



**CAMPUS
PREVENTION
NETWORK**

COMPLYING WITH THE DRUG-FREE SCHOOLS AND CAMPUSES REGULATIONS [EDGAR PART 86]

A Guide for University and College Administrators

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Complying with the Drug-Free Schools and Campuses Regulations [EDGAR Part 86]: A Guide for University and College Administrators is a revision of the guide published in 1997 by the Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention, Office of Safe and Drug-Free Schools, U.S. Department of Education (Pittayathikhun, Ku, Rigby, Mattsson, & DeJong, 1997), and later updated in 2006 (DeRicco, 2006).

SECTION I: PURPOSE OF THE GUIDE

The Higher Education Act of 1965, as amended by the Drug-Free Schools and Communities Act of 1989, requires that any institution of higher education that receives federal financial assistance must adopt and implement a program to prevent the use of illicit drugs and alcohol abuse by students and employees ([20 U.S.C. 1145g—Drug and Alcohol Abuse Prevention](#)).

Pursuit to this requirement, the Department of Education General Administrative Regulations (EDGAR), 34 C.F.R. Part 86 (Part 86), mandate that colleges and universities: 1) annually distribute specified drug and alcohol prevention information to students and employees (“annual notification”), and 2) conduct a biennial review of their drug and alcohol prevention programs¹.

The Department’s Office of Postsecondary Education (OPE) was responsible for enforcing the Part 86 regulations from 1989 until June 2010, at which point the Secretary of Education reassigned this duty to the Department’s Office of Federal Student Aid (FSA). The FSA also reviews compliance with Title IV of the Higher Education Act, which authorizes federal student aid², and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act³.

In 2012, the Office of the Inspector General (OIG) for the U.S. Department of Education reported to the FSA that the Department had failed to ensure compliance with the Part 86 requirements from 1998 until June 2010, and that “the oversight process FSA developed provides no assurance that institutions of higher education (IHEs) are in compliance with Part 86 requirements.”⁴

In response to the OIG report, the FSA pledged to clarify its procedures and to train the Clery Act and Title IV reviewers to document whether institutions of higher education have complied with the Part 86 requirements. In addition, the FSA stated that it would assess Part 86 compliance with a sample of schools that receive federal funds but do not participate in Title IV programs.

¹ These regulations were originally published in the Federal Register, Vol. 55, No. 159, Aug. 16, 1990, pp. 33580–33601, and are now available at <https://ifap.ed.gov/regcomps/attachments/86.pdf> (accessed on December 2, 2016).

² Additional information is available from the Department of Education’s Federal Student Aid website at <https://studentaid.ed.gov/sa/>

³ Additional information and resources are available from the Clery Center at <http://clerycenter.org/policy-resources/the-clery-act/>

⁴ The OIG’s report is available at <http://www2.ed.gov/about/offices/list/oig/aireports/i1310002.pdf>, along with the FSA’s response (accessed on December 2, 2016).

For IHEs found in violation of Part 86, the Department can stipulate an agreement designed to bring the institution into full compliance, but sanctions can be as severe as requiring repayment or loss of all federal funds, including student financial aid.

This guide is designed to support college and university staff—campus attorneys, risk management staff, or student affairs staff—charged with ensuring their institution’s Part 86 compliance.

Section 2 outlines the Part 86 certification requirements and consequences for failing to comply with the regulations.

Section 3 outlines requirements for the annual notification and describes written formats that colleges and universities have used to present this information to their students and employees.

An important aspect of the Higher Education Act is the requirement that campuses document and assess their prevention program on a biennial basis. Section 4 provides guidance on preparing the biennial review report.

SECTION 2: CERTIFICATION REQUIREMENTS

The EDGAR Part 86 regulations state that institutions of higher education (IHEs) must certify that they have adopted and implemented a program “to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees” on the institution’s premises or in conjunction with institution-related activities.

When applying for federal assistance, IHEs must certify to the existence of such a program, typically as part of a Title IV program participation agreement or within the “Representations and Certifications” section of a standard federal grant or contract application in the “Representations and Certifications” section.

Having a compliant program also requires that IHEs do the following:

- Annually provide each student and employee with a written statement outlining its standards of conduct; a description of appropriate sanctions for violation of federal, state, and local law and campus policy; a description of the health risks associated with alcohol and other drug (AOD) use; and a description of available treatment programs.
- Use a reliable method for distributing the annual notification so it can be documented that it reached every student and employee.
- Prepare a biennial review report on the effectiveness of its AOD programs and policies and the consistency of its policy enforcement.

Additionally, the regulations require that IHEs must retain all records related to Part 86 compliance for three years.

When an IHE fails to submit a requested certification or otherwise violates Part 86, the Department may arrange for technical assistance to help the institution develop a plan to achieve compliance as soon as possible. The Department has the authority to terminate all forms of federal financial assistance, whether from the Department of Education or other agencies, and can demand repayment of past assistance, including grants to individual students (e.g., Pell grants).

The Part 86 regulations establish a set of minimum requirements for campus substance use programs and policies. Colleges and universities may have additional obligations under state law.

Also important may be recent court decisions that have implications for what types of programs and policies IHEs are expected to have.

Consultation with a knowledgeable attorney is highly recommended. Additional resources may be provided by the [Council on Law in Higher Education](#) and the [National Association of College and University Attorneys](#).

Assigning Responsibility for Ensuring Compliance with EDGAR

The federal regulations do not specifically instruct IHE's on which individual or office should be responsible for overseeing compliance with Part 86. However, an institution may be best served by assigning this responsibility to an entity already charged with ensuring compliance of other federal regulations such as Title IV, Title IX, and the Clery Act.

With Title IX resolution agreements now including express mention of DFSCA compliance and biennial reviews being requested as part of Clery Act and financial aid audits, IHE's may be best served by assigning oversight to a single individual or office. This is preferable to responsibility being spread across multiple departments or divisions, particularly at institutions where communication is more of a challenge due to size or organizational structure.

Campuses have several options for who or where to assign responsibility: general counsel, compliance office, office of financial aid, etc. For a number of reasons, it may not be appropriate to delegate responsibility to the AOD office or practitioner. As the resident prevention expert, they can and should play a significant role in development of the Biennial review (see section 4) and serve in an advisory role to whoever is ultimately responsible for certifying the institution's compliance.

SECTION 3: ANNUAL NOTIFICATION

Part 86 requires that IHEs adopt and implement programs “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.”⁵

The regulations specify that the annual notification to students and employees must include the following items:

- Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees
- A list of applicable legal sanctions under federal, state, or local laws for the unlawful possession or distribution of illicit drugs and alcohol
- A list of applicable legal sanctions under federal, state, or local laws for the unlawful possession or distribution of illicit drugs and alcohol
- A description of the health risks associated with the abuse of alcohol or use of illicit drugs
- A list of drug and alcohol programs (counseling, treatment, rehabilitation, and reentry) that are available to students and employees
- A clear statement that the IHE will impose disciplinary sanctions for violations of these standards of conduct and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution

Each of these requirements is discussed below.

⁵ EDGAR Part 86, Subpart A 86.3

Standards of Conduct

Standards of conduct govern the behavior of students, faculty, and staff as members of the campus community. The standards should focus on prohibited activities related to alcohol and other drugs, but may also cover more specific expectations that the institution has established.

According to Part 86, the standards of conduct should apply to all students who are registered at an institution for at least one course for any amount or type of credit, except for continuing education units.⁶ Students who hold part-time jobs with the institution are covered by both student and employee policies. At some campuses, student workers are covered under the employee policy while on duty but otherwise are covered under the student policy.

An IHE's standards of conduct apply to all on-campus activities and to off-campus activities that are considered to be sponsored by the institution (e.g., an officially sanctioned field trip). The standards have also been interpreted to apply to student-sponsored activities or professional meetings attended by employees if these events are considered IHE-sponsored activities. Note that if a fraternity or sorority is recognized by an IHE, then its activities may be classified as IHE-related activities, even if it is located off campus.

Legal Statutes

The Part 86 regulations include a description of federal penalties and sanctions for illegal trafficking and possession of a controlled substance.⁷ This represents the minimum level of information about federal laws that IHEs must provide to students and employees.

IHEs also must include in their policies a copy or summary of the relevant sections of their state penal codes and local ordinances dealing with illegal substances, including sanctions. Students and employees need to know that changes in state law regarding marijuana or other controlled substances do not negate applicable federal statutes.

The institution's AOD policy should stipulate that a student or employee who violates the policy is subject to both the institution's sanctions and criminal sanctions as provided by federal, state, and local law.

The regulations do not require any particular approach for presenting these legal statutes, but the goal is to ensure the information is clearly articulated and easily accessible to all members of the campus community.

⁶ EDGAR Part 86 (Subpart B 86.100)

⁷ The Part 86 list can be found in the Appendix of the Regulations at <https://ifap.ed.gov/regcomps/attachments/86.pdf> (accessed on February 16, 2017) Additional information can be found on the [Department of Justice](#) and [Drug Enforcement Agency](#) websites (both accessed on February 16, 2017).

Health Risks

The Part 86 regulations also require institutions to distribute facts about the health risks associated with alcohol abuse and illicit drug use. Publications available from the [National Institute on Alcohol Abuse and Alcoholism \(NIAAA\)](#), [National Institute on Drug Abuse \(NIDA\)](#) and resources available through EverFi's [Campus Prevention Network](#) can be used to guide campus personnel in presenting this information.

Some policy statements use charts to summarize this information, organized by the class or prohibited substances (i.e., narcotics, depressants, stimulants, hallucinogens, cannabis, alcohol, and tobacco):

- risk of dependence,
- possible short-term effects,
- possible long-term effects, and
- likelihood and effects of overdose

The health risks should be written using non-technical language to the extent possible.

Drug and Alcohol Programs

Part 86 requires that the annual notification include a description of the alcohol and other drug programs (counseling, treatment, rehabilitation, and reentry) available to students, staff, and faculty. Some institutions may provide the full spectrum of programs on their individual campus, but those who do not will need to identify the process for referring to off-campus resources.

Disciplinary Sanctions

The regulations further require that the annual notification describe the disciplinary sanctions the IHE may impose when the standards of conduct are violated, plus an explicit statement that these sanctions will be imposed. It should be noted that the sanctions that apply to faculty and staff may differ according to the terms set forth in union contracts.

⁸ EDGAR Subpart B 86.100

Distribution of the Annual Notification

Part 86 requires that the annual notification be distributed in writing. The Department of Education has stated that merely making the materials available to those who wish to take them does not satisfy the regulations. Accordingly, the biennial review report should describe what specifically is done to guarantee that every student and employee does in fact receive the annual notification.

More and more institutions are utilizing technology to distribute and guarantee receipt of the required information. Online education and training courses, for example, can incorporate or provide links to the necessary information on a campus website. This can include collection of an electronic signature or tracking of completions to verify receipt of the information. Electronic card readers can also be used to record names of student, staff, or faculty who receive information via tables at orientations, trainings, or other venues.

The U.S. mail remains a viable option as well, albeit more of a challenge in terms of verification. According to the regulations, if a mailing is returned undelivered, then the IHE should use the method it normally would rely upon to locate and deliver the item. The Department of Education has not developed an official policy regarding the use of electronic mail. When using this low-cost option, campus officials must be able to document that all students and employees actually received the material, not just that it was sent. Use of an electronic signature that can be collected via a campus website can be helpful in addressing this challenge and generally requires little effort to put in place.

For students, additional lower-cost options include passing out the materials in required classes, orientation meetings, and advising sessions; including them in registration packets; reprinting the policies in documents that students use frequently such as academic bulletins, student handbooks, academic calendars and class schedules; and displaying posters, flyers, and door hangers in residence halls, and using social media. For employees, the required notification can be presented in annually distributed faculty and staff handbooks or as an enclosure with paychecks, tax forms, parking permits, or other routine mailings.

To be on the safe side, institutions will often employ a variety of distribution methods, knowing that no single method alone will successfully reach every student and employee. Many of these methods will be employed at the beginning of the academic year, but it should be noted that students and employees who come to campus after that time should receive the annual notification immediately upon their arrival.

Some institutions take advantage of the in-person or online class registration system. For example, before the registration process begins, students can be asked if they had read the institutions annual notification. If they answer no, then they should be required to read the document. This procedure can be set up so that there is a record of each student's affirmation of having received the annual notification and having read the material.

It should be noted that while many of these examples include collection of electronic or in-person signatures as a method for verifying receipt of the annual notification, signature collection is not expressly required by the regulations.

Policies that are written with an engaging rather than legalistic style and use bulleted lists and graphics will have greater appeal and are more likely to be read.

SECTION 4: THE BIENNIAL REVIEW

The Part 86 regulations require institutions to conduct a biennial review of their AOD-related programs and policies and produce a report that demonstrates how the institution meets all of the Part 86 directives. This document should be kept on file and provided to anyone who requests it, whether they are asking in an official capacity or not.

The required review has two purposes that should drive the report's basic structure:

- To determine the effectiveness of the AOD prevention program and identify any improvements that need to be implemented
- To document that the institution consistently applies disciplinary sanctions for violations of its AOD-related policies

Part 86 does not dictate how the biennial review should be conducted, what types of information the report should include, or the reporting format. As a result, institutions have great leeway in how they structure the review to meet their own needs and provide the greatest benefit to their AOD-related efforts.

The regulations do not specify a date by which the biennial review report must be on file, but simply state that the review must be done every two years. Since the regulations went into effect in 1990, many institutions complete the review by December 31 of each even-numbered calendar year, with each report covering two academic years. For example, for the 2018 biennial review, the covered dates would be the 2016-17 and 2017-2018 academic years.

Assigning Responsibility for the Biennial Review and Report

Typically, a task force or committee conducts the review and prepares the report. Ideally, the campus attorney and the AOD prevention coordinator co-lead the effort, working with representatives of key departments and offices that have a primary role in promoting student health and safety—for example, student affairs, residential life, student health services, athletics, and campus security.

The institution's president or chancellor, if not personally involved, should have a representative at the meetings and should approve and sign the final report.

Institutions that have not had a permanent alcohol task force have used the biennial review process to initiate its formation. With this group in place, the institution is able to put systems in place for collecting data and initiating quality-improvement efforts on a continual basis rather than waiting until just a few months

*While responsibility for the Biennial Review should be shared with the campus prevention expert, compliance with all components of EDGAR Part 86 should be the responsibility of an individual or office with legal and compliance expertise (see previous section *Assigning Responsibility for Ensuring Compliance with EDGAR on p. 4*)*

Conducting the Review of Programs and Policies

The first step in preparing the report is to take stock of the institution's AOD-related programs and policies. The most useful reviews develop an inventory that describes program and policy initiatives, notes whether they are evidence-based practices, and describes any improvements that need to be made.

Consistent with the environmental management framework,⁹ this review should consider any and all campus and community efforts that may serve to reduce students' alcohol and other drug use, even if they were not designed primarily for that purpose. Building a new student union, for example, may provide a wider range of recreational options and therefore contribute to a reduction in student alcohol use.

As part of the review, the report can validate the institution's enforcement procedures by documenting the level of effort expended to detect violations of the institution's standards of conduct. This can be accomplished by examining a combination of department budgets, staff plans, and personnel records, which would highlight the percentage of time that prevention, conduct, and other staff spend on enforcement, as well as the qualifications of those involved.

⁹ See "A Typology for Campus-Based Alcohol Prevention: Moving toward Environmental Management Strategies" by William DeJong and Linda Langford in *Prevention and Treatment of College Alcohol Problems* (No. 14, 2002).

Evidence-Based Practices

NIAAA's [CollegeAIM \(Alcohol Intervention Matrix\) website](#) provides a helpful listing of evidence-based prevention programs and policies. CollegeAIM gives higher scores to strategies that have been tested in randomized control trials (RCTs) and therefore favors individual-level strategies such as brief interventions with high-risk students.

EverFi's Alcohol Prevention Compass, available from the [Campus Prevention Network](#), is another tool that can be used to identify effective strategies. The Compass utilizes a scoring methodology that quantifies the effectiveness of more than 30 campus prevention programs and policies. Effectiveness is based on reviews of published literature, credible web resources, and interviews with practitioners and researchers. The Compass also provides a way for campuses to visually relate the potential cost of a program to the scale of that program and the impact it is likely to have on student drinking.

Other resources to help determine if current efforts are on track can be found in the recommended standards for prevention programs developed by the [Council for the Advancement of Standards in Higher Education](#) and the [American College Health Association](#).

Evaluation and Data Monitoring

The institution's AOD-related efforts should be guided by a logic model that depicts how the outlined programs and policies can be logically linked—step by step—to its short- and long-term objectives. In turn, the logic model is the basis for the evaluation plan. A well-crafted logic model will make clear exactly what needs to be measured: (1) the resources and activities that constitute the intervention (process evaluation), (2) intermediate objectives (outcome evaluation), and (3) long-term goals (impact or summative evaluation). A comprehensive evaluation enables researchers to establish that the planned activities contributed directly to achieving the intervention's objectives or to diagnose why a particular intervention did not work as planned.

A well-designed evaluation will document how a prevention initiative was implemented and assess its intermediate and long-term outcomes. With these findings in hand, the planning group can develop plans for strengthening or improving that effort. In some cases it will be discovered that a program or policy was not implemented as planned, or that too few resources were invested in it. Or it may be that too few students knew about the initiative for it to be effective. In other cases, the evaluation will show that an entirely new approach is needed.

Consistency of Enforcement

The biennial review's second major objective is to document that the institution holds all students to the same policy standards and treats similarly situated offenders in a similar manner. This can be done by preparing a chart that lists each case (without identifying information to protect confidentiality) and describes the offense, any mitigating or aggravating circumstances, and the disposition. The report can facilitate cross-based comparisons by grouping similar cases together.

Ensuring consistent enforcement is made complicated by the fact that a student disciplinary committee or conduct office does not have sole responsibility for enforcing the institution's policies. Multiple players are involved: campus police or security personnel, student affairs staff, the Greek advisor, the housing office, the athletics program, student health services, academic departments, faculty, and even students, especially where there is a student honor code that applies.

Recommendations for Improvement

The biennial review report should include a summary of strengths and weaknesses in the institution's prevention efforts. Most noteworthy would be the use of evidence-based programs and evaluation data showing that the institution's efforts are working. Other potential areas of strength might include visible presidential leadership, having a well-trained and experienced AOD prevention office, strong budgetary support, an active campus-community coalition, and a solid data collection system. The list of identified gaps should be informed by an updated assessment of the AOD-related problems that both students and the community are experiencing.

In crafting its recommendations, the institution should again look to evidence-based practices, but also take into account its readiness to undertake those initiatives. It is important to develop a realistic plan, while also recognizing that the best defense in any lawsuit stemming from an alcohol-related incident is the institution's commitment to use evidence-based practices and to evaluate those efforts.¹⁰ A focus on evidence-based practices does not mean, however, that institutions should avoid interventions without a strong evidentiary basis. There are many commonly used programs and policies that are widely accepted in the field that have not been subjected to rigorous evaluation, yet are consistent with the environmental management approach or have a strong basis in behavior change theory.

“the best defense in any lawsuit stemming from an alcohol-related incident is the institution's commitment to use evidence-based practices and to evaluate those efforts.”

¹⁰ Lake, Peter F. (2013). *The Rights and Responsibilities of the Modern University: The Rise of the Facilitator University* (Second Edition). Durham, NC: Carolina Academic Press.

Assembling the Biennial Review Report

The report outline can follow the sequence of activities described earlier in this section: 1) a description of the campus officials assigned responsibility for conducting the review; 2) the inventory of programs, policies, and enforcement procedures, with special note made of those interventions that are evidence-based; 3) findings from the institution's data monitoring and evaluation work; 4) documentation regarding the consistency of enforcement; and 5) recommendations for improvement.

As noted earlier, Part 86 requires that the institution distribute its annual notification in writing to faculty, staff, and students. When describing the ways the institution has distributed its annual notification to students and employees, the report should list the methods used and the specific steps taken to ensure that the notification was actually received.

Finally, the biennial review report should include a copy of the distributed policies. Note that campus officials should review the annual notification on a regular basis so that it reflects current case law and changes in federal, state, and local laws, and to ensure that the policies are reasonable, comprehensive, and enforceable.

RESOURCES

[American College Health Association](#)

[CollegeAIM](#)

[Campus Prevention Network](#)

[Council on Law in Higher Education](#)

[National Association of College and University Attorneys](#)

[National Institute on Alcohol Abuse and Alcoholism \(NIAAA\)](#)

[National Institute on Drug Abuse \(NIDA\)](#)

[The Council for the Advancement of Standards in Higher Education](#)

[Illinois Higher Education Center](#)

[Higher Education Center for Alcohol and Drug Misuse Prevention and Recovery](#)

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