

Working with Minors Legal Issues

Catherine Hansen-Stamp
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8:30 – 10 a.m.

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This presentation

This presentation contains general information and is not intended to provide specific legal advice. Organizations should consult with appropriate legal counsel, regarding matters specific to their business and aware of the laws in their jurisdiction.

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Focus – Why are we here

➤ Endeavor to run a Quality Program!



➤ Choosing to responsibly manage risks rather than just avoid lawsuits



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Perspective - WRMC

➤ Risk management – *not risk elimination*

➤ Goal: responsibly managing risks (www) *considering risk of loss to participant and to operation*



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Minors – Some issues

- Helicopter parents; divorced parents
- The “new” kid
- Marketing tension – what parents want vs...
- The triangle: OPC – recognize and address
- Info Exchange is key: accurate, balanced
- Minors (and parents): personal responsibility

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Minors – Other Issues

- Supervision d/n = assuring safety
- Instruction – freedom to teach/learn Kahn
- Free and unstructured time – articulate
- Minor LIT, apprentice et al.
- **Sexual abuse**: who? where? PDRRR
 - 1995 Co-ed tenting Mock Trial to current –
 - Camps, schools, churches and ANY organization service youth

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Minors and Law

What ‘law’ are we talking about?

- Civil and Criminal Law
- Case Law (‘common’ law)
- Statutes & regulations



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Civil Law

Focus Torts - Negligence



- Most common ‘legal’ measuring stick (standard of care):

That degree of care that a reasonably prudent person would exercise in the same or similar circumstances (Reasonable care)

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Tort – Negligence

Zeroing In

The standard of care forms the basis for the duty owed in a negligence claim:

The duty to exercise reasonable care to protect others from unreasonable risks of harm.

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“Tort” of Negligence

Elements:

- Duty
- Breach
- Proximate cause
- Damages



There must be all 4 elements!

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Liability for Negligence

- Organization:
 - direct liability
 - liability for acts of staff (or others)
- Staff member direct liability

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Negligence

Common claims - negligence in:

- Hiring and training staff
- Supervising participants/staff
- Instructing participants
- Warning; “safe environment”
- Maintaining equipment

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Negligence

- Is there always a duty?
No, but by virtue of: 1) offering out services and 2) custodial relationship... duties arise
 - What is 'in loco parentis'?
'Reasonably prudent parent' or other?
- *Amoako, Munn

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Negligence - Duty

- Judge: determines existence and scope of duty.
- Fact-finder: determines if there is a breach of duty.

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Negligence: Duty/Breach

- A variety of factors can *create, eliminate or influence* the duty
- These factors impact the basis for a negligence claim and any defenses to a claim

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Factors – Duty/Breach

- Control or oversight
- Nature of relationship - e.g. 'custodial'
- foreseeability
- State or federal laws and case law
- Standards and practices
- Gratuitous undertaking

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Factors – Duty/Breach

- Your internal policies (oral or written)*
- Staff words or conduct*
- Representations in your external materials*
- Your contracts*
- Known problem that isn't fixed
- After program contacts *Camp Sunshine

*Information exchange

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Perspective: Defenses to Negligence

- Absence of any element, (including) no duty or eliminating the duty
 - Inherent Risk doctrine (PAR)
 - Parent for Minor Release of Liability (in larger agreement containing description of activities, risks and AAR, among other important provisions) Eriksson, Kelly
 - Immunities – volunteers, governmental, coaches

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Defenses to a Negligence Claim

- Reduce or eliminate ultimate liability
 - Comparative Fault laws: Plaintiff's contributory negligence or secondary Assumption of Risks

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Duty/Breach potential

- Where is duty/breach potential?
- Where does your program manage risks?
Two Silos



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Chavez v. City of Santa Fe Springs
2011 Cal. App. Unpub. Lexis 9462

- City sponsored high school youth trip to Mt. Whitney – state park.
- City employees chaperoned trip; no chap. training and attending teens not required to have experience to attend.
- Parent meeting: assurance that children would be safe and “supervised at all times.”
- Parent signs aar/release/indemnity for 16 yr. old son John.
- Trip itinerary reflecting ‘some free time’ – not distributed to parents.
- Day 2: 3 boys, including John, obtained permission from chaperone to hike to a waterfall 1 mile from campsite.
- Boys stepped out on rocks above falls; 2 boys returned to shore, admonishing John to come back. He did not. Fall resulting in death.
- Lawsuit by mother against City and supervising employee for herself and on behalf of her son’s estate: negligence and gross negligence.
- City: PAR and release form signed by parent barred claims.
- Lower court granted City’s motion and dismissed – release, no g.n.
- Plaintiff appeals

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Nowlin v. Moravian Church, et al.,
745 S.E. 2nd 51 (N.C. 2013)

- 16 yr. old Summer Nowlin attended defendant’s summer camp.
- Last night: campers participated in “The Game.” The goal: campers sneak around camp staff members at night, through a wooded area, and ring a bell on a hilltop.
- Summer’s Game partner was camper Molly. Summer and Molly met with camp staff members Crawford and Harrison. Molly left with Harrison, leaving Summer alone with Crawford.
- Summer alleged that when she and Crawford were alone, he kissed her, pushed and held her down, and engaged in sexual intercourse.
- After the incident, she did not initially report (2-3 mos. later).
- Crawford initially denied incident but later claimed it was consensual
- Complaint by Summer and father against Camp: negligent failure to provide safe environment; negligent hiring/ret./supervision of staff.
- Camp: Motion for SMJ before trial to dismiss on both counts.

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Contact Information

Catherine Hansen-Stamp
13245 Willow Lane
Golden CO 80401

Office: 303-232-7049/Cell: 720-320-7329

reclaw@hansenstampattorney.com

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