



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Evaluation and Inspection Services

Control Number
ED-OIG/I13L0002

March 14, 2012

James W. Runcie
Chief Operating Officer
Federal Student Aid
U.S. Department of Education
830 First Street, NE
Washington, DC 20202

Dear Mr. Runcie:

This final inspection report presents the results of our inspection of the Department of Education's (Department's) process for ensuring compliance by institutions of higher education (IHEs) with the drug and alcohol abuse prevention program requirements in Sections 120(a)-(d) of the Higher Education Act of 1965, as amended (HEA), and 34 C.F.R. Part 86 (Part 86 requirements).

The objective of our inspection was to determine whether the Department is appropriately ensuring that IHEs are in compliance with Part 86 requirements. We determined that the Department's Office of Postsecondary Education (OPE) performed no oversight activities of IHE drug and alcohol abuse prevention programs from 1998 to June 2010. In June 2010, oversight responsibility was delegated to the Department's Office of Federal Student Aid (FSA). We found that the oversight process FSA developed provides no assurance that IHEs are in compliance with Part 86 requirements.

BACKGROUND

On December 20, 2010, U.S. Senator Chris Dodd and U.S. Representative John Larson requested that OIG conduct a review of the Department's implementation and enforcement of Part 86 requirements.¹ The regulations at 34 C.F.R. Part 86 implement Sections 120(a)-(d) of Title I of the HEA. Senator Dodd and Representative Larson expressed concern that the Department had not taken appropriate steps to address IHEs' noncompliance with Part 86 requirements.

The minimum requirements for IHE drug and alcohol abuse prevention programs are found in Sections 120(a)(1) and (2) of Title I of the HEA. The HEA requires any IHE receiving Federal financial assistance to certify to the Secretary of Education that it has adopted and implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees. At a minimum, an IHE's program must include the annual distribution in writing of specified drug and alcohol abuse prevention information to each student and employee and a biennial review of the program by the IHE. (See Attachment 1 for the specific requirements included in Sections 120(a)(1) and (2) of Title I of the HEA.)

Section 120(c)(1)(A) of the HEA states, "[t]he Secretary shall publish regulations to implement and enforce the provisions of this section, including regulations that provide for— (A) the periodic review of a representative sample of programs" The regulations at 34 C.F.R. § 86.101 state that the "Secretary annually reviews a representative sample of IHE drug prevention programs."

In accordance with requirements in the HEA, 34 C.F.R. § 86.301 provides for a range of responses available to the Department when an IHE does not comply with Part 86 requirements. The Department's actions may range from the provision of information and technical assistance to sanctions, including repayment of any or all forms of Federal assistance received by an IHE while it was in violation of the regulations and termination of all forms of federal assistance.

The definition of an IHE at 34 C.F.R. § 86.7 includes public and private nonprofit educational institutions, proprietary institutions, postsecondary vocational institutions, and vocational schools.

FSA's Oversight Process

OPE was responsible for oversight of IHE drug and alcohol abuse prevention programs from 1989 until June 2010 when the Secretary delegated the authority to FSA. After receiving the delegation, FSA developed its current oversight process for ensuring IHE compliance with Part 86 requirements. FSA requires all institutions participating in the Title IV, HEA programs to certify their compliance with Part 86 requirements through their program participation agreements.² FSA also conducts reviews of IHE compliance with Part 86 requirements. These

¹ Senator Dodd's final term in the Senate ended in January 2011.

² Title IV of the Higher Education Act of 1965, as amended, authorizes the Federal Student Assistance Programs that include grants, loans, and work-study programs.

reviews are conducted as part of Title IV program reviews by FSA's School Participation Teams and as part of compliance reviews for the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) by FSA's Campus Security Team.

INSPECTION RESULTS

The objective of our inspection was to determine whether the Department is appropriately ensuring that IHEs are in compliance with Part 86 requirements. We determined that OPE performed no oversight activities of IHE drug and alcohol abuse prevention programs from 1998 to June 2010. In June 2010, oversight responsibility was delegated to FSA. We found that the oversight process FSA developed provides no assurance that IHEs are in compliance with Part 86 requirements. We also found that IHEs that do not participate in Title IV, HEA programs are not covered by FSA's oversight process even though they are covered by Title I of the HEA.

OPE Performed No Oversight Activities from 1998 to June 2010

OPE was responsible for ensuring compliance with the drug and alcohol abuse prevention program requirements beginning with the 1989 amendments to the HEA, which added these requirements. In 1998, the HEA was reauthorized and provided for the creation of a performance-based organization to administer the Title IV, HEA programs, including compliance oversight. At that time, the Office of Student Financial Assistance was separated from OPE to become the performance-based organization required by the HEA and was later renamed Federal Student Aid (FSA).

In the process of issuing separate delegations of authority for OPE and FSA in 1998, the Secretary did not delegate responsibility for Title I, Parts A and B of the HEA to either office.³ In 2007, the Secretary formally delegated administration of Title I, Parts A and B of the HEA to OPE. The corresponding memorandum for the delegation stated that the administration of Title I had remained in OPE despite the inadvertent omission of Title I of the HEA from OPE's 1998 delegation of authority. Therefore, OPE was responsible for oversight of IHE drug and alcohol abuse prevention programs from 1989 until June 2010 when the Secretary delegated the authority to FSA.

We could not draw a conclusion on the appropriateness of OPE's oversight from 1989 to 1998 because of a lack of available evidence. For the time period from 1998 to June 2010, we concluded that OPE's oversight was not appropriate, because OPE did not perform any oversight activities. We drew this conclusion based on statements made by senior OPE officials. OPE's responsibility for ensuring compliance ended with the June 2010 delegation of authority to FSA.

³ The drug and alcohol abuse prevention program requirements are in Title I, Part B of the HEA.

FSA's Oversight Process Provides No Assurance That IHEs Are in Compliance with Part 86 Requirements

After receiving the delegation of authority from the Secretary in June 2010, FSA developed an oversight process for ensuring IHE compliance with Part 86 requirements. Compliance reviews of Part 86 requirements are conducted as part of Title IV program reviews by FSA's School Participation Teams and as part of Clery Act compliance reviews by FSA's Campus Security Team.

We reviewed 28 reviews conducted by FSA that evaluated IHE compliance with Part 86 requirements—14 Title IV program reviews and 14 Clery Act compliance reviews.⁴ FSA correctly identified and reported IHE noncompliance for 5 of the 28 reviews. The remaining 23 reviews had at least one or more of the following problems:

- For 18 of the 23 reviews, there was a lack of documentation to support FSA's conclusions that IHEs were in compliance with elements of Part 86 requirements.
- For 10 of the 23 reviews, there were indications that FSA reviewers did not fully understand Part 86 requirements, because the reviewers concluded that IHEs had complied with certain elements of Part 86 requirements despite documentation to the contrary.
- For 4 of the 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.

Given the nature of these problems, there is no assurance that FSA's review process ensures that IHEs are in compliance with Part 86 requirements.

IHEs That Do Not Participate in Title IV, HEA Programs Are Not Covered by FSA's Oversight Process Even Though They Are Covered by Title I of the HEA

Title I of the HEA requires all IHEs that receive Federal funds from any of the programs administered by the Department or any other Federal agency to be in compliance with Part 86 requirements. FSA collects certifications and reviews drug and alcohol abuse prevention programs for only IHEs that participate in the Title IV, HEA programs. FSA does not have a process to identify IHEs that do not participate in the Title IV, HEA programs.

Recommendations

We recommend that the Chief Operating Officer for FSA—

- 1.1 Ensure that reviewers adequately document their review of IHE compliance with Part 86 requirements.

⁴ For the Title IV program reviews, we selected all reviews started on or after June 1, 2011, where FSA had issued a program review report to the IHE under review. FSA informed us that the formal program review procedures for reviewing IHE compliance with Part 86 requirements were published on May 31, 2011. For the Clery Act compliance reviews started after FSA's delegation in June 2010, we selected all reviews covering compliance with Part 86 requirements where FSA had issued a program review report to the IHE under review.

- 1.2 Develop and provide training and guidance to FSA reviewers on Part 86 requirements.
- 1.3 Begin reporting all identified cases of IHE noncompliance with Part 86 requirements in the corresponding program review reports.
- 1.4 Develop a process to identify IHEs that receive Federal funds but do not participate in the Title IV, HEA programs and ensure that these IHEs are in compliance with Part 86 requirements.

OTHER MATTERS

During the course of our inspection we identified that the FSA Handbook did not provide complete information on the full range of consequences for IHE noncompliance with Part 86 requirements.⁵ We informed FSA of this issue during our inspection, and FSA added this information to the 2011-12 FSA Handbook in November 2011.

FSA COMMENTS

On January 30, 2012, we provided FSA with a copy of our draft inspection report for comment. We received FSA's response to the report and a draft corrective action plan (CAP) on February 29, 2012. FSA did not take issue with any of the results presented in the draft inspection report. FSA stated that it understands and appreciates the importance of effective monitoring and enforcement of the Part 86 requirements and that it will improve and refine its oversight process to ensure that students and institution employees are fully informed about the dangers and consequences of drug and alcohol abuse. FSA also provided a description of the actions it is prepared to take consistent with our recommendations. FSA's response is attached in its entirety. (See Attachment 2.)

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our inspection was to determine whether the Department is appropriately ensuring that IHEs are in compliance with Part 86 requirements.

⁵ The FSA Handbook provides extensive guidance for institutions participating in the Title IV, HEA programs and also contains information on some non-Title IV requirements including the drug and alcohol abuse prevention program requirements.

We notified the Department of our inspection on February 10, 2011, and began our fieldwork on February 14, 2011. We conducted an exit conference on August 3, 2011.

We reviewed applicable laws and regulations requiring IHEs to implement drug and alcohol abuse prevention programs.

We interviewed relevant officials from the Office of the General Counsel, FSA, OPE, and the Office of Safe and Drug-Free Schools.⁶

We reviewed the following delegations of authority to FSA and OPE:

- Delegation of Programmatic Authority to FSA (November 17, 1998)
- Delegation of Programmatic Authority to OPE (November 18, 1998)
- Amendment No. 2 to the Primary Delegation of Programmatic Authority to OPE- Concerning HEA, Title I, Parts A and B (May 23, 2007)
- Delegation of Authority to Perform Oversight Functions Relating to the Requirement that Institutions of Higher Education Must Adopt and Certify They Have Drug and Alcohol Abuse Prevention Programs (June 1, 2010)

We also reviewed documents provided by FSA related to its oversight of IHE compliance with 34 C.F.R. Part 86. These documents included:

- Announcement letter for Clery Act and 34 C.F.R. Part 86 compliance reviews
- 34 C.F.R. Part 86 Compliance Checklist for FSA reviewers
- Training PowerPoint on performing 34 C.F.R. Part 86 compliance reviews
- A list of FSA Clery Act reviews covering compliance with 34 C.F.R. Part 86
- A list of Title IV program reviews covering compliance with 34 C.F.R. Part 86
- Current Program Participation Agreement for Title IV Programs
- FSA Handbooks (1998-99 to 2009-10)
- FSA Program Review Procedures

We reviewed documentation for 14 Title IV program reviews and 14 Clery Act compliance reviews. For the Title IV program reviews, we selected all reviews started on or after June 1, 2011, where FSA had issued a program review report to the IHE under review. FSA informed us that the formal program review procedures for reviewing IHE compliance with Part 86 requirements were published on May 31, 2011. For the Clery Act compliance reviews started after FSA's delegation in June 2010, we selected all reviews covering compliance with Part 86 requirements where FSA had issued a program review report to the IHE under review. FSA informed us that the Campus Security Team began performing compliance reviews for Part 86 requirements prior to the May 31, 2011, publication of the program review procedures and helped to develop the review procedures and Part 86 Checklist.

We requested that FSA provide us with any and all documentation related to its review of

⁶ On September 26, 2011, the Office of Safe and Drug-Free Schools and its programs were moved into a new Office of Safe and Healthy Students within the Office of Elementary and Secondary Education.

IHE compliance with Part 86 requirements for the 28 institutions we reviewed. We also requested that FSA provide us with a management representation letter on January 6, 2012, and we received the signed letter from FSA on January 10, 2012.

We attempted to determine the appropriateness of OPE's oversight of IHE compliance with Part 86 requirements from 1989 to 1998; however, we were unable to obtain sufficient evidence to draw any conclusions.

Our inspection was performed in accordance with the *Quality Standards for Inspections* (2005) and the *Quality Standards for Inspection and Evaluation* (2011) as appropriate to the scope of the inspection described above. The 2005 standards issued by the President's Council on Integrity and Efficiency were adopted by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) in June 2010. During the course of our inspection, CIGIE issued the 2011 standards; however, except for technical changes and mandating adherence to the "Quality Standards" when conducting inspection work, the standards from 2005 are largely unchanged.

ADMINISTRATIVE MATTERS

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). Department policy requires that you enter your final CAP for our review in the automated system within 30 days of the issuance of this report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after six months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Respectfully,

/s/

Wanda A. Scott
Assistant Inspector General
Evaluation, Inspection, and Management Services

Attachments

Electronic cc: Robin Minor, FSA Chief Compliance Officer
Mark Love, FSA Audit Liaison
Janie Funkhouser, OPE Audit Liaison

Sections 120(a)(1) and (2) of Title I of the Higher Education Act of 1965, as Amended

Sections 120(a)(1) and (2) of Title I of the HEA state the minimum requirements for IHE drug and alcohol abuse prevention programs:

(a) Restrictions on Eligibility. — Notwithstanding any other provision of law, no institution of higher education shall be eligible to receive funds or any other form of financial assistance under any Federal program, including participation in any federally funded or guaranteed student loan program, unless the institution certifies to the Secretary [of Education] that the institution has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees that, at a minimum includes –

- (1) the annual distribution in writing to each student and employee of:
 - (A) standards of conduct clearly prohibiting the unlawful possession, use, or distribution of illicit drugs and alcohol on its property or as part of any of its activities;
 - (B) a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;
 - (C) a description of the health risks associated with the use of illicit drugs and the abuse of alcohol;
 - (D) a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and
 - (E) a clear statement that the IHE will impose disciplinary sanctions on students and a description of those sanctions.
- (2) a biennial review by the institution of the institution's program to –
 - (A) determine its effectiveness and implement changes to the program, if the changes are needed;
 - (B) determine the number of drug and alcohol-related violations and fatalities that-
 - (i) occur on the institution's campus . . . or as part of any of the institution's activities; and
 - (ii) are reported to campus officials;
 - (C) determine the number and type of sanctions . . . that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution's campus or as part of any of the institution's activities; and
 - (D) ensure that the sanctions are consistently enforced.



CHIEF OPERATING OFFICER

TO: W. Christian Vierling
Director, Evaluation and Inspection Services
Office of Inspector General

FROM: James W. Runcie
Chief Operating Officer
Federal Student Aid

SUBJECT: Response to Draft Inspection Report, *The Department of Education's Process for Ensuring Compliance by Institutions of Higher Education with the Drug and Alcohol Prevention Programs* (ED-OIG/I13L0002)

FEB 28 2012

Thank you for providing us with an opportunity to review and respond to the Office of Inspector General's (OIG) draft inspection report, "*Compliance with Drug and Alcohol Prevention Programs.*" The audit found that Federal Student Aid's (FSA) current oversight process for monitoring institutions' compliance with the Part 86 requirements is in need of improvement.

FSA recognizes the serious health and safety threats posed by the scourge of drug and alcohol abuse on campus. We also understand and appreciate the importance of effective monitoring and enforcement of the Part 86 requirements. FSA will continue to improve and refine our oversight processes to ensure students and institution employees are fully informed about the dangers and consequences of drug and alcohol abuse. FSA has begun to make the necessary changes to ensure effective monitoring of institutions' compliance with Part 86 requirements. To that end, FSA has developed a corrective action plan that will allow us to quickly implement the recommendations contained in the draft inspection report. We are amending and clarifying Part 86 program review procedures and providing corresponding training to all program review staff. FSA is also developing a process to identify all Institutions of Higher Education (IHE) that receive Federal Funds but do not participate in the Title IV, HEA programs and we will conduct focused Part 86 program reviews on a sample of the identified institutions. The amended and clarified procedures will be finalized and be made part of FSA's Program Compliance National Standards by the end of the current fiscal year.

Our specific response to each recommendation follows in the attachment. Again, we appreciate the opportunity to review and comment on the draft report.

Attachment

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Attachment –Federal Student Aid’s Response to Recommendations

“Compliance with Drug and Alcohol Abuse Prevention Programs” (ED-OIG/113L0002)

Finding: FSA’s oversight process provides no assurance that Institutions of Higher Education (IHE) are in compliance with Part 86 requirements. Also, FSA’s oversight process does not reach IHE’s that do not participate in the Title IV, HEA programs even though they receive funding under Title I of the HEA.

Recommendation # 1: Ensure that reviewers adequately document their review of the IHE compliance with Part 86 requirements.

Federal Student Aid’s Response/Action Item #1: FSA will amend and clarify its procedures to ensure that the Clery Team and School Participation Teams (SPTs) reviewers adequately document their review of the IHE compliance with Part 86 requirements.

Recommendation # 2: Develop and provide training and guidance to FSA reviewers on Part 86 requirements.

Federal Student Aid’s Response/Action Item #1: FSA will provide refresher training and guidance to FSA reviewers on Part 86 requirements to include the amended and clarified procedures noted in Recommendation #1/Action Item #1.

Recommendation #3: Begin reporting all identified cases of IHE noncompliance with Part 86 requirements in the corresponding program review reports.

Federal Student Aid’s Response/Action Item #1: The amended and clarified procedures and corresponding training noted in Recommendation #1/Action Item #1 and Recommendation #2/Action Item #1 above will ensure that all cases of IHE noncompliance with Part 86 requirements are identified in the corresponding program review reports.

Recommendation #4: Develop a process to identify IHEs that receive Federal Funds but do not participate in the Title IV, HEA programs and ensure that these IHEs are in compliance with Part 86 requirements.

Federal Student Aid’s Response/Action Item #1: FSA will develop a process to identify IHEs that receive Federal Funds but do not participate in the Title IV, HEA programs. FSA will select a sample of the identified institutions and conduct off-site program reviews focused solely on Part 86 to ensure that these IHEs are in compliance with Part 86 requirements.