



Child Protection Policy – Guidance

A. Introduction

The purpose of this guidance document is to the Child Protection Policy (the “Policy”) and its applicability in various circumstances. The date at the bottom of the document will show when this guidance was last updated.

B. Definitions

1. Custody, Control, Supervision

“Custody, control and supervision” means that a parent or legal guardian has placed the child in the care of the University, University-affiliated organization or third party for a duration of time and for a specific covered activity. The University, its affiliate, or third party is exercising its own authority to guide, manage and supervise the child, in the place of the parent or legal guardian.

Note that the phrase “custody, control **and** supervision” is used in the conjunctive where it first appears in Policy Section C, *Definitions, Covered Activity*. In the same section, under the definition of *Covered Persons*, the phrase is constructed in the disjunctive: “custody, control **or** supervision.” These alternate constructs acknowledge variations in the duties of Covered Persons. For example, one Covered Person may supervise the Covered Activity, while another may be called in simply to take attendance. The first is supervising the children; the second is controlling the children. Nonetheless, overall “custody, control **and** supervision” is vested with the University, its affiliate, or the third party.

2. University-Affiliated Organizations

For purposes of the Policy, there exist only four (4) University-Affiliated Organizations:

- (1) The Research Foundation;
 - (2) The Campus Foundation;
 - (3) The Campus Alumni Association; and
 - (4) The Campus Auxiliary Services Corporation.
- a. University-affiliated organizations are **not** treated as third parties under the Policy. Policy Section I, *Third Party Use of University Facilities*, is **not** applicable to University-affiliated organizations.
 - b. Policy Section G, *Campus Responsibilities*, requires each campus, System Administration and University-affiliated organization to develop procedures to implement the Policy. In a practical sense, the four University-affiliated organizations can only develop procedures in cooperation with

their campuses, because the campus and its affiliates must coordinate on such matters as training, investigation, reporting, and designation of a Responsible University Official.

- c. When a University-affiliated organization sponsors a Covered Activity on campus, it must appoint a Responsible University Official unless, in coordination with the campus as discussed above in subpart (b), the Responsible University Official designated by the campus is responsible for all Covered Activities conducted on campus.
- d. The Policy does not cover University-affiliated on-campus child care centers, regardless of whether they are operated by the University or by a separate corporate entity.
- e. Student organizations, despite their ties to the University by charter, faculty advisors or budget, are not University-affiliated organizations under the Policy definition unless they are so designated by the Chancellor or the campus President. Absent such designation, there is no obligation to treat student groups as University-affiliated organizations.

Designating a student group as an affiliate is event-based, not permanent. Designating a student group as an affiliate for an event means that the event they conduct with children becomes a Covered Activity. This triggers the provisions of Policy Section G, *Campus Responsibilities* and makes those provisions applicable to the student group. Additionally, such designation makes student group members Covered Persons, which triggers the Responsible University Official to take the steps outlined under Policy Section F, *Responsible University Official*, with respect to them.

The decision to designate student groups as University-affiliated organizations rests with the campus, but the Policy does not require such designation. Designation will create additional responsibilities for the campus, specifically, the requirements of Policy Sections F & G described in the preceding paragraph. The campus may also be exposed to liability for the actions of student groups by virtue of their designation as a University-affiliated organization. Non-affiliated student groups engaged in activities with children occurring off-campus are not subject to the Child Protection Policy.

For non-affiliated student groups to engage in Covered Activities on campus, the Policy provides only two options:

- (1) The student group may run the Covered Activity as “permittees” who sign and abide by the terms of a Revocable Permit; OR
- (2) The student group may fit under the definition of “Covered Persons,” specifically, as an **“other person who is given permission to come onto the campus or to use University facilities for Covered Activities.”** (Policy Section C, Covered Person (iv).) Other persons given permission to come onto the campus or to use campus facilities for Covered Activities are guests/invitees of the University. They are not permittees required to execute a Revocable Permit.

Under Option 2 above, the Policy requires the following:

- The Responsible University Official must obtain an Acknowledgement Form from the student group prior to commencement of the Covered Activity. (Policy Section F. 3.) Exhibit D to the Model Revocable Permit may be adapted by the campus for such use.

- In signing the Acknowledgement, the student group acknowledges that Sex Offender Registry searches have been conducted in accordance with the Policy for each of their Covered Persons. Should the campus lack confidence in a student group’s ability to comply with this requirement, it may run the Sex Offender Registry checks and revise the Acknowledgement Form accordingly.
- The campus must communicate the requirements of the Policy to each Covered Person. (Policy Section G. 3).

3. Child

The Policy definition of “child” is:

An individual under age of seventeen years, who is participating in a Covered Activity. The term ‘child’ shall not include a matriculated student of the University or a person accepted for matriculation.

The term “matriculate” as used in the Policy takes its ordinary dictionary definition: “to enroll as a member of a body and especially of a college or University.” For purposes of the Policy, a student is “matriculated” if they are accepted by the University as a student into an actual college course listed in the college catalog. Any campus definition of “matriculation” that may differ is **not** applicable for purposes of the Policy.

4. Covered Activities

An activity is only “covered” if it meets the two-part Policy definition:

- (a) it is sponsored or approved by the University, University-affiliated organization or conducted by a vendor, licensee or permittee for which a license or permit for use of University facilities has been approved, occurring on or off campus; and
- (b) for the duration of the activity, custody, control and supervision of children is vested in the University, University-affiliated organization or the approved vendor, licensee or permittee.

In determining whether an event is a Covered Activity, it is useful to use a “decision-tree” approach, starting with whether the participants are “children” under the Policy definition. If YES, proceed to Part 1 of the Covered Activity definition. If Part 1 is satisfied, proceed to Part 2.

For activities that do **not** meet the definition of Covered Activity, the Policy does not apply. For example:

1. Incidental visits where custody, control and supervision is not vested might include:
 - events that are open to the general public, such as concerts, athletic events, exhibitions and seasonal events such as winter carnivals and Halloween parties.
 - children accompanying a visitor to campus (e.g., accompanying a sibling on a recruiting visit)
 - “field trips” where children are brought onto campus by a school or other organization and the representatives of those schools or organization remain with the children throughout the trip and responsible for the custody, control and supervision.

2. Unless Greek organizations or student government clubs or organizations are designated by the Chancellor or the campus President as University-affiliated organizations for an event, the events they sponsor are not “Covered Activities.” because the events do not meet the 2-part definition of Covered Activity. *See, Policy Section C, Definitions. See also, Guidance Section B (2)(e), University-Affiliated Organizations.*
3. High school students who are under 17 years of age commonly take college courses. If the student is “matriculated,” i.e., has been accepted by the University as a student in an actual college course listed in the college catalog, the courses taken do not become Covered Activities by virtue of the fact that an individual under age 17 is in attendance. *See, Policy Section C, Definitions. See also, Guidance Section B, Definitions, 3, Child.*
4. Internships, student teaching assignments, affiliations, and volunteer work conducted off-campus by students or faculty are generally not Covered Activities, because the responsibility for custody, control and supervision of children is not vested in the University, University-affiliated organizations or approved vendor, licensee or permittee. If an on-campus event is co-sponsored with an organization such as the 4-H or the Boy/Girl Scouts, a determination must be made on a case-by-case basis as to which entity has responsibility for the custody, control and supervision of children. (*See, Guidance Section H, Co-Sponsored Activities.*)

Activities that **may** meet the definition of Covered Activity include:

1. Research programs conducted on campus may involve student and faculty contact with families and children. Whether these are Covered Activities that trigger the Policy requirements must be determined on a case-by-case basis. For example, if parents are present, they retain responsibility for custody, control, and supervision of their children and such responsibility is not vested in the University, University-affiliated organizations, or approved vendor, licensee or permittee.
2. On-campus activities involving children that are organized by faculty members may or may not be Covered Activities. A determination must be made on a case-by-case basis as to whether the University, University-affiliated organizations, or approved vendor, licensee or permittee is responsible for the custody, control and supervision of the participating children. Faculty members acting on campus in their individual capacities should be governed by the Model Revocable Permit attached to the Policy.
3. Some campuses hold Permits to operate Children’s Camps from the New York State Department of Health. These Children’s Camps are Covered Activities subject to the provisions of the Child Protection Policy because they meet the 2-part definition of Covered Activities. In other cases, a third party holds a Camp Operator Permit from the New York State Department of Health and operates the camp using University facilities. In such event, the Camp Operator should use University facilities pursuant to the Model Revocable Permit attached to the Policy.
4. Children under age 17 who are not matriculated or accepted for matriculation sometimes volunteer at the campuses. An example is a non-matriculant under age 17 who volunteers to work in a laboratory. The campus may enter the child into its Human Resources systems for insurance coverage purposes. Departments and supervisors are informed of the rules and regulations from the New York State Department of Labor regarding employment of minors and the regulations are observed. (<http://www.labor.ny.gov/workerprotection/laborstandards/workprot/minors.shtm>). In this scenario, the children are under the custody, control and supervision of the University and the program they are

working in is sponsored or approved by the University. Therefore, both prongs of the Covered Activity test have been met, making this volunteerism a “Covered Activity.” A Covered Person must be appointed for their custody, control and supervision.

5. Covered Persons

Children under 17 cannot be “Covered Persons.” (For example, a 16-year-old volunteer assisting with a summer camp.) Covered persons are defined as “persons who are responsible for the custody, control or supervision of children participating in a Covered Activity.” As such, they cannot simultaneously be “children,” defined as “an individual under the age of seventeen years, who is participating in a Covered Activity.” The only children under 17 years of age who could meet the definition of “Covered Person” are those who are matriculated students of the university or who have been accepted for matriculation.

Parents who volunteer to participate in Covered Activities are “category (iii)” Covered Persons as defined in the policy and should be treated the same as “category (i) and (ii) Covered Persons.

C. Responsible University Official

1. A Responsible University Official (RUO) must be designated for each Covered Activity. RUOs may or may not be present at the Covered Activity. Where Covered Persons are present at the Covered Activity, the RUO need not be present, so long as they are available (i.e. responsible) to the Covered Persons. For example, if designated RUO is away on vacation or medical leave, or absent in such a way that s/he is not available to the Covered Persons handling the Covered Activity, an alternate RUO must be designated for the Covered Activity.
2. The UUP contract provides for employees required to be “on call” to be paid an hourly wage for the on-call period. Campuses may wish to consider this when appointing Responsible University Officials.

D. Being Alone With Children

The Policy aims to protect children from 1-on-1 contact with adults, including Covered Persons, through which children may be at risk of physical or sexual abuse. Exceptions to the 1-on-1 provisions of the Policy should therefore be applied only with thorough and cautious consideration.

1. Campuses may create exceptions to the 1-on-1 prohibition in situations where the pedagogical or health-related nature of the activity logically involves only two participants, such as an instructor/treating professional and a student/patient. Examples of these activities include, but are not limited to, tutoring, music lessons, speech therapy, and medical, dental, or optical services. Parental release forms are suggested for such exceptions, but even excepted activities should generally be observable and interruptible by other adults, as appropriate for the activity. Campuses should also consider whether such activities can be conducted in a public setting or in a space that is easily viewable and accessible by others.
2. Transportation, bussing, locker rooms, shower rooms and rest rooms will require additional attendants to ensure that no child is alone with an adult.
3. In a true emergency, 1-on-1 contact is permissible.

E. Sex Offender Registry Searches

The Policy sets out the requirements for sex offender registry checks and places the responsibility for conducting them upon the University, University-affiliated organizations and approved vendors, licensees and permittees. *See*, Policy Section G, *Campus Responsibilities* and Model Revocable Permit ¶18.

Currently, SUNY has no system-wide policy on conducting background checks, but University Police conduct criminal background checks through the New York Department of Criminal Justice Services (DCJS) if required by state or federal laws or regulations for a particular job classification. University Police can obtain criminal background information from DCJS only if it is authorized by statute or if the information is sought in connection with a criminal investigation. For any other purpose, DCJS cannot provide criminal background information unless the subject of the investigation gives written consent. 9 NYCRR § 6050.1(a). In their local procedures, campuses may elect to obtain consent, but the sex offender registry websites are available to the public. A refusal to give consent would disqualify an individual from participating in a Covered Activity.

1. A Registry Search must be performed on all Covered Persons using both New York and national registries. A Registry Search is not a background check. A Registry Search is targeted to identifying convicted sex offenders.
2. Vendors, licensees, permittees or other persons given permission to come onto campus or to use University facilities for Covered Activities are responsible to conduct sex offender registry checks on their employees, agents and volunteers participating in the Covered Activity. The policy does not require that the sex offender registry search results on these Covered Persons be submitted to the University.
3. The campus and University affiliated organizations must promulgate procedures to identify: (1) staff to conduct the Registry Search; (2) staff that shall have access to the resulting information; and (3) recordkeeping procedures.
4. Sex Offender Registry searches must be conducted no sooner than 90 days in advance of an event, so the information will be current. Sex Offender Registry searches are timed to the Covered Activity; not to a semester or other periodic or episodic time interval. Covered Activities must not proceed without completion of Sex Offender Registry Searches as required by the Policy.
5. When a Sex Offender Registry Search identifies an individual as a convicted sex offender, that individual cannot participate or be involved in any way with a Covered Activity. A positive result may raise an employee relations issue and that department should be consulted before further action is taken. The HR issues that may accompany a positive result are outside the scope of the Child Protection Policy and should be handled by campus HR offices in accordance with their policies.
6. The National and State Sex Offender Registries cannot identify individuals who have been convicted of sex abuse crimes in other countries. The policy contains no requirement that campuses attempt to check similar databases in other countries. Campuses should take this into consideration in exercising their discretion to assign Covered Persons to Covered Activities, and in granting the use of their facilities to third party permittees.
7. The Child Protection Policy requires that search results be kept for six years after the Covered Person has separated from the University or University-affiliated organization. Although the statute of

limitations for civil cases of sexual abuse is longer, there is no reason to extend the retention period for Sex Offender Registry search results. However, SUNY Policy No. 6609 (records retention schedules) require Athletics records to be maintained for “a minimum of 7 years.” Campuses might choose to consider the records of a sports-related Covered Activity to be “Athletics Records,” and can retain them for as long as they choose, since the Retention Schedule cites a minimum, but no maximum, retention period for Athletics Records. Similarly, the retention period for SUNY Public Safety Records (certain police records, investigation reports, etc.) is, in some cases, “permanent.” Any reported incident of sexual abuse that arose during a Covered Event would have a permanent record based on that retention schedule.

F. Training

1. Training Frequency: Campuses must train their Covered Persons by May 15, 2015 and biennially (every two years) thereafter. See, Policy Section G. 4. No individual may participate in a Covered Activity as a Covered Person without first having received training.
2. SUNY System Administration has developed a university-wide training on the Policy. Campuses may be responsible for confirming and recording attendance of Covered Persons who are employees, volunteers, students, or agents of the campus or a University-affiliated organization.
3. The University has no responsibility to train third-party users of University facilities. See, Policy Section G, *Campus Responsibilities*, (4). University employees may volunteer or work for external organizations that are also third-party users of University facilities. Technically, the University has no responsibility to train such employees, because they are representatives of the third party permittee during the Covered Activity. However, should this be a frequent occurrence, the best practice is to train such employees.

G. Identification of Covered Persons

1. All Covered Persons participating in Covered Activities should be identified by photo ID affixed to a lanyard (for active sports an arm or wrist band may be appropriate). The ID should be event-specific, to include the event name, date(s) as well as the Covered Person’s name and photo. Shirts, uniforms and such attire, and non-photo IDs may be duplicated or misappropriated.
2. Event specific identification means that a single identification for a Covered Person participating in multiple Covered Activities is not sufficient (for example: “Summer Athletic Programs”) At larger campuses, Covered Persons may not know each other until they are introduced at the Covered Activity. Both the Covered Persons and the participating children need to be able to rely on the fact that a person with an ID is authorized to participate in their specific activity. Also, ID badges are not likely to have the security of a “key card” that can be deactivated if the employee is terminated.

H. Third Party Use of University Facilities

Third parties (vendors, licensees, permittees, referred to collectively as “Permittees”) given permission to use University facilities for Covered Activities must do so pursuant to the Model Revocable Permit for Covered Activities appended to the Policy. Private events, such as weddings and private parties are considered Third Party use of University Facilities and are subject to the Policy only if children are present. The Model Revocable Permit attached to the Child Protection Policy is for use with Covered Activities. For

all other use of University facilities when no children are present, the standard SUNY Revocable Permit is applicable.

1. Permittees must be given copies of the SUNY Child Protection Policy (No. 6505) and the SUNY Policy on Mandatory Reporting and Prevention of Child Sexual Abuse (No. 6504). Permittees must provide a written acknowledgement to the campus of their receipt of the policies on Exhibit D to the Model Revocable Permit. Campuses must provide, at minimum, SUNY Policy Nos. 6504 and 6505. Campuses may also elect to provide their local policies or procedures. In such event, the campus should revise Exhibit D to reflect its inclusion of its local policies.
2. Permittees are responsible for conducting Sex Offender Registry searches for all of their employees, volunteers, and agents, which would include all subcontractors, who come onto campus or use University facilities for Covered Activities pursuant to the Model Revocable Permit. By signing the Revocable Permit, Permittees acknowledge that Sex Offender Registry searches have been conducted, and that they have been conducted no sooner than 90 days before the scheduled event. The campus is not required to review, record or file the third party's search results.
3. When the campus determines in its discretion that the Permittee's event is substantial (e.g. an overnight camp), of substantial duration (e.g. one week), or involves large numbers of children, the campus may require the Permittee to obtain Sexual Molestation Insurance ("SMI"). The specific policy language is:

For those instances in which a campus believes that the activity is so long or substantial and that the obtaining of such insurance will not unduly preclude beneficial use of the campus' facilities, the campus should require [SMI].

SMI is generally excluded from Commercial General Liability ("CGL") policies and must be purchased separately. As a state educational corporation, SUNY is not authorized to provide guidance to third parties regarding their purchase of insurance. We can, however, recommend that they contact their insurance broker or insurance agent for professional advice on coverage, costs, and application requirements.

The SUNY policy revocable permit requires "...General Liability insurance two million dollars (\$2,000,000) each occurrence and two million dollars (\$2,000,000) in the aggregate.." These limits can be provided through a combination of primary and excess/umbrella liability policies. (*See, Council of Contracting Agencies' Procedure Manual for Insurance Requirements in Agreements, Ch. 3, p. 27. Adopted by the NYS Procurement Council August 2011.*)

The following summary explains the 6-month minimum effective period for a "claims made" general liability policy.

- Liability insurance policies may be written as "**Claims Occurrence**" policies or as "**Claims Made**" policies.
- An "occurrence" policy provides coverage for claims arising out of an event that occurs during the period the policy is in effect.
 - **Example:** A third party Permittee uses University facilities for a Covered Activity for one week in June 2015. The Permittee purchases Sexual Molestation insurance for that week and the policy is an "occurrence" policy. If 20 years later, a child who attended the event files a claim for damages arising from sexual molestation that occurred during that week

in June 2015, the insurance company is responsible for its payment, up to the limits of the policy, because coverage is based on when the events giving rise to the claim occurred.

- A “claims made” policy provides coverage for claims that are made during the time the policy is in effect.
 - **Example:** A third party Permittee uses University facilities for a Covered Activity for one week in June 2015. The Permittee purchases a “claims made” Sexual Molestation insurance for that week. For the week that the policy is in effect, the insurance company is responsible for payment of any sexual molestation claim made against the insured Permittee, whether it is made by a child participating that week in June, or whether it is made by someone who claims they were sexually molested by the permittee 20 years ago.
 - The Child Protection Policy requires that Sexual Molestation insurance purchased on a “claims made” policy have a minimum 6 months of what is called “tail coverage.” Under the primary policy, the period for allowable claims is only 1 week in June, but the tail coverage extends that deadline for 6 additional months.
 - The Revocable Permit accompanying the Child Protection Policy affords the campuses discretion on whether to require Sexual Molestation insurance from Permittees. It must follow then, that the campuses have discretion to require the coverage be provided by “occurrence” policies or “claims made” policies. Campuses also have the discretion to require a longer tail coverage if on claims made policies.
4. By signing the Revocable Permit, Permittees acknowledge that they will adhere to the American Camp Association standards for minimum staff-to-child ratios and will provide transportation for minors to and from the campus in accordance with the provisions of the Revocable Permit, which requires that in addition to the driver of the vehicle, there must be at least one other staff member in the vehicle at all times.
 5. A Permittee holding a Camp Operator Permit from the New York State Department of Health is not exempt from the provisions of the Model Revocable Permit. A children’s camp operated by a third party Permittee using University facilities must adhere to the New York State Department of Health standards for licensed camps and to the University’s standards as enunciated in the Child Protection Policy and the Model Revocable Permit.
 6. The American Camp Association (ACA) standards cited in the Revocable Permit are applicable **ONLY** to the Covered Activities of approved vendors, licensees and permittees. ACA standards do not apply to Covered Activities for which the custody, control, and supervision of children is vested in the University or University-affiliated organizations. Campuses may, at their discretion, choose to use ACA standards for their own Covered Activities.

I. Co-Sponsored Activities

Outside organizations and educational institutions may co-sponsor Covered Activities with the University. In a co-sponsored event, the University and the co-sponsor have shared responsibility for custody, control and supervision of children. An example is the Model Organization of American States Conference, which is co-sponsored by a campus program and area schools. Teachers from the area schools chaperone the event

and stay in the college dormitories with students. The College hires its students as hall monitors. College students from the campus program serve as mentors.

In this example, the Model Organization of American States Conference and the teachers from area schools are guests/invitees of the University. They fall within the definition of Covered Person (iv): “a vendor, licensee, permittee **or other person, who is given permission to come onto the campus** or to use University facilities **for Covered Activities.**” *See*, Section C, *Covered Person* (iv). These guests/invitees have permission to come onto campus to participate in a Covered Activity, but they are not permittees required to execute a Revocable Permit.

Under a co-sponsored arrangement:

- The Responsible University Official must obtain Acknowledgement Forms from these Covered Persons (institutions) prior to commencement of the Covered Activity. (Policy Section F. 3.) Exhibit D to the Model Revocable Permit may be adapted by the campus for such use.
- In signing the Acknowledgement, the teachers’ institutions and the Model Organization of American States Conference acknowledge that Sex Offender Registry searches have been conducted in accordance with the Policy for each of their Covered Persons.
- The campus must communicate the requirements of the Policy to each Covered Person. (Policy Section G. 3).