

10 Commonly Asked Questions Regarding the Drug Free Schools and Campuses Act Requirements

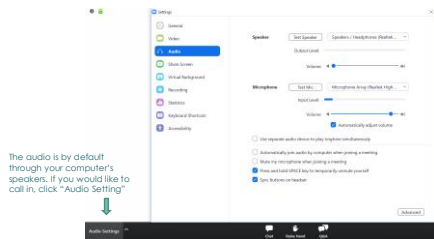
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Higher Education Center for Alcohol and Drug Misuse Prevention and Recovery

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Asking Questions



Q&A: Your questions will be submitted to the staff and answered at the end of the webinar. Any questions we do not address during the webinar will be shared via email along with the recording of the webinar.

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HECAOD Annual Membership Benefits

Membership



	ONLINE MEMBERSHIP (Professional)	ONLINE MEMBERSHIP (Faculty)	HYBRID MEMBERSHIP (Professional)	HYBRID MEMBERSHIP (Faculty)	HEC MEMBERSHIP (Faculty)
Unlimited access to ScreenIt Account, On and Campus	✓				
Unlimited access to single ScreenIt Program		✓			
ScreenIt Technical Assistance	✓	✓			
Recovery Ally Training Materials	✓				
Learning Collaboratives (Fall and Spring)	✓	✓	✓	✓	
National Meeting discount	✓	✓	✓	✓	
Webinars	✓	✓	✓	✓	✓
Weekly Update	✓	✓	✓	✓	✓
	\$2,500	\$1,000	\$600	\$150	FREE

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Our Presenter 



Dr. Eric Davidson
Executive Director, Health & Counseling Services
Eastern Illinois University



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Top 10 Commonly Asked Questions Regarding the Drug Free Schools & Campuses Act (34 C.F.R. Edgar Part 86) Requirements

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The Higher Education Center for Alcohol and Drug Misuse Prevention and Recovery

12-14-2022

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Top 10 Questions Asked of Eric Regarding DFSCA

10. My institution has not been compliant with DFSCA. Where do we start?
9. If we are audited, what are the consequences of being non-compliant?
8. What are the main requirements of the DFSCA Regulations?
7. What does certification of the DFSCA Mean?

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Top 10 Questions Asked of Eric Regarding DFSCA

6. What Do I Do With the Biennial Report & DAAPP Notice?
5. What must be included in the Drug and Alcohol Prevention Program Notice?
4. When must the DAAPP be distributed, and who needs to receive it?
3. How do we conduct a biennial review?

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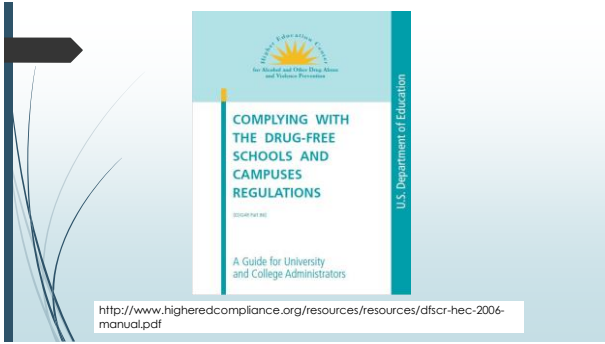
Top 10 Questions Asked of Eric Regarding DFSCA

2. When must the biennial review be conducted?
1. What are the similarities and differences between the Clery Act and the DFSCA?

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10. My institution has not been compliant with DFSCA. Where do we start?

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9. If we are audited, what are the consequences of being non-compliant?

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DFSCA Consequences

- Corrective Actions Required
- May trigger other audits
- 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

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DFSCA Financial Consequences

- Federal Civil Penalties
Initiation 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 **\$59,017**
- DFSCA and Clery!!!!!!

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New DFSCA Monitoring and Compliance

- 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

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8. What are the main requirements of the DFSCA Regulations?

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Edgar 86 Minimum Requirements

- Annual Drug and Alcohol Prevention Program notification/distribution of substance misuse policy and information to all students, staff and faculty.
- Development and implementation of a 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

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Additional Requirements Letter vs. Spirit

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

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7. What does certification of the DFSCA Mean?

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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.**

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What Does Certification Mean?

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

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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:

1. 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 campus or on 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 an anti-drug or alcohol counseling, treatment or rehabilitation or re-entry program 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 suspension or termination of enrollment and referral for prosecution, for violations of the standards of conduct. A disciplinary sanction may include the completion of an appropriate rehabilitation program.

2. A biennial review by the institution of its alcohol and other drug prevention comprehensive program by:

- Determine its effectiveness and implement changes to its comprehensive alcohol and other drug prevention program and policies, if they are needed.
- Ensure that its discipline sanctions are consistently enforced.

Sign: University Name
 Sign: University Address
 City: State, ZIP

Typed Name of Chief Executive Officer _____ IIS Employer Identification Number _____
 Signature of the Chief Executive Officer _____ Telephone Number _____
 Date _____ Email Address _____

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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

Unless written in Title IV and IX agreements, this appears to be unwritten anywhere – but was voiced by Norris Dickard, a former Dept. of Ed. Official, during the last Dept. of Ed. National Higher Ed AOD Meeting, October 2010.

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6. What Do We Do With the Biennial Report & DAAPP Notice?

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What Do I Do With the Biennial Report & DAAPP Notice

- Unless requested, we currently do not send to Dept. of Ed.
- Davidson Recommendations -
 - Send copy to President/Senior Level Administrator for signature/certification -
 - Send signed copy to Financial Aid
 - Clery Compliance Officer
 - 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

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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

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5. What must be included in the Drug and Alcohol Prevention Program Notice?

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Annual Notification

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DFSCA vs Clery

- Not the same
- When looking at the requirements, if you have less than 2 page DAAPP Notice – you’re probably not doing it correctly.

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Compliance – Annual Notification

- Notification should include:
 - Standards of conduct
 - Applicable federal, state, local and institutional sanctions
 - Description of short and long term health risks
 - List of AOD prevention and treatment programs available to students, staff and faculty
 - Clear statement that IHE will impose disciplinary statements

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Standards of Conduct

- Covers all students who are registered for one course for any type of unit except continuing education
- Students who work for the institution may be covered by employee policies
- Applies to all on-campus activities and to off-campus activities officially sponsored by IHE's
- Have been interpreted to apply to student-sponsored social activities and professional meetings attended by employees

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Legal Sanctions

- A description of the applicable legal sanctions under **local, State, or Federal law** for the unlawful possession or distribution of illicit drugs and alcohol
- An alcohol and drug policy should stipulate that anyone who violates the policy is subject both to the institution's sanctions and to criminal sanctions.

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Health Risks

- A description of the health risks associated with the use of illicit drugs and the misuse of alcohol that occurs on your campus.
- Statements of health risks associated with the use of alcohol and other drugs represent the minimum level of information that schools must distribute.

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Health Risks Descriptions should include

- Risk of dependence
- Possible short-term effects
- Possible long-term effect
- Effects of overdose

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Health Risks Description Considerations

- Many people use a shotgun approach and just list common categories
- Most schools do not alter listing once its created.
- Drugs highlighted implies that these drugs are ones used by your students.
- Drugs highlighted implies that you have collected data to determine what drugs exist on your campus

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Drug & Alcohol Programs

- A description of any drug or alcohol programs that are available to employees and students . These include:
 - Prevention programs
 - Assessment/Identification
 - Intervention
 - Treatment
 - Rehabilitation
 - Re-Entry
 - Recovery

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Disciplinary Sanctions

- **A clear statement that the institution will impose 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

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4. When must the DAAPP be distributed, and who needs to receive it?

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Compliance – Annual Notification

- Different than sending the notice annually
- Notification must occur **annually** (within a 12 month period) to each **employee** and **student**

The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll at a date after the initial distribution and for employees who are hired at different points throughout the year.

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Distribution of Annual Notification

- The Dept. of Ed. requires that each IHE distribute its AOD document to each student, staff and faculty **annually in writing.**
- If new students enroll or new employees are hired after the annual distribution date, these students and employees must also receive the materials.
- Merely making the materials available to those who wish to take them does not satisfy the requirements of the Regulations.
- Distribution must be intentional, passive methods do not meet requirements or expectations

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Distribution of Annual Notification

- Delivery may be electronic if the IHE has established that electronic delivery **goes to the individual and** that electronic communication is one of the IHE's primary modes of communication.
- Policy that Electronic Methods are to be used to disseminate official information
- Assurance that the majority of the majority are accessing the electronic channel
- Must demonstrate appropriate method of distributing to those whose mailings are returned or bounced back

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Recent Changes in E-Delivery

- Until Recently - if you were to send by e-mail
 - Entire DAAPP Notice, including tables, charts had to be in the body of the e-mail.
- E-mail with direct link to on-line DAAPP now acceptable

*Occidental College
Campus Crime Final Program Review Determination - Page # 52*

information is not adequate to meet the active distribution standard set out in Federal law and the Department's regulations. An institution may distribute the annual disclosure by electronic mail if it wishes to do so. The method for such a distribution would require the institution to post program materials on its website and then send an e-mail message to each mandatory recipient that includes a direct link to the document. Sending a general email message to students and employees encouraging them to read all of the College's policies does not meet the standard for direct notice.

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3. How do we conduct a biennial review?

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The Biennial Review

- Because EDGAR 86 does not specify what a biennial review should include or how it should be conducted, schools have considerable leeway in determining how to conduct and what to include in their biennial review.
- ESD Recommendation – Some standards/guidelines should be used.

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The Biennial Review

- The law further requires an institution of higher education to conduct a **biennial review** of its **comprehensive program** to:
 - determine its **effectiveness** and implement changes if they are needed
 - ensure that the **sanctions developed are consistently enforced**

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What is meant by "Program?"

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What is meant by a program?

- Clear guidance is not really given
- DAAPP constitute program?
- Some institutions believe that disclosure notification and biennial review constitute compliance and are the "program"
- Current best practices and science of prevention are strongly suggested. Spirit of the Law vs. Letter of the Law

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A Comprehensive Program Entails More than Just Educational and Therapeutic Interventions – It Also Includes Policy, Sanctioning, and Environmental Strategies.

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Comprehensive Program - Scope of Care – DAAPP Notice

- Prevention programs
- Assessment/Identification
- Intervention
- Treatment
- Rehabilitation
- Re-Entry


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Possible Frameworks to Use When Considering Program Development

- Department of Education Principles of Program Effectiveness
- The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse Standards
- ACHA Standards of Practice for Health Promotion within Higher Education
- NIAAA College Alcohol Intervention Matrix (AIM)
- Council for the Advancement of Standards in Higher Education - CAS Standards
- Healthy People/Healthy Campus 2020/2030


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US Dept of Education Grant Project Findings

- Experiences in Effective Prevention
 - https://safesupportivelearning.ed.gov/sites/default/files/sssta/20130315_ExperiencesinEffectivePreventionEDAlcoholandOtherDrugPreventionCampusModels.pdf
- Field Experiences in Effective Prevention
 - <http://www.alcoholeducationproject.org/field-experiences2010.pdf>

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Reviewing Your Current Campus AOD Comprehensive Prevention Program

- Program Inventory
- Interventions Inventory
- Policy Inventory

- NOT INTENDED TO BE A BRAG DOCUMENT
- NOT INTENDED TO BE A SUBJECTIVE REVIEW


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**Biennial Review
Traditionally Viewed Best Practices**

- Comprehensive program focused on evidence-based strategies of practice and policies.
- Data collection of students' behaviors and perceptions
- Program focused on meeting needs of students at various levels (drinkers, non-drinkers, problem drinkers)
- Creation of a strategic plan of action
- Creation of a task-force or campus-based coalition


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**1999 Former National Higher Education
Center EDC Analysis –
Model Biennial Reviews**

1. Each included materials to compliment the report
2. Each included information on assessment and evaluation of program effectiveness
3. Each detailed goals and goal achievements
4. Each included recommendations for revising programs and policies
5. Each used a task force to complete the review

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**IHEC Suggested Review Report
Contents**

- Introduction/Overview
- Biennial Review Process
- AOD Comprehensive Program Goals and Objectives for Biennium being reviewed
- Annual Policy Notification Process
- AOD Prevalence and Incidence Rate Data
- AOD Needs Assessment and Trend Data
- AOD Policy, Enforcement & Compliance Inventory & Related Outcomes/Data
- AOD Intervention Inventory & Related Outcomes/Data
- AOD Goal Achievement and Objective Achievement
- AOD Strengths and Weaknesses
- Recommendations for next Biennium
- Goals and objectives for next Biennium

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Reviewing Your Current Campus AOD Data

- Collect and review data that describes alcohol and other drug problems and culture
 - CORE Survey
 - National College Health Assessment
 - Policy Violations
 - Transports
 - Diagnoses

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Data indicated within EDGAR Part 86 Contents and Subparts A—General, B, and D

- Tracking the number of drug- and alcohol-related disciplinary sanctions imposed;
- Tracking the number of drug- and alcohol-related referrals for counseling or treatment;
- Tracking the number of drug- and alcohol-related incidents recorded in the logs of campus police or other law enforcement officials;
- Tracking the number of drug- and alcohol-related incidents of vandalism;
- Tracking the number of students or employees attending self-help or other counseling groups related to alcohol or drug misuse; and
- Tracking student, faculty and employee attitudes and perceptions about the drug and alcohol problem on campus.

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Reviewing Your Current Campus AOD Prevention Program

- Consider including process summary or performance metrics for each program/intervention:
 - # of times program/intervention delivered
 - # of students/staff/faculty participating
 - Satisfaction survey results

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Reviewing Your Current Campus AOD Prevention Program

- Assessment data on student learning outcomes, attitudinal changes, behavior changes gained through programs
- Evaluation and Research data collected through programs

**Conduct a biennial review to measure the effectiveness of its drug and alcohol abuse education and prevention programs. The University of South Alabama was required to describe the research methods and data analysis tools that will be used to determine the effectiveness of the program as well as the responsible official or office that will conduct the review. Finally, the biennial review report was to be approved by the University's chief executive and/or its board. The biennial review was to be completed by June 1, 2015 and was to be submitted to the Department by June 15, 2015; and,*

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Reviewing Your Current Campus AOD Policies

- Identify and compile all alcohol and other drug related policies for students, staff and faculty
- Assess how consistently enforced are the policies
- Assess if everyone, regardless of affiliation, is held to the same policy standards and offered the same interventions
- Assess how effective are policies at moving the IHE toward its AOD goals and outcomes

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Policy Inventory

- Measuring Enforcement Consistency
 - Dept of Ed recommends submitting a chart that ID's each case and presents particulars of each offense
 - Documenting level of effort expended to detect violations
 - Document level of expertise of those responsible for detecting/adjudicating AOD offenses

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Minor In Possession Violation

Case	Athlete	Fine	Paper	Educational Class	BASICS
1	N	X		X	
2	N	X		X	
3	Y		X		
4	N	X		X	
5	N	X			X
6	N	X			
7	Y		X		
8	N	X	X		
9	Y		X		
10	N	X			X
11	N	X		X	

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Determining SWOT

- Strengths
- Weaknesses
- Opportunities
- Threats

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Review Conclusions

- Outcomes, goals, and objectives for the coming Biennial Period
- Recommended changes in programming, policy, and enforcement.

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2. When must the biennial review be conducted?

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The Biennial Review

- The Drug-Free Schools and Campuses Regulations require IHEs to review their AOD programs and policies **every two years**.
- The Department of Education recommends that IHEs conduct the biennial review in even-numbered years and focus their report on the two preceding academic years.
- No specific date in which report is to be filed

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Complying with the DFSC Regulations (2006), p.13

The regulations 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. Following this tradition and to ensure the production of a useful biennial review in compliance with the DFSCA, good sense suggests that an IHE's biennial review be completed and on file by December 31 of each even-numbered year, and the report should cover the previous two academic years. For example, for the 2006 biennial review, the dates of coverage should include Sept. 1, 2004–Aug. 31, 2005, and Sept. 1, 2005–Aug. 31, 2006.

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Examples of Timelines

Biennial Review Period	Period Start	Period End	Report Due
2022 - Fiscal	July 1, 2020	June 30, 2022	December 31, 2022
2022 - Academic	September 1, 2020	August 31, 2022	December 21, 2022
2021 - Fiscal	July 1, 2019	June 30, 2021	December 21, 2021
2021 - Academic	September 1, 2019	August 31, 2021	December 21, 2021
2020 - Fiscal	July 1, 2018	June 30, 2020	December 31, 2020
2020 - Academic	September 1, 2018	August 31, 2020	December 21, 2020

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1. What are the similarities and differences between the Clery Act and the DFSCA?

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Similarities and Differences Between DFSCA and Clery

	DFSCA	Clery
Date in Which Annual Notice is to be Distributed	No specific date, but every individual is to receive it annually within a 12-month term	By October 1
Individuals who are to receive the Annual Notice	All students receiving 1 or more hours of academic credit; all faculty and staff; prospective students, faculty and staff	All students, staff, and faculty, and prospective students, faculty, and staff
Report Submitted to Department of Education	Only when requested, usually as part of a Title IV or Clery Audit	Annually, both with on-line and hard copy (if requested)
Educational Programming	No specific programs are indicated to be employed. Institutions are to use data to drive approaches while utilizing evidence-based strategies.	Requires specific programs as awareness programs, ongoing awareness campaigns, bystander interventions, primary prevention programs, and risk reduction interventions.

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Similarities and Differences Between DFSCA and Clery

	DFSCA	Clery
Evaluation and Assessment	Incorporated into the Biennial Review Process	Compliance committee is strongly recommended
Certification	Part of Title IV Financial Aid Agreement	Part of Title IV Financial Aid Agreement
Compliance Coordinator	Strongly encouraged, but not yet required	Encouraged, ASR requires indication of roles with responsibilities.
Enforcement	Clery division has monitored and enforced compliance since 2010	Clery division monitors compliance and receives complaints from an individual party or performs "media checks."

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QUESTIONS?

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