and calls that individual an independent contractor, if an injury occurs for which the sailing director is alleged to be liable, courts will look at factors such as ownership of the boats, control of the schedule, and reporting procedures.

The school should ask for proof of insurance before engaging a contractor's services. The school's broker can be helpful in determining if the contractor has appropriate insurance for the specific activity. The contractor's insurance should cover the specific activity and any related liability.

The college should be alert to the inappropriate use of college equipment, supplies, administrative services, and employees. For example, unless specifically told not to, some coaches may use college stationery for camp correspondence, have phone registrations taken by a college employee, or have fees paid through the business office, all of which serve to reinforce the perception that the camp is sponsored by the college.

Camps that are not sponsored or co-sponsored by the institution should not use the institution's name as part of the camp name.

## When the Camp Operator is Viewed as Acting on the Institution's Behalf

The institution should take care that a camp it is not sponsoring or co-sponsoring does not portray itself as operated by or “affiliated” with the university. This can be accomplished through both the written contracts and advertising materials. The advertising materials for this kind of camp must make it clear that the school is not running the camp.

Distancing the institution from the camp can be particularly difficult if the camp is run by a college coach who has accepted complete control of the camp. The college should be alert to the inappropriate use of college equipment, supplies, administrative services, and employees. For example, unless specifically told not to, some coaches may use college stationery for camp correspondence, have phone registrations taken by a college employee, or have fees paid through the business office, all of which serve to reinforce the perception that the camp is sponsored by the college.

Camps that are not sponsored or co-sponsored by the institution should not use the institution's name as part of the camp name.



## Sample Screening Questions

Specific questions to ask in checking references for employee/ volunteer applicants who will work with minors.

- **How would you describe his/her personal characteristics?**

Probe for immaturity, shyness, introversion, non-assertiveness, indecision, or passive acquiescence.

- **How would you say he/she relates with children?**

Probe whether or not he/she relinquishes adult role and responsibility, tends to become more like the child, places a premium on one-on-one activities rather than group activities.

- **Have you ever seen him/her discipline a child?**

If so, please describe what you saw him/her do. The manner in which individuals try to control children's behavior can reveal their true character. Disciplinary techniques used should not be violent or emotionally degrading. They should deal with the issues involved, be constructive, and appropriate for the age of the child being disciplined.

- **I'd be interested in knowing if you think there may be any problems or conditions that would interfere with the applicant's care. These problems include substance abuse, mental or emotional illness, or history of child mistreatment.**

While the reason for this question is obvious, the kinds of information you may receive are not. Listen not only to the words, but also how the words are said. Is there hesitancy? Equivocation?

*Taken from Staff Screening Tool Kit: Building a Strong Foundation Through Careful Staffing—2nd Edition, a publication of the Nonprofit Risk Management Center. (See Resources.)*

*In addition, many states publish sex offender registers. All employees and volunteers who work with minors should be checked against the register.*

# Legal Responsibilities for Camps



## Case Law Review

### **Golden Spread Council, Inc. #562 of the Boy Scouts of America v. Akins**

An assistant scoutmaster for a Boy Scout troop molested a child in the troop. The scoutmaster learned that “something was amiss” with the assistant scoutmaster and relayed this information to a scout council employee. Nonetheless, the molester was selected to be a scoutmaster for a new troop, and he resumed his advances upon the same minor. The allegations brought against the Boy Scouts of America (BSA) and its chartered council were based on a violation of their duty to reasonably and properly screen, select, train, supervise, and retain scoutmasters. Specifically, the plaintiffs alleged that the defendants were negligent in failing to investigate reports of inappropriate sexual behavior by the scoutmaster and in failing to take steps to remove this person from his position as troop leader. The Texas Supreme Court held that the Boy Scouts of America had no duty to screen an adult volunteer about whom it had no knowledge and over whom it had no right of control. However, the court held that the chartered council had a duty to use reasonable care in fulfilling its affirmative act of recommending potential scoutmasters, and this duty extended to the children and parents involved in the troop. The court noted that if the council knew or should have known that the assistant scoutmaster was likely to molest boys, it had a duty not to recommend him as a scoutmaster. The council’s duty was to exercise reasonable care, based on the information it received that the assistant scoutmaster had been “messing with boys,” in recommending a scoutmaster.<sup>13</sup>



## **Dismuke v. Quaynor**

A 15-year-old female was enrolled as a camper in the National Youth Sports Program (NYSP), an educational day camp sponsored by a state university and staffed by university employees and student aides. On a day when the camp ended early because of weather conditions, the camper was sexually assaulted by a 25-year-old student aide in the Student Union. This location was designated as “off limits” for campers. The employee asserted that he had gone to the Union after the campers were dismissed to make sure that the male campers whom he supervised had gotten rides home. The court held that the university was vicariously liable for the actions of the student aide. The court reasoned that the employee’s motives in going to the Union, albeit secondary, promoted the university’s interest in supervising campers and that there was a very short time interval between the time the employee left work and when the assault occurred. This time interval, noted the court, was insufficient to break the connection with his employment activities. Also, the court, on the question of foreseeability, commented that this incident was “the more or less inevitable toll” of running a sports program for children, in which teenage girls were placed under the general supervisory authority of a 25-year-old male college student.<sup>14</sup>

# Camps on Campus: Managing Camp Liabilities

## Maintain Accurate and Accessible Information

The first step in controlling camp-related liability is to identify the number and kinds of camps that are being held on campus. Although this may seem easy, many institutions do not methodically collect this information in one place. The institution should designate a single office or person to maintain camp records and coordinate information pertaining to all camps held on campus, academic or sports-related. The designated person should serve as the liaison for communications with all camps, and all camp information should be routed through this individual. In addition to the camp coordinator, the risk manager should be kept informed of all camp activities.

## Have Proper Insurance

Insurance needs for camps will depend on whether the camp is operated by a separate entity, run by the institution, or co-sponsored by the institution and another entity. In all cases, the quality and scope of the coverage should be carefully reviewed.

### Camps Run by a Separate Entity

If the camp is not sponsored or co-sponsored by the institution, the school should verify that the camp operator carries the necessary coverage with appropriate limits and necessary endorsements, check the credentials of the insurance carrier, and be named as an Additional Insured on the camp operator's policy.

The camp operator will need general liability, auto, and directors and officers liability insurance. When checking coverage, determine if the camp's general liability policy covers more than just premises liability. Be aware of any exclusions; in particular, be sure there is no exclusion for sexual abuse/ molestation. The general liability policy should cover the camp's liability for claims that arise from activities sponsored by the camp but conducted on premises that are not owned by the insured. The common minimum limits for primary general liability for camp operators are \$1 million, with \$500,000 to \$1 million for auto insurance. The camp should also carry umbrella coverage with minimum limits of \$3 million to \$5 million. Be sure the policy is an occurrence rather than a claims-made policy.

There are relatively new errors and omissions policies available for camps that include entity coverage and employment practices. If not prohibitively expensive, such policies are worthwhile and can provide additional protection for the institution if it is named as an Additional Insured.

In addition to ensuring appropriate coverage and limits, the institution should check on the camp operator's insurance carrier. Be sure the company understands the liabilities associated with camps. If it is a commercial carrier, check its rating with a service such as A.M. Best. The carrier should have at least a B+/V rating. The institution's insurance broker can help by providing general information about a carrier. (The broker can also review the camp operator's insurance policy if the camp operator is willing to release its policy for review.)

### Institution-Run Camps

The institution should be sure its insurance program covers camp-related liabilities. The general liability policy should cover all camp activities. In particular, there should be no exclusions for any specific camp activity, athletic program, or sexual abuse/molestation. The educators legal liability policy should cover discrimination claims that might be brought by camp employees, volunteers, campers, and others.

Auto insurance is another area that should be reviewed if the camp is transporting campers using institutional vehicles and/or camp employees or volunteers as drivers. If transportation is subcontracted, verify that the contractor has appropriate insurance.

If the institution does not consider its camp operations when purchasing insurance, it may be underinsured. Camp claims can significantly eat away at the institution's aggregate limit.

An institution may want to purchase additional accidental death and dismemberment insurance to provide additional insurance for its camps. This kind of insurance is usually available at approximately \$2 to \$7 per camper.

### Co-Sponsored Camps

Indemnification is the most critical insurance issue for co-sponsored camps. The co-sponsors should determine which entity indemnifies the other, when, and for what. They should decide which entity controls specific activities and aspects of the camp operation, and be sure that each entity is appropriately insured. These issues should be clearly addressed in the contract. The contract should also clearly state that there is no indemnification in the case of sole negligence of the other sponsor. The institution should confirm that its insurance will cover any liabilities assumed by the school on behalf of its co-sponsor.

Whether the camp is run by another organization or by the institution, the camp operator is responsible for having worker's compensation coverage for all camp employees.

### General Guidelines for Managing Liability

Liability varies with the institution's relationship with a camp, and it is important to know which type of relationship exists with each camp.

#### If the Institution Is Not a Sponsor or Co-Sponsor

When your institution is simply providing the premises and limited services for the camp, the following guidelines apply:

- Verify that the camp operator has all necessary licenses or permits required by local, state, and federal regulations.
- Verify that the camp operator is knowledgeable in the programs offered. A useful indicator would be accreditation by a nationally recognized body such as the American Camping Association.<sup>15</sup> Even if the camp is not accredited, there should be some evidence that the camp performs self-evaluations and has written policies regarding important liability concerns, such as transportation, medical care, staffing, and training regarding camper abuse.



### ACA Standards

#### Transportation

Core standards that apply to all camps seeking accreditation:

- Site and Facilities
- Administration
- Administration of Transportation and Vehicles
- Personnel
- Program
- Health Care

Activity standards that are applicable only if these activities are offered:

- Aquatics
- Trip/Travel
- Horseback Riding

*See Accreditation for Day and Resident Camps in the Resources.*

- Verify that the camp operator informs campers and parents of the risks involved in the camp and asks both campers and their parents to sign agreements to participate that clarify that the campers and parents assume those risks. The signed forms should release the institution as well as the camp from liability to the parents. Although in most jurisdictions neither minors nor their parents can release the minor's rights, they can agree to assume risks. The agreement is not a release, but it does allow the camp and the institution to use an "assumption of risk" defense if sued by a camper or parent.

# Managing Camp Liabilities

- Specify what is expected of the institution in operating the camp. If the institution is to have no operational responsibility for the camp, this should be clearly delineated. Any services that the school is expected to provide should be clearly outlined. If the school is not providing health care services, the camp sponsor should submit written proof that health services have been arranged. All agreements between the institution and camp sponsor should be in writing.
- Verify that advertisements for the camp will not imply any sponsorship or control by the institution. Consider inserting a clear statement that the camp is not affiliated with the institution.
- Notify school employees who will be providing services to the camp of their specific responsibilities. In addition, employees should be aware of any "off limit" areas to campers and procedures for dealing with problems and reporting incidents.
- The camp operator should agree to indemnify the institution and provide the institution with a certificate of insurance with all endorsements, outlining coverages and amounts and designating the institution as an Additional Insured.
- The camp operator should designate a person to coordinate and provide information as requested by your institution's camp liaison. Procedures for responding to emergency situations should be clearly outlined.
- The camp operator should agree to adhere to specified institutional policies and procedures, and acknowledge that a failure to do so may result in termination of the agreement. The institution may also be able to terminate the agreement for any conduct by the camp, its employees, or campers that is in any way detrimental to the university.

## If Your Institution Sponsors the Camp

The following guidelines apply if your institution is sponsoring or co-sponsoring the camp:

- Be aware of all federal, state, and local laws and regulations governing camps just as you would for academic-year activities. Most states have regulations that may impact camp operations concerning health, hygiene, safety, and staff/volunteer screening requirements. Agencies that may have jurisdiction over a camp include OSHA (Occupational Safety and Health Administration), EPA (Environmental Protection Agency), the U.S. Coast Guard (if there are water sports on a waterway), the Equal Employment Opportunity Commission and state fair employment practices agency, the local health department, state water control agency, state department of transportation, and child protective services agencies.
- The camp should follow recognized standards developed by organizations such as the American Camping Association. Evaluate your camp based on these standards, or have your camp evaluated by knowledgeable outsiders.
- Choose camp staff with care and train employees and volunteers properly. Have a written job description for each paid and volunteer position. Be sure they are competent and suitable to work with the particular age group of the campers. References should be checked to assess factors that may indicate that a job applicant is a potential child molester.<sup>16</sup> Individuals who will provide assistance in a particular program, e.g., aquatic specialists, must be properly certified. Check their certifications and test their ability. Ask them to demonstrate their CPR or water lifesaving skills.



## Agreement to Participate

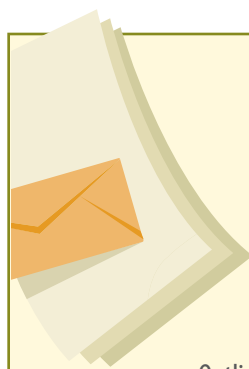
Betty van der Smitten, a leading expert in sport law, has conceptualized the agreement to participate as having four components:

- Nature of the activity
- Possible injuries that may occur
- Expectations of the participant
- Physical condition of the participant

Legal Liability and Risk Management for Public and Private Enterprises, *Anderson Pub. Co.*, 1990, Section 24.812.



- Make sure that supervision and instruction match the campers' competencies and expectations. A professional educator or coach should be in charge of the instructional element of the camp. If counselors will supervise campers in the residence halls, they must understand the expectations for control and security of the campers. Ideally, at least one supervisor in any activity group will have had safety training for the activity.
- Advertising materials for the camp should accurately represent the skill level required for camp activities. They must also accurately indicate the relationship of the school to the camp.
- Have a written health care plan that specifies the general procedures and responsibilities of all staff regarding medical and health issues. The plan should include pre-camp medical screening, a record-keeping system, procedures to prevent and control the spread of contagious diseases, and emergency medical and disaster response procedures. Staff should be trained in emergency protocols, and activity supervisors should be competent in CPR and emergency first aid. If the university health care system will be responsible for the medical needs of campers, the camp should have a liaison to coordinate with the appropriate university staff. If contracting out health services, have an agreement to show readiness.
- If the camp is for minors, security arrangements should reflect the fact that you are responsible for an underage population. You may wish to designate certain parts of your campus (or off-campus) as inappropriate or unsafe for your campers. Camp staff should work in pairs with children in isolated locations (bathrooms, locker rooms, dorms, or other sleeping areas). Staff and volunteers must understand and follow procedures for releasing children from the camp.
- Collecting personal information about the campers can be useful. Ask campers about their past camp experiences: At which activities do they excel? Which activities present problems? Do they have any specific fears? Clarify who is allowed to pick up the child from camp, and be sure to get extra contacts in case a designated adult fails to pick up the child.



## Participation/Permission Forms

### In the section for campers to sign:

- Outline the dangers, risks, and possible injuries resulting from the camp activities
- Outline the importance of following rules and regulations to minimize risks
- Statement of agreement to obey all rules, regulations, and instructions of supervisors
- Statement of health and fitness on part of camper
- Statement that medical form has been completed
- Statement of assumption of risk
- Dated signature of camper

### In the section for parents to sign:

- Statement that child's participation in the camp is completely voluntary
- Statement that parent has read risk information outlined in camper's section of form
- Statement of understanding that despite safety precautions, the camp cannot guarantee that a camper will not be injured
- Statement that parent has instructed child to obey all rules, regulations, and instructions of camp personnel
- Dated signature of parent or guardian

- Transportation should be provided only by qualified drivers and in properly maintained and safe vehicles. All drivers must know what to do in the event of an accident. Access to keys should be monitored.

# Managing Camp Liabilities

- Premises used for camp purposes should be periodically inspected for safety and any unreasonable dangers corrected promptly. Procedures should be in place for requesting emergency repairs, safety equipment should be available and clearly labeled, and emergency procedures (e.g. fire drills) should be understood and practiced. Facilities must also meet requirements under the Americans with Disabilities Act.
- Emergency procedures should be clearly posted. Procedures for camp field trips should include informing campers and staff what to do if they are separated from the group. Staff should be prepared to handle a variety of potential risk situations, such as injury to a camper or counselor, a missing child or missing adult, or a fire, tornado, or other “disaster” situation.
- Develop participation agreements to be signed prior to the beginning of camp by campers and their parents. Although exculpatory clauses are usually unenforceable with a camp population of minors, it is still important to apprise participants of expected conduct and the risks inherent in an activity. This information is important in order to be able to use “assumption of risk” as a defense.<sup>17</sup> The dissemination of risk information is also important to prevent a plaintiff from making a claim of negligence based on a failure to warn. The medical form should certify the camper’s fitness for camp, confirm there is health insurance in place, and request permission for treatment in case of emergency.
- Food service should be provided by the school or an approved caterer. Otherwise, if campers are bringing food from, refrigeration or other appropriate food storage areas should be available.
- Organize a risk management committee to oversee camp operations. The committee can conduct inspections, monitor accidents, and review policies. Committee members should include the chief administrator of the camp; representatives from the program staff, maintenance staff, and emergency services; and the insurance manager.

## Conclusion

Camps can be a considerable source of additional income for schools, colleges, and universities. They can also be a considerable source of additional liability if not managed properly. In a climate of budget cuts, staff reductions,

and increasing complexity of campus activities, the temptation may be strong to reap the short-term financial benefits of hosting camps without an investment in careful planning. Schools should apply the same standards of caution to camps as they do to academic-year operations. By appointing a central office or camp coordinator to oversee the various camps held on campus, clearly structuring and defining the relationship in writing between each camp and the institution, establishing risk management guidelines, and obtaining proper insurance, institutions can significantly reduce the risk associated with operating camps on campus.

# Audit Guide

Item	✓	Notes
<b>Which office is responsible for coordinating camp activity?</b>		
<b>Identify Camp</b>		
■ Name of camp		
■ Name of entities that operate camp		
■ Name of director		
■ Number of campers		
■ Number of paid staff		
■ Number of volunteers		
■ Short description of camp (include any areas of specialization)		
<b>Identity institutional relationship to the camp and the institution's role in its operations</b>		
■ Allows use of facilities, but no institutional involvement in operations or management		
■ Promotes camp run by another entity. Gives camp special privileges or access to resources		
■ Joint operation with another entity		
■ In-house operation by school		
<b>Promotional materials</b>		
■ Accurately reflect relationship of camp to school		
■ Accurately depict skill level of camp		
<b>Supervision</b>		
<i>Screening of employees and volunteers</i>		
■ Job description		
■ Application		
■ Interviews		
■ Reference checks		
■ Criminal checks (if required by state law)		
■ DMV checks		
<i>Training</i>		
■ In issues such as identification, reporting, and response to suspected abuse situations		
■ In specific activities that counselors supervise such as water sports		
■ In general camp operations and policies		
■ In safety and emergency procedures		

# Audit Guide

Item	✓	Notes
<i>Camp organization</i> (Who watches over employees and volunteers?)		
Camper/counselor ratio		
■ For specific activities		
■ For free time activities		
■ For residence halls		
■ For field trips		
<b>Facilities</b>		
<i>Dormitories</i>		
■ Which ones are being used by the camp?		
■ During what dates will each dormitory be used by the camp?		
■ What other groups, if any, will be using the dormitory?		
<i>Athletic facilities</i>		
■ Gyms		
■ Pools and other water sports facilities		
■ Fields		
■ Locker rooms		
■ Other athletic facilities		
<i>Food service facilities</i>		
<i>Health service facilities</i>		
<i>Laboratories</i>		
<i>Who is responsible for safety inspections prior to use?</i>		
<i>Who is responsible for clean-up, maintenance after use?</i>		
<b>Other school resources used by the camp</b>		
■ Transportation (school buses, vans, cars)		
■ Watercraft and other equipment		
■ Computer network		
<b>Are medical forms and participation agreements used?</b>		
<b>State reporting requirements for suspected molestation/abuse</b>		
<b>Visitors/pickups</b>		
■ Parental visits allowed? How often?		
■ What are the procedures for signing children in? Signing out?		
■ Extra contacts requested		



# Audit Guide

Item	✓	Notes
<b>Insurance needs</b>		
<i>For all camp-institution relationships</i>		
■ General liability		
— Coverage for specific activities		
— No exclusions for sexual molestation		
— Minimum limits of \$1 million for camp operations		
— Name of carrier		
— Occurrence, not claims-made		
— Indemnification issues		
■ Auto		
— Limits of \$500,000 to \$1 million		
— Name of carrier		
■ Educators Legal Liability (or camp operator's E&O, D&O, and EPLI)		
— Covers employees of camp		
— Name of carrier		
■ Accident insurance		
■ Workers' compensation		
<i>For camps run by a separate entity (all of the above plus the following)</i>		
■ Certificate of Insurance		
■ Institution named as Additional Insured		
<i>For co-sponsored camps</i>		
■ Indemnification: Which entity controls/insures which activities		
■ No assumption of another's sole negligence		

# Resources

**Basic Camp Management**, 5th ed., by Armand and Beverly Ball, 2000. Published by the American Camping Association, Inc., 5000 State Road 67 North, Martinsville IN 46151-7902. Available for \$42.95 by calling (765) 342-8456.

**For Their Sake: Recognizing, Responding to, and Reporting Child Abuse**, by Becca Cowan Johnson, For Kids Sake Inc., 1992. Published by the American Camping Association, Inc., 5000 State Road 67 North, Martinsville IN 46151-7902. Available for \$19.95 by calling (765) 342-8456. 204-page paperback book. A thorough review of child abuse including history, types of abuse, etc. Also includes a chapter on staff screening for child abusers and documentation guidelines for suspected abuse/molestation by parents or employees. An abbreviated version is available as a 36-page handbook, and is designed specifically for staff training.

**Staff Screening Tool Kit: Building a Strong Foundation Through Careful Staffing-2nd Edition**, by John Patterson with Charles Tremper. A 135-page paperback manual. Published by the Nonprofit Risk Management Center, 1001 Connecticut Ave. NW #900, Washington DC 20036. Presents an overview of types of screening that can be done with different types of employees as part of risk management efforts to prevent incidents of abuse or injury. Available for \$30.00 plus shipping and handling by calling (202) 785-3891.

**Accreditation for Day and Resident Camps** (for voluntary accreditation by the American Camping Association, Inc.), 1998. A 260-page paperback manual. Published by the American Camping Association, Inc., 5000 State Road 67 North, Martinsville IN 46151-7902. Available for \$42.95 by calling (765) 342-8456. Includes standards for facilities, specific activities, administration. Appendix includes "Helps in Risk Management Planning," "Sample Accident/ Incident Report," "Guidelines for Camps Primarily Serving Persons with Special Medical Needs," and "Considerations for Establishing Lifeguarding Ratios."

## Internet Sites

- American Camping Association  
[www.acacamps.org](http://www.acacamps.org)
- Camp Fire USA  
[www.campfire.org](http://www.campfire.org)
- National Clearinghouse on Child Abuse and Neglect Information  
[www.calib.com/nccanch](http://www.calib.com/nccanch)
- National Center for Prosecution of Child Abuse  
[www.ndaa-apri.org/apri/programs/ncpca/ncpca\\_home.html](http://www.ndaa-apri.org/apri/programs/ncpca/ncpca_home.html)

# Endnotes

- 1 Restatement (Second) of Torts, §§341-343A, 343-343A app. (1991 & Supp. 1996).
- 2 *Id.* at § 315.
- 3 See generally *Nieswand v. Cornell University*, 692 F. Supp. 1464, 1468 (N.D. N.Y. 1988) (stating that the school's failure to maintain minimum level of security may constitute negligence).
- 4 *Graham v. Montana State Univ.*, 767 P.2d 301 (Mont. 1988); *Cutler v. St. John's United Methodist Church*, 489 So.2d 123, 124 (Fla. Dist. Ct. App. 1986).
- 5 *Enright v. Busy Bee Playschool*, 625 N.Y.S.2d 453, 454 (Sup. Ct. 1995).
- 6 See generally *Kessling v. United States Cheerleaders Ass'n*, 655 N.E.2d 926, 928 (Ill. App. Ct. 1995) (stating that, although plaintiff was also negligent, defendant did not consider plaintiff's experience and skill level in the activity).
- 7 See *Armlin v. Board of Educ.*, 320 N.Y.S.2d 402, 404 (App. Div. 1971) (finding that school's negligence for fifth grader's injuries stemmed from failure to properly supervise child during gymnastics).
- 8 *Dibortolo v. Metropolitan Sch. Dist.*, 440 N.E.2d 506 (Ind. Ct. App. 1982).
- 9 *Landers v. School Dist. No. 203*, 383 N.E.2d 645 (Ill. App. Ct. 1978).
- 10 Armand Ball, et al., American Camping Association, *Basic Camp Management* (1995).
- 11 *Martinez v. Western Carolina Univ.*, 271 S.E.2d 91 (N.C. Ct. App. 1980).
- 12 James Breeding et al., United Educators, *Vehicle Safety* (1996).
- 13 *Golden Spread Council, Inc. #562 of the Boy Scouts of America v. Akins*, 926 S.W.2d 287 (Tex. 1996).
- 14 *Dismuke v. Quaynor*, 637 So.2d 555 (La. Ct. App. 1994).
- 15 See American Camping Ass'n, *Accreditation for Day and Resident Camps* (1998) (discussing requirements of accreditation process).
- 16 Becca Cowan Johnson and For Kids Sake, Inc., American Camping Association, *For Their Sake*, 104-120 (1992).
- 17 *O'Connell v. Walt Disney World Co.*, 413 So.2d 444 (Fla. Dist.Ct. App. 1982), Restatement of Torts (Second), §496B, comment d.



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