

# Mandatory Sexual Abuse and Child Molestation Awareness Training for Campus Programs for Minors

## FREQUENTLY ASKED QUESTIONS

The following information is provided to assist you in complying with legal requirements imposed by Section 51.976, *Texas Education Code*, which requires certain employees of campus programs for minors to receive sexual abuse and child molestation awareness training. This FAQ is issued before the Department of State Health Services has adopted any rules implementing Section 51.976. The answers to these questions may be inaccurate after the Department issues rules under this statute.

NOTE: Institutions may require awareness training for individuals beyond what is required by law, and is encouraged to do so to the extent feasible.

### **What programs are subject to the requirements of the statute?**

Answer: Section 51.976 applies to programs that meet the following criteria. The program must:

- 1) be operated by an institution of higher education or be on the campus of the institution;
- 2) offer recreational, athletic, religious or educational activities; and
- 3) be offered to at least twenty (20) minors who:
  - a) are not enrolled at the institution, and
  - b) attend or temporarily reside at the camp for all or part of at least four (4) days.

Programs that meet these criteria are called "campus programs for minors" under the statute.

However, a program is not considered a "campus program for minors" if it is a day camp or youth camp or a facility/program that is licensed by Department of Family and Protective services. These licensed camps, as defined by Sec. 141.002 of the Health and Safety Code, are subject to other state laws regarding training and examination on sexual abuse and child molestation. See Sec. 51.976(a)(2).

### **Who is a minor?**

Answer: Generally, under Texas law a minor is anyone under the age of 18. (However, state law does provide that anyone under the age of 18 who is or has been married, or has a court order declaring the minor may legally act as an adult, is not considered a minor.)

**Do the statute's requirements also apply to campus programs for minors that are conducted off campus?**

Answer: Yes. The statute's definitions encompass not only camps occurring on campus, but also programs for minors that are "operated by" institutions of higher education, which may be off campus. See Sec. 51.976(a)(2).

**Under the definition of a "campus program for minors," the statute only includes programs that last "at least four (4) days." Are those four (4) consecutive days?**

Answer: No. The statute does not use the term "consecutive." Therefore, the "four days" must be must be applied literally. For example, if a program for minors meets once a week on campus over the course of six (6) weeks, camp employees who are in contact with campers must complete the training and examination program if all other criteria for a "campus program for minors" are met since the minors attended the camp for at least four day. See Sec. 51.976(a)(2)(b)(ii).

**What does the statute require if the program is a "campus program for minors"?**

Answer: If a program is classified as a "campus program for minors," the program operator of the campus program for minors:

- 1) May ONLY employ an individual in a campus program position involving contact with minors in the campus program IF:
  - It can be verified that the individual successfully completed a sexual abuse/child molestation training and examination program that has been approved by the Department of State Health Services pursuant to Section 51.976 of the Texas Education Code within the last two (2) years, OR
  - The individual successfully completes an approved program during the first five (5) days of employment and documents its completion.

There are no exceptions to this requirement except for paid students who meet the criteria detailed below. For example, state teachers, state social workers and other individuals who have received in-service training already provided by their place of employment are not exempt from this training.

Also, note, not only are program operators obligated to ensure employees are properly trained, the employee is directly obligated to ensure he or she receives approved training as set out above. See Sec. 51.976(e).

- 2) Must submit verification fees and forms indicating that each campus program employee received the required training under the statute to the Department of State Health Services. (Note, the fee for approval of the training program has already been paid by UT System.)

- 3) Must maintain documentation of each employee's successful completion of the training and examination program for two (2) years from the date of the examination.

**Suppose a campus program for minor only lasts for five days. How is the training to be accomplished if the camp employee has never received the training before and the statute allows five days from employment to complete the training?**

As the purpose of the statute is to provide child abuse/ molestation awareness to those who will be involved with minor campers, the employee training should be successfully completed prior to the commencement of the program on campus.

**Who is the "program operator"?**

Answer: The statute defines the "program operator" as the "person who owns, operates or supervises a campus program for minors, regardless of profit." In accordance with the statute, the program operator is generally responsible for:

- 1) Ensuring that only those individuals with appropriate training are employed in campus programs involving minors;
- 2) Submitting training verification forms and fees to the Department of State Health Services; and
- 3) Maintaining records of completion of training of individuals.

Therefore, for Institution campus programs for minors, the program operator(s) designated by the Institution should be at a level of authority to ensure compliance with these requirements. Who is the program operator may vary from campus to campus given the varying sizes and complexity of the programs on campus. Ultimately, it is the responsibility of the Institution to ensure there is compliance with the law.

Third-parties who contract with the Institution for use of Institutional facilities in order to operate private summer camps and whose programs meet all the requirements of a campus program for minors are the programs operators.

**Does the training requirement apply to volunteers or unpaid students who participate in campus programs operating on campus?**

Answer: No. Only individuals meeting the following elements are required to take the sexual abuse and child molestation awareness training and examination:

- 1) The individual is employed in a position in the campus program for minors, and
- 2) The employee's position involves contact with minor campers.

As volunteers and unpaid students are not *employees* of the campus program for minors, they are not required under the statute to successfully complete the training and examination on sexual abuse and child molestation. (Of note, within the legislative process, the term "volunteers" was removed from the statute. Additionally, the administrative rules being proposed by the Health and Human Services Commission also only use the term "employee".)

However, given the sensitivity of this issue, it is **highly** recommended that, to the extent possible, volunteers and unpaid students should be required to take the training if the individual will be involved with the campers.

**The training and examination only applies to employees who are “in a position involving contact with campers at a campus program for minor.” How much contact must there be with campers for the position to be subject to the statute?**

Answer: The statute does not provide any guidance or descriptors as to what constitutes “contact with campers.” Therefore, “contact” must be read as that word is commonly understood. It is recommended that “contact” be applied as broadly as feasible. The Department of State Health Services may adopt rules in the future that provide some guidance on this issue.

Also, remember that the “contact with campers” only applies to employees of the campus program for minors. Non-employees such as volunteers, guest lecturers, or visitors are not subject to the training and examination requirements.

**Are university students involved in the camp subject to the training requirement? Does it matter if the student is paid or unpaid?**

Answer: If the student is a paid employee in a campus program position and the position involves contact with campers, then the student is subject to the training requirements. However, the statute exempts paid students from the training requirement if the following two elements are met:

- 1) The student is enrolled at the institution, and
- 2) The student’s contact with campers is limited to a single class of short duration.

Unpaid students would not be required to complete the training as they would be considered volunteers.

**Does the training requirement apply to facility maintenance staff, food servers or other individuals who may be around the campers?**

Answer: The training requirement only applies to individuals the program operator may employ in a position involving contact with campers at a campus program. If a program operator hires janitorial staff, food servers or other support personnel for the campus program and the individual will be in contact with campers, then the individuals would be required to attend training. However, for example, if the Institution’s facilities department, or anyone other than the program operator, hired maintenance staff to attend to the entire campus, then these individuals would not be subject to the training requirement. Nor would maintenance staff hired for a position at the campus program, for example, be subject to the training requirement if the repairs or cleaning were to occur in the evening when no campers would be present as the position would not involve contact with the campers.

**Are University employees who assist with camp check-in or other administrative duties required to complete the training since they could potentially have unsupervised contact with the minor campers?**

Answer: Yes, if the campus program for minors is owned, operated or supervised by the Institution.

**Our campus often provides tours of the campus to minors attending a campus program. Would the university tour guides required to take the training?**

Answer: If the tour guides are hired by the University to provide campus tours to anyone requesting a tour (i.e. parents, visitors, potential student applicants), then the tour guide would not be required to take the training under the statute. If the guides were hired for the primary purpose of giving tours to minors attending a campus program, then they would be subject to the training requirement.

**Are employees of charter schools located on campus subject to the requirements of the statute?**

Answer: No. Charter schools are generally governed by the Chapter 12, Subchapter E of the Texas Education Code (Sec. 12.151, et. seq). Within that statutory structure, charter schools are required to provide sexual abuse/molestation awareness training to its employees as outlined in sec. 38.0041 of the Code. As those statutes more specifically govern the responsibilities of charter schools and address sexual abuse/molestation training, those statutes prevail over sec. 51.976.

**Are institutions obligated to ensure third-parties, who rent facilities on campus for summer camps, comply with the law or to provide the required training to their employees?**

Answer: As these third-parties own, operate and supervise the summer camp for minors on campus, they would be considered the program operator under the statute. The statute does *not* impose an obligation on the university to ensure third- party camp operators fulfill their obligations under the statute.

However, given the sensitivity of the issue of sexual abuse and child molestation, it would be in the institution's best interest to verify that third-parties and their employees are compliant with the statute. Therefore, it is recommended that, at a minimum, a rental agreement or contract with the third-party contain a clause specifically mentioning the obligation of the third-party to comply with this statute in the provisions requiring the third-party compliance with laws. (i.e. "Licensee shall comply with all laws of the United States and of the State of Texas (including child sexual abuse/molestation awareness training as required by Tex. Educ. Code, sec. 51.976), all local ordinances...")

Additionally, the institution may require the third-party submit any or all of the following:

- a statement verifying compliance with the statute:

Sample Language:

A Lessee who is operating a campus program for minors shall submit a verified statement to the Institution indicating that the program operator and campus program employees subject to Texas Education Code, sec. 51.976 are in compliance with the requirements set forth in Texas Education Code, sec. 51.976. This verified statement must be submitted within seven (7) days from the commencement of the campus program for minors. If additional employees subject to Texas Education Code, sec. 51.976 are employed after the commencement of the campus program for minors, additional verified statement must be submitted within seven (7) days from the commencement of his/her employment.

- a copy of the verification the third-party program operator submitted to the Department of State Health Services that is required under the statute:

Sample Language:

A Lessee who is operating a campus program for minors shall provide to the Institution a copy of the verification that must be submitted to the Texas Department of State Health Services (Department) in accordance with Texas Education Code, sec. 51.976(d)(1). The copy must be provided to the Institution within five (5) days from the date of submission to the Department.

Finally, the institution may contractually impose higher standards than the statute on third-parties wanting to use the institution's facilities. For example, the institution may require all employees and volunteers of a campus program for minors, regardless of size or duration, complete the training before they are permitted to commence their program on campus.

Regardless of which option is chosen, the critical element is that the institution ensures that the third-party complies with this contractual term.

**May the third-party owner/operator/supervisor use the institution's approved sexual abuse/child molestation awareness training and examination program?**

Answer: Yes, the institution may permit the third-party vendor, the use of UT System's training and examination program materials that has been approved by the Department of State Health Services. However, the institution may NOT assume responsibility for training the third-parties' employees, intermingle third-party employees in the institution's training of its employees, or use facilities or equipment that is not included in the rental agreement.

**Must the training and examination be provided in a face-to-face setting or is online or other electronic delivery system permissible?**

Answer: Presentation of the training materials and the examination may be presented online.

**Must documentation verifying completion of the training and examination program be maintained in paper format or may it be maintained electronically? Must the documentation be maintained by each program operator, or may the institution create a central repository?**

Answer: Either format is acceptable as long as the documentation can be maintained for two (2) years from the date of the successfully completed examination. (Sec. 51.976(d)(2)). Verification documents may be centrally maintained. What is critical is that the program operator be able to access or readily obtain the documentation if needed.

**Has the Department of State Health Services adopted rules outlining the requirements of the statute in more detail?**

Answer: As of March 30, 2012, rules have not been adopted. UT System and other institutions have submitted comments to the proposed rules outlining various concerns. A copy of these comments or proposed rules can be obtained from Laura Hartman, Assistant Vice Chancellor for Governmental Relations, lhartmann@utystem.edu..

**Has the Department of State Health Services issued the form needed by program operators to verify to the department that employees have completed the required training?**

Answer: Yes. The form is available at <http://www.dshs.state.tx.us/cpm/forms.shtm>.

**Does the institution have to implement a sexual abuse and child molestation program by June 1, 2012 even though the Health and Human Services Commission has not adopted rules as required by the statute?**

Answer: Yes. All parties are striving to comply with the statute to the greatest extent possible. For example, even though it has not adopted rules regarding the criteria and guidelines for the training and examination program, it nonetheless has approved the training and examination program submitted by UT System for "Campus Programs for Minors training."

**What happens if an employee of campus program for minor who has contact with campers fails to obtain the proper training and examination under the statute?**

Answer: A program operator or employee that fails to comply with the training and examination requirements of the statute is subject to investigation by the Department of State Health Services and an assessment of civil penalties of not less than \$50 or more than \$1,000 for each act of violation.

**What penalties does the statute impose if sexual abuse or molestation of a camper occurs during the campus program?**

Answer: The statute's purpose in requiring a training and examination program is to raise awareness of sexual abuse and child molestation. The statute does not impose civil or criminal penalties because sexual abuse or molestation of a camper occurs during the campus program.

However, other state laws impose a duty to report abuse or molestation of a minor when a person has cause to believe it is occurring. Under section 261.101 of the Texas Family Code, a person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person must immediately make a report to a local or state law enforcement agency, or the Department of Family and Protective Services, among other agencies. The identity of the person making the report is confidential. Also, a person acting in good faith who reports or assists in the investigation of a report of alleged child abuse or neglect, or who participates in a judicial proceeding arising from a report is immune from civil or criminal liability that might otherwise exist.

Issued: April 2, 2012

Office the General Counsel

University of Texas System Administration