



**MARICOPA**  
COMMUNITY COLLEGES

Office of the  
General Counsel  
Compliance

## DO YOU KNOW EDGAR? DRUG AND ALCOHOL ABUSE PREVENTION

This month's Melissa Talks will cover EDGAR 86. If you are not familiar with EDGAR, it is the Education Department General Administrative Regulations (EDGAR), specifically found in Title 34, Code of Federal Regulations (CFR), Part 86 that deals specifically with drug and alcohol abuse prevention. For context, the Family Educational Rights and Privacy Act (FERPA) is found in Part 99 of EDGAR.

EDGAR Part 86 requires that any institution of higher education receiving federal financial assistance must:

- 1) annually distribute specified drug and alcohol prevention information to students and employees ("annual notification"),
- 2) adopt and implement a program to prevent the use of illicit drugs and alcohol abuse by students and employees, and
- 3) conduct a biennial review of their drug and alcohol prevention programs.

We are going to talk about these three requirements, how the MCCCCD colleges comply with these provisions, and where you can go to find the information discussed today. Before we dig into EDGAR Section 86, it is important to note that the Federal Drug-Free Schools and Communities Act of 1989 (Public Law 101-226) requires federal contractors and grantees to certify that they will provide a drug-free school. As a recipient of federal grants, the District must adopt a program toward accomplishing this goal.

### **Annual Notification**

MCCCCD colleges must send out an annual notification that contains specific information to all students and employees. With respect to the annual notification, it is sent out via email every August, at the start of the Fall semester. Students who register for classes or employees who are hired after the annual notification and before the next annual notification (between September and July) are emailed the annual notifications upon their date of registration or hire.

The notification must include the following:

- (1) standards of conduct;
- (2) possible legal sanctions and penalties;

- (3) statements of the health risks associated with AOD abuse;
- (4) the District/college AOD programs available to students, staff, and faculty; and
- (5) disciplinary sanctions for violations of the standards of conduct.

The first page of the annual notification looks like this (see below). The notification itself is 17 pages.



As is required by law, the District must make the notification in writing and in a manner that ensures all students and employees receive it. Notice it says ensures all students and employees *receive* it, not that they read it. We absolutely hope that students and employees read the information, but even if they don't, they are held to the information and restrictions listed in the notification. Now let's turn to the information that must be disclosed in the Annual Notification.

The notification outlines the standards of conduct for District students and employees. These standards can be found in the following Administrative Regulations.

AR 2.4.7 – Abuse-Free Environment (drugs and alcohol)

## AR 4.13 – Use of Alcoholic Beverages

In short, possession or consumption of alcohol, tobacco, and illegal drugs on MCCCDCD campus is prohibited. Pursuant to federal law, cannabis (marijuana) use is prohibited on MCCCDCD property, even for those who have a medical marijuana card or who use recreational marijuana in accordance with Arizona state law. The MCCCDCD Public Safety Department actively enforces laws pertaining to underage drinking, public consumption of alcohol, the furnishing of alcohol to underage individuals, and other alcohol laws. MCCCDCD Police also enforces drug laws and related prohibitions on campus.

Aside from the annual notification, policies related to drugs and alcohol (and associated standards of behavior) are posted on the District and college websites and included in annual reports and consumer information.

### **Possible Legal Sanctions and Penalties and Statements of the Health Risks Associated with AOD Abuse**

The Annual Notification provides an overview of alcohol and drug offenses for Arizona, with an outline of the penalties for each offense. Sanctions under federal, state, and local laws for the unlawful possession or distribution of illicit drugs and alcohol are outlined as well. The notification also outlines the risk associated with alcohol and drug consumption and abuse, in great detail.

### **District/College AOD Programs Available to Students, Staff, and Faculty**

The notification is also required to list the District/colleges alcohol and drug programs that are available to students and employees. Drug and alcohol treatment and rehabilitation programs are available for students and employees. MCCCDCD colleges have partnerships with community groups to address both prevention as well as student drug or alcohol abuse. The District also has an employee assistance program for employees that addresses prevention and abuse assistance. We will talk a bit more about this when we cover the Biennial Report.

### **Disciplinary Sanctions for Violations of the Standards of Conduct**

The notification also outlines the disciplinary sanctions for employees and students when they violate the drug and alcohol prohibitions. Students who violate the college drug or alcohol policy are subject to disciplinary sanctions, educational interventions and/or administrative actions that range from conducting research into various aspects of drug or alcohol use all the way to expulsion from the District colleges. Depending on the specific violation, the student may also be referred for prosecution.

Employees who violation the drug and alcohol prohibitions may face discipline that includes progressive discipline, a written reprimand, suspension, demotion, or termination of employment. Sanctions may also include the requirement that the employee complete a drug or alcohol education or rehabilitation program. Further, just as with students, depending on the violation, employees may be referred for prosecution.

Now I want to talk about the third requirement outlined in EDGAR Part 86. The requirement is to conduct a biennial review of the college's drug and alcohol prevention programs. This Biennial Review is conducted and reported every two years (on even years). The purpose of the review is to formally interrogate the

college's drug and alcohol (AOD) program to determine its effectiveness, to review and assess the consistency of sanction enforcement, and to identify and implement any necessary changes to the program.

At MCCCDC, each college completes its own Biennial Review that is specific to the programs developed and offered at each specific campus. Biennial Reviews must be published on the campus websites and the college must be prepared to submit a copy of the report (or any past report) to the U.S. Department of Education or its representative on request.

EDGAR Part 86 does not specify how the report is structured or how the review of the existing program is done, but the best practice is to include in the report: program inventories, policy inventories, and enforcement analyses. Best practice is also to include attachments to the report that provide copies of the programs and policies, procedures for annual notifications (who sends it out, how it is sent out, how we ensure each student and employee receives the notification), and descriptions of and supporting documentation for the means of assessing program effectiveness and enforcement consistency.

The review should not just be a litany of generic, compliance-related statements. The review should be focused and specific to the programs offered either at the college or through a community partnership. In outlining prevention program, the focus should be on what problems the programs are seeking to address—binge drinking, drug use, the proliferation of alcohol-related conduct on campus, as well as the outcomes the prevention program seeks to achieve. By doing this, the college is creating a blueprint for action. The review should also identify whether the blueprint for action was met or if there is still work to be done. The review should also list the strengths and weaknesses of the AOD program as well as recommendations for revising and strengthening the prevention programs. Lastly, there should be a review of enforcement consistency. If the college has sports teams, there should be a section of the review that addresses any drug and alcohol prevention programs specific to student-athletes and athletic staff. This information addresses the second requirement under EDGAR Part 86, specifically, adopting and implementing a program to prevent the use of illicit drugs and alcohol abuse by students and employees.

### **Adopting and Implementing a Program to Prevent the Use of Illicit Drugs and Alcohol Abuse by Students and Employees**

The key to compliance with this section of EDGAR Part 86 is to not fall into the trap that simply creating a checklist or inventory of programs, policies, and enforcement procedures will constitute compliance. Prevention programs must include evidence-based practices and research driven strategies. The Biennial Report must note evidence-based interventions and must include recommendations for improvement, which cannot be determined without appropriate data monitoring and evaluation methods in place to assess for impact. It provides direction in the design of effective, comprehensive, evidence-informed prevention. Peter Lake, renowned expert on higher education law and policy, speaks to the importance of balancing compliance and prevention in his book *The Rights and Responsibilities of the Modern University*, stating, “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.”

### **Final Comments**

EDGAR is not new. It has been around since 1990, but after years of limited oversight, it is back on the Department of Education’s radar. Title IX Resolution Agreements with the Office for Civil Rights now

include express mention of the Drug-Free Schools and Communities Act of 1989 compliance and biennial reviews are being requested as part of Clery Act and financial aid audits.

Colleges and Universities face penalties for noncompliance, the most extreme being the forfeiture of federal funding. The Department of Education also has the authority to levy civil monetary penalties to any institution that has engaged in substantial misrepresentation of the nature of its educational program as is noted in Title IV Participation Agreements (20 U.S.C. § 1094(c)(3)(B)(2017).

If you have any questions, please contact Melissa Flores at [Melissa.Flores@domail.maricopa.edu](mailto:Melissa.Flores@domail.maricopa.edu).

#### References:

[Complying with the Drug-Free Schools and Campuses Regulations \[EDGAR Part 86\] A Guide for University and College Administrators](#)

[eCFR :: 34 CFR Part 86 -- Drug and Alcohol Abuse Prevention](#)

Auxiliary Services section for Tobacco-Free Environment and the Appendices/Student Section Medical Marijuana Act of the Administrative Regulations

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



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