

Compliance Information Sheet
Activities for Minors
Baylor University
Office of General Counsel
October 2012

Background: As part of Baylor's mission, Baylor frequently has Baylor programs that are for minors, as well as non-Baylor programs on Baylor property but operated by an outside entity (Third Party). These activities can be regulated through a variety of state and federal agencies. The compliance requirements can include mandated reporting of certain incidents, licensing by the state, mandated training, and mandated record-keeping. For the purposes of this Compliance Information Sheet, Activities for Minors are considered to be those activities in which the care and custody of a minor who is not enrolled in Baylor is surrendered even temporarily to Baylor or its agents, or to a Third Party authorized to use Baylor facilities.

General Regulatory Setting:

The Texas Department of Family and Protective Services (DFPS) has regulatory authority over child day care activities, including those that are licensed as well as those that are exempt as most exemptions require approval. DFPS also has general authority under the Texas Family Code regarding children and is an investigative agency regarding child abuse.

The Texas Department of State Health Services (DSHS) has regulatory authority over certain activities with children, including youth camps, as well as enforcement activities relating to those programs, such as the training and examination of campus programs for minors on warning signs of sexual abuse and child molestation.

The U.S. Department of Education (USED) has regulatory authority of the Clery Act that requires the tracking and public reporting of certain criminal activity on or near campuses of higher education.

Mandatory Reporting:

There are both state and federal mandates to report (i) physical or mental abuse of minors or (ii) certain specific criminal activity (regardless of the age of the victim) to appropriate authorities. These reporting requirements are based solely on knowledge of reportable events (abuse, neglect, or criminal acts) even if the events did not occur during a Baylor activity of any kind. In this regard, the safety and health of children is paramount. The adage may be simple: If you see it; report it.

- 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 shall immediately make a report as provided below:**

- Any person must make a report as above; however, special rules apply to Professionals.¹
 - A Professional must make the report within 48 hours after the hour the Professional first suspects that the child has been or may be abused or neglected or is a victim of a criminal offense of Indecency with a Child.
 - Any person or a Professional must make a report even if the communications with the person or Professional are otherwise privileged.
 - The report must be made to an appropriate agency, which includes:
 - Any local or state law enforcement agency (including the Baylor Police Department at 710-2222), or
 - The Texas Department of Family and Protective Services, or
 - The state agency that operates, licenses, certifies or registers the facility in which the alleged abuse of neglect occurred.
 - The name of the reporter may typically be held in confidence unless confidentiality is waived in writing by the person making the report.
 - A failure to report is typically a Class A misdemeanor.
 - An employer cannot take a personnel action against a Professional for making a report in good faith or for cooperating in a resulting investigation.
- **Clery Act: Baylor University, through its Police Department, is required to include certain specified criminal offenses (that are reported to the Baylor Police Department and that occurred on Baylor-owned or -controlled property or limited areas of adjacent public property) in its daily Crime Log and in its Annual Campus Security Report, both of which are subject to public disclosure.**
 - Such reports may come from other law enforcement agencies, the victim, or any person.
 - Some internal reports; however, are mandated. If a report is made to a Designated Campus Authority, the Designated Campus Authority must relay the report to the Baylor Police Department. Baylor's Designated Campus Authorities are:
 - Associate Dean for Judicial and Legal Student Services (ext. 1715)
 - Director, Counseling Services (ext. 2467)
 - Director, Health Services (ext. 1010)
 - Associate Vice President for Student Life (ext. 1314)
 - Director, Campus Living and Learning (ext. 3642)
 - Assistant Vice President for Human Resources (ext. 8562)
 - Director, Student Activities (ext. 2371)
 - Director of Athletics (ext. 1222)
 - The certain specified crimes in the Clery Act include, but are not limited to, homicide, aggravated assault, and sex crimes.
 - The failure to meet the requirements of the Clery Act can include the imposition of penalties by the U.S. Department of Education, which has the ability to terminate the provision of federal financial assistance to Baylor.

¹ A Professional means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, had direct contact with children. The term includes teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services.

Definitions of Regulated Activities for Minors: Because of the complicated statutory and regulatory structure, it is necessary to provide some definitions to facilitate an analysis of compliance requirements. Generally this structure does not apply if the minors remain under the care and custody of a parent or guardian.

- Campus Programs for Minors:
 - Operated by Baylor or on Baylor campus (which can include non-Baylor programs)
 - Offers recreational, athletic, religious or educational activities for minors who:
 - Are not enrolled in Baylor
 - Attend or temporarily reside at the camp for all or part of at least four days.
 - Is not a Youth Camp or a Licensed Day Care Program
- Youth Camp:
 - Accommodates five or more minors who attend or temporarily reside at the camp for all or part of at least four days.
 - Is used primarily for recreational, athletic, religious or educational activities, and
 - Has the general characteristics of a day camp (operates generally between 7 a.m. and 10 p.m.), or a resident camp (provides overnight accommodations).
 - Such Camps operated by Baylor or on Baylor campus are exempt from the requirements of Youth Camps.
- Day Care Programs: Day care is defined as the care, supervision, or education of an unrelated child or children under 14 years of age for less than 24 hours per day that occurs any place other than the child's home. All Day Care Programs must be either Licensed or Exempt. Exemptions generally require a determination by the DFPS.
 - Licensed: The Piper Child Development Center is a licensed Child-Care Center.
 - Exempt: Any other Day Care Programs at Baylor may need to be licensed or apply for an exemption.
- Baylor Activities for Minors: An all-inclusive term that includes Campus Programs for Minors, Youth Camps, Day Care Programs and any other Baylor Activity for Minors who are not enrolled in Baylor (when care and custody is provided by Baylor).
- Third-Party Programs: Third-Party Programs are not Baylor operated but are held on Baylor campus. These programs are typically coordinated through Baylor Event Services.

State Licensing Requirements Generally:

- A Youth Camp that is not operated by Baylor or on Baylor campus must be licensed and meet the requirements of the Texas Youth Camp Safety and Health Act. This could include camps operated off campus by Baylor personnel in an individual capacity, such as some athletic camps.
- A Campus Program for Minors that has at least 20 minors participating need not be licensed but must meet Other Specific Requirements outlined below.

- Day Care Programs such as the Piper Child Development Center must be licensed; other Day Care Programs may have to be licensed unless there is an exemption, which exemption itself must typically be approved by the DFPS. In general, exemptions may include:
 - Certain programs and facilities regulated by other government entities. For example, Youth Programs or Exempt Youth Programs regulated by Texas Department of State Health Services are exempt.
 - Programs of limited duration
 - Educational facilities and programs
- Third-Party Programs for Minors may or may not be required to be licensed; however, licensing would be the responsibility of the Third Party.

Some Other Specific Compliance Requirements:

- Youth Camps: In general, compliance with the requirements of the Youth Camp law include:
 - Payment of a license fee for original license and re-issuance
 - Submission for inspection by the Texas Department of State Health Services
 - Compliance with standards established by the Board of Health relating to such things as: supervision, qualifications and numbers of supervisors and staff, procedures for food preparation, sanitation, water safety procedures, fire precautions, and criminal convictions of camp personnel. The standards can be found at:
<http://www.dshs.state.tx.us/Layouts/ContentPage.aspx?PageID=35857&id=4774&terns=Youth+Camp+Rules>
 - Training of staff (including volunteers), examination of staff, and records retention relating to the training and examinations
 - Subjection to revocation of license and administrative and civil penalties for non-compliance
- Campus Programs for Minors: The compliance issues (for programs with at least 20 minors participating) relate to training and examination program on sexual abuse and child molestation, hiring practices and record retention relating to training and examination. In particular:
 - An employee of the program must successfully complete approved training and examination within two years prior to employment, or must successfully complete such training and examination within five days of employment.
 - Baylor must pay any fees assessed by the state.
 - Baylor must submit to the state appropriate records that the employee has completed the training and examination.
 - Baylor must retain the records until the second anniversary of the examination date and the employee must retake the training and examination.
- Day Care Programs: Since the law generally requires either a state license or a state-approved exemption, Day Care Activities (those including minors under the age of 14) should be reviewed carefully to determine what action must be taken with the State.

Certain exemptions for institutions of higher education like Baylor may only require a call to the DFPS to see if the state requires the submission of the Exemption Form.

Additional Considerations:

- Baylor Activities for Minors. Any Baylor operated Activity for Minors (regardless of the number of minors) involving minors who are not enrolled at Baylor is considered a Special Event under current Baylor practices. A Special Event request form must be submitted to the Department of Risk Management. If the minors remain under the supervision and control of a parent, guardian or responsible third party, the Special Event process does not apply. Attachment 1.
- Third Party Programs for Minors. Third Party Programs must register with Baylor Event Services. If the Third Party Program can be accommodated, then Baylor requires the sponsor to assure Baylor that the sponsor has conducted successful criminal background checks on the program staff and volunteers and provided appropriate training. Attachment 2.
- Exceeding Compliance Requirements. Some Activities for Minors will fall outside the compliance matrix. Nonetheless, although not technically a “compliance” standard, Baylor activities should be conducted “reasonably” or liability to injured parties can arise. The heavy regulation of many, but not all, activities with minors by the state entities is a call to vigilance in all such activities, regulated or not, to safeguard the health and safety of minors.
- Criminal Background Checks (including sex offender registry check). Baylor’s Human Resources runs the Criminal Background Checks on employees and volunteers who staff all Baylor Activities for Minors. Attachment 3.
- Baylor Release Forms. Program Directors of all Baylor Activities for Minors must obtain Release Forms from the Office of General Counsel and have the parents or guardians of the minors sign the form. Executed forms must be returned to Risk Management.