



## MEMBER ALERT

### VOCATIONAL EDUCATION PROGRAMS

(Including Student Interns and Technical Training)  
[Issued With Workers' Compensation Coverage for Students Alert]

Adult and minor Student vocational training programs (“Training Programs”), as well as vocational and life skills training for Students with special needs, provide important services to our Students and community.

These programs, regardless of their funding source, curricular or extracurricular purpose, or scope of service provided (Workability, Cooperative Vocational Education, etc.), often involve external parties (“Sponsors”) who may be unaware of governing privacy, wage and hour, and workplace safety laws that create significant risks for all involved. Members also having safety and privacy protection obligations when adult and/or minor Students are participating in off-campus programs. Despite a strong internal desire to support these programs and concerns that standard risk management reviews or processes might “scare away” Students or Sponsors, it is important that Members help ensure that their employees are using required forms, are conducting reviews to help ensure “safe” placements, are explaining privacy standards to involved Sponsors, and are promptly reaching out to the administrative management team with any questions or concerns regarding programmatic compliance and/or individual Student placements.

#### I. KEY LEGAL AND POLICY CONSIDERATIONS

Students desiring to participate in Member-sponsored work experience and internship programs remain subject to the governing requirements of several key laws and regulations, with the key legal standards below:

- **DISQUALIFIED INDIVIDUALS/BACKGROUND CHECKS.** By placing Students (primarily minor Students) in Member-sponsored intern or vocational training programs, the definition of Volunteer (usually encompassed with BP/AR 1240, and the associated laws and regulations) usually encompasses Sponsors, who are effectively donating their time and workplace for educational purposes. Recognizing that these external workplaces may also include individuals with disqualifying criminal histories, Members should reasonably seek to comply with their own internal standards (at least a background check for primary/point person Sponsor representatives), and inquire and document the Sponsor’s response regarding potentially disqualified individuals with whom the Student might come into contact.

As a general rule, District-sponsored programs (curricular or extra-curricular) require compliance with Section 49024 when the involved individual is doing something more interactive with the Students than (a) giving a general speech, or (b) merely providing short-term, limited access to a site (such as a single work experience day supervised field trip). Thus, there is an argument that Sponsors may need to comply with Education Code Section 49024 (Volunteer Activity Clearance Certificate), because the Students are being independently supervised outside the direct presence of a certificated employee. While the statute may not have been intended to apply to such situations, the broad language of the statute raises concern, such that Members should at least be as proactive as possible in creating or ensuring a safe environment through prudent risk reviews and appropriate waivers/releases.<sup>1</sup>

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<sup>1</sup> Fagen Freidman has published a checklist relevant to this topic at <http://www.f3law.com/downloads/10-77%20Activity%20Supervisor%20Clearance%20Certificate%20Update%20and%20Checklist.pdf>.

In situations of potential concern, the program employees should be directed to advise a senior management team member in order to gain guidance and direction.

- **FERPA** – The Family Educational Rights Act prohibits disclosure of confidential Student information, including names, photographs, Student ID numbers, and educational records and information to anyone other than District employees (and certain retained consultants) and parents/legal guardians without the express, written permission from the parents/legal guardians, which should be expressly contained in the vocational program participation forms. Sponsors are likely unaware of these standards, which gains additional importance when involved in attendance and grading considerations, and there should be express understandings regarding compliance with all Student privacy rights and obligations.
- **ADA/FEHA/IDEA** – Students having special needs are equally entitled to participate in vocational programs, with certain programs even created or required in the providing of career and technical education. Not only must Members ensure that special needs Students (504 and IEP) have an opportunity to participate in such programs, but that the Sponsor locations are at least generally ADA compliant and the Sponsor’s employees are aware of ADA accommodation and related obligations.
- **OSHA** – Federal and state Occupational Safety and Health Administration laws require Sponsors to maintain a safe working location for Student interns, which includes obligations relating to initial safety orientations, precautionary safety instructions and training, and ongoing supervision for assigned duties. These laws also require an experienced professional who has expertise in the content area of the internship to be assigned to supervise the Student intern to ensure compliance with safe workplace and accident management issues.
- **FLSA** – The Fair Labor Standards Act, and more stringent California laws, prevents the use of Student interns in vocational education/practical training programs with for-profit companies unless specific legal requirements are met ensuring the program is an educational benefit for the Student, does not displace or replace regular employees, and requires that Students remaining under the supervision of the Sponsor’s employees.<sup>2</sup> When those and other requirements are not met, the parties are at risk for back wages and interests, civil penalties and attorney’s fees, and at times even criminal proceedings.<sup>3</sup>

## II. **PROGRAM COMPONENTS/CHECK LIST**

Vocational education and training can be provided in many contexts and settings. Those settings can impact the Member’s risk exposures or programmatic requirements, taking into account:

- An internship in a local assemblyman’s office presents different physical injury risks from an internship in a local mechanic shop; a vocational education program in a well-lighted, security

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<sup>2</sup> The factors include obligations to ensure: (1) the training program, even though at the Sponsor’s facility, is similar to that which would be given in a vocational school; (2) is for the benefit of the Student, not the Sponsor; (3) does not displace a regular employee (assist or support, but not replace), but instead works under the close observation of a regular employee or supervisor; (4) provides training that provides no immediate and direct advantage to the Sponsor, and on occasion may actually impede the Sponsor’s operations given the requirements of the training; (5) the Student is not necessarily entitled to a job at the conclusion of the training period; and (6) the Sponsor and the Student understand that the Student is not entitled to wages for the time spent training.

<sup>3</sup> Federal and state regulators are aggressively investigating and prosecuting claims for alleged misuse of Student interns/volunteers. Program placement agreements, signed by the Student, a parent/legal guardian, the sponsor, and the Member’s supervising employee, should clearly define the purpose of the program, the skills to be learned/developed, how the skills will be taught or explained, the level and method of direct supervision. Regardless of FLSA exposures and concerns, these standards should be included in all agreements as a best practice standard in any event.

patrolled business park may present fewer general safety concerns than programs in more remote or unsecured locations. Members should take “reasonable care under the circumstances” to identify or avoid known, expected or foreseeable risks to the Student.<sup>4</sup>

- The location or specific type of vocational program might also determine whether a Student must be covered by the Member’s workers compensation program (See Workers’ Compensation Coverage For Students Alert for greater detail), or whether the Student must seek coverage for medical expenses under a personal medical policy or program. If the Student is covered by the NBSIA workers’ compensation program, Members also need to ensure the Student is aware of how to report injuries and best protect coverage rights.
- The requirement for the Student to obtain professional liability, general liability, and/or personal automobile insurance coverage (often required in health care-related programs, such as nursing, or pharmacy technician programs), which will respond to claims that a Student’s negligent or wilful acts allegedly caused harm or injury to the Sponsor’s assets, employees, customers, or patients.<sup>5</sup> There are Members who pay for such separate coverage, which helps support and ensure Student participation without regard to such costs. Other Members note that as a voluntary program, the Student should bear such costs (almost always true with adult education students). In either event, as a Member-sponsored program usually accompanied by an external memorandum of understanding (“MOU”), the Member should ensure that insurance coverage obligations are clearly and expressly dealt with in advance of Student participation in the program.

These issues, among others, can materially impact a Member’s decision to sponsor a program or simply advise its Students of such opportunities (with the Students and their parents thereafter independently investigating such opportunities, and choosing whether to participate without school credit or involvement). These same issues also confirm the importance for program administrators and supervising certificated staff members to remain vigilant in ensuring that (1) newly initiated programs or locations do not present undue risk concerns, and (2) more mature or stable programs are not currently facing changes in personnel or physical location that may have turned a once appropriate site into a less than desirable location.

Therefore, as a quick guide for review, we provide the following nonexclusive check-list of items that should be regularly reviewed while developing student intern and vocational education programs.

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<sup>4</sup> This is an important concept that all program administrators must recognize. While as a general rule "school districts are not legally responsible for accidents that students may suffer once they have been released from school, Education Code Section 44808 creates an exception to this rule if the Member has “specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances." *Perna v. Conejo Valley Unified School Dist.* (1983) 143 Cal.App.3d 292, 294. As a Member-sponsored activity, the duty to exercise “reasonable care under the circumstances” to ensure the location, individuals, and program are “safe” exists even though the program is off campus and primarily supervised or conducted by others.

<sup>5</sup> NBSIA provides limited Student-related coverage, namely to Member-sponsored Student body clubs and organizations that are directly supervised by a Member’s employee. NBSIA does not separately provide liability coverage for Students.

## SUGGESTED PROGRAMMATIC CHECKLIST

CONCEPT	DONE
<p>1. Has the Program Description been written in accordance with all legal/regulatory standards (i.e., a Community Classroom or Cooperative Vocational Education program must be written in the manner defined by governing Education Code statutes and regulations, and should confirm/deny whether the Student is entitled to workers' compensation coverage protection), and</p> <ul style="list-style-type: none"> <li>i) identify skills to be developed, the expected method for developing those skills, and the method for determining successful participation and/or award of class credit; and</li> <li>ii) affirmative statements that the Sponsor and Student will comply with all safe work practice, labor, and privacy laws and regulations; and</li> <li>iii) methods by which the Sponsor or Student can report concerns, terminate participation early, and/or interact with program administrator in case of questions or concerns?</li> </ul>	
<p>2. Has the Program Description been reviewed and approved by the Board of Education and/or Superintendent or Designee (based on curricular v. extracurricular issues, the approval requirements may change)?</p>	
<p>3. Has a Program Participation Form (not necessarily the generic form available through CDE, which does not account for all Risk Management/Program Compliance Standards) been prepared and in keeping with all standards (see Item 1 above), and has it been executed by the Member's supervising, certificated employee, the Student, a parent/legal guardian, and the external Sponsor, with a copy provided to each party for their records?</p>	
<p>4. Have the minor Student and parent also signed an Agreement for Activity Participation Form (K-12), or has an adult Student signed a Contract for Adult Activity Participation Form, confirming proper waivers, releases, assumptions of risk, and designations for medical care? [Note: these forms are not required if their contents are incorporated into the Program Participation Form and/or they are attached to that Form and made a part of its terms.]</p>	
<p>5. Has the Member's program administrator verbally, or in person depending on the risk exposure and situation, reviewed privacy, safety, disqualifying criminal background, and related program compliance and risk management issues with the Sponsor? [In the case of "risky" intern settings, an in person review should be conducted to ensure that basic safety practices are in place; in almost all placements, the program administrator should also review a copy of business licenses and insurance documents evidencing basic compliance with California law and safe practices]</p>	
<p>6. Has the Member's program administrator obtained confirmation that the Sponsor has completed a Volunteer Background clearance? If not, has the Superintendent authorized a waiver of this requirement? [Completion of the background check, or the waiver of this requirement, should be documented in the Program file along with the Student's information; if this requirement is waived, the absence of such a background check should be noted in the Program Participation Form signed by the Student and parent/legal guardian to provide actual notice and acceptance of that risk]</p>	
<p>7. Have issues of transportation (self-transportation, guided transportation, etc.) been addressed and resolved [May require completion of Student Transportation Form if Student is driving, etc.]</p>	
<p>8. Are there special circumstances or documentation that is required and must be kept/shared?</p> <ul style="list-style-type: none"> <li>i) Special Needs Student should include IEP/504 forms – special review should occur</li> <li>ii) Medical programs (often involve Sponsors' confidentiality/compliance forms)</li> <li>iii) Evidence of separate insurance coverage (medical and pharmacy programs)</li> </ul>	