

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

FREQUENTLY ASKED QUESTIONS

August 1, 2012  
(Update of FAQs issued on April 2, 2012)

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. UT System Office of General Counsel issued a prior FAQ on April 2, 2012. Since that time, the Department of State Health Services adopted, on July 16, 2012, rules implementing Section 51.976 (25 TAC secs. 265.401-265.405). This FAQ updates and supersedes the prior FAQ issued by this Office.

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

\*\* UPDATED ANSWERS OR NEW FAQ

**1. 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.

\*Note: The Executive Compliance Committee (ECC) has determined that all UTSA employees/volunteers who fall within the parameters below are required to complete the SB1414 Child Protection Training: SB 1414 Child Protection Training is required for anyone (faculty, staff, volunteer or student worker) having contact with a minor (under 18 years of age) as part of a camp or program under the following scenarios:

- Camp or Program with minors lasts 6 hours or more on any given day,
- Camp or Program with minors continues for multiple days no matter what the duration is per day, and/or
- Camp or program requires an overnight stay.

Note: Any volunteer acting as a guest speaker, entertainer or a person who visits for a limited purpose or limited time if the person has no direct and unsupervised interaction with minors does not have to take this training.

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).

## **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.)

## **3. 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).

## **4. 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 days. See Sec. 51.976(a)(2)(b)(ii).

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**Note: Any volunteer acting as a guest speaker, entertainer or a person who visits for a limited purpose or limited time if the person has no direct and unsupervised interaction with minors does not have to take this training.**

## **5. 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.

Individuals who received sexual abuse and child molestation training in other contexts, (i.e. state teachers, state social workers and other individuals who have received in-service training provided by their place of employment) are not exempt from this training and examination requirement.

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 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.

## **6. 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 state law and the implementing regulations, a "person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. 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.

## 7. Who is an “employee” subject to the statute?

An “employee” is “person of any age who receives compensation for work or services at a campus program for minors.” This means an individual is subject to the statute’s requirements if the person 1) is being compensated by the program operator, 2) provides work or services at a campus program for minors and 3) has contact with campers. Additionally, “compensation” is more than just a salary; it includes something of value that is in exchange for the services performed. So if the institution is the program operator and offers a student a scholarship in exchange for working at the camp, the student would be considered an employee.

However, the regulations **exempt** certain employees from the training and examination requirements. Employees of the institution who have “only *limited or incidental contact* with campers” are *not* subject to training and examination requirements. (25 TAC sec. 265.403(c)).

## 8. 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.)

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.

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- Camp or Program with minors lasts 6 hours or more on any given day,
- Camp or Program with minors continues for multiple days no matter what the duration is per day, and/or
- Camp or program requires an overnight stay.

**Note: Any volunteer acting as a guest speaker, entertainer or a person who visits for a limited purpose or limited time if the person has no direct and unsupervised interaction with minors does not have to take this training.**

**9. 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: Implementing regulations clarify what does not constitute “contact with campers.” An employee is not considered “in contact with a camper” if the employee is:

- ☑ acting as a guest speaker, an entertainer, or fulfilling any other role whose attendance at the campus program for minors is for a limited purpose or a limited time, and
- ☑ will not have any direct and unsupervised interaction with campers. (25 TAC Sec. 265.403(b)).

**10. 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 compensated by the program operator to work or provide services to a campus program for minor 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.

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**Note: Any volunteer acting as a guest speaker, entertainer or a person who visits for a limited purpose or limited time if the person has no direct and unsupervised interaction with minors does not have to take this training.**

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

Answer: If the institution is the program operator, the implementing regulations provide that employees of the institution who have only limited or incidental contact with the campers are not subject to training and examination requirements. (25 TAC sec. 265.403(c)(2)).

Additionally, if a third-party is operating campus program for minors on campus, employees of the institution are not considered employees of the campus program for minors and not subject to the training and examination requirements even if they are in contact with campers. (25 TAC sec. 265.403(c)(1)). Like volunteers or visitors, they are excluded from the scope of the statute in this

particular situation. Again, if such institution employees have more than limited or incidental contact with children, it is recommended that the employees receive the training nonetheless.

**12. 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: In accordance with the implementing regulations, if these employees only have limited or incidental contact with the campers, then they are not subject to training and examination requirements. (25 TAC sec. 265.403(c).

**13. 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, they would *not* be subject to the training requirement if their contact with the camper was only limited or incidental. So if the tour was say only two-four hours long, it would be reasonable to argue that the contact with the campers was of a limited nature.

**14. 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.

**15. 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 thirdparty complies with this contractual term.

**16. 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.

**17. 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.

**\*UTSA provides only on-line training for employees and non-employees (volunteers). For additional information, see: [www.utsa.edu/acrs/Training/sb1414\\_training.html](http://www.utsa.edu/acrs/Training/sb1414_training.html)**

**18. 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.

**\*Note: UTSA will provide the employee/non-employee upon successful completion of the training a Certificate of Completion that is to be printed and provided to the individual Program Operators.**

**19. 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>.

**\*Note: Individual UTSA Program Operators are responsible for submitting this form in accordance with the regulatory requirement.**

**20. 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.

**21. 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.

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Office the General Counsel

University of Texas System Administration