



## Drug and Alcohol Abuse Prevention under Higher Education Act (HEA)

Law/Act:	Drug and alcohol abuse prevention provisions of Higher Education Act	
Public Law Citation:		
U.S. Code Citation:	<a href="#">20 U.S.C. § 1011i</a>	
Code of Federal Regulations Citation:	<a href="#">34 C.F.R. pt. 86</a>	
Responsible Regulator:	Department of Education	
BYU–Hawaii Responsible Officer	Dean of Students	
	Last updated: 18 October 2012, WDH	Effective Date: October 1, 1990

### PURPOSE OF ACT

The drug and alcohol abuse prevention requirements of the Higher Education Act (“HEA”) aim to motivate colleges and universities to adopt and implement “a program to prevent the use of illicit drugs and the abuse of alcohol” on campus by making certification of a drug prevention program a condition for receipt of any federal funds.<sup>1</sup>

### GENERAL REQUIREMENTS

The university is required to do the following:

- Adopt and implement a drug and alcohol abuse prevention program “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.”<sup>2</sup>
- Distribute annually to each student and employee information about the institution’s standards of conduct, legal sanctions, health risks, treatment programs, and institutional sanctions.<sup>3</sup>
- Provide written certification that it has adopted and implemented a drug prevention program.<sup>4</sup>
- Conduct biennial reviews of its drug and alcohol abuse prevention program.<sup>5</sup>

### HISTORY

1986	Drug-Free Schools and Communities Act of 1986 (DFSCA): imposed requirements related to drug abuse prevention programs in elementary and secondary schools.
1989	Drug-Free Schools and Communities Act Amendments of 1989 (Pub. L. No. 101-226): amended DFSCA and Higher Education Act of 1965 (HEA) to require schools to have drug prevention programs as a condition of federal funding.
1998	Higher Education Amendments of 1998 (Pub L. No. 105-244): extended authorization of programs under the Higher Education Act of 1965; instituted national awards for models of

<sup>1</sup> 20 U.S.C. § 1011i(a); *see also* 34 C.F.R. § 86.1 (“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.”).

<sup>2</sup> 34 C.F.R. § 86.3(a); *see also* 20 U.S.C. § 1011i(a).

<sup>3</sup> *Id.* § 1011i(a)(1).

<sup>4</sup> 34 C.F.R. § 86.3(b).

<sup>5</sup> 20 U.S.C. § 1011i (a)(2).



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	innovative and effective alcohol and drug abuse prevention programs in higher education and promulgated review criteria.
2008	Amendment to Higher Education Act of 1965 (Pub. L. No. 110-315), including the provisions for drug and alcohol abuse prevention.

### APPLICABILITY TO BYU–HAWAII

As a condition of receiving funds or any other form of financial assistance under any federal program, an institution of higher education must certify it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees. The BYU–Hawaii Drug-Free School Policy was developed to accomplish this purpose. It was last updated on January 1, 1992. Failure to comply with the drug and alcohol abuse prevention requirements of the HEA may cause an institution to forfeit funding eligibility.<sup>6</sup>

### REQUIREMENTS

The Drug and Alcohol Abuse Prevention regulations require BYU–Hawaii to do the following:

1. Annually distribute in writing the following information to all students<sup>7</sup> and employees:
  - (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, rehabilitation, or re-entry programs that are available to employees or students; and
  - (5) “A clear statement that the [higher education institution] 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.”<sup>8</sup>
2. “[S]ubmit to the Secretary [of the Department of Education] the drug prevention program certification required by §86.3(b).”<sup>9</sup>
3. Review biennially its drug and alcohol abuse prevention program to:
  - (A) determine the program’s effectiveness and implement changes to the program if the changes are needed;

<sup>6</sup> 34 C.F.R. § 86.301(b)(2).

<sup>7</sup> The annual distribution must be made to students “taking one or more classes for any type of academic credit except for continuing education units.” 34 C.F.R. § 86.100(a).

<sup>8</sup> 34 C.F.R. § 86.100(a)(1)-(5).

<sup>9</sup> 34 C.F.R. § 86.4.



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- (B) determine the number of drug and alcohol-related violations and fatalities that—(i) occur on the institution’s campus (as defined in section 485(f)(6) [20 USCS § 1092(f)(6)]), or as part of any of the institution's activities; and (ii) are reported to campus officials;
  - (C) determine the number and type of sanctions described in paragraph (1)(E) that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution’s campus or as part of any of the institution’s activities; and
  - (D) ensure that the sanctions required by paragraph (1)(E) are consistently enforced.”<sup>10</sup>
- 4. Upon request, make available to the public and the Secretary of the Department of Education a copy of each item required for the annual distribution requirement and the results of the biennial review.<sup>11</sup>
  - 5. If selected for review, “provide the Secretary [of the Department of Education] access to personnel . . . and any other necessary information requested by the Secretary to review the [university’s] adoption and implementation of its drug prevention program.”<sup>12</sup>
  - 6. Retain records related to the drug and alcohol prevention program for three years after the fiscal year in which the record was created.<sup>13</sup>

Federal regulations do not specify how information about drug and alcohol prevention must be distributed to students and employees other than stating the information must be in writing.<sup>14</sup> According to guidance issued by the U.S. Department of Education in 2006, “merely making the materials available to those who wish to take them does not satisfy the requirements of the regulations, as that does not ensure distribution to every student and employer.”<sup>15</sup> Some schools disseminate information to students by including the information in registration materials, academic schedules, class schedules, or invoices for financial accounts.<sup>16</sup> Likewise, schools have distributed the information to employees with paystubs or W-2s.<sup>17</sup> Applicable regulations and guidance do not prohibit distributing the drug and alcohol abuse prevention information in conjunction with a school’s annual security report, which is required by the Clery Act.

“The Department of Education has not developed official policy on allowing electronic dissemination in fulfillment of the requirement that IHEs [institutions of higher education] must distribute their AOD [alcohol and other drugs] annual notification in writing.”<sup>18</sup> Emailing a link may satisfy the requirement to

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<sup>10</sup> 20 U.S.C. § 1011i(a)(2)(A)-(D).

<sup>11</sup> 20 U.S.C. § 1011i(b).

<sup>12</sup> 34 C.F.R. § 86.102.

<sup>13</sup> 34 C.F.R. § 86.103(b)(1) (noting that records include, but are not limited to, results of biennial review, annually distributed information, and litigation records).

<sup>14</sup> *Id.* § 86.100(a).

<sup>15</sup> U.S. Department of Education, Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention, *Complying with the Drug-Free Schools and Campuses Regulations: A Guide for University and College Administrators* 9 (2006), available at <http://www.higheredcenter.org/files/product/dfscr.pdf>.

<sup>16</sup> *Id.* at 9-10.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.*



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distribute information in writing,<sup>19</sup> however, the Department of Education suggests that if email is used to distribute alcohol and drug prevention information, schools “must ensure they can provide reasonable assurance to the Department (if audited) that this method of dissemination ensures distribution to all students and employees.”<sup>20</sup>

### COMPLIANCE CALENDAR

The regulations and amendments do not specify a date by which the biennial review must be completed and on file—they simply require that a campus complete a review every two years. Since the regulations went into effect in an even-numbered year (1990), long practice has held that campuses conduct a biennial review by the end of each even-numbered calendar year.<sup>21</sup>

### STAYING UP-TO-DATE

The following web sites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
<a href="#">“Complying With the Drug-Free Schools and Campuses Regulations: A guide for University and College Administrators”</a>	A compliance checklist developed by the Department’s Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention that highlights the legal requirements of the Drug-Free Schools and Campuses Regulations. Completing this checklist will ensure that the campus has a sense of what has been done to satisfy the minimum requirements.
<a href="#">The Department of Education’s Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention</a>	This site contains updated information on DFSCA and other useful information regarding actual implementation of the law by other universities.

<sup>19</sup> Given the lack of specificity regarding the distribution requirements for drug and alcohol prevention information, the Clery Act regulations are instructive. Under the Clery Act, an institution may distribute its annual security report via email or a website posting. *Id.* § 668.41(b). The annual security report can be distributed by posting the information on an Internet or Intranet website so long as the required recipients are sent a notice that includes the “exact electronic address at which the information is posted” and a “statement that the institution will provide a paper copy of the information on request.” *Id.* § 668.41(c)(2)-(3); *id.* § 668.41(e)(1)-(2).

<sup>20</sup> U.S. Department of Education, Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention, *Complying with the Drug-Free Schools and Campuses Regulations: A Guide for University and College Administrators* 10 (2006), available at <http://www.higheredcenter.org/files/product/dfscr.pdf>.

<sup>21</sup> The U.S. Department of Education’s Higher Education Center, *Drug-Free Schools and Communities Act (DFSCA) and Drug and Alcohol Abuse Prevention Regulations*, available at <http://www.higheredcenter.org/mandates/dfsca>.