As you know, the position of Agency Safety Director has been abolished in the Office of the Vice Chancellor for University-Wide Services and Special Programs. The elimination of this position, however, in no way diminishes the continuing responsibility of each campus to comply fully with all applicable state and federal safety requirements. I'm enclosing a memorandum from the Office of University Counsel which summarizes these obligations.

Reports of the annual fire hazards inspection required under Section 807(b) of the Education Law henceforth should be sent directly from the campus to the Commissioner of Education, to the attention of Division of Facilities Planning.

Reports of accidents or incidents which must be filed in accordance with Item 250 of the Administrative Policy should be sent by the campus directly to the Attorney General, the Dormitory Authority, the Office of General Services or other appropriate office.

While Central Staff does not perform safety services at the campus level, the State University Construction Fund and the Office for Campus Development staffs have considerable expertise in issues relating to life safety codes and other technical aspects of safety practices. If such assistance is required, you should feel free to get in touch with Oscar Lanford who will be glad to see that staff assistance is made available to you. Also, if there are special problems involving contacts with other state agencies concerning safety, his office will serve as liaison at the request of the campus.

Thanks very much.

Enclosure
This memorandum addressed to:

Presidents, State-operated campuses
Deans, Statutory Colleges

Copies for information only to:

Presidents, Community Colleges
President Rose
Mr. Barlow
MEMORANDUM
March 2, 1976

To: James S. Smoot
From: Thomas H. Winfield
Subject: Safety Responsibilities of State University Under Federal and State Statutes and Regulations

The Comprehensive United States Occupational Safety and Health Act of 1970 (OSHA) and the regulations thereunder by the Federal Department of Labor do not apply to the individual states or political subdivision thereof. As such the State University is exempt from coverage (29 USCA 652).

However, the duty of an employer, i.e., the University, to provide employees with a reasonably safe place to work is established by court decision as well as by statute. This includes not only the exact site of an employee's work, but the means of egress, ingress and ways customarily used by employees in passing from one part of the premises to another in the course of their employment. This duty also includes the making of reasonable rules to guard against accidents as may be reasonably foreseen. Whatever source of injury which is discoverable by reasonable inspection, an employer is presumed to have knowledge. Should the University fail its duty as an employer to provide a safe place to work and thereby cause an injury to an employee, it would be liable in damages.

In addition to the above common law requirements established by Judicial decision upon the University as employer, there are also additional specific safety obligations upon the University imposed by statute.

1. Under the Education Law the University Trustees are mandated to prepare construction standards for University facilities which may include provisions for safety, fire protection, health and sanitation. Upon adoption by the Trustees, such standards must be approved by the Governor (§375 Education Law). While the Trustees have adopted certain construction safety standards in 1962 (6 NYCRR 300), prudence may indicate the need for modifications or additions.
2. Subject to the overall control of the Board of Trustees, each local college council is charged under the Education Law with the special duty to "prescribe for and exercise supervision over student housing and safety" (§356(4) (h) Education Law).

3. The Education Law requires that students and teachers wear eye safety devices in shops or laboratories providing instructional or experimental programs involving work upon hazardous materials or objects. Visitors to such areas as well as students and teachers must wear such devices at times prescribed by regulations promulgated by the Commissioner of Education (§409(a) Education Law). The statute lists the following programs during the operation of which these eye safety devices must be worn:

   a. Those involving hot solids, liquids or molten metals; or

   b. Milling, sawing, turning, shaping, cutting, or stamping of any solid materials; or

   c. Heat treatment, tempering, or kiln firing of any metal or other materials; and

   d. Gas or electric arc welding; or

   e. Repair or servicing of any vehicle; and

   f. Caustic or explosive chemicals or materials.

4. Section 807(3) ibid. requires fire drills at colleges and universities. Three fire drills are to be held per year, with at least one conducted between September 1 and December 1 with an additional fire drill required the first week of a summer session in the buildings used during that term. If any building has fire escapes as a means of emergency egress at least one of the drills must be conducted in a manner that utilizes the fire egress. A fire drill is also required in dormitories of the University at some time between sunset and sunrise.

5. Section 807(b) ibid. requires annual inspections for fire hazards at facilities of a college to be conducted and a report filed with the Commissioner of Education between January 1 and June 1 of each year. Colleges located in the
cities of Albany, New York, Buffalo, Syracuse, Rochester and Yonkers need not comply with this requirement. This would appear to exempt a number of our campuses as: SUNYAB, Buffalo College, the College of Environmental Science and Forestry, our Medical Centers, and our Albany campus.

There are various regulations promulgated under the State Labor Law which appear applicable to the University. Certain of these regulations provide standards for the inspection, operation and maintenance of steam boilers which are the principal source of heat on our campuses. Annual inspections of the boilers are necessary to determine whether operation and maintenance is within stated guidelines (12 NYCRR 4, 14).

6. Control of Air Contamination - Although not a major concern to the University there are components (i.e., College of Ceramics at Alfred, major Fine Arts Departments) where this part has applicability. As such certain protective equipment (goggles, masks and shields) must be provided employees. Being the prime users of the equipment providing the contaminants (sawdust, ceramic dust, etc.) prudence would dictate that this protective equipment be available to students. (Point 12 ibid.)

7. Floor and Stair Surfaces, Railings and Towboards - Although principally concerned with standards in floors, stair surfaces, et al., this part does establish ongoing requirements that floors and stairs be kept dry and that no storage occur on or about stairways (Part 16 ibid.)

8. Guarding of Dangerous Machinery, Vats and Pans - These regulations make it the responsibility of the University to establish general standards for guarding dangerous machinery and require that eye protection be provided employees who work in such conditions (Part 19 ibid.)

Safety requirements also exist in the following areas which may pertain to the University:

circular metal saws,
wood working machines,
printing and paper box machines,
textile machinery,
grinding and polishing machinery (ibid.)
9. Radiation Protection - These labor regulations provide for the licensing of installations where there is radiation, sets limitations on its use on humans, requires the appointment of a radiation safety officer by the installation, and provides for various safety inspections and tests at six-month intervals. They also provide for the daily monitoring of personnel exposed to radiation as well as establish procedures for the proper labeling, instruction of personnel, keeping of records, and emergency evacuation and reporting (Part 38, ibid.)

10. Transparent Glass Doors must be properly marked. (Part 47, ibid.).

11. Under the Public Health Law, Swimming Pools must be annually licensed. Standards for operation are set including requiring lifeguards, and lifesaving equipment. (19 NYCCR, Part 6).

12. Ionizing Radiation Regulations under this law overlap those of the State Labor Department. Similar requirements for a radiation equipment safety officer with responsibility for radiation safety exist. Radiation safety responsibilities require that operators of the equipment be properly instructed and competent, that the operating personnel be provided with safety rules, that there is a radiation protection program to keep the exposure levels as far below the maximum as possible. Survey, check, test and inspection requirements are similar to those in the Labor regulations (Part 16, ibid.).

13. Public Functions with Attendance over 5,000 people - Regulations under the Public Health Law provide for a certain number of emergency health care units and the availability of a physician at a public function in excess of 5,000 people. Functions in excess of 5,000 are only to be by permit. An ambulance may be required and any additional equipment the official deems necessary. If a crowd exceeds the projected attendance figures by 20% then the sponsor must provide certain additional health and other personnel required by the regulation (Part 18, ibid.).

14. The State Hospital Code includes fire and safety regulations which apply to all hospitals including the University health centers. They include maintaining exists, stairways, doors and corridors free of obstacles, proper storage and handling of flammable liquids, a master fire plan, fire regulations conspicuously posted, as well as standards for fire extinguishers and sprinkler systems. Fire drills are to be conducted at irregular intervals at least 12 times a year with inspections of fire detection systems.
and protection systems to occur at least twice a year (10 NYCRR Part 202.3).

15. A hospital is required to retain on file the reports of hospital inspectors or surveys of outside agencies and the steps taken to correct any hazards or deficiencies noted therein. (Part 720.5(a) (7) ibid.)

16. Radiology Department – These regulations require compliance with the State Sanitary Code and mandate the presence of licensed and qualified personnel (Part 720.12, ibid).

17. A hospital must have an operating room procedure which will minimize the accidental ignition of anesthetic gases (Part 720.13(c) (2), ibid.).

18. Federal Hospital Insurance Benefits for the Aged and Disabled legislation authorize the Department of Health, Education and Welfare to administer the participation of hospitals in receiving reimbursement for health services to the aged and disabled (42 USCA § 1395). A hospital's failure to meet these conditions of such participation may render it ineligible to receive reimbursement. Our University Medical Centers render services under this program.

The hospital's governing body must provide "... a physical plant equipped and staffed to maintain the needed facilities and services for patients"; and receive periodic reports from appropriate internal and external sources on the condition of the physical plant (20 CFR §405.1021(i)).

19. In addition to the requirement that the hospital retain a safe environment specific requirements exist for emergency power, lighting, gas and water supplies, unobstructed corridors and passageways, written fire control and evacuation plans and proper methods for the handling and storage of explosive agents and oxygen supplies. The hospital must also meet the provisions of the Life Safety Code of the National Fire Protection Association (1967 ed.) as it applies to hospitals as well as the standards of the National Fire Protection Association for the use of anesthetics (20 CFR §405.1022).
Compliance with the Life Safety code may be waived if unreasonable hardship would result. However, there must be a determination that the waiver will not adversely affect the health and safety of the patient. The Life Safety Code shall not apply if the HEW secretary finds that State law imposes a fire and safety code adequately protecting the hospital patient (ibid.)

Thus, apart from any plan developed by the State Department of Labor concerning University employees, these statutes and regulations require the University to actively pursue certain safety procedures concerning its employees and students. The prevalent wave of information about new hazards including product safety liability requires a continuing University concern for safety. The statutory concerns would appear to involve the facilities office more than any other.

cc: James Kelly
    Oscar Lanford
    Jerry Komisar
    Ted Barber
    Platt Harris

TW: eck
Memorandum No. 5  
Date June 1, 1976  
Prepared by Office for Campus Development

Copies sent to:

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Board of Trustees' Office (1)

Messrs. Block (2)  
Dearing (7)  
Ingler (3)  
Kelly (6)  
Komisar (3)  
Lanford (4)  
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