

AFFILIATION AGREEMENTS FREQUENTLY ASKED QUESTIONS

Source PASSHE WEBSITE 2/2010

What is an "affiliation agreement"?

An affiliation agreement is between a university and another entity for purposes of providing an educational opportunity for students generally in a supervisory situation such as a clinical experience, an internship program, or a student teaching assignment. Such contracts can be with federal agencies (*i.e.* prisons or Veterans Administration Hospitals), other state entities, school districts or private companies/businesses. The purpose of such agreements is to memorialize each party's rights and responsibilities in regards to this educational opportunity.

What is the difference between "affiliation" and "articulation" agreements?

An articulation agreement is between two academic institutions regarding the administration of a joint degree or a cooperative academic program, as opposed to an internship or clinical experience.

Do these agreements require attorney review and approval?

The Office of Legal Counsel has prepared several templates which cover a wide variety of affiliation experiences and are contained in the appendix of the Handbook for Academic Agreements. The manual is posted on the Office of Legal Counsel's web site. If these agreements are utilized without any alternations (but for information to be inserted in the given blanks provided), legal review is not necessary. However, if these templates are altered in any capacity, or the affiliated entity desires to use their own agreement, legal review is required.

The hospital requires us to maintain insurance for the student interns? Must we comply?

The University cannot and does not procure professional liability insurance for its students because there exists no statutory authority for such. The agreement should be crafted to reflect that a student shall be responsible for the procurement of such insurance at levels acceptable to the affiliated entity.

If participation is contingent on compliance, a student should be advised of the requirement as a prerequisite to obtaining a placement at this site. If the site mandates that the University procure the insurance, then an agreement between the parties will not occur and an alternative placement will have to be secured.

The hospital requires us to purchase and maintain insurance for our employees who will be at the site. How do we resolve this issue since our employees are already covered by insurance?

There exists no statutory authority for a Commonwealth agency to procure insurance and it does not buy casualty, loss, liability, or fidelity insurance for its property, assets or employees as a general rule. The

Department of General Services (DGS) through the Bureau of Risk and Insurance Management (BRIM) has the authority to administer the Commonwealth self-insurance program.

Provisions that require a student to purchase insurance are acceptable. Provisions that require faculty to purchase insurance are not permissible in that it results in a change in the terms and conditions of their employment. The following can be used where a contractor insists on substitute language for an insurance clause or can be provided to the affiliated entity by way of explanation as to the Commonwealth's self-insurance program:

_____ *University of Pennsylvania, is a part of the State System of Higher Education, a body corporate and politic, constituting a public corporation and government entity. As such, it lacks the statutory authority to purchase insurance and it does not possess insurance documentation per se (i.e., certificates of insurance). Instead, it participates in the Commonwealth's Tort Claims Self-Insurance Program administered by the Bureau of Risk and Insurance Management of the Pennsylvania Department of General Services. The program covers Commonwealth/University-owned property, employees and officials acting within the scope of their employment, and claims arising out of the University's performance under this agreement, subject to the provisions of the Tort Claims Act, 42 Pa.C.S.A. §8521, et seq.*

If this is not acceptable, then it is possible that an agreement may not be reached.

May we enter into an affiliation agreement that includes a term for 10 years?

Any contract in excess of five years must have good cause and the expressed written approval of Chief Counsel prior to submission of the contract.

We are considering a foreign placement with a school in Ontario, Canada. That school's form agreement provides that the laws of Ontario will govern. Is this permissible?

A contract will not meet with legal approval if it requires that the laws of another state or country apply to its interpretation. All contracts involving Commonwealth contracts entered into by any Commonwealth agency are obligated to be interpreted and enforced under Pennsylvania law, in courts and agencies of appropriate jurisdiction in this Commonwealth or else various legal protections could be compromised. There are no exceptions to this requirement. If necessary, the alternative is for the agreement to say nothing as to this issue.

How do we resolve the issue when a hospital insists that we indemnify or hold them harmless from any claims, costs, etc. due to the actions of our students or employees?

This is always a challenging situation. The best thing to do is to educate the affiliated entity that the university cannot waive its statutory right of sovereign immunity.

Clauses, which demand that the university not hold an affiator legally responsible for any actions or to reimburse the affiator for any damages, are strictly prohibited. These are commonly noted as

"Indemnification and Hold-Harmless Clauses." As an alternative, the language below is commonly substituted and is to be included in every affiliation agreement as standard language. This clause acknowledges that each party has the right to pursue whatever remedies are available to them as provided by law. In that the law strictly prohibits certain litigation or the awarding of certain damages against the Commonwealth (sovereign immunity), the university is, for the most part, protected by statutory authority. The language below can be offered as an alternative:

Liability. Neither of the parties shall assume any liabilities to each other. As to liability to each other or death to persons, or damages to property, the parties do not waive any defense as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the University.

The affiliated entity has not returned a signed agreement and the semester starts tomorrow. Can we place the student while waiting for the contract to be returned?

No student should be placed absent having a fully executed agreement which includes the review and approval of your university attorney if such review is required. If legal review is not required because of utilizing a pre-approved form from the handbook, the contract must be in the possession of the University with the affiliated entity's signature.

Who can sign affiliation contracts on behalf of the university?

Only the President of the University may sign an agreement and any other party specifically delegated by the President in writing. No person should sign an agreement on behalf of the University unless they are specifically delegated to do so. A person without delegation who signs an agreement will be acting outside the scope of his or her employment and can be held personally liable for obligations created by the inappropriate signing of the agreement.