

Office of Enrollment Management and Student Success

Interaction with Minors

POLICY:

Utica University (“Utica” or the “University”) is committed to the safety and protection of children. This policy applies to all faculty, staff, volunteers and students representing the University who interact with children in a direct and/or unsupervised capacity. It also applies to employees and volunteers from external groups that interact with children in a direct and/or unsupervised capacity in Utica facilities.

REASON FOR POLICY:

The public and private conduct of faculty, staff, employees, students, and volunteers can inspire and motivate those with whom they interact, or can cause great harm if inappropriate. Especially when working with children and youth, we should at all times be particularly aware that we are responsible for maintaining appropriate physical, emotional, and sexual boundaries. We must avoid any behaviors of a sexual nature with those for whom we have responsibility. This includes seductive or sexually-oriented speech or gestures as well as physical contact that exploits, abuses, or harasses.

We must show prudent discretion before touching another person, especially children, and be aware of how physical touch will be perceived or received, and whether it would be an appropriate expression of greeting, care, concern, or celebration. Physical contact with children can be misconstrued both by the recipient and by those who observe it, and should occur only when completely nonsexual and otherwise appropriate, and never in private. One-on-one meetings with a child are best held in a public area; in a room where the interaction can be observed; or in a room with the door left open, and another staff member or supervisor notified about the meeting. Utica University personnel and volunteers are prohibited at all times from physically disciplining a child.

DEFINITIONS:

Covered Activity: A program or activity sponsored or approved by the University, or an activity 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, for the duration of which the responsibility for custody, control and supervision of children is vested in the University, University-affiliated organization or the vendor, licensee or permittee so approved.

Covered Person: A person who is responsible for the custody, control or supervision of children participating in the Covered Activity and who is:

- i. An employee of the University or University-affiliated organization;

- ii. A University student;
- iii. A volunteer of the University or University-affiliated organization; or
- iv. A vendor, licensee, permittee or other person, who is given permission to come onto campus or to use University facilities for Covered Activities; or
- v. An employee, agent or volunteer of (iv) above.

Child: An individual under the 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. For purposes of this policy, “matriculation” means accepted by the University as a student into a University course that is listed in the University catalog.

Children’s Camp: A camp defined under New York Public Health Law §1392.

Physical Abuse: Physical contact with a child by a covered person which is intended to cause, or causes, pain or physical injury, including punching, beating, shaking, throwing, kicking, biting and burning, or directing a child, outside the norm of the supervised activity, to perform physical activity which is intended to cause physical injury.

Sexual Abuse: Engaging in a sexual offense with a child and/or encouraging or promoting sexual performance by a child. Pursuant to the NYS Penal Law Articles 130, 263, and Sections 260.10 and 260.25, sexual offenses include: sexual misconduct, rape, criminal sex acts, forcible touching, persistent sexual abuse, sexual abuse, aggravated sexual abuse, course of sexual conduct against a child, facilitating a sex offense with a controlled substance, sexually motivated felony, predatory sexual assault against a child, and sexual performance by a child. This also includes Penal Law offenses relating to children including endangering the welfare of a child and unlawfully dealing with a child in the first degree. Sexual performance by a child, as defined by the Penal Law, is any behavior which results in touching of the sexual or other intimate parts of a child for the purpose of sexual gratification of the child and/or adult, including touching by the child and/or adult with or without clothing, and all acts as defined by New York State Penal Law Articles 130, 263 and Section 260.10.

If criminal activity is found to have occurred, the University will support civil prosecution to extent allowed by law.

Responsible University Official: The employee of the University or University-affiliated organization. For athletic events, programs and activities the Responsible University Official will be the Director of Physical Education and Athletics. For academic events, programs and activities the Responsible University Official will be the Provost and Senior Vice President for Academic Affairs. For all other events, programs and activities the Responsible University Official will be the Dean of Students.

PROCEDURE:

Conduct for Covered Persons:

A Covered Person shall not:

1. Be alone with a child, unless the Covered Person is a relative or guardian of the child, unless one-on-one contact is approved in accordance with a determination pursuant to paragraph 2 of the “University Responsibilities” section of this policy. In no event shall a Covered Person, who is not a relative or guardian of a child, be alone with the child in a rest room, locker room, shower, sleeping area or vehicle.
2. Engage in physical abuse or sexual abuse of a child.
3. Engage in the use of alcohol or illegal drugs, or be under the influence of alcohol or illegal drugs, during Covered Activities.
4. Enable, facilitate or fail to address a child's use of alcohol or illegal/non-prescribed drugs.
5. Contact a child through electronic media, including social media, for the purpose of engaging in any prohibited conduct, including sexual abuse.
6. Offer or make a gift to a child for the purpose of engaging in any prohibited conduct, including sexual abuse.
7. Release a child from a Covered Activity to anyone other than their parent or guardian without a written authorization from the child’s parent or guardian.

A Covered Person shall:

1. Take all reasonable measures to prevent physical and sexual abuse of a child during a Covered Activity, including immediately removing a child from potential physical abuse, sexual abuse or prohibited conduct as defined herein.
2. Report immediately any suspected physical abuse or sexual abuse of a child, whether during a Covered Activity or otherwise, to local police and provide to the police a written report of suspected physical or sexual abuse of a child. Other reporting requirements not addressed in this Policy may also apply, such as the obligations of mandated reporters under the New York Social Services Law, who are required to report suspected child abuse or maltreatment of persons under age 18 in certain circumstances when they are presented with a reasonable cause to suspect such abuse or maltreatment has occurred as specified therein.
3. Comply with the University’s procedures and policies as set forth at utica.edu
4. Complete all required training required for Covered Persons (i) – (iii) developed pursuant to this Policy. Training can be accessed at <https://learn.ue.org/JX53B194209/UticaProtectingChildren> (follow prompts to register).
5. Wear and display prominently at all times during the Covered Activity a form of identification that identifies the individual as having the responsibilities of a Covered Person.

Requirements for Responsible University Officials:

1. Confirm that the requirements of this Policy have been communicated to Covered Persons (i) – (iii) prior to the commencement of a Covered Activity.
2. Confirm that New York Sex Offender Registry and National Sex Offender Public Registry searches (as described in University Responsibilities, below) have been obtained and reviewed for Covered Persons (i) – (iii) prior to the commencement of a Covered Activity.
3. Confirm that the completed Acknowledgement of the University's Child Protection Policy form (available in Exhibit A of this policy) has been obtained from Covered Persons (iv) – (v) prior to the commencement of a Covered Activity.
4. Immediately report allegations of physical abuse or sexual abuse of a child to the local police department, and complete and provide to the police a written report for each allegation of physical abuse or sexual abuse of a child. Other reporting requirements not addressed in this Policy may also apply, such as the obligations of mandated reporters under the New York Social Services Law, who are required to report suspected child abuse or maltreatment of persons under age 18 in certain circumstances when they are presented with a reasonable cause to suspect such abuse or maltreatment has occurred as specified therein.
5. Notify and coordinate with appropriate campus offices to ensure that allegations of suspected physical abuse or sexual abuse are investigated and addressed appropriately.
6. Confirm that required training on this Policy has occurred prior to the commencement of a Covered Activity for all Covered Persons who are employees, volunteers, students or agents of the University or a University-affiliated organization.

University Responsibilities:

Utica University owned or operated facility and University-affiliated organization shall develop procedures to:

1. Designate a Responsible University Official for each Covered Activity.
2. Determine on a limited basis the circumstances in which the first sentence of Section A.1. of this Policy, which prohibits a Covered Person from being alone with a child, shall not apply to certain Covered Activities when the pedagogical or health-related nature of the Covered Activity requires such one-on-one contact with a child. Examples may include tutoring, music lessons, speech therapy, and medical, dental or optical services.
3. Communicate the requirements of this Policy to Covered Persons (i) – (v).
4. By October 1, 2018 and biennially thereafter, provide for and require training on this Policy for all Covered Persons (i) – (iii) prior to the commencement of a Covered Activity.
5. Obtain New York Sex Offender Registry and National Sex Offender Public Registry searches for Covered Persons (i) – (iii) and complete a review of such

searches not more than ninety (90) days prior to the commencement of a Covered Activity.

A. A search of the NY Sex Offender Registry means:

1. A search of the file of persons required to register pursuant to Article 6-C of the Correction Law maintained by the NY Division of Criminal Justice Services pursuant to NY Correction Law § 168-b for every level of sex offender (Level 1 through Level 3), which requires an email, CD or hard copy submission of names and identifiers to DCJS as described on the [DCJS website](#); and
2. retention of the records of the results of such search. Note that an internet search alone will not meet the requirements of this Policy.

B. A search of the National Sex Offender Public Registry means:

1. A search by first and last name of the National Sex Offender Public Website maintained by the United States Department of Justice at this link: <http://www.nsopw.gov/>; and
 2. Retention of the records of the results of such search.
6. Provide for the prompt investigation and preparation of written findings by the Office of Campus Safety of reports of suspected physical abuse or sexual abuse, and if there is reasonable cause to believe a crime has been committed, coordination by the Office of Campus Safety with other law enforcement officials.
7. Provide a mechanism to report and respond to allegations of retaliation (as described below).
8. Retain documentation of the search results from the New York and National Sex Offender registries for Covered Persons who are employees, volunteers, students or agents of the University or a University-affiliated organization for six (6) years after the covered person has separated from the University.

Retaliation:

Retaliatory action against anyone acting in good faith, who has reported alleged physical abuse or sexual abuse in accordance with this Policy, or who has been involved in investigating or responding to allegations of physical or sexual abuse, or who has reported a failure to comply with this Policy, is a violation of this Policy. Retaliatory acts may include, but are not limited to: employment actions affecting salary, promotion, job duties, work schedules and/or work locations; actions negatively impacting a student's academic record or progress; and any action negatively affecting a person's participation in the campus environment, including harassment and intimidation.

Third Party Use of University Facilities:

The use of University facilities by vendors, licensees or permittees for commercial and non-commercial Covered Activities shall be accomplished pursuant to a revocable permit. The following minimum terms shall be included in all such revocable permits:

1. Specific definition of the areas accessible to the Covered Activity. For example, revocable permits for sporting events held on athletic fields should include the athletic field, as well as any ancillary areas or structures where minors will be permitted, such as adjacent grounds, parking lots, rest rooms, locker rooms, accessory structures, etc.
2. A provision requiring insurance coverage in the types and amounts listed below, naming the University as an additional insured, and requiring that evidence of such insurance be provided to the University within five (5) business days of execution of the revocable permit or at minimum two weeks (14 days) prior to the scheduled use of University facilities.
 - A. General Liability insurance two million dollars (\$2,000,000) each claim and two million dollars (\$2,000,000) in the aggregate;
 - B. New York State Workers' Compensation insurance and New York State Disability Benefits insurance during the term of the revocable permit for the benefit of permittee's employees required to be covered under the NYS Workers' Compensation Law and the New York State Disability Benefits law.
 - C. For those instances in which the University believes that the activity is so long or substantial and that the obtaining of such insurance will not unduly preclude beneficial use of the University's facilities, the University should require additional insurance in the form of: Sexual Abuse and Molestation insurance, either under the above-described general liability policy or in a separate policy, with coverage not less than one million dollars (\$1,000,000). Any insurance coverage for sexual abuse and molestation insurance written on a claims made basis shall remain in effect for a minimum of six (6) months following the use of University facilities.
3. If the Covered Activity is a Children's Camp as defined in this policy, a provision requiring permittee to provide the University with a copy of its camp operator permit issued by the New York State Commissioner of Health, either upon execution of the permit or not later than two weeks (14 days) before the scheduled use of University facilities.
4. A representation and warranty from permittee that for all of its employees and volunteers, and employees and volunteers of its sub-permittees, who shall enter upon University facilities for purposes related to a Covered Activity, the University has conducted within the ninety (90) day period preceding the use of University facilities (i) a search of the NY Sex Offender Registry; and (ii) a

search of the National Sex Offender Public website, each as defined in this policy, and that the permittee shall not permit any individual with a positive search result to be present in or at University facilities in connection with the Covered Activity.

5. A representation and warranty from permittee that for all Covered Activities: (i) it shall adhere to the American Camp Association standards for minimum staff-to-child supervision ratios, minimum staff age and minimum staff accreditation requirements (available at: <http://www.acacamps.org/accreditation/stdsglance>); and (ii) that the overall supervisor for each Covered Activity is an adult with certification or documented training and experience in the Covered Activity.
6. A representation and warranty from permittee that any transportation it provides for participating children to and from the University grounds shall conform to the American Camp Association's transportation standards (available at: <http://www.acacamps.org/accreditation/stdsglance>).
7. A provision requiring written acknowledgement from permittee that it has received a copy of the University's Child Protection Policy and agrees to abide by all of its terms, including its requirement that any suspected physical or sexual abuse be immediately reported to the Office of Campus Safety.
8. A provision requiring the permittee to conduct the Covered Activity and all other activities in or at University facilities in accordance with applicable federal, state and municipal laws, ordinances, rules and regulations (including, if the Covered Activity is a Children's Camp as defined in this policy, the New York State Sanitary Code).

RESPONSIBILITY:

It is the responsibility of the assigned Responsible University Official for a particular activity, program or event to uphold the requirements of this policy. It is the responsibility of the Senior Vice President for Enrollment Management and Student Success, in conjunction with the Vice President for Legal Affairs and General Counsel, to review this policy on a regular basis to ensure that it is current and in keeping with applicable federal and state law.

ENFORCEMENT:

Enforcement of Utica University policies is the responsibility of the office or offices listed in the "Resources/Questions" section of each policy. The responsible office will contact the appropriate authority regarding faculty or staff members, students, vendors, or visitors who violate policies.

Utica University acknowledges that University policies may not anticipate every possible issue that may arise. The University therefore reserves the right to make reasonable and relevant decisions regarding the enforcement of this policy. All such decisions must be approved by an officer of the University (i.e. President, Provost and Senior Vice President for Academic Affairs, Senior Vice President for Enrollment Management and Student Success, Vice President for Financial Affairs, or Vice President for Legal Affairs and General Counsel).

RESOURCES/QUESTIONS:

Vice President for Legal Affairs and General Counsel
Provost and Senior Vice President for Academic Affairs
Senior Vice President for Enrollment Management and Student Success
Dean of Students
Vice President for Human Resources and Personnel Development
Director of Physical Education and Athletics

Please note that other Utica University policies may apply or be related to this policy. To search for related policies, use the Keyword Search function of the online policy manual.