

THE **CAMPLINE**

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

WINTER 2018 / VOLUME XXVIII / NUMBER 3



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SUMMER CAMP FOR ALL: SERVING THE NEED OF TRANS CAMPERS

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Summer camp can be a very special place for youth. Summer camp allows a person to explore new activities like hiking, horseback riding, arts and crafts, and other outdoor adventures. For some campers, as was the case for me, summer camp was the first place I felt like I could be myself without any filters or expectations. As a child, I only attended Girl Scout camps. When there was a male in camp, he was either the camp ranger or the dishwasher. It wasn't that other men weren't allowed, but looking back, it was the first space I visited where I was surrounded by women. The opposite is true about the Boy Scout camp that is 23 miles away. What happens though when a gender-diverse child wants to attend summer camp, especially if that camp is designed to serve a single gender?

Whether a camp is intended for youth of a single sex (girls or boys) or is a co-ed facility, there are numerous ways that boys and girls are segregated such that it might as well be a camp for children of a single sex. This traditional approach to summer camp programming leaves out those children and youth who are gender diverse. In this article, we offer some basic guidance on ways you might address the needs of transgender youth who want to attend your camp.

Gender-Diverse People

Who are gender-diverse people?

¹ Gender diverse is used here as an all-inclusive term. Some other identity labels include transgender and transsexual. For this article, we use trans as shorthand for all gender-diverse people.

For the time being, we will focus on children and adolescents. We will address staff members later in this article. Gender diverse children and adolescents are those youth whose gender identity and expression is different from the sex they were assigned at birth. Different terms are used to describe these children and adolescents: gender diverse, gender creative, gender nonbinary,

genderqueer, gender expansive, trans boy, trans girl, and many more. However, an important difference exists between trans children and adolescents. Speaking in general terms, trans children make a social transition, while adolescents consider medical interventions. Social transitions include a change in the name and pronouns used by a child (having made a social transition could also be said to have affirmed one's gender). Social transitions also include a change in the manner of dress (also known as expression). The difference for trans adolescents is their readiness for medical interventions. One such intervention is the use of hormone blockers that suspend the adolescent's puberty. It is possible, with parental support, for an adolescent to begin "cross-sex" hormone therapy at the age of 16. However, it is unlikely that a trans person will have genital surgery prior to becoming an adult (age 18). If a more thorough understanding of the needs of trans children and adolescents is required, please see the list of additional resources at the end of this article.

For the most part, trans campers with a binary gender identity (identifying as a boy or a girl) create few challenges. Campers with nonbinary identities may be confusing to you and may bring some additional challenges you haven't begun to explore. People with nonbinary identities believe that gender is on a spectrum, and they do not believe their gender is limited to the immutable concept of the gender binary (i.e., only two gender choices of male and female). Youth and adults with nonbinary identities may use pronouns that are not commonly used among cisgender² people. Pronoun options for nonbinary people include they/them/theirs that would be used in the same fashion as she/her/hers and he/him/his.

² Cisgender is a term that is used to describe people whose gender identity and sex assigned at birth are in alignment. In other words, a cisgender person is not trans.

Will addressing the needs of trans youth in a summer camp setting require a change in "business as usual?" The obvious answer is yes. Are these changes impossible? Will they disrupt campers' experiences? The answer to both questions is no. In the following sections, we will focus on several areas related to campers, including whether and how to accept a trans camper, housing at camp, the use of hygiene facilities (e.g., bathroom and showers), and the use of gender-inclusive programming. Following this focus on trans campers, we will address the needs of trans staff in the camp setting and the need for cultural knowledge as a part of staff training. Some of the concerns with staff members are no different than they are for campers, but the focus is different since the primary role of a staff member is camper safety.

Trans Campers at Camp

In an ideal world, you will know prior to a camper's arrival about their gender identity. However, sharing this information prior to camp will not always be the case. The challenge this poses is that you may not have had a chance to consider how this camper's needs can be met and whether the staff have any training to understand how to best work with a trans camper. Although you may not have personally confronted any transgender issues, enrolling trans campers is becoming increasingly common. In 2016, according to the ACA Fall Enrollment

Icon Key

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

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

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Survey, one out of every five ACA camps indicated they had served trans campers. Additionally, several camps operate in the US that only serve LGBTQ (lesbian, gay, bisexual, transgender, queer, or questioning) campers.

In 2016, according to the ACA Fall Enrollment Survey, one out of every five ACA camps indicated they had served trans campers.

The possibility exists that a camper will arrive at camp and inform the camp staff that they have a trans identity and would like to be housed with other campers whose sex is consistent with the trans camper's affirmed gender. The assertion of their gender identity may be accompanied by a request from the camper that their parents not be informed, as the camper would face harsh consequences (e.g., abuse) if their parents found out. One of the challenges, aside from the logistics of placing another camper in a sleeping area, is whether and how to address this request. Assuming that you can accommodate the request of the camper, some bigger picture concerns need to be considered. For example, would you allow the camper to be in the sleeping area

that is consistent with their affirmed gender? What is your responsibility to share requests like this one made by the camper with their caregivers? In another example, campers often develop strong connections at camp and decide to stay in touch after the

camp session ends. If the trans camper has been known by their affirmed name and pronouns, what happens when their new friend reaches out to them and uses this affirmed name when the parent is unaware of this change? How will you address having accommodated the camper's requests to the parent? Although no easy answers exist, considerations of these types of questions before the camper arrives prepares you and your staff with viable options for solutions.

You might be wondering whether you can or should accept trans campers for your programs. As a word of caution, before making a decision to not allow the child to come to camp, you should consult with an attorney. Legal precedence is building that makes it unlawful to discriminate

against someone on the basis of their gender, which includes people with trans identities. For example, if you use any federal facilities (e.g., US Forest Service land) you are required to have a statement of equal opportunity. Most of these statements are inclusive of sex or gender, and these very policies have been used to support a trans person's right to access of programs, employment, and housing. To this point, we are not aware of such a legal decision regarding a camp setting. However, legal advice is critical to ensure that you are not putting your organization or business at risk by not allowing the child to enroll in and attend camp based solely on their gender identity or expression.

A final word about trans campers in the camp setting. When you are first faced with this question, you may struggle to figure out how best to proceed. One of the first steps for you to take is to examine your mission statement or the purpose for your program. If serving the trans camper falls within your mission or purpose, the answer is easy. You will serve the camper. If serving the camper does not fall within the mission or purpose, you have more to consider. It is important to use the resources that



Photo courtesy of Tom Sawyer Camps, Allandale CA

are readily available to you, including your agency or program administrative support structures, as you make that decision. You might also reach out to other camp directors or administrators in your local area. Lastly, another resource is to consult with the staff at ACA. You may be surprised to find out that they have resources applicable to your situation.

Addressing the Safety Needs of Trans Campers

Years ago, when I was a camper, the first thing I wanted to know was where I was going to sleep each night. Prioritizing the designation of sleeping spaces for campers and staff alike helps them to gain a sense of safety and assurance that they have a space they can call their own. For me, until I had that assurance, I exhibited anxiety and had trouble concentrating. Anxiety can be especially true for campers who are new to sleepover programs or to campers who have traditionally marginalized identities (e.g., racial, ethnic, sexual, and gender minorities).

Nothing is more sex segregated than housing and hygiene spaces. Sex segregation is present in summer camps, schools, and other public facilities (e.g., swimming pools, locker rooms, and restrooms). The accepted, affirming practice is to allow the trans child or adolescent to use those facilities that are consistent with their expressed gender. For example, a trans female camper (assigned male at birth) would sleep in the same tent or cabin with other girls and would participate in all other areas of the camp that are designated for girls. The most obvious area of concern is how to handle dressing, bathing, and the use of restrooms. Ideally, the camp would have one or more gender-inclusive or all-gender changing and hygiene spaces. There is certainly some cost associated with this type of facility addition, but to expect a camper to use a centrally located facility that is far from their sleeping area is unreasonable and singles out the camper in a way that can be used against them. Although summer camps should be a space where

people are treated with respect, we know that campers may engage in mistreatment of one another, especially when someone seems different from everyone else.

Unless your camp has a large endowment, it is unlikely that you will be able to make significant renovations that would include gender-inclusive hygiene spaces. However, simple, cost-effective ways are available to address some of these concerns. One of the easiest solutions is to place shower curtains in communal bathing spaces to ensure that all people who are showering are afforded privacy. It may seem like a good idea to just put up one shower curtain; however, whoever uses that shower stall may find that they are singled out in a way that feels unsafe. Another possible solution is to set a shower schedule and allow campers to decide which shower time (based on gender) best fits their identity. With the right physical accommodations, one or more time periods could be designated as a time for people of all genders to use the space, with the understanding that people of other genders might use the shower facilities at that time.

Often, cisgender people have some difficulty understanding people with nonbinary identities. The challenge in the summer camp setting is mostly related to the housing and hygiene issues. Ideally, all-gender housing with sleeping areas would be an option. Another option is to ask the camper and/or their parents where the child will feel safest. The same approach should be used with hygiene facilities. Depending on the experience of the camper, you may need to have a conversation about how things are going. It is preferable to engage in this conversation proactively with the camper rather than wait for the camper to bring an issue to you. The conversation does not need to be a big production. It is simple enough to speak with the child during a meal or some other all-camp activity.

Camps need to have policies about how they will work with trans campers.

These policies need to have some flexibility so the needs of each camper can be handled on a case-by-case basis. One of the best resources for understanding the camper's needs is to have a conversation with the child's parent(s). The parent(s) will likely be open to this conversation, because they want their child to have an enjoyable and safe experience at camp. By partnering with parent(s) you have demonstrated your willingness to understand and address the unique needs of their child in that camp setting.

A final area of safety concern is related to campers who return in a subsequent summer after having made a social transition. All of the recommendations made to this point apply. If the camper is returning with a group of children with whom they attended camp the previous year, it is best to allow the camper to decide when and if others should know about their social transition.

Summer Camp Programming

This section is devoted to co-ed camps. Few, if any, programs offered in camps need to be sex segregated. However, programs are often set up for girls or boys depending on the activity. Any child with an interest in a program should be able to take part. The only exception to participation should be related to skill level. As such, most directors would agree that programs are offered at all skill levels as appropriate to the facilities and the level of staff training. However, there may be times when a group of girls or boys may choose to participate together, but this engagement must not be at the exclusion of any trans campers. If a camper identifies as female, she should be allowed to participate in any activities or programs that cisgender girls are offered. The same is true for male-identified campers.

Who Needs to Know

It is easy to make the case that certain people need to know about a trans camper's identity. However, the knowledge of camper's gender identity status should be protected in

the same ways that health information is protected. The need for privacy and confidentiality is especially true for adolescents who may be taking hormone blockers or cross-sex hormones. Besides the camp director, the camp nurse is an important person to have on board. The staff in the camper's unit or living area should know about the child's identity, but generally do not need to know more details about the child's experience as a trans person.

Parents of other campers are another likely source of concern for many directors. No logical reasons exist for informing the parent(s) of other campers about the trans camper's attendance at a camp their children will attend. Camps that are committed to serving the needs of trans campers should openly describe their policies and options like all-gender living spaces. In this way, if a parent wants their child to be in a single gender living space, they can identify that in their registration.

with the trans staff member about their privacy needs. For example, several years ago, I had the opportunity to spend a week at a summer camp for youth with diabetes. My work at the camp came after I had made a medical transition. I was assigned to oversee a cabin group of boys. I asked the camp director for the ability to shower and change clothes out of the sight of campers. Fortunately, the camp facilities were such that this request was easy to fulfill. Outside of the camp director, no one else in the camp knew of my status as a trans person.

Staff Training

We all know that many content areas need to be covered in staff training. The challenge is how to add training content when the schedule is already full. Many camps may already have a segment about values that could be tweaked to accommodate a broader discussion around cultural knowledge. Such training could include an exploration of values that

Conclusion

As said in the beginning of this article, camp can be a very special place. With some attention to the needs of trans youth, it should be easy to ensure that trans campers also have wonderful memories of their time at camp. Here are a few thoughts to keep in mind as you make plans to welcome trans youth to your camp:

- Camp is for everyone.
- The needs of trans campers should always be taken seriously.
- A trans camper's identity should be respected.
- Gender-segregated programming is likely not needed.
- Be proactive in working with campers whose needs are different than most other campers (regardless of gender identity).

The American Camp Association has long believed that summer camp is for all children. Trans children are in need of a positive camp experience as much as any other child. With some considerations for the specific needs of a trans child or staff member, it is possible to create a safe and enjoyable summer camp for all.

... the knowledge of camper's gender identity status should be protected in the same ways that health information is protected.

Addressing the Needs of Camp Staff

Two areas related to staff need to be addressed. The first is related to the needs of staff members who have a trans identity. The second area is the training that all staff need to complete to ensure culturally competent interactions with campers, staff members, and parents.

Just as a cisgender person may have the desire to work at a summer camp, the same could be said of a transgender person. Similar to the warning about a policy of not accepting trans campers without exploring the legal ramifications, directors are cautioned against making an unfavorable hiring decision for a person, who is otherwise qualified, based on their gender identity. As most staff members are at least 18 years old, a discussion is needed

staff members hold and the ways that those values can impact the safety of all members of the camp community. Staff members' personal values should not be discounted; however, in exploring their values, staff should come to an understanding of the ways their values may negatively affect other community members. The goal of this type of activity would be to ensure that staff members have a good understanding of how and when to make these values known to others, especially campers, and how they philosophically relate to the camp's policies. In order to work in a culturally competent manner, staff must have a basic knowledge of camper backgrounds and identities. This cultural knowledge does not need to be specific to just trans campers, but should address all of the demographic differences that may exist.

Additional Resources

Angello, M. & Bowman, A. (2016). *Raising the transgender child: A complete guide for parents, families, and caregivers*. Berkeley, CA: Seal Press.

Brill, S. & Pepper, R. (2008). *The transgender child*. San Francisco: CA: Cleis Press.

Brill, S. & Kennedy, L. (2016). *The transgender teen*. Jersey City, NJ: Cleis Press.

Nealy, E. C. (2017). *Transgender children and youth: Cultivating pride and joy with families in transition*. New York, NY: W. W. Norton.

Testa, R. J., Coolhart, D., & Peta, J. (2015). *The gender quest workbook: A guide for teens and young adults exploring gender identity*. Oakland, CA: New Harbinger Press.



MARIJUANA REVISITED

By Charles R. Gregg and Catherine Hansen-Stamp©2018*

I. Introduction

We last wrote on the subject of camps and marijuana use in the fall of 2011, following a variety of camp concerns and inquiries to ACA's Hotline. At that time, camp managers, and the rest of us, were concerned about the apparent conflicts between federal laws pertaining to controlled substances and a few states' laws permitting the use of marijuana (cannabis) for medicinal purposes. See: www.ACAcamps.org/resource-library/articles/medical-marijuana-current-issues-camps¹, and an American Camp Association summary citing to our article at: www.ACAcamps.org/resource-library/public-policy/medical-marijuana-and-camps.

Since our 2011 article, a significant number (at least 29) states have

joined those allowing medical marijuana, and at least seven states now allow, with some variations, the use, possession, growing and sale of marijuana for purely recreational purposes. (See: www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html and www.ncsl.org/research/health/state-medical-marijuana-laws.aspx.) By way of example, as of January 2018, California is issuing licenses to allow the growth, transport, and sale of marijuana for recreational purposes, some 20 years after first allowing the use of marijuana for medical purposes. The early tension between state and federal laws continues, vacillating between federal deference to such state laws and aggressive action against violators.

Camps are challenged to know how

to proceed when a staff member, camper, or other visitor (including rental group staff and campers) asks to be allowed to use marijuana on the camp's premises. Other challenges include staff who use marijuana off camp premises, but whose use may be reflected in random drug testing or impairment during work hours.

II. Refresher — Legal Issues

First, a brief refresher regarding laws related to the use of marijuana — medical or otherwise. Marijuana is a scheduled drug (Schedule 1) under the federal Controlled Substances Act of 1970 (CSA). Under that law, marijuana (along with other Schedule 1 drugs) is deemed to have a high potential for abuse and no accepted means of safe use under medical supervision. Accordingly, the CSA comprehensively prohibits its use,

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manufacture, distribution, dispensing, or possession for any purpose. Violators of the Act are subject to monetary penalties and imprisonment.²

As noted above, the majority of states now allow marijuana for medical purposes, and several for recreational purposes — an awkward situation for, under the Supremacy Clause of the US Constitution, federal law prevails in the event of a clear conflict with a state’s laws.³

In his 2008 campaign for the presidency, Barack Obama signaled an intent to scale back the enforcement of the CSA as it pertained to medical marijuana. In fact, in December 2014, after a good bit of haggling in congress, the Rohrabacher-Farr Act was passed, prohibiting the Justice Department from spending funds to interfere with the implementation of state medical marijuana laws. Adherence to this Act has been inconsistent. Penalties, raids, and imprisonments continue to be a threat, and efforts to more formally relax the application of the CSA have routinely failed, even in the face of evidence of the medical benefits of cannabis. The current Department of Justice has indicated an intent to follow the practice of President Obama’s Attorney General, declaring that a state can legalize marijuana “for its law enforcement purposes,” but the federal law remains in effect — that is, marijuana is an illegal substance under federal law and federal prosecutors will continue to prosecute those in violation of the law, as it sees fit. The confusion continues.⁴

Related Update:
On January 4, 2018, Attorney General Jeff Sessions repealed the Cole Memorandum, indicating the potential enforcement of federal regulations as they relate to marijuana. The impact of this is unknown at the time of publication.

III. Issues for Camps

Conundrum

The problem for camps confronted with the prospect of marijuana use is two-fold: 1) may a camp legally deny such use; and 2) if a camp permits such use, how can it best manage the risks of doing so (including the risk of criminal and civil liability)? These issues impact the camp’s staff employment and camper enrollment policies, in addition to a camp’s endeavor to manage the risks of harm to campers, visitors, and staff. As we discussed in our 2011 *CampLine* article, the staff member, camper, or other visitor is expected to engage in camp activities with motor function and mental acuity (absent legitimate program modifications for an individual with a disability). On the flipside, organizations, including camps, may be tempted to “turn a blind eye” to marijuana use, reasoning that since it has been “legalized” in so many states, it can’t be that bad. Organizations may believe that if they adopt a strict no-drugs policy, or aggressively enforce their existing policy, they may have very few employees left! Another concern may be a fear that state marijuana laws as well as anti-discrimination laws, may raise barriers to enforcing an explicit workplace “no drugs” policy. Alternatively, camp management may believe that a staff member’s off duty medical marijuana use is necessary for that employee’s well-being on the job.⁵

Some Realities

• Impairment

There is no question that marijuana use can result in significant impairment, regardless of whether the use is medical or recreational. The National Institute on Drug Abuse reports serious impairment issues affecting both the mind and body, including an altered sense of time, impaired or delayed body movement, difficulty in thinking and problem solving, and, with high doses, hallucinations or delusions. Recent studies also show that marijuana affects brain development in youth. Disturbingly,

the primary (and mind-altering) cannabinoid in marijuana, delta-9 tetrahydrocannabinol (THC), is significantly more concentrated now than in the recent past — and even more so when it is extracted from marijuana in the form of a resin (a practice frequently referred to as “dabbing”).⁶ Importantly, depending upon a variety of factors, impairment can last from a shorter period to up to one to three days. Studies have shown a correlation between marijuana use and a significant increase in workplace absenteeism and on-the-job incidents and injuries, and a decrease in productivity.⁷

• Protections for Employers in State Marijuana Laws.

Some states provide protections for employers within their laws legalizing marijuana. Colorado, for example, provides with regard to laws legalizing medical use of marijuana: *“Nothing in this section shall require any employer to accommodate the medical use of marijuana in any workplace”* and in its laws legalizing recreational use of marijuana: *“Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees,”* and among other restrictions, prohibiting driving under the influence or while impaired [by marijuana].⁸ If your state has legalized marijuana, you and your legal counsel should be aware of any such protections.

• Protections in Other Federal Laws

As we discussed in our 2011 article, certain federal laws expressly provide protection to organizations. For example, Titles I and III of the Americans with Disabilities Act (ADA) requiring, respectively, employers and private organizations not to discriminate against individuals with disabilities, does not protect individuals (employees or prospective

campers, for example) who are currently engaging in the use of illegal drugs.⁹ In addition, the Drug-Free Workplace Act of 1988 requires federal agency contractors and grantees to certify that they will provide a drug-free workplace as a pre-condition to receiving a contract or a grant from a federal agency.¹⁰ Other federal laws may come into play (see our 2011 article). The goal is often a “safe” work environment.¹¹

• Varying Court Legal Interpretations

Our 2011 article identified several cases where courts held that state marijuana, anti-discrimination, or other laws were pre-empted by the CSA, or otherwise finding that state law could not prevent an employer from enforcing anti-drug policies with its staff.¹² Consistent with those cases, recently, in *Brandon Coats v. Dish Network, LLC*, the Colorado Supreme Court upheld the firing of an employee for off-duty use of medical marijuana (he tested positive at work). The worker claimed that such use was allowed by a state “lawful activities” statute which prevented discriminatory or unfair employment practices in terminating an employee for “lawful activities” off the employer’s premises. The court cited federal law, and its supremacy over state law, in finding that use of marijuana was illegal under the CSA, and so was not a “lawful activity” off premises.¹³

Recent cases out of other states have taken different directions, giving some strength to state laws. In an interesting 2017 case, the Massachusetts Supreme Court found that an employer unlawfully discriminated against an employee who was fired after testing positive for (off-duty) medical marijuana use. Massachusetts has a state law legalizing the possession and use of marijuana for medical treatment, but the court acknowledged that an individual using marijuana in compliance with that law was nevertheless subject to criminal prosecution under the CSA. Against that backdrop, the court found the employer acted illegally in terminating

the employee. The illegal conduct of the employer, however, was *not* the firing for marijuana use — it was its failure to attempt to accommodate (under a state handicap anti-discrimination law), the employee’s handicap (Crone’s disease). Under that disability law, the court found that the employee had a legitimate claim for handicap discrimination, as the employer was required to engage in an interactive process with her, before termination, to determine whether it could make a reasonable accommodation consistent with its drug policy (which it had not). The court went on to find that in this case, since there was no reasonable alternative to medical marijuana for this employee (based upon her physician’s opinion), the employer was entitled to make an exception to its drug policy to allow the off-site use of marijuana — which, in these circumstances, the court found to be a “*facially reasonable accommodation.*” The case was sent back to the lower court to determine whether other aspects of the disability law might relieve the defendant of its obligation to provide accommodation to the employee.¹⁴ Recent cases out of Rhode Island and Connecticut have also ruled in favor of employees, upholding claims brought by medical marijuana users under state laws, and declining to find that the CSA preempted application of those laws.¹⁵ In another case, a New Mexico court held that an employer must reimburse an injured worker for his medical marijuana costs, under a state “Compassionate Use Act.”¹⁶

• Issues Camps Face

A camp screening for medical marijuana use or denying such use does not, merely by virtue of that screening or prohibition, violate the ADA. Marijuana is illegal under federal law, and illegal drug use is not protected under the ADA. However, recent state court decisions (examples cited above) make clear the importance of camps working with legal counsel to understand the implications of state anti-discrimination,

lawful activities laws or other state laws that may impact the camp’s decisions. Any decision to hire or allow accommodation for a staff member who may be using medical marijuana should be considered very carefully. A camp that allows the medical use of marijuana must reasonably manage the risk of harm by strict policies governing the time and circumstances of medication — on or off the premises — and the nature of permitted tasks or activities. In setting these policies/requirements for use, the camp should rely on sound medical expertise and advice — not simply a vague notion of the effects of the drug, or the assurances of the user, regarding, for example, his or her tolerance for the drug. Remember that the rationale behind the federal classification of medical marijuana as a Schedule 1 controlled substance is its potential for abuse and the dangers of its use even under medical supervision.

The camp must carefully weigh the risk that a staff member using medical marijuana may come to work impaired, and thus endanger his own health or well-being or that of campers, visitors, or other staff members. This could occur as the staff member engages in his work duties — leading and supervising activities, driving vehicles, or otherwise. This directly impacts the camp’s legal duty of care to protect its campers, and others on its premises, from unreasonable risks of harm.

As reflected above, a camp permitting staff members to engage in the off-premises/off-duty use of medical marijuana cannot be sure that it is immune from CSA penalties, even if the camp operates in a state whose laws permit the use of marijuana. Importantly, consider the camp’s own drug policies and any professed intention or required legal obligation to provide a drug-free workplace.

Other issues may arise if the camp allows employees — or campers — to engage in marijuana use (medical or recreational) on its premises. As noted above, camp activities — and simply

moving about the premises — might expose a marijuana user to certain harm and cause that user to be a danger to others. Even state laws that allow the use of marijuana frequently prohibit such use when engaged in skilled activities while under the influence, in a way that endangers the health or safety of another. Consider an employee or camper, arguably impaired, on the waterfront, or rifle range, or on a zip line, climbing wall, or challenge course.

Importantly, if marijuana use is allowed on camp premises, what if the camp maintains the supply for the user? Is the camp thereby an illegal possessor of the drug? Might the camp be considered an abettor to the crime merely by knowingly allowing the use?

Hiring or enrollment that permits the use of marijuana would certainly violate at least the spirit of the ACA standards, and, more clearly, camp

prohibitions against smoking and drug use. And a camp that employs a strict “zero tolerance” drug use policy, but ignores marijuana use at camp (among campers or staff) sets itself up for problems — both in the increased potential for incidents and injuries, and regarding its duty of care. A violation of the camp’s own policies may, in the event of an injury or other loss, allow a plaintiff to successfully argue, without more, the violation of a duty of care owed to the injured person.



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An over-arching concern associated with the camp's decisions regarding marijuana is, of course, the camp's mission, its culture, and the relationship of trust it has with its camper families. The camp's reputation is one of its most valuable assets. The camp owes it to itself and its camp community to be clear on its marijuana policies, and firm in enforcing them.

IV. Conclusion

In closing, whether your camp operates in a state that has legalized marijuana or not (and most have, to some degree), work closely with informed legal counsel to:

- Thoughtfully develop an employee drug policy and consider zero tolerance — incorporating the importance of a drug-free workplace, and consideration of specific ramifications for illegal drug use — including marijuana¹⁷. Any drug policy should be crafted carefully and informed by an understanding of state statutes and case law — considering the tension between marijuana's status as an illegal CSA controlled substance and continuing efforts by states to make inroads on employee rights. That being said, any exceptions for medical marijuana use may run a slippery slope — consider with caution!

- Develop drug policies for campers specifically addressing use or possession of marijuana on camp premises; consider a “zero-tolerance” policy for unauthorized drug use on camp premises, including marijuana¹⁸, considering the potential for impairment and other legal issues.

- Comply with state and federal laws that require a drug free workplace (including the Drug Free Workplace Act of 1988).

- Consider a drug testing policy for your camp staff, compliant with applicable law. Despite the fact that testing is variable and inconsistent, the science is evolving and can assist the camp in targeting users and managing risks to both staff and campers.

- Be alert to legislative and legal developments in this rapidly changing landscape!

- Ask your insurance representative to explain your insurance coverage (or lack of coverage), for losses related to marijuana use (including medical) and how the camp's actions or policies may impact that coverage.

Don't become complacent regarding employee or camper marijuana use. Impairment is real, and the camp must strongly consider the legal and risk management issues associated with “normalizing” marijuana and

thinking that because it is now “legal” in most states, it can't be so bad. As discussed above, despite the increased “legalization” of marijuana across the US, federal law still prohibits the use, sale, possession, and distribution of marijuana — and classifies it as a Schedule I controlled (and illegal) substance. Stay engaged and stay tuned!

***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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¹⁷In addition, see the ACA's short summary of issues at: www.ACACamps.org/resource-library/public-policy/medical-marijuana-and-camps and a very informative article at www.acocamps.org/resource-library/camping-magazine/dont-let-your-camp-go-pot-impacts-policy-challenges-legalized-marijuana-youth-camps.

¹⁸CSA — 21 U.S.C. 801, et seq.; 812(b)(1) and 844.

¹⁹Id., 21 U.S.C. 903.

²⁰www.washingtontimes.com/news/2017/nov/14/jeff-sessions-clarifies-doj-s-marijuana-stance/; U.S. Department of Justice Memo, Attorney General James Cole, August 29, 2013; 4/3/17 Letter from Alaska, Colorado, Oregon and Washington Governors to Attorney General Jeff Sessions, and his various responses to those governors dated 7/24/17.

²¹12/6/17 Interviews with Lynn Reimer, www.actondrugs.com. (Act on Drugs, Inc. is a nonprofit company organized to provide drug awareness and prevention training for communities) and Jo McGuire, www.jomcquire.org, private consultant, on the board of directors for the Drug and Alcohol Testing Industry Association and co-chairs the Marijuana Education Committee. Both Ms. Reimer and Ms. McGuire are recognized national experts in their field.

²²Id (interviews; see also www.drugabuse.gov/publications/drugfacts/marijuana).

²³ohsonline.com/Articles/2016;/02/01/Marijuana-Use-and-Its-Impact-on-Workplace-Safety-and-Productivity.aspx; www.fss-safety.com/wp-content/uploads/2014/10/Colorado-Marijuana-Experience-Presentation.pdf.

²⁴Colorado Constitution, Article XVIII, Section 14 and 16 (2017).

²⁵ADA Title III, 42 U.S.C. 12210 - “illegal use of drugs” is defined in accompanying regulations as those drugs that are defined as unlawful under the federal CSA — see 28 CFR 36.104, similar to ADA Title 1 restriction at ADA Title I, 42 U.S.C. 12114(a).

²⁶41 U.S.C. 701, et seq.

²⁷See Federal Occupational Safety and Health Act (“OSHA”), 29 U.S.C. 651, et seq.

²⁸Roe v. Teletech, et al., 2011 Wash. Lexis 393 (Wash. Supreme Court June, 2011); *Casias v. Wal-Mart Stores, Inc.*, 764 F. Supp. 2d 914 (U.S.D.C. Mich. February, 2011); *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries*, 230 P.3d 518 (Ore. Supreme Court, 2010); *Ross v. Raging Wire Telecommunications, Inc.*, 174 P.3d 200 (Cal. Supreme Court 2009).

²⁹350 P.3d 849 (Co. Sup. Ct. 2015); see also, *People v. Crouse*, 388 P. 3d 39 (Co. Sup. Ct 2017), where the court reached a similar finding in a criminal case, holding that a state law allowing

officers to return seized medical marijuana to an acquitted patient is in direct conflict to (and preempted by) the CSA which prohibits the distribution of marijuana.

³⁰*Barbuto v. Advantage Sales and Marketing, LLC*, 78 N.E.3d 37 (MA Sup. Ct. July, 2017).

³¹Both cases involved an employer who declined to hire the individual and involved various claims. See, *Callaghan v. Darlington Fabrics Corp*, 2017 R.I. Super. Lexis 88 (May, 2017); *Noffsinger v. SSC Niantic Operating Co. LLC*, 2017 U.S. Dist. Lexis 124960 (CT U.S. Dist. Ct., August, 2017);

³²*Vialpando v. Ben's Auto. Servs.*, 331 P. 3d 975 (N.M. Ct. App. 2014).

³³Although marijuana may be “legalized” under a state law, it remains illegal under Federal law, per the CSA.

³⁴See above note. The camp's policies will allow for certain drug use — that is, a camper's authorized prescriptions or other medications — via its medical and health processes. Unauthorized substances would include illegal drugs, like marijuana, or a camper's unauthorized use of prescription drugs, narcotics or other substances, like alcohol.



WHAT IF IT DOES HAPPEN? CAMP SECURITY – PLANS TO MAKE AND ACTIONS TO TAKE

In July 2011, Anders Brevik detonated a “car bomb,” killing eight people in the Parliament Building in Oslo, Norway. He then proceeded to shoot and kill 69 participants at the Workers Youth League Summer Camp on the Island of Utoya. He entered the camp property by killing the security guard. Teenage campers attempted to flee by running and swimming away from the camp property.¹ Too often, we think “it could never happen here/to me.”

While the above situation is one extreme, being prepared for a variety of scenarios is critical in today’s world. Other potential security situations that could occur at your camp include:

- Several camp alumni come visit during the all-camp event.
- An individual from the company that provides and checks the chlorine at the swimming pool arrives during lunch to service the pool.

- A sorority (rental group) is hosting a “pledge event” at your camp. The first night of the event, a group from a fraternity comes to “visit.” You have locked the gate, yet they choose to abandon their cars and walk up to camp — carrying a keg of beer.

- In monitoring the police scanner, you hear of an active threat at a facility located three miles from camp. There is no other news at this point.

- During dinner, a staff member unlocks the gun storage cabinet and steals three rifles. He then gets three boxes of ammunition. He walks into the dining room aiming/waving the rifles at campers and staff.

- After an all-camp activity, it is discovered that an 11-year old camper is missing.

Would you be prepared to deal with these scenarios? The primary focus

of this article is security in a variety of situations. Having a basic plan is important. Training on and rehearsing the plan is critical.

According to ACA’s research, there are 14,000 youth camps in the US, with 14 million participants attending camp each year².

As part of her master’s thesis³, Jenika Doberstein sent a survey to a random sampling of youth camps related to camp security and preparedness for disaster response. Natural, human-caused, and technological disasters were the focus of the research. The 66 respondents were from 23 states and Canadian provinces.

- Fifty-four percent offered day camps, 68 percent offered resident camps, and 14 percent offered wilderness programs.

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- Eighty-eight percent of the camps shared they have a formal emergency and disaster management plan or an emergency action plan (EAP).
- Forty-four percent of the camps indicated they have indoor space in the event of an active shooter.
- Fifty-four percent of camps stated they can transport all campers and staff in an hour to a designated location.

The Redwoods Group, an insurance company, reported that in 86 percent of the recent visits to customers, Redwoods employees were able to get inside of the building without being questioned.⁴

In an April 2015 *Huffington Post* article⁵, security consultant Joshua Gleis warned that many camps are failing to adequately deal with the fact that summer camps have become what is known as a soft target.

Gleis also states that as schools have begun to tighten their security protocols making them more difficult to attack, summer camps often remain wide open. The good news is that much can be done to change this.

In talking with individuals from large organizations that work with multitudes of camps (YMCA, Union for Reform Judaism, JCCA), and in reviewing the recommendations from the Department of Homeland Security (DHS) and other security resources the following are actions that should be taken by all camps.

According to the Federal Emergency Management Agency (FEMA), emergency management functions are generally grouped into four

phases: mitigation, preparedness, response, and recovery. The grouping of emergency management functions is useful for classifying and conceptualizing activities. While conceptually useful for targeting efforts and resources, the phases of emergency management are not distinct — activities in each phase often overlap.⁶

• MITIGATION

- Conduct a “safety and security” audit of your property.
 - Consider having an outside consultant conduct this audit (or your local authorities such as police, sheriff, or emergency management).
 - Someone trained in this skill will view your property and buildings with a trained eye and critical lens. They will identify “challenges” you might miss.
- Recognize that deterrence is critical (gates, guards, cameras, someone near the entrance to camp, someone in the front of the office, use of signage, lights, etc.) You want to send a message that you take safety and security seriously.
- Once you have analyzed the nature of your facilities and programming, create standards and protocols in safety and security. This will be the basis of your plan.

• PREPAREDNESS

- Establish a solid relationship with local government agencies (police, fire, sheriff, public lands contacts, Department of Transportation, and if near train tracks, the rail road) as you work to develop your plan to address identified threats while incorporating your responses.
 - Make sure to share pre-planned entry/exit routes and any necessary access codes for the local fire department, law enforcement, emergency medical services (EMS), etc.
 - Provide detailed maps of the facility to the dispatch system(s).
 - Invite key individuals from the agencies for a tour of your facility. Have them for lunch. Allow them to host trainings at your facility.
 - Hold a pre-season, in-person briefing.
- Develop your plan.
 - Use the information obtained in your “audit” and recommendations from the local authorities
 - Consider using a template, which can then be adjusted and/or expanded for the various situations such natural disasters, human-caused disasters, etc.
 - There are many resources available — talk with your local school district, camps in your areas, community centers, and places of worship. Determine how you might work together.
 - Realize there must be some flexibility in any plan based on the reality of the situation.
- Review your plan annually. Things change!
- Train, rehearse, train, rehearse, train, rehearse:
 - Training your staff to manage urgent situations is critical.
 - Consider who needs to know what and realize that all staff (and campers) need basic information so they know how to respond immediately and appropriately.

A note on terminology: Over the past several years, law enforcement and emergency management departments have “standardized” their language and terminology. School districts are doing the same. Prior to this, different agencies might use different words to mean the same thing, leaving a statement open to interpretation. This caused mis-steps and issues. Generally, the terminology used in this article is what is currently recommended by authoritative sources and used by most law enforcement, fire, and emergency services. A “camp equivalent” is referenced, yet when working with your partners, it is important to use their language and terms. As you work with your emergency contact, having a conversation related to terminology used is important.

Become familiar with and consider using the Incident Command System (ICS). ICS is a standardized approach to incident management that:

- Enables a coordinated response among various jurisdictions and agencies.
- Establishes common processes for planning and managing resources.
- Allows for the integration of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.

ICS helps ensure integration of response efforts. ICS is a standardized, on-scene, all-hazards approach to incident management. ICS allows all responders to adopt an integrated organizational structure that matches the complexities and demands of the incident while respecting agency and jurisdictional authorities. Although ICS promotes standardization, it is not without needed flexibility. For example, the ICS organizational structure can expand or contract to meet incident needs.

training.fema.gov/emiweb/is/icsresource/index.htm

- Your plan should include responses for the most common (weather-related issues), for missing campers, active threats, etc.
 - Staff are the eyes and ears — train them for different scenarios so they can use their best judgment.
 - Rehearse different scenarios at different times (during the various levels of staff training and with campers. Remember — most campers will have received similar “training” at school).
- When available, take advantage of “reverse 911” and/or county emergency text message systems. These can alert you to severe weather, active threats, fires, etc. Depending on location, some camps monitor the police scanner.
- Establish a communications plan with authorities, the media, and parents. Develop your protocols and include this aspect in your training. It is important to respond to parents in a thoughtful, serious manner.

• RESPONSE

To address the potential “language/terminology” confusion, consider using standard response protocols (SRP)⁷ as outlined below.

Hold: “Hold in your classroom/program area” is used when there is an issue in a specific part of the building/camp that is under control, but not yet fully removed. Business as

usual within the classrooms/programs area; doors closed. Remain in place until an all clear is announced.

Shelter: Ordered when personal protection is necessary from dangerous weather conditions such as a tornado, blizzard, or hail. May also be ordered in the event of a hazmat situation in the area.

Evacuate: Ordered when people must exit the building (or camp) due to unsafe circumstances. If student/camper pick-up or off-site reunification is required, instructions will be communicated by the camp. Staff should bring phones if they are readily available. Take a “go bag” if one is packed and time allows (camps in known fire areas often have campers pack a “go bag” or have counselors pack a “go bag” by cabin. The bag includes a change of clothes for each camper in the event they are away from camp overnight). Leave all other belongings behind and follow instructions.

Lockout: Ordered when there is an issue **outside the building/off camp property**, most often due to police activity in the area that could pose a threat, or a wild animal nearby. Consider moving campers to buildings if possible. All exterior doors are locked while “business as usual” continues inside the school/at camp. Staff must have an increase in situational awareness.

Lockdown: Ordered when there is a threat **inside the building (or on camp)**. Students/campers and staff are secured *in* the school (or designated buildings). School/camp staff does not communicate during a lockdown. Parents are not allowed on site during a lockdown. Interior doors are locked/barricaded, the lights should be out, and all should do their best to remain out of sight and maintain silence.

EXAMPLES of what might occur when:

Severe weather — schools/camps may shelter until weather passes; could delay the release of students/campers at the end of the day until it is safe to exit the building, or might impact programming at resident camp.

Fire or hazmat situation in the area — evacuation or shelter, depending on location and the severity of fire/hazmat issue.

Threat of violence or weapon on a person — lockout, lockdown, or evacuation, depending on the situation.

Some entities (schools, churches, camps) will have a “black box” (think some type of tool box) that will contain important camp maps with cut-off valves for water, gas, and electric noted, important phone numbers, rosters, necessary keys, and maybe a radio for communication with camp staff. Emergency personnel are made aware of this resource should it ever be necessary.

Intruder — requires an immediate lockdown; an emergency notification will be sent to parents by the district with any instructions.

Police Activity in the Area — usually a lockout; action may be taken at the direction of law enforcement or any staff member at the school.

Communication with authorities will vary during these different scenarios. It is important to instruct campers/staff to listen and clearly follow any directions provided.

• RECOVERY

- Know your assets ahead of time: Who can help clean up and get things back in order if damage has been done? What financial resources do you have available?
- Once “back and operating,” determine what should change — back to the mitigation phase.

Additional terminology used in the event of an active threat includes:

Hide = shelter/lockdown. Consider if campers/staff should be all in one place or a variety of locations.

Run = evacuate, although this would more likely be on foot and toward a pre-designated type of area.

Fight = as it states, throw things, kick, scream, tackle the intruder(s).

Authors:

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Photo courtesy of Camp Howe, Coashen, MA

Learning from Others

It is important for you to plan and determine what works best for your camp. Once you have conducted your assessment and worked with your local authorities to help develop the plan, there is no shortage of resources that are readily available and can easily be adapted for the camp setting. Some of them include:

i love u guys Foundation: www.iloveugays.org

This site includes plans, posters, and a variety of resources that, while designed for schools, could be readily adapted for camps.

A.L.I.C.E. Training (Alert, Lockdown, Inform, Counter, Evacuate): www.alicetraining.com

Youth Emergency Preparedness Curricula – Ready Kids: www.fema.gov/media-library/assets/documents/34411

American Camp Association website on Camp Security: www.ACAcamps.org/resource-library/camp-security

Federal Bureau of Investigations: www.fbi.gov/about/partnerships/office-of-partner-engagement/active-shooter-resources

US Department of Health and Human Services: www.phe.gov/preparedness/planning/pages/eops.aspx

Department of Homeland Security www.dhs.gov/active-shooter-preparedness

Bureau of Justice Assistance www.bja.gov/ProgramDetails.aspx?Program_ID=106

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⁷ i love u guys Foundation

General References:

Secure Community Network: Camps scnus.org/resources/institutional-safety-and-security-library/camps

Security at Summer Camps: What You Need to Know. Ben Harris, www.timesofisrael.com, February 20th, 2017



ACA Adopts Two Public Policy Position Statements

On the recommendation of the ACA Government Relations Committee, in November 2017, the Executive Committee of the Board of Directors adopted two new position statements advocating for tax reform.

Overnights camps and the US tax code

ACA supports amending the US tax code to allow overnight camp families to qualify for the same tax credit that is provided to families that utilize day camps and child care centers. ACA supports expanding the Child & Dependent Care Tax Credit (CDCTC) to include overnight camps. CDCTC is currently available to subsidize the cost of day camps, including specialized day camps such as sports camps or artistic camps. The current tax code explicitly excludes overnight camp families from qualifying for CDCTC.

Depreciation impacting camps and the US tax code

ACA supports decreasing the current depreciation time periods within the US tax code to help camps. Depreciation is an accounting method of allocating the cost of a tangible asset over its useful life. Camps depreciate long-term assets for both tax and accounting purposes. For tax purposes, camps can deduct the cost of the tangible assets they purchase as business expenses; however, camps must depreciate these assets in accordance with IRS rules about how and when the deduction may be taken.

Learn more about ACA's Public Policy Position Statements

www.ACAcamps.org/about/who-we-are/public-policy/aca-public-policy-agenda-and-position-statements



Tax Reform Update

In December 2017, President Trump signed the tax reform legislation passed by Congress. The highlights of the conference agreement reflect the changes to the tax law, courtesy of Crowe Horwath, LLP.

Tax reform highlights for exempt organizations:

www.crowehorwath.com/insights/asset/tax-reform-highlights-for-exempt-organizations

THE CAMPLINE

Published three times a year by the American Camp Association.

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