# The Safe and Drug Free Schools & Campuses Act (34 C.F.R. Edgar Part 86): Updates and Review Session I

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#### Webinar Series

- 1:30 PM CDT 3:00PM
- Session I: Introduction
  - Wednesday, April 27
- Session II: Drug and Alcohol Program Prevention Notice
  - Wednesday, May 18
- Session III: Comprehensive Program
  - Wednesday, May 25
- Session IV: Biennial Review
  - Wednesday, June 8

### Module 1 Learning Objectives

- Describe the history of the DFSCA Compliance Act
- List the primary requirements of the Drug-Free Schools and Campuses Act.
- Explain required elements of certification
- Detail current changes in how the act is monitored and enforced



#### COMPLYING WITH THE DRUG-FREE SCHOOLS AND CAMPUSES REGULATIONS

[EDGAR Part 86]

A Guide for University and College Administrators

http://www.higheredcompliance.org/resources/resources/dfscr-hec-2006-manual.pdf

U.S. Department of Education

#### Past Statements Made RE: Not Doing DFSCA

- "DFSCA doesn't apply to community colleges"
- Only applies to residential, 4-year colleges
- There are no penalties, so its not a priority
- Its an act that is not enforced, and our likelihood of getting caught is naught
- It will cost more to do this than the fine we will get.
- They won't take away our students' financial aid
- Very little drinking occurs on campus not an issue
- We're a religious institution our students sign contracts that they won't drink
- We're a nursing school we cover these issues in our coursework
- We do Clery we're fine!
- I'm sure someone else is doing this
- Someone else is responsible for this

#### Past Statements Made RE: Not Doing DFSCA

"If you can't tell me that my university will be fined for not doing this, or anyone will not be arrested for not doing this – you're wasting my time."

Anonymous Student Affairs Senior Level Officer

#### Past Statements Made RE: Not Doing DFSCA

- Eric, We've let this ball drop.
- Eric, I don't think we've been doing this
- Eric, I know we have not been doing this
- Eric, I've been sent here because my VP heard about this, or was responsible for this at another institution and we don't have anything.

# Historical Events Related to DFSCA

- 1820 1933: See "Betwixt Brewings: A History of College Students and Alcohol, 1820-1933" Dissertation by Michael Stephen Hevel (2011)
- 1919 1933: Prohibition
- 1937: Marijuana Tax Act
- World War II and GI Bill
- 1953: Drinking in College published by Straus and Bacon
- 1971: Nixon Initiates War on Drugs; Controlled Substances Act
- 1970's: Drinking age lowered in 29 states
- 1975: BACCHUS founded at the University of Florida
- 1976: The Whole College Catalog about Drinking is published by the NIAAA
- 1978: Animal House Released

- 1983: Inter-Association Task Force on Alcohol and Other Substance Issues is Founded leading to National Collegiate Alcohol Awareness Week
- 1984: National Minimum Drinking Age Act is passed
- 1984: Nancy Reagan Launches Just Say No
- 1984: Revenge of the Nerds Released
- 1985: Greeks Advocating Mature Management of Alcohol is Founded
- 1986: Anti-Drug Abuse Act of 1986 establishes the Drug-Free Schools and Communities Act
- 1986: Perkins and Berkowitz first publish on social norming
- 1986: Jeanne Clery is murdered in her dorm room at Lehigh University
- 1987: Minimum drinking age of 21 is in effect

- 1987: Journal of College Health has special issue on college drinking
- 1987: The Network Addressing Collegiate Alcohol and Other Drugs is established
- 1987: First Fund for the Improvement of Post-Secondary Education (FIPSE) Grants are awarded for college AOD Prevention
- 1988: Drug-Free Workplace Act passed
- 1989: Crime Awareness and Campus Security Act of 1990 is passed

- 1989: Drug Free Schools and Communities Act Amended to add Drug Free Schools and Campuses component, "monitored" by US Dept of Safe and Drug Free Schools
- 1990: DFSCA regulations codified on 8/16/1990, being effective on 10/1/1990
- 1990: Americans with Disabilities Act Passed
- 1992: Palmer and Gehring publish "A Handbook for Complying with the Program and Review Requirements of the 1989 Amendments to the Drug-Free Schools and Communities Act"
- 1994: DFSCA revised to remove language regarding local and state educational entities
- 1998: "Monitored" by the Office of Post-Secondary Education (through 2010)

- 1997: Complying with the DFSCA Regulations first printed
- 2005: Kristine Guest death due to alcohol-related snowmobile death, family loses wrongful death suit; parents become strong advocates for enforcement and monitoring of DFSCA
- 2006: Complying with the DFSCA Regulations reprinted
- 2010: Last Dept of Education Higher Education AOD Meeting
- 2010: Financial Student Aid Office, Clery Compliance Division begins overseeing DFSCA
- 2011: Office of the President Dear Colleague Letter
- 2012: Inspector General's Office Releases DFSCA Monitoring and Compliance Report

#### Key Points from History

- Regulations written over 32-36 years ago, during a high activity time during prevention history, have not changed
- Historical context provides insights into the requirements of DFSCA
  - Left to the institution to decide power at the local level
  - Informational/Educational Approach policy notice
  - Programming approach not defined or articulated
  - Policy approach strong focus
  - Enforcement approach –strong focus
- Letter of the Law vs. Spirit of the Law
  - Regulations have not been updated/modified
  - We've learned a lot about effective prevention expectation is that our efforts evolve and align with current practices, research, etc.

# Main Elements of DFSCA

### Edgar 86 Minimum Requirements

- Annual notification/distribution of a Drug and Alcohol Prevention Program Notice, which includes substance abuse policy and information to all students, staff and faculty.
- Development and implementation of a Drug and Alcohol Prevention Program to prevent the unlawful possession, use or distribution of illicit drugs or alcohol by students and employees.
- Prepare a biennial report on the effectiveness of its alcohol and other drug (AOD) programs and the consistency of policy enforcement.

#### Drug and Alcohol Prevention Program (DAAPP)Annual Notification

- Annual = everyone gets it within a 12 month period, not that you just send it out once
- Goes to all students who are receiving 1 or more hours of for credit coursework
- Goes to all faculty and staff, not just new hires
- Must be available to new and prospective students and family members
- Has specific and detailed information
- Is way more than just a paragraph or page
- Includes more than just your AOD policy statement

#### Additional Requirements Letter vs. Spirit

- The Drug-Free Schools and Campuses Regulations establish an expectation that colleges address substance abuse issues based on current research, evaluation, best practices, etc.
- Focus is on Primary Prevention Efforts
- In finding documents & fine letters Drug and Alcohol Abuse Prevention Program (DAAPP)

### What does "program" mean?

- Very ambiguous this is where the spirit of the law really comes to play
- Programming is not prescribed
- DFSCA does not specify what programs or interventions should be included in your comprehensive program unlike the VAWA requirement additions to the Clery Act
- Comprehensive Effort The Network Addressing Collegiate Alcohol and Other Drug Issues
  - Education and awareness
  - Student Assistance and Support
  - Policy Monitoring, Enforcement, and Sanctioning
  - Socio-Ecological Interventions
  - Community ownership/community organizing

### Letter of the Law vs. Spirit of the Law

- Again, programming and interventions are not indicated/suggested/recommended
- The expectation is that you are implementing programs and interventions based on
  - Data you have collected at your institution to show a need
  - Data you have collected on the programs, interventions, policies to show efficacy
  - If programs, interventions, and policies are not effective, then as part of your BR process you make recommendations and action plans to strengthen and improve interventions or adopt new interventions to replace ineffective ones.

#### Biennial Review

- Not specified as Clery Data
- Ambiguous
- Review of Program/Intervention effectiveness
- Review of Consistent Policy Monitoring, Enforcement,
   & Sanctioning
- Similar to a research methodology or accreditation process
- Findings are expected
- Recommendations and Actions to be taken should be included.

#### Certification Requirements

Part 86, the Drug-Free Schools and Campuses Regulations, requires 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 program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees.

### What Does Certification Mean?

- For certain forms of federal funding and assistance,
   IHE's must certify compliance.
- Title IV/Financial Aid Agreements with Dept. of Education
- In most cases, certification is included within the "Representations and Certifications" portion of funding applications and proposals

#### NAME OF UNIVERSITY/COLLEGE

#### Drug-Free Schools and Campuses Regulations [EDGAR Part 86] Alcohol and Other Drug Prevention Certification

The undersigned certifies that it has adopted and implemented an alcohol and other drug prevention program for its students and employees that, at a minimum, includes –

- The annual distribution to each employee, and to each student who is taking one or more classes
  of any kind of academic credit except for continuing education units, regardless of the length of the
  student's program of study, of:
  - 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
  - A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol
  - A description of the health risks associated with the use of illicit drugs and the abuse of alcohol
  - A description of any drug or alcohol counseling, treatment or rehabilitation or re-entry programs that are available to employees or students
  - A clear statement that the institution will impose disciplinary sanctions on students and
    employees (consistent with 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. A disciplinary sanction may include the completion of an
    appropriate rehabilitation program.
- A biennial review by the institution of its alcohol and other drug prevention comprehensive program to:
  - Determine its effectiveness and implement changes to its comprehensive alcohol and other drug
    prevention program and policies, if they are needed
  - Ensure that its disciplinary sanctions are consistently enforced.

Your University Name Your University Address City, State Zip	
Typed Name of Chief Executive Officer	IRS Employer Identification Number
Signature of the Chief Executive Officer	Telephone Number
	e-mail address

#### Presidential/Senior Administrator Certification

- IHE's must also have the senior leading administrator (President) certify
  - minimally every five years
  - Upon the arrival of a new senior leading administrator

This is unwritten anywhere – but was voiced by a formal Dept of Ed Official during the last Dept of Ed National Higher Ed AOD Meeting, October 2010.

## What Do I Do With the Biennial Report, DAAPP Notice & Certification

- Unless requested, we currently do not send to Dept of Ed.
- Send copy to President/Senior Level Administrator for signature/certification
- Send signed copy to Financial Aid
- Send copy to grant's office
- Copies to places where someone would think that an alcohol report would be obtained
- Place on-line for public access (many schools are doing, but at this time, it is not required)

#### **Additional Requirements**

- If requested, IHE's are required to submit written certification and/or copies of policy/information distributed annually, as well as copies of the biennial review to the Secretary of Education – Federal Student Aid designees.
  - Auditors inspecting Financial Aid records
  - Auditors inspecting Clery Security Compliance
  - Auditors inspecting federally funded research grants

#### Record Keeping Requirements

Sec.86.103 requires that IHEs retain the following records for 3 years after the fiscal year in which the record was created:

- The annually distributed notification document
- Prevention program certification
- Results of the biennial review
- Any other records reasonably related to the IHE's compliance with certification
- If selected for review, the IHE shall provide 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

### Ensuring Compliance

### Times Have Changed

### Failure to Comply with the Drug-Free Schools and Campuses Regulations

- Old Warning
  - May terminate all forms of financial assistance, whether from the Department of Education or other federal agencies
  - **■** Corrective action
  - May require repayment of such assistance, including individual students' federal grants, such as Pell grants.

### March 2012 Monitoring and Compliance Report

- OSDFS Performed No Oversight Activities from 1998 to June 2010
- ► FSA's Oversight Process Provided No Assurance That IHEs Were in Compliance with Part 86 Requirements
- IHEs That Did Not Participate in Title IV, HEA Programs Were Not Covered by FSA's Oversight Process Even Though They Were Covered by Title I of the HEA

### March 2012 Monitoring and Compliance Report

- 28 random reviews; 14 Clery, 14 Financial Aid
- 5 were correctly identified and reported for noncompliance
- 18/23 reviews, lack of documentation to support FSA's conclusions that IHEs were in DFSCA compliance.
- 10/23 reviews, indications that FSA reviewers did not fully understand DFSCA requirements, reviewers concluded that IHEs had complied with certain DFSCA requirements despite documentation to the contrary.
- 4/23 reviews, FSA reviewers documented that IHEs were not in compliance with elements of Part 86 requirements but did not report the IHEs' noncompliance in the corresponding program review report.

### New DFSCA Monitoring and Compliance

- Office of the President Letter Fall 2011
- Monitoring and compliance administered by the Clery Compliance Division
- Increased number of schools reporting being audited for DFSCA

### New DFSCA Monitoring and Compliance

- The National Association of Clery Compliance Officers and Professionals (NACCOP) conducted a review
- January 1, 2014 September 1, 2015
- 263 publically-available Clery program reviews completed by ED since 2014
  - 57/263 institutions were found to be out of compliance with DFSCA in the last 2 years
  - 6 of those institutions being fined as a result.
- https://info.stanleycss.com/2016ResurgenceofDrugFreeSc hools.html?utm\_source=Partner&utm\_medium=website& utm\_term=Drug-Free-Schools&utm\_campaign=DSA

### Schools Found in Violation – 2016 – Clery Audits

- Penn State (PA) \$27,500
- Graham Hospital College of Nursing (IL) \$15,000
- Jefferson College (MO) \$27,500
- McDaniel College (MD) \$35,000
- Wichita Area Technical College (KA) \$27,500
- Rosemont College of the Holy Child Jesus (PA) -\$35,000

### DFSCA Consequences

- Federal Civil Penalties
   Inflation Adjustment Act Improvements Act of 2015 (2015 Act)
- April 20, 2017 Federal Register
- Increase in Civil Monetary Penalties from the previous amount of \$35,000 to currently \$59,017.
- DFSCA and Clery!!!!!!

### 2015-2019 IHEC Review

- 76 institutions in violation
- ► Average DFSCA Fine \$20,121
- 40% of overall Dept of Ed Fine

### 2015-2019 IHEC Review

- Common Issues
  - Failed to Develop DAAPP
  - Failed to Implement DAAPP Notice
  - DAAPP Notice was Missing Requirements
  - Failure to distribute DAAPP Notice to Students and/or Staff/Faculty on an Annual Basis
  - ► Failed to Conduct Biennial Review
  - ► Failed to Produce Biennial Review Findings

### 2015-2019 IHEC Review

- Common Required Actions
  - Create/Form DAAPP
  - Review/Update DAAPP
  - Distribute Annually to all Students/Staff/Faculty
  - Provide Certification/Documentation
  - Approved/Reviewed by Senior/Chief Executive
  - Conduct a Biennial Review
  - Submit Copy of revised policies/procedures
  - Conduct BR in a timely manner

## Department of Education Websites

- Federal Student Aid Program Reviews
  - https://studentaid.ed.gov/sa/about/d ata-center/school/program-reviews
- Clery Program Reviews
  - https://studentaid.ed.gov/sa/abou t/data-center/school/clery-actreports

## New DFSCA Monitoring and Compliance – Jim Moore, Director – Clery Compliance Division

- Audits Methods
  - ► Full Financial Aid/Title IV Program Review/Recertification
  - Clery Compliance Review
  - Complaint Filed with Dept of Education
  - ► FBI-UCR Audit
  - Media Assessment
  - Random Audit

### DFSCA Consequences

- Corrective Actions Required
- May trigger other audits
- Fines/Sanctions
- Institutional name given to Congress
- Possible suspension/limitation of Title IV funding
- Negative media attention
- Used in court to demonstrate indifference to campus security and AOD issues

## AUDIT CONVERSATIONS

- Auditors are not health promotion, counseling, or student affairs folks, most are those with law degrees
- Many are looking at a lot of different areas really have a surface knowledge of the mandates
- Now and Later Review
  - surface collection and interview
  - deep analysis thank you, we'll let you know how you did, go and review materials more intently
- Varying notification times
  - Short length of time between warning and visit
  - Others may know they are coming, but don't inform others on campus

- Data, data, data
  - How do you know what substances are an issue on your campus?
  - How do you know your programs and interventions are working?
  - How do you know policies are working
- Evidence, evidence, evidence
  - If you send DAAPP electronically best to have hard copies for every year – watch out for overwriting.
  - Evaluation reports for prevention programming

- Consistent sanctioning across different demographics

   they want to see it, and they will call out specific
   groups
- Where is info for Faculty and staff? How are distributing to Faculty and Staff? Fac/Staff Prevention?

- How and who are involved in your Biennial Review?
- How are faculty involved in your prevention programming?
- How have faculty been involved in your Biennial Review Process?
- Who is ultimately responsible for ensuring that your institution is compliant with DFSCA?

## Questions?

### **Eric's Contact Information**

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