



Complying with the Drug-Free Schools and Campuses Regulations (DFSCR)

By H.S. Albert Jung, Intern, SUNY Office of General Counsel,¹ July 22, 2015

DFSCR requires that colleges (1) distribute a written notice with required alcohol and other drugs (AOD) related information to all students and employees; and (2) conduct a biennial review of the AOD prevention program. To prepare for Department of Education (ED) audits, SUNY campuses should keep records of annual notices and biennial reviews.

I. How to Prepare the Annual Notice

A written notice, including five types of information about AOD use. **Suggestion:** this information need not to be included in the notice itself, but can be incorporated in a policy document (e.g. Clery ASR).

Type	Requirement	Suggestions
Standards of Conduct	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.	<ul style="list-style-type: none"> ▪ Ensure that it applies to all employees, in addition to all students who are registered for at least one course for any type of credit, except for continuing education units. ▪ Ensure that it applies to all on/off-campus activities that are sponsored by the institution. ▪ Ensure that it applies to student-sponsored social activities or professional meetings attended by employees that the campus authorizes and/or use any campus resources.
Legal Sanctions	A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol.	<ul style="list-style-type: none"> ▪ Provide a copy or a summary of the federal laws with the similar level of information as Appendix 1. ▪ Provide a copy or a summary of the state/local law with the similar level of information as Appendix 2. ▪ State that violators of the AOD policy are subject to both IHE’s sanction and criminal sanctions under federal, state, and local law.
Health Risks	A description of the health risks associated with the use of illicit drugs and the abuse of alcohol.	<ul style="list-style-type: none"> ▪ Focus should be on information about substances covered by the Controlled Substances Act (See Appendix 1). ▪ Could be in a form of a chart, a descriptive paragraph, etc. (See Appendix 3).
Drug and Alcohol Programs	A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available.	<ul style="list-style-type: none"> ▪ Provide a description of on and off-campus AOD programs (prevention, counseling, treatment, rehabilitation, and re-entry) available to students, staff, and faculty. ▪ Could be in a form of a chart, a list, a descriptive paragraph, etc.
Disciplinary Sanctions	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.	<ul style="list-style-type: none"> ▪ Provide a description of the range of disciplinary sanctions that the campus might impose in case of the conduct violation. Include an explicit statement that these sanctions will be imposed. ▪ Make a note that the disciplinary sanctions that apply to faculty and staff may differ from one another depending on the terms set forth in union contracts. ▪ Ensure that the campus administrators are ultimately responsible for enforcing the standard of conduct, but the responsibility can be shared with campus police, health providers, student affairs staff, faculty and students.

¹ 2015 Intern at the SUNY Office of General Counsel. Prepared under the supervision of Associate Counsel Joseph C. Storch.

II. How to Distribute the Annual Notice

Requirements	Suggested Steps
<ul style="list-style-type: none"> • Actively Distribute every year <ul style="list-style-type: none"> ○ Merely making the required information passively available to students/employees (e.g. posting on the website) is not sufficient. ○ Recipient’s acknowledgement or proof of delivery is not necessary. ○ Using a method that reasonably ensures delivery to everyone satisfies the requirement. • In a written form (e.g. email) • Include five required types of information • Distribute to each employee and student <ul style="list-style-type: none"> ○ Student: someone 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. ○ New students who enroll or employees who are hired after the initial distribution date for a given year must receive the notice with required information. 	<ol style="list-style-type: none"> 1. Include the required information in Clery ASR. 2. Send out a brief descriptive notice with the link to the policy document via email to all students and employees in the beginning of each school year. <ul style="list-style-type: none"> ▪ It could be the same as the Clery ASR notification. However, the notification should contain a clear description that the notice also is a DFSCR notification. 3. After this initial distribution, ensure that all new students and employees receive the notice via email as soon as they activate their email account. 4. Keep the records showing that the notice was sent to everyone, including those who received the notice after the initial distribution. <ul style="list-style-type: none"> ▪ If the students or employees do not receive an email account as part of their enrollment/employment, ensure that they receive the notice in another manner that allows the campus to record that it gave the notice to the students/employees. ▪ For example, it could be included with the first pay-stub for new employees, or welcome packet for new students.

III. How to Conduct the Biennial Review

No specific form is required and colleges are given latitude on the format of the review. However, recent audits by ED indicate that it should be an extensive report. All requirements described below should be with detailed factual data and evidence. In addition, the review should identify in detail current prevention efforts and point to policy and program areas that need improvement as well as those that can continue unchanged.

Requirements	Suggestion
Description of AOD Program Elements	<ul style="list-style-type: none"> • List the program elements that the campus uses. • Examples: alcohol-free event promotion, creation of alcohol-free zones, mentorship programs, strict enforcement of standards of conduct, etc.
Statement of AOD Program Goals and Description of Goal Achievement	<ul style="list-style-type: none"> • Identify the goals that the campus is trying to achieve (e.g. reducing heavy episodic alcohol use). Should be like a blueprint for what the AOD program is doing. • Include information indicating whether goals have been met and program outcome.
Summary of AOD Program Strengths and Weaknesses	<ul style="list-style-type: none"> • Summarize strengths and weaknesses that the program has. • Strength Examples: reasonable budget, support from leadership, etc. • Weakness Examples: lack of support, lack of collaboration, understaffing.
Procedures for Distributing Annual AOD Notification to Students and Employees	<ul style="list-style-type: none"> • Describe procedures the campus uses to distribute the Annual AOD Notification, including how the campus ensured distribution to every student / employee.
Policies Distributed to Students and Employees	<ul style="list-style-type: none"> • Include copies of information distributed as part of the Annual AOD Notification. • List other locations where the information can be founded.
Recommendation for Revising AOD Programs	<ul style="list-style-type: none"> • Recommend courses of action to address the weaknesses and/or achieve AOD program goals.

Appendix 1: Sample - Summary of Federal Drug Law ²

Federal Trafficking Penalties for Schedules I, II, III, IV, and V (except Marijuana)				
Schedule	Substance/Quantity	Penalty	Substance/Quantity	Penalty
II	Cocaine 500-4999 grams mixture	First Offense: Not less than 5 yrs. and not more than 40 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine of not more than \$5 million if an individual, \$25 million if not an individual. Second Offense: Not less than 10 yrs. and not more than life. If death or serious bodily injury, life imprisonment. Fine of not more than \$8 million if an individual, \$50 million if not an individual.	Cocaine 5 kilograms or more mixture	First Offense: Not less than 10 yrs. and not more than life. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine of not more than \$10 million if an individual, \$50 million if not an individual. Second Offense: Not less than 20 yrs, and not more than life. If death or serious bodily injury, life imprisonment. Fine of not more than \$20 million if an individual, \$75 million if not an individual. 2 or More Prior Offenses: Life imprisonment. Fine of not more than \$20 million if an individual, \$75 million if not an individual.
II	Cocaine Base 28-279 grams mixture		Cocaine Base 280 grams or more mixture	
IV	Fentanyl 40-399 grams mixture		Fentanyl 400 grams or more mixture	
I	Fentanyl Analogue 10-99 grams mixture		Fentanyl Analogue 100 grams or more mixture	
I	Heroin 100-999 grams mixture		Heroin 1 kilogram or more mixture	
I	LSD 1-9 grams mixture		LSD 10 grams or more mixture	
II	Methamphetamine 5-49 grams pure or 50-499 grams mixture		Methamphetamine 50 grams or more pure or 500 grams or more mixture	
II	PCP 10-99 grams pure or 100-999 grams mixture		PCP 100 grams or more pure or 1 kilogram or more mixture	
Substance/Quantity		Penalty		
Any Amount Of Other Schedule I & II Substances		First Offense: Not more that 20 yrs. If death or serious bodily injury, not less than 20 yrs. or more than Life. Fine \$1 million if an individual, \$5 million if not an individual.		
Any Drug Product Containing Gamma Hydroxybutyric Acid		Second Offense: Not more than 30 yrs. If death or serious bodily injury, life imprisonment. Fine \$2 million if an individual, \$10 million if not an individual.		
Flunitrazepam (Schedule IV) 1 Gram				
Any Amount Of Other Schedule III Drugs		First Offense: Not more than 10 yrs. If death or serious bodily injury, not more that 15 yrs. Fine not more than \$500,000 if an individual, \$2.5 million if not an individual. Second Offense: Not more than 20 yrs. If death or serious injury, not more than 30 yrs. Fine not more than \$1 million if an individual, \$5 million if not an individual.		
Any Amount Of All Other Schedule IV Drugs (other than one gram or more of Flunitrazepam)		First Offense: Not more than 5 yrs. Fine not more than \$250,000 if an individual, \$1 million if not an individual. Second Offense: Not more than 10 yrs. Fine not more than \$500,000 if an individual, \$2 million if other than an individual.		
Any Amount Of All Schedule V Drugs		First Offense: Not more than 1 yr. Fine not more than \$100,000 if an individual, \$250,000 if not an individual. Second Offense: Not more than 4 yrs. Fine not more than \$200,000 if an individual, \$500,000 if not an individual.		

² Available at http://www.dea.gov/druginfo/ftp_chart1.pdf.

Appendix 2: Sample - Summary of State Alcohol Law³

<p><u>NYS ABC Law</u> Special Provisions Relating to Liquor</p>	<p>Specifics</p>	<p>Sentence</p>
<p>§ 65-a. Procuring alcoholic beverages for persons under the age of 21 years</p>	<p>Any person who misrepresents the age of a person under the age of 21 years for inducing the sale of any alcoholic beverage, as defined in the alcoholic beverage control law, to such person.</p>	<p>A fine of not more than \$200, or imprisonment up to five days, or both.</p>
<p>§ 65-b. Offense for one under age of 21 years to purchase or attempt to purchase an alcoholic beverage through fraudulent means.</p>	<p>No person under the age of 21 years shall present or offer to any licensee, or to the agent or employee of such licensee, any written evidence of age, which is false, fraudulent, or not actually his own, for the purpose of purchasing or attempting to purchase any alcoholic beverage.</p>	<p>1st violation: a fine of not more than \$100 and/or up to 30 hours of community service. Also may order completion of an alcohol awareness program.</p> <p>2nd violation: a fine of \$50 to \$350 and/or up to 60 hours of community service. Also shall order completion of an alcohol awareness program if not previously completed.</p> <p>3rd and subsequent violations: a fine of \$50 to \$750 and/or up to 90 hours of community service, shall order evaluation by an appropriate agency to determine whether the person suffers from the disease of alcoholism or alcohol abuse. Payment for such evaluation shall be made by such person. If person elects to participate in recommended treatment, the court shall order that payment of such fine and community service be suspended pending the completion of such treatment.</p> <p>In addition to these penalties, the court may suspend such person's license to drive a motor vehicle and the privilege of an unlicensed person of obtaining such license: 1st violation: a three month suspension; 2nd violation: a six month suspension; 3rd or subsequent violation: a one year suspension or until the holder reaches the age of 21, whichever is the greater period.</p>
<p>§ 65-c. Unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of 21 years.</p>	<p>No person under the age of 21 years shall possess any alcoholic beverage with the intent to consume such beverage.</p>	<p>A fine up to \$50 and/or completion of an alcohol awareness program and/or up to 30 hours of community service.</p>

³ Available at SUNY Policies & Procedures website: https://www.suny.edu/sunypp/documents.cfm?doc_id=440.

Appendix 3: Sample – Health Risks Information⁴

Health Risks

The following information on health risks is from *What Works: Schools Without Drugs*, U. S. Department of Education (1992):

Alcohol consumption causes a number of marked changes in behavior. Even low doses significantly impair the judgment and coordination required to drive a car safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate doses of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high doses of alcohol cause marked impairments in higher mental functions, severely altering a person's ability to learn and remember information. Very high doses cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower doses of alcohol will produce the effects just described.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life-threatening. Long-term consumption of large quantities of alcohol, particularly when combined with poor nutrition, can also lead to permanent damage to vital organs such as the brain and the liver.

Mothers who drink alcohol during pregnancy may give birth to infants with fetal alcohol syndrome. These infants have irreversible physical abnormalities and mental retardation. In addition, research indicates that children of alcoholic parents are at greater risk than other youngsters of becoming alcoholics.

A chart accompanying this policy in the current Safe & Secure brochure lists the possible effects and health risks associated with the use of illicit drugs and controlled substances.

⁴HIGHER EDUC. CTR. FOR ALCOHOL AND OTHER DRUG ABUSE AND VIOLENCE PREVENTION, COMPLYING WITH THE DRUG-FREE SCHOOLS AND CAMPUSES REGULATIONS 46 (July 2006).