

### Subpart B—Institutions of Higher Education

#### § 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)

#### § 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)

#### § 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under § 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.

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

#### § 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 § 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by § 86.100(a) as well as the results of the biennial review required by § 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]**

**Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE**

**§ 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 § 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 § 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]

**§ 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]

**§ 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]

**§ 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.