

Big Decisions in the Field and their Legal Implications

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Presentation Overview

Real Incidents from Wildlands Studies

Field and Administrative Decisions

Legal Liability

Outcomes/Organizational Changes



Field Based Decisions and the Law

The role of the Lawyer

Protecting organization /protecting student

Legal response considerations

Student Mutiny in Iceland

- New program, leader hired, skilled academician
- Proclaimed outdoor person “lots of experience”
- Iceland plagued by non-stop rain and 40’ temperatures
- By Day 2 obvious no outdoor skills and emotionally unstable
- Students become wary, then upset, then adamant - **“We don’t feel safe”**
- Day 9 Instructor removed; Co-leader takes charge



Student Mutiny in Iceland

KEY FACTORS

- References not checked
- Weather made camping more challenging
- Students are outdoor people with extensive experience
- Instructor lied re outdoor experience and group management
- Instructor's behavior irrational, inappropriate (crying, yelling, belittling)
- Co-instructor qualified to take lead



Student Mutiny in Iceland

ACTION STEPS

- Attempted to coach Lead Instructor, understand going on
- Talked with TA to get perspective
- Day 7 first call to Reb for advice
- Day 8 by mid-day 3 parents call, 2 students then entire team email
- Day 9, effort to convince co-Instructor to take leadership
- Instructor removed; Departs within 2 hours

Field Based Decisions with Legal Implications

- “UNSAFE” was the tipping point – hard to defend in court
- Considerations
 - Responsibility to student
 - Organizational liability with “unsafe” instructor
- Balancing academic and risk management skills

Organizational Changes

- Re-evaluated hiring process –
 - reference checks
 - outdoor & risk management
 - group management
- Established criteria for leadership team qualifications
- Insurance review to purchase program cancellation coverage

Student Firewalker

- Accepted student (Firewalker) immediately causes concerns
- Day 9 of 12-day backpacking trip, regular evening campfire, instructors go to bed
- 1 beer allowed around campfire
- 3 students stay (including Firewalker); agree put out fire



Not actual instructor

Student Firewalker

- Students exceed drinking allowance
- Firewalker **decides to walk across the hot coals**
- Initially lies/denies, but when instructors insist on seeing his feet he confesses

Student Firewalker

KEY FACTORS

- Drinking allowed following “Alcohol Policy”
- Red flags early on with Firewalker regarding self care, awareness, responsibility, pushback of regular rules
- Students left alone at fire
- Firewalker 21 years old



Not actual “Firewalker”!

Student Firewalker

ACTION STEPS

- Immediate trailside medical care
- Immediate change to alcohol usage – program made “dry”
- Established tougher rules and expectations for behavior
- Must wear shoes, keep blisters clean

Field Based Decisions with Legal Implications

- What is obligation of organization when allow for young adults to drink alcohol (unsupervised)
- Is this “abandonment of supervision”?
- Risk of inadequate medical care
- How can you legally remove a student:
 - Align Mission to activities, then activities to risk, then risk to behavior

Organizational Changes

- Modified alcohol policy; made majority of programs “dry”
- Added Firewalker case in pre-program planning discussion with all instructors
 - Campfire rules and expectations
 - Alcohol usage and “dry” programs
- Additional application screening questions added to address behavioral concerns

(Adult) Students' Sexual Conduct

- 2 students couple up Day 4 (of 44 day program)
- Isolate themselves, share tent
- Appear to have a consensual sexual relationship
- Instructor, almost fatherly, pulls each student aside to discuss safe sex; offers to help get condoms
- Course evaluation reveals students felt singled out, privacy violated
- Student states “should have been part of Orientation to entire group”



Again, not actual couple

(Adult) Students' Sexual Conduct

KEY FACTORS

- Two (young) adults have consensual sexual relations
- No organization policy in place prohibited consensual sexual relationships
- When approached, couple felt singled out, embarrassed
- Instructor felt being prudent, protective, supportive

(Adult) Students' Sexual Conduct – Small groups

As Instructor

Address “safe” sex or leave alone?

Is this appropriate supervision or meddling?

Does instructor cause liabilities to himself? To organization?

Are students being harassed?

As Students

Address sexual relationship or leave alone?

Is Instructor meddling or helping?

How would they prefer to be addressed?

When does this become a resented intrusion?

(Adult) Students' Sexual Conduct

ACTION STEPS

- Immediate review with instructor on reasons for intervention
- Peer review with faculty in similar situations
- Review of sexual relations policy; comparison with other organizations

Field Based Decisions with Legal Implications

- No organizational policy: does this make “having sex” ok? What are we talking about, really?
- Is Instructor meddling or supporting?
- Exposure to legal liability? (For allowing? For intervening?)
 - Where do you draw the line re “sexual relations”? When is it crossed?

Organizational Changes

- Kept our student policy the same; do not condone “romantic” student to student relationships on programs.
- Pre-Program briefings to instructor now include what to say (or not say) and do (or not do) in similar situation

ACTION STEPS FOR YOU

Check – Is your mission aligned with risks you take, and can you effectively manage those risks?

Provide for consistent debrief that identify leadership challenges in the field

Use cases and lessons learn to further inform and train for risk management in the field

Review risk management plans for liability vs right thing to do. Can you have both?