

Appendix 1



U.S. Department of Education
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EDGAR Part 86 (Drug and Alcohol Abuse Prevention)-Subpart A (General)

TITLE 34--EDUCATION

PART 86_DRUG AND ALCOHOL ABUSE PREVENTION

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* Downloaded from EDGAR version June 23, 2005 (www.ed.gov/policy/fund/reg/edgarReg/edlite-part86a.html).

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Authority: 20 U.S.C. 1145g, unless otherwise noted.

Source: 55 FR 33581, Aug. 16, 1990, unless otherwise noted.

Subpart A_General

Sec. 86.1 What is the purpose of the Drug and Alcohol Abuse Prevention regulations?

The purpose of the Drug and Alcohol Abuse Prevention regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which added section 1213 to the Higher Education Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE) must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g)

[61 FR 66225, Dec. 17, 1996]

Sec. 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include--

- (a) All programs administered by the Department of Education under which an IHE may receive funds or any other form of Federal financial assistance; and
- (b) All programs administered by any other Federal agency under

which an IHE may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Sec. 86.3 What actions shall an IHE take to comply with the requirements of this part?

(a) An IHE shall adopt and implement a drug prevention program as described in Sec. 86.100 to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE shall provide a written certification that it has adopted and implemented the drug prevention program described in Sec. 86.100.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, 66226, Dec. 17, 1996]

Sec. 86.4 What are the procedures for submitting a drug prevention program certification?

An IHE shall submit to the Secretary the drug prevention program certification required by Sec. 86.3(b).

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(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66226, Dec. 17, 1996]

Sec. 86.5 What are the consequences if an IHE fails to submit a drug prevention program certification?

(a) An IHE that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Sec. 86.6 When must an IHE submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that--

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3) An IHE shall submit a request for an extension to the Secretary.

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(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66226, Dec. 17, 1996]

Sec. 86.7 What definitions apply to this part?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR part 77:

Department

EDGAR

Secretary

(b) Other definitions. The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means--

- (1) An institution of higher education, as defined in 34 CFR 600.4;
- (2) A proprietary institution of higher education, as defined in 34 CFR 600.5;
- (3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and
- (4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66226, Dec. 17, 1996]

Appendix 1 (continued)



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EDGAR Part 86 Subpart B (Institutions of Higher Education), Subpart C [Reserved]

Subpart B_Institutions of Higher Education

Sec. 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit except for continuing education units, regardless of the length of the student's program of study, of--

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a) (1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to--

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph

(a) (5) of this section are consistently enforced.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

Sec. 86.101 What review of IHE drug prevention programs does the

Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

Sec. 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under Sec. 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Approved by the Office of Management and Budget under control number 1880-0522)

(Authority: 20 U.S.C. 1145g)

Sec. 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by Sec. 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by Sec. 86.100(a) as well as the results of the biennial review required by Sec. 86.100(b).

(b) (1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

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(Authority: 20 U.S.C. 1145g)

Subpart C [Reserved]

Appendix 1 (continued)



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EDGAR Part 86 Subpart D (Responses/Sanctions Issued/Imposed by the Secretary for Violations by an IHE)

Subpart D_Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE

Sec. 86.300 What constitutes a violation of this part by an IHE?

An IHE violates this part by--

(a) Receiving any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification in accordance with Sec. 86.3 (b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE to--

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under Sec. 86.100 (a) (1).

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66226, Dec. 17, 1996]

Sec. 86.301 What actions may the Secretary take if an IHE violates this part?

(a) If an IHE violates its certification, the Secretary may issue a response to the IHE. A response may include, but is not limited to--

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE into full compliance with this part as soon as feasible.

(b) If an IHE receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, including--

(1) Repayment of any or all forms of Federal financial assistance received by the IHE when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that--

(i)(A) Except as specified in paragraph (b) (2) (ii) of this section, ends an IHE's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE from making any new obligations against Federal

funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Sec. 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE in writing, through site visits, or by other means.

(b) The IHE shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Sec. 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE in writing of--

(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE may submit written comments to the Secretary on the determination under paragraph (a) (1) of this section and the intended response under paragraph (a) (2) of this section within 30 days after the date the IHE receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE in accordance with the procedures in Sec. 86.304.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Sec. 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's eligibility for any or all forms of Federal financial assistance by sending the IHE a notice by certified mail with return receipt requested. This notice--

(1) Informs the IHE of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate--

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent; and

(3) Informs the IHE that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE receives the notice of intent described in this paragraph--

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place; or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE contends need not be repaid.

(b) If the IHE does not request a hearing but submits written material--

(1) The IHE receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE in writing whether--

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g)

[55 FR 33581, Aug. 16, 1990, as amended at 61 FR 66225, Dec. 17, 1996]

Appendix 2

PART 86 COMPLIANCE CHECKLIST

Part 86, Drug-Free Schools and Campuses Regulations Compliance Checklist

1. Does the institution maintain a copy of its drug prevention program? Yes No
If yes, where is it located? _____

2. Does the institution provide *annually to each employee and each student*, who is taking one or more classes for any type of academic credit except for continuing education units, written materials that adequately describe and contain the following?
 - a. Standards of conduct that prohibit unlawful possession, use, or distribution of illicit drugs and alcohol on its property or as a part of its activities
Students: Yes No Staff and Faculty: Yes No
 - b. A description of the health risks associated with the use of illicit drugs and the abuse of alcohol
Students: Yes No Staff and Faculty: Yes No
 - c. A description of applicable legal sanctions under local, state, or federal law
Students: Yes No Staff and Faculty: Yes No
 - d. A description of applicable counseling, treatment, or rehabilitation or re-entry programs
Students: Yes No Staff and Faculty: Yes No
 - e. A clear statement of the disciplinary sanctions the institution will impose on students and employees, and a description of those sanctions
Students: Yes No Staff and Faculty: Yes No

3. Are the above materials distributed to students in one of the following ways?
 - a. Mailed to each student (separately or included in another mailing)
Yes No
 - b. Through campus post offices boxes
Yes No
 - c. Class schedules which are mailed to each student
Yes No
 - d. During freshman orientation
Yes No
 - e. During new student orientation
Yes No