

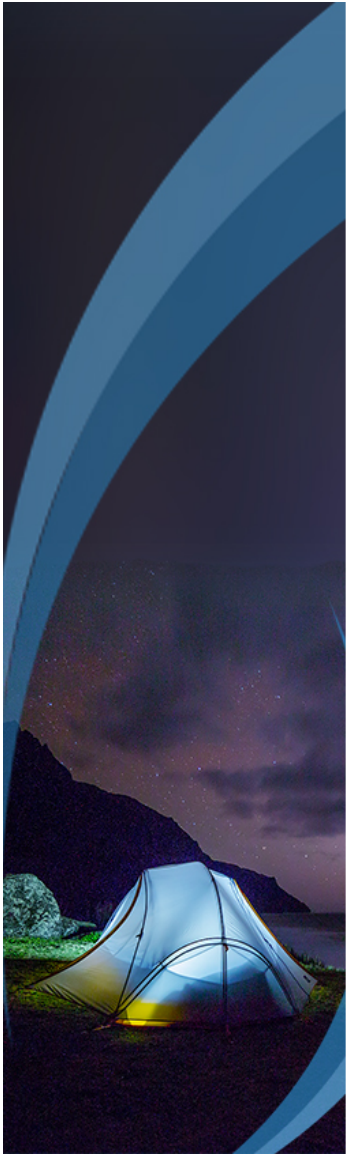
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Lessons for Handling Sexual-Related Incidents: *Exploring the Legal, Operational and Administrative Challenges*

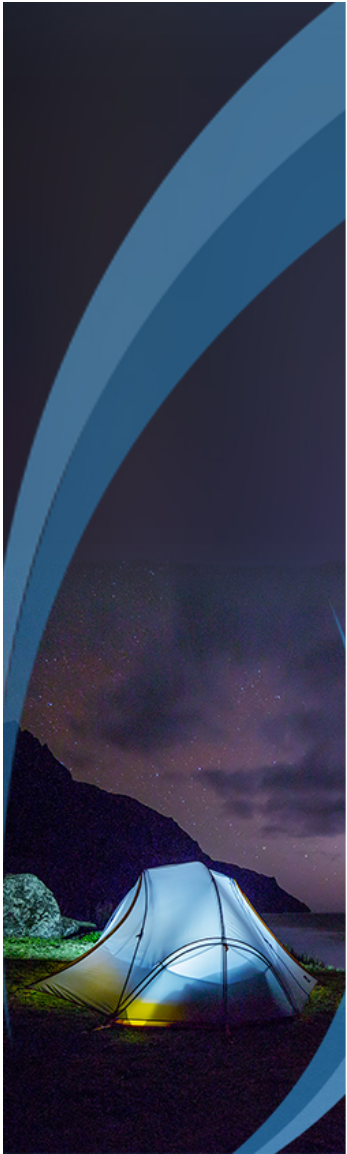
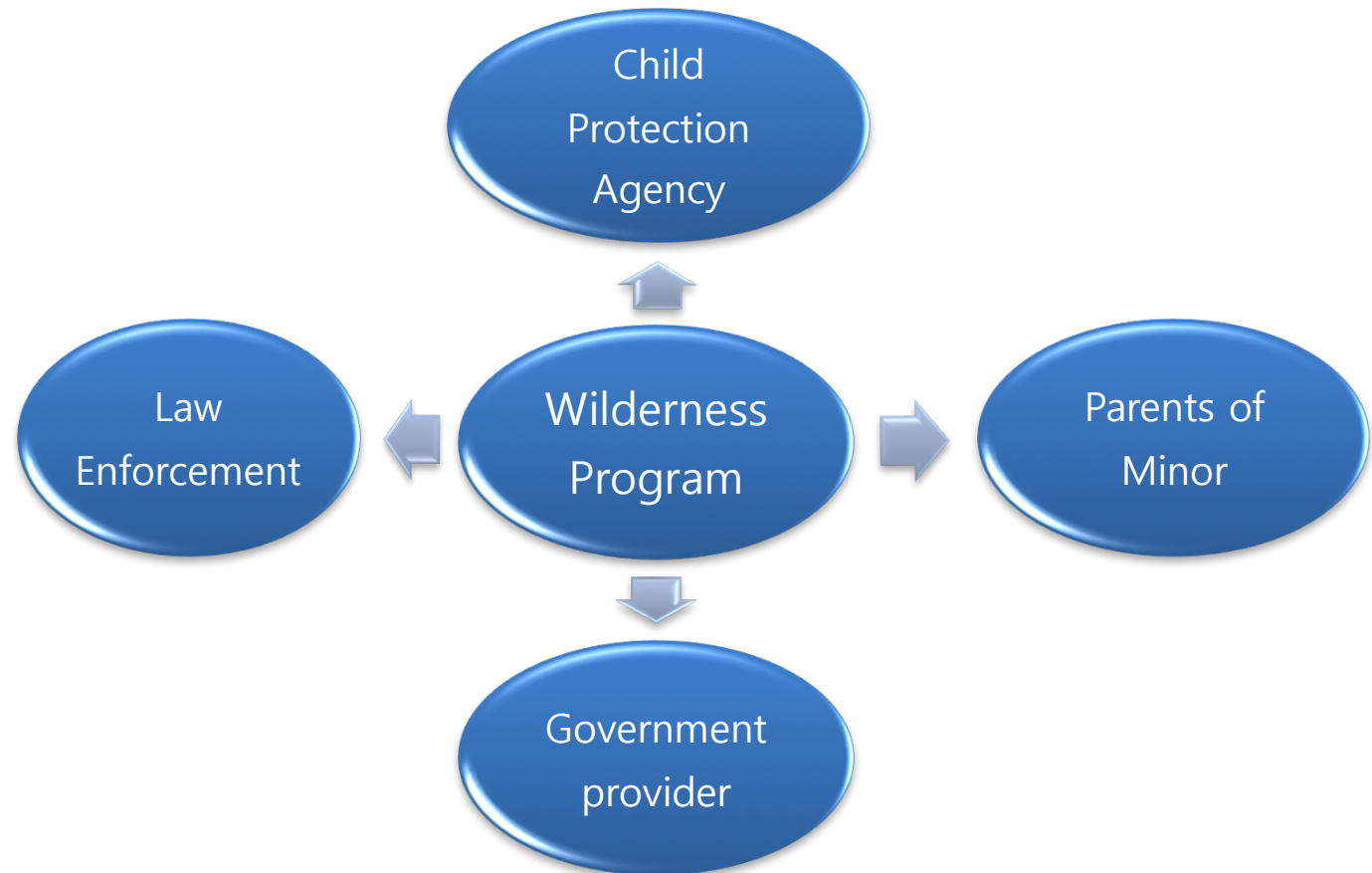
- ❑ Traci T. McKee, Esquire, Henderson, Franklin, Starnes & Holt, P.A.
- ❑ Dave Dennis, Resilient Solutions, LLC
- ❑ Doug Stevens, Caplan & Earnest

Case Scenario

- During an overnight camping trip, an instructor learns that a 17-year-old student engaged in sexual acts with a 14-year-old student.
- Both students advise the instructor that the sexual act was consensual, and the instructor feels comfortable the act was consensual.

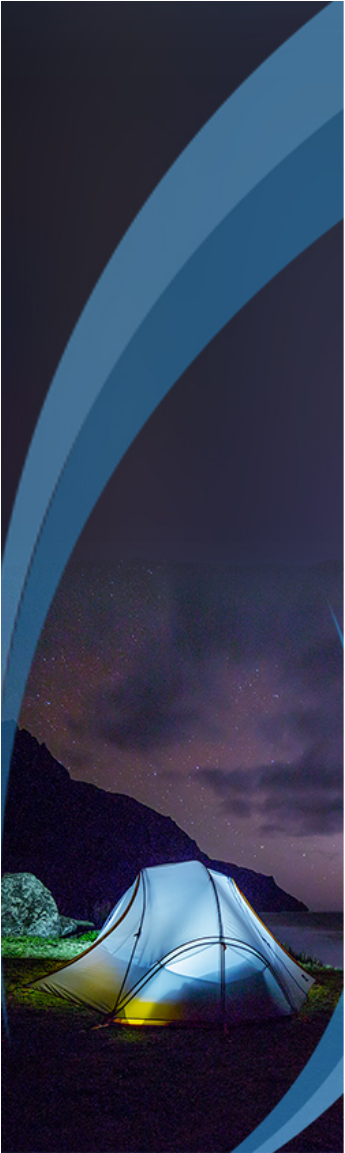


Who should be notified?



Critical Questions That Must Be Asked

1. Is the wilderness program employee a mandatory reporter under governing law?
 - If yes, under what circumstances must a report be made?
2. Is the sexual act at issue a crime under governing law?

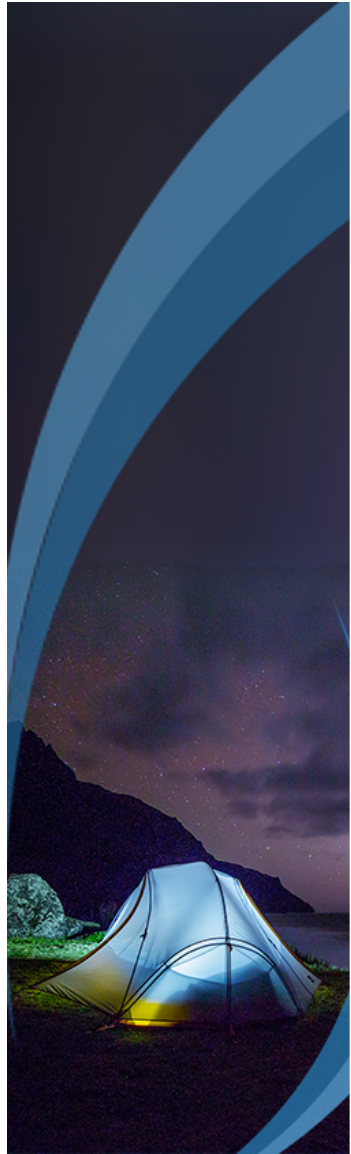


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Child Protection Laws: Mandatory Reporters

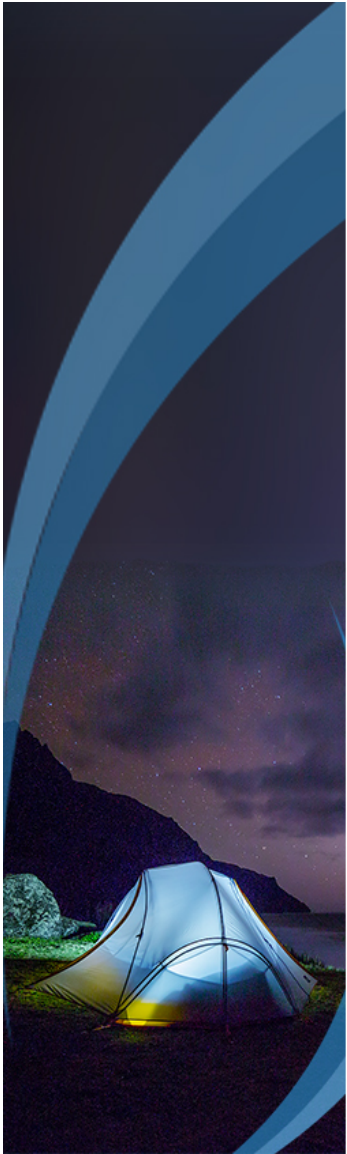
- Child Protection Agencies operate under state law

Florida	Maine	North Carolina	Colorado
<p>"Mandatory Reporters"</p> <ul style="list-style-type: none">•ANY person	<p>"Mandated Reporters"</p> <ul style="list-style-type: none">•Youth camp personnel or counselor•School official•Child care personnel	<p>"Mandatory Reporter"</p> <ul style="list-style-type: none">•ANY person or institution	<p>"Mandated Reporters"</p> <ul style="list-style-type: none">•Workers in a facility or agency licensed under C.R.S. §26-6-101•School personnel



Child Protection Laws: When Must a Report be made?

Florida	Maine	North Carolina	Colorado
When ANY person knows or has reasonable cause to suspect that a child is the victim of childhood sexual abuse.	When a MANDATED REPORTER knows or has reasonable cause to suspect that a child has been or is likely to be abused.	When ANY person or Institution has cause to suspect that any juvenile is abused, neglected, or dependent.	When a MANDATED REPORTER knows or suspects child abuse, or circumstances or conditions which may reasonably result in abuse.



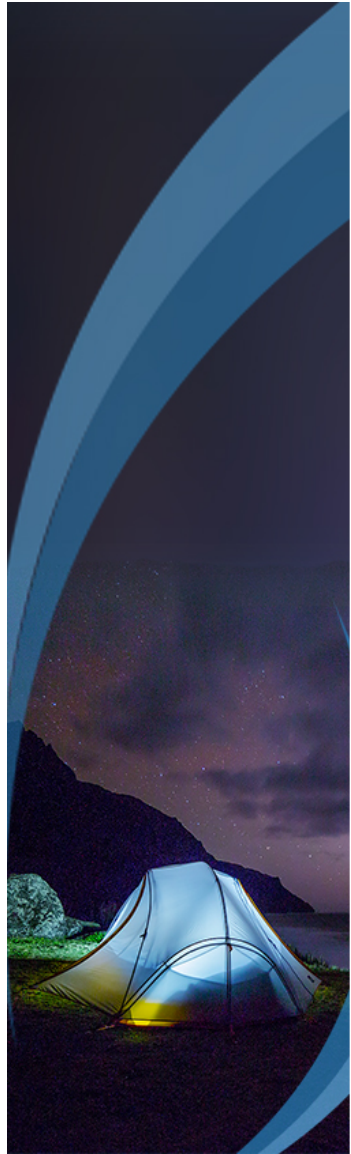
Crimes Involving Minors

Florida	Maine	North Carolina	Colorado
A 16- or 17-year-old may legally consent to consensual sexual conduct with a person 16-23 years of age.	Actor is guilty of sexual assault when the actor engages in a sexual act with a person who is either 14 or 15 years old and the actor is at least 5 years older.	An actor is guilty of statutory rape or sexual offense of a person who is 13-15 years old if the actor is 5 years older than the victim.	Person under age 15 can consent to sex with someone no more than 4 years older; OR Person under age 17 can consent to sex with a person no more than 10 years older.



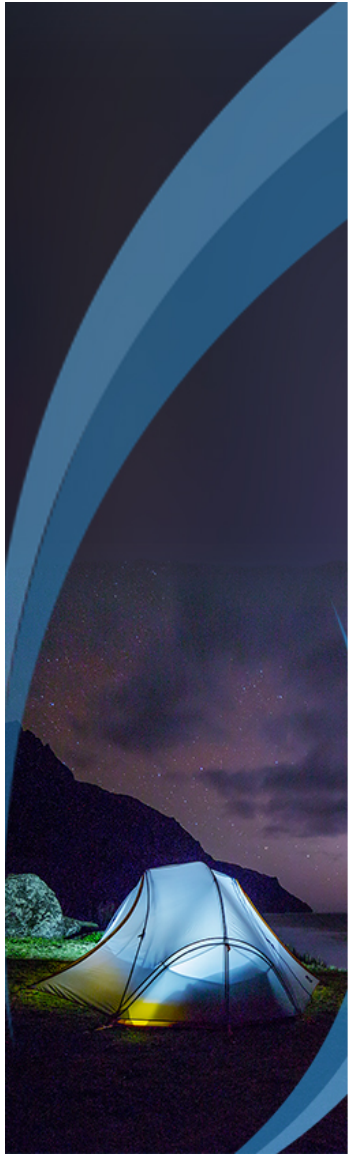
Who should be notified?

- **Parents**: Almost always
- **Child Protection Agency**:
 - Depends upon answers to previous questions
- **Law Enforcement**:
 - Depends upon answer to previous questions
- **Government Provider**:
 - What does the contract specify?



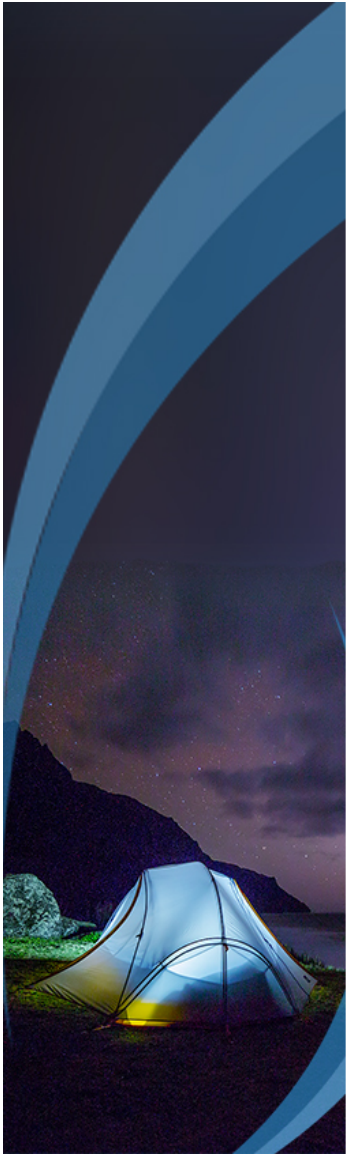
Case Scenario with a Twist

- During an overnight camping trip, an instructor learns that a 17-year old student engaged in sexual acts with a 14-year-old student.
- However, one of the students advises the instructor that the sexual act was non-consensual.



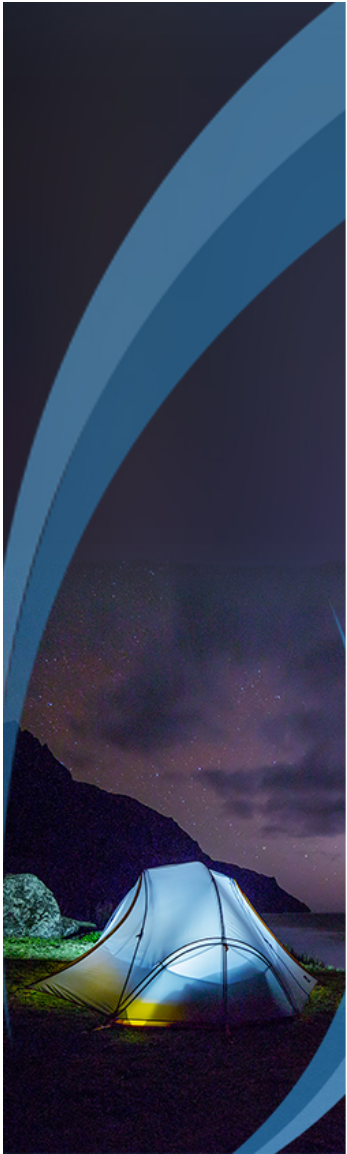
Case Scenario with Another Twist

- During an overnight camping trip, an instructor learns that a 17-year old student may have engaged in sexual acts with a 14-year-old student.
- Both students deny the encounter. The instructor believes, but cannot confirm, that sexual conduct likely occurred between the students.



Why not err on the side of caution and report every potential incident?

- Negative Ramifications of Investigations
 - Organization and Employees
 - Who Can Access Negative Findings
 - Protecting Organization and Employees
 - What if a claim/lawsuit is later filed



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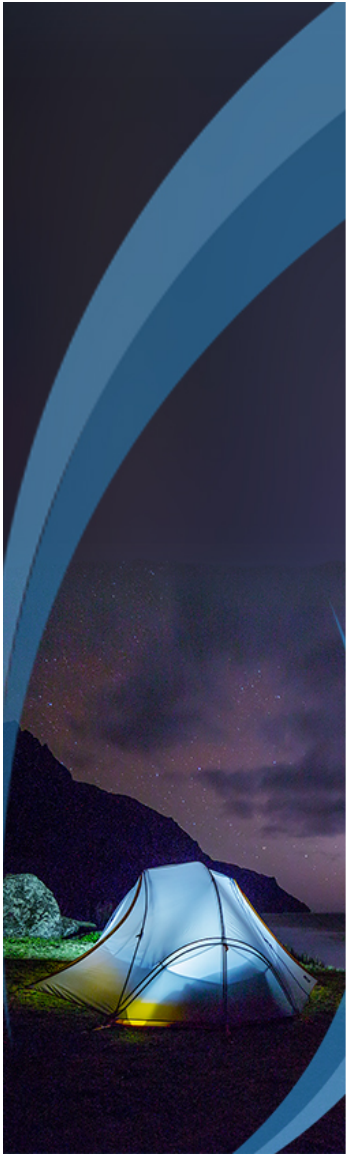
Case Study

Vendor to Student Assault, International Adventure Program



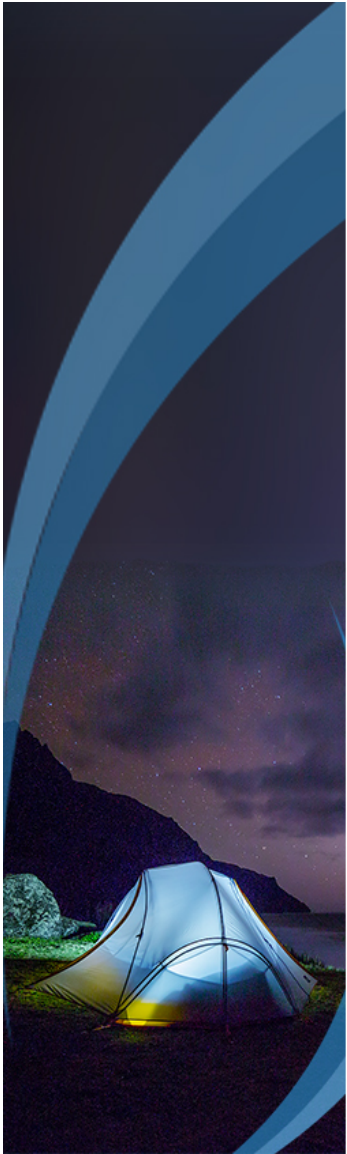
Case Scenario

- School group to Peru
- 8-Day program, community-service based
- Group size: 16 participants, 2 chaperones, 3 trip leaders.
- Day 3: Zip lining (subcontractor)
- Subcontractor completed business/safety assessment within previous 6 months
- Participants paired for longer sections.



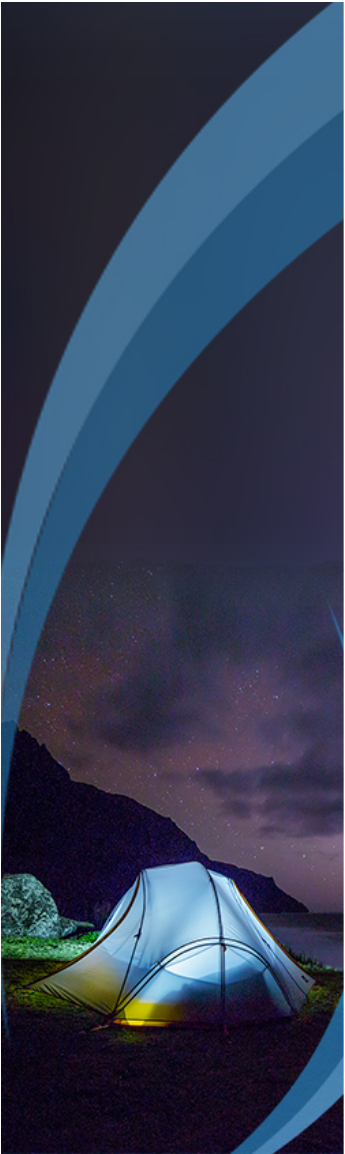
Case Scenario | Vendor to Participant

- After activity, chaperone overhears “Zip-line guide was touching me.”
- Chaperone tells trip leader the participant over-reacting.
 - “We were told the guide would need to wrap legs overtop their partner.”
 - Trip leader checks on participant, “We’re fine.”
- Later, participant tells trip leader “felt violated, chaperone is not supportive.”



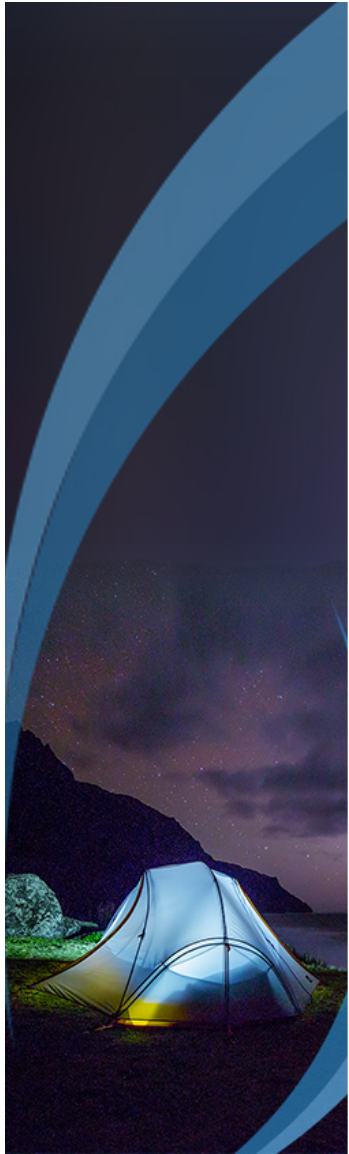
Case Scenario | Vendor to Participant

- Tour company, school, & vendor notified <12 hours of claim.
 - ✓ Guide suspended from further involvement.
 - ✓ School decides no further action needed.
 - ✓ Tour company caught in middle, continues investigation.
- Participant's parents nor authorities contacted
 - ✓ Participant is 18 years old.
- Management talks with affected participant on Day 4, no additional issues afterwards.



Case Scenario | Vendor to Participant

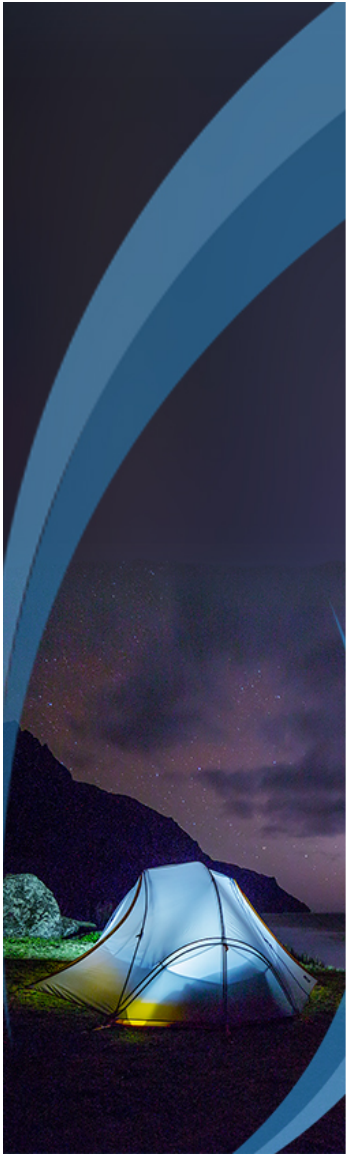
- 5 days after returning home, parent calls tour company.
 - ✓ “My daughter was assaulted on your trip! We’re seeking legal advice and you will not get away with this.”
 - ✓ Parent’s position is school not responsible, tour operator breached duty of care.
 - Responsible for the zip-lining guide(s)
 - Did not support his daughter
 - Claimed knowing “a troubled history with this guide” and tour company covered up the incident.



Actions

- Insurance & legal notified
- Further investigation, discussion with school / vendor.
- Continued contact & support with family(s).
- Suspended zip line in Peru

What else needs to be done?



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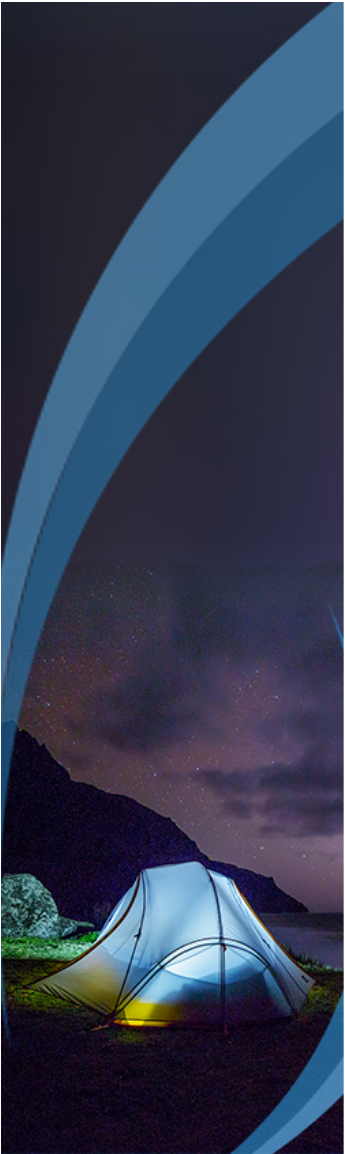
Case Study

Staff-to-Student Intimacy, International Adventure Program



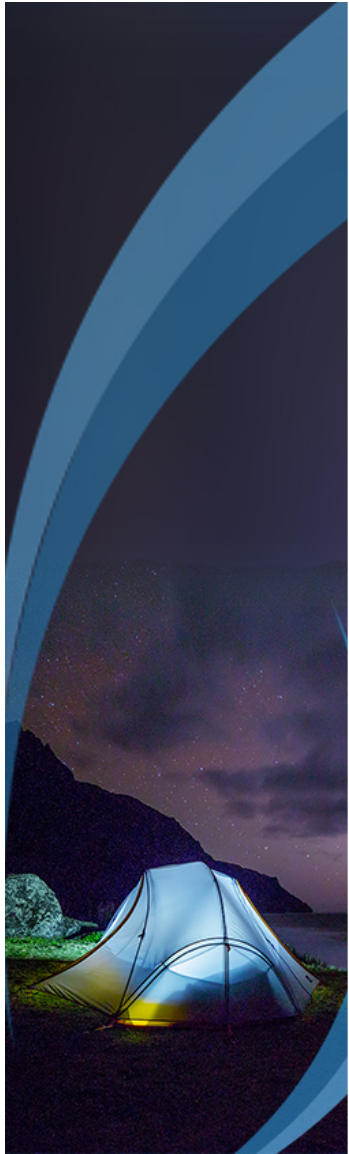
Case Scenario

- 17-year-old American male spends 5 weeks in Australia.
 - ✓ Includes 2 weeks independent travel, 3 weeks adventure program.
- After returning home, male is diagnosed with “lifelong STD”.
- Parents call tour operator reporting assault by local staff member. Staff member is 24 years old.



Case Scenario | Staff to Participant

- Investigation launched
 - ✓ No incidents reported
 - ✓ No change in participant behavior during program
- Trip leader admits to two consensual acts, claims participant provoked intimacy.
- TL agrees to STD testing
 - ✓ Negative results, employment terminated
- U.S. Embassy notified by tour operator. Embassy requires family to make report. Australia age of consent is 16.



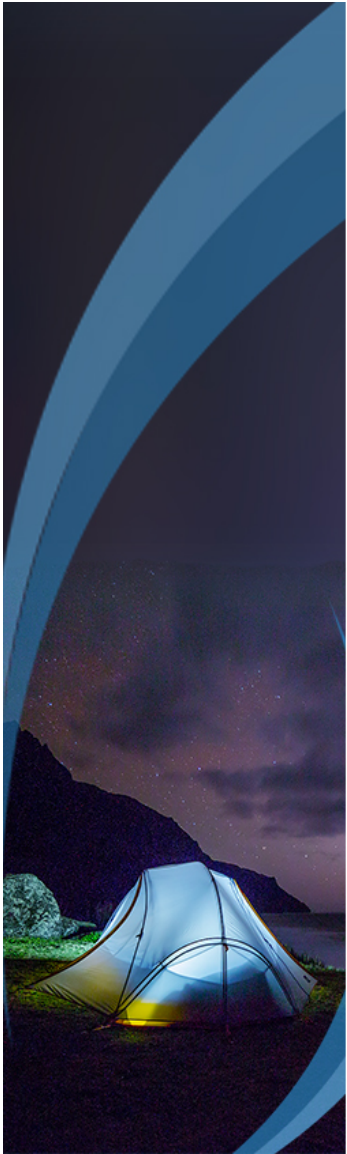
Case Scenario | Staff to Participant

- 3 days later, parents raise new assault claim involving different trip leader
 - ✓ Second TL admits to kissing student
 - ✓ Claims student initiated act
- Same investigation & STD testing
 - ✓ Negative results, employment terminated
- Family support
- Legal and insurance contacted



Discussion

- What are tour operator's obligations?
 - ✓ To the family
 - ✓ To the participant
- Does it matter that age of consent in Australia is 16?
- How should tour operator handle situation when evidence is contradicting participant's storyline?



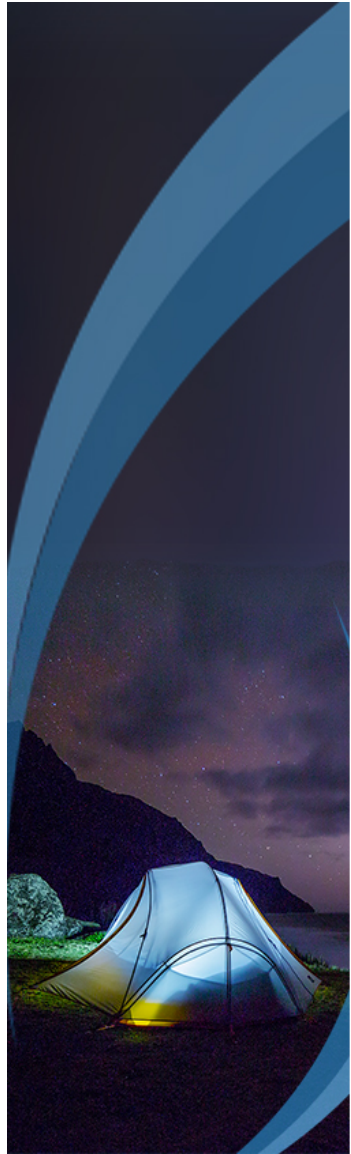
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Action Items To Consider



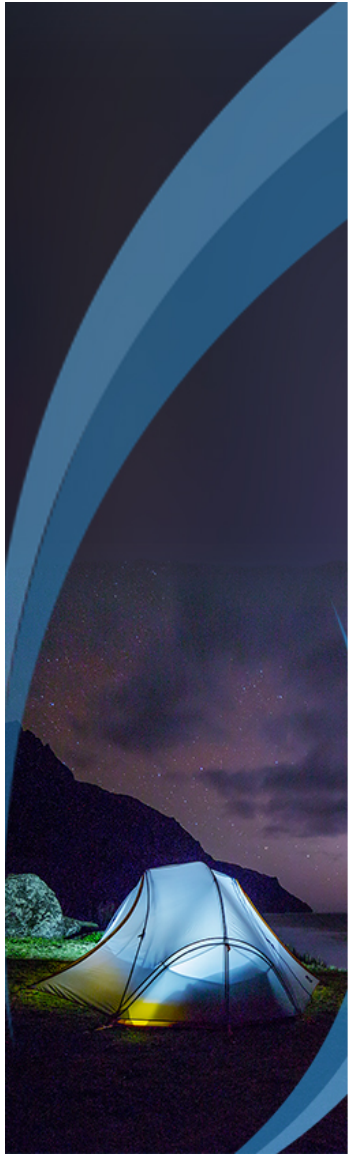
Pre-Trip Actions

- Enrollment forms (well-written liability waivers)
- Vetting (chaperones, employees, vendors, students?)
- Insurance coverage (sexual assault inclusion)
- Contracts with schools and vendors
- Child protection policy (sexual assault inclusions)
- Process for investigating incidents
- Trip leader training



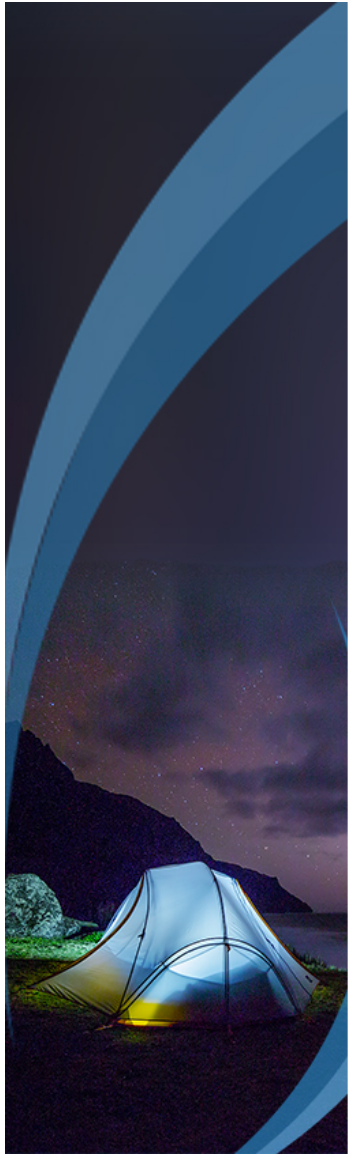
Incident Response

- Supervision and support (staff, participants, chaperones)
- Incident communications
- ALWAYS act on information
 - ✓ Remain aware of “quiet ones”
 - ✓ Involvement in law enforcement
 - Mandatory for minors, optional 18+
 - ✓ Mandatory reporting?
 - ✓ U.S. Embassy contact
- Immediate incident investigation
 - ✓ Consider law enforcement



Post-Incident Actions

- Ongoing support for participants
- Clear & intentional communication without bias
 - ✓ Participants and families
 - ✓ Vendors
 - ✓ Other associated parties
- Focus on human safety, not solely business protection.
- Media response
- Report to insurance company and legal counsel
- Determine adjustments (trips, response plans)



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Q&A / Open Discussion



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