

**DRUG FREE SCHOOLS
AND COMMUNITIES ACT**

**THE UNIVERSITY OF MARYLAND,
COLLEGE PARK**

FOURTH BIENNIAL REVIEW

DECEMBER 1998

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I. Introduction

A. Summary of the Requirements of the Drug-Free Schools and Communities Act Amendments of 1989

1. Mandatory Federal Requirements

As a condition of receiving funding under any federal program, the Drug-Free Schools and Communities Act Amendments of 1989 (the "1989 Act")¹ required that institutions of higher education ("IHE") certify by October 1, 1990 that they had adopted and implemented a drug and alcohol prevention program. This was a one-time certification requirement. On September 15, 1990, the University of Maryland, College Park certified its compliance with the 1989 Act to the U.S. Department of Education.

The 1989 Act requires that each IHE's drug and alcohol program, at a minimum, include:

- a) the annual distribution to employees and students of a written statement which covers five topics, each of which is specifically defined in the implementing regulations; and,
- b) a biennial review by the IHE of its program. The purpose of the biennial review is to determine program effectiveness and implement changes as needed, and to ensure that the disciplinary sanctions imposed on students and employees for drug and alcohol policy violations are consistently enforced.

2. Federal Oversight

Under the 1989 Act, the Secretary of Education is authorized to review annually a representative sample of IHE drug and alcohol prevention programs for compliance with the Act. As part of this review, an IHE is required to provide the Secretary access to personnel records, and any other information requested by the Secretary to review the IHE's adoption and implementation of its program. Upon request, an IHE must provide to the Secretary, and to the public, a copy of the writing provided annually to employees and students, as well as a copy of the IHE's biennial review.

¹ Public Law 101-226, 34 CFR Part 86.

B. The University of Maryland, College Park's Fourth Biennial Review.

The 1989 Act's implementing regulations do not specify how the biennial review is to be conducted or what criteria should be used to measure the "effectiveness" of the program. However, the regulations do require that "evaluations of program effectiveness ... not solely rely on anecdotal observations."² The regulations³ suggest the use of objective data such as:

- 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 abuse; and
- tracking student, faculty and employee attitudes and perceptions about drug and alcohol problems on campus.

The University's Fourth Biennial Review ("1998 Review") of its drug and alcohol prevention program and policies was conducted by representatives from the Office of the Vice-President of Student Affairs, the Personnel Services Department, the University Health Center, and the President's Office of Legal Affairs (the "Evaluating Committee"). In compliance with the 1989 Act, the Evaluating Committee determined that the 1998 Review should consist of three parts:

First, documentation and evaluation of the University's compliance with the 1989 Act's requirement that a written statement be sent annually to each employee and student;

Second, documentation and evaluation of the effectiveness of drug and alcohol prevention programs; and

Third, documentation and evaluation of the enforcement of disciplinary sanctions imposed on students and employees. The 1989 Act requires that similarly situated offenders be treated in a similar manner.

Reports on each part of the 1998 Review were prepared by the departments responsible for that particular aspect of the University's program. To the extent possible, the departments were asked to provide data similar to that suggested in the 1989 Act's implementing regulations.

² 55 Fed. Reg. 33597

³ Id.

II. Documentation of Compliance with the Act's Annual Notice Requirement

A. Distribution of Written Drug and Alcohol Abuse Policy

1. Employees: President William E. Kirwan sent written notice of the University's *Employee Drug and Alcohol Abuse Policy* to all University employees at their individual campus addresses on September 15, 1996 and October 1, 1997 (FY97 and FY98). (For copies of these notices see Exhibits 1 and 2). The University has approximately 13,000 faculty and staff, including full-time, part-time, contractual, and temporary employees.

The Department of Personnel includes the written notice in the orientation packet which each new employee receives when he or she attends the Department's orientation program. As a result of recommendations from the 1992 Biennial Review, the written notice also has been mailed to each new employee, along with other personnel-related documents. This ensures each new employee receives the notice, as attendance at the orientation program is not mandatory.

2. Students: On October 1, 1996 and October 1, 1997 (FY97 and FY98), President Kirwan sent a written notice of the University's *Student Drug and Alcohol Abuse Policy* to each student who was taking one or more classes for any type of academic credit. (For copies of these notices see Exhibits 3 and 4). Student enrollment for these years was approximately 33,000.

In compliance with Maryland Higher Education Commission ("MHEC") requirements, each student must sign an acknowledgment that he or she has received a copy of a one page summary of the University's *Student Drug and Alcohol Abuse Policy*. In addition, MHEC requires that a copy of the one page *Policy* be included in admissions packets sent to all prospective students.

As a result of recommendations from the 1992 Biennial Review, the University instituted a system of identifying new students for the Spring and Summer semesters. These students were mailed a copy of the written notice. This has ensured that students who newly enroll in the Spring and Summer semesters receive the same written notice as those who enroll in the Fall.

In addition, the University developed a system to re-send student notices which were returned by the U.S. mail. The University re-sends these notices to students' local addresses. Most of these mailings were addressed to students with home addresses in foreign countries such as China and India.

B. Content of Written Notice: Employees (Exhibit 1; Exhibit 2)

Each year the written notices have contained the following five (5) categories of information:

Prohibited Conduct: Standards of conduct for employees are defined as required under the Federal Drug Free Workplace Act of 1988, Public Law 100-690, and the State of Maryland Substance Abuse Policy, as revised by the April 1, 1991 Governor's Executive Order .01.01.1991.16

Disciplinary Sanctions: Disciplinary sanctions are defined as required under the State of Maryland

Substance Abuse Policy, and applicable University personnel policies and penalties contained in Article 64A of the Annotated Code of Maryland.

Legal Sanctions under Federal, State, and Local Laws: The federal, state and local sanctions have been updated each year. The description of Federal sanctions for trafficking has been simplified in response to recommendations to make the information more "user friendly."

Health Risks: The health risks of alcohol are described in a narrative-format written by a physician at the University of Maryland Medical School, and distributed to all educational institutions by the State Attorney General's Office. This section has been simplified in response to recommendations to present the required information in a more succinct and understandable manner.

Drug and Alcohol Programs Available on Campus: Various programs available to faculty and staff are listed and updated, as necessary.

C. Content of Written Notice: Students (Exhibit 3; Exhibit 4)

Each year the written notices have contained the following five (5) categories of information:

Prohibited Conduct: Standards of conduct are defined by reference to conduct prohibited by the Code of Student Conduct, Resident Life Policies, and Office of Campus Activities Policies.

Disciplinary Sanctions: Sanctions are defined by reference to the Code of Student Conduct.

Legal Sanctions under Federal, State, and Local Laws: The 1996 and 1997 (FY97 and FY98) notices have maintained the tables as noted during the 1994 Review, as they are clearer and easier to understand.

Health Risks: As a result of feedback from students and staff, the health risks table previously included in the brochure was replaced by a narrative format; again, the purpose was to make the information clearer to the reader. Based on a positive response to the changed format, the "Checklist for Identifying Problems" and "What To Do When You Are Concerned About a Friend or Loved One" sections have been continued in the 1996 and 1997 (FY97 and FY98) brochures.

Drug and Alcohol Programs Available on Campus: Resources in both the local and University communities -- including the Health Center -- are listed and updated annually, as necessary.

D. Printing and Mailing Costs

1. The FY 1997 cost of printing and mailing the student and employee notices was: \$11,758.00.
2. The FY 1998 cost of printing and mailing the student and employee notices was \$12,834.00.

III. Effectiveness of Education and Treatment Programs

- A. Faculty and Staff Substance Abuse Programs' Report (Exhibit 5)
- B. Student Substance Abuse Programs
 - 1. Report by the University Health Center Substance Abuse Program (Exhibit 6)
 - 2. Report by the Department of Residence Life (Exhibit 7)
 - a. Drug and Alcohol Programming: Fall 1996 to Spring 1997
 - b. Drug and Alcohol Programming: Fall 1997 to Spring 1998
 - c. Safe Break Program, Substance Abuse Education newsletter Article, Substance Free Housing and Alcohol Class
- C. Police Department Drug and Alcohol Programs (Exhibit 8)
- D. Commercial Driver's License Drug and Alcohol Testing Program (Exhibit 9)

IV. Enforcement of Disciplinary Sanctions

- A. Student Disciplinary Code Violations: Report by the Office of Judicial Programs (Exhibit 10)
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UNIVERSITY OF MARYLAND AT COLLEGE PARK

OFFICE OF THE PRESIDENT

September 15, 1996

MEMORANDUM

TO: All Campus Employees

FROM: William E. Kirwan *WEK*
President

SUBJECT: Drug-Free Schools and Communities Act

The Drug-Free Schools and Communities Act, Public Law 101-226, requires that as a condition of receiving funds or any other form of financial assistance under any federal program, all institutions of higher education must adopt and implement programs to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees. The University of Maryland at College Park has such programs in place. In addition, the University has developed a program to comply with federal regulations which required as of January 1, 1995, drug and alcohol education and testing of employees whose job duties require them to have a Commercial Drivers License.

The attached document, Employee Drug and Alcohol Abuse Policy, is a description of University policies and programs and a statement of information required to be distributed annually to all employees under the Drug-Free Schools and Communities Act. It contains information the University also is required to provide under the Drug-Free Workplace Act of 1988, Public Law 100-690, the State of Maryland Substance Abuse Policy, Executive Order .01.01.1991.16, and the Maryland Higher Education Commission's Policies Concerning Drug and Alcohol Abuse Control.

It is important that all employees are aware of the information contained in the attached document and understand that the University is committed to maintaining a drug-free campus for its employees and students.

Please read this document carefully. If you have any questions, you should call the Employee Relations Section of the Personnel Services Department on Extension 5-5651.

EMPLOYEE DRUG AND ALCOHOL ABUSE POLICY

The University of Maryland at College Park is dedicated to the pursuit and dissemination of knowledge. The illegal or abusive use of drugs or alcohol by members of the campus community jeopardizes the safety of the individual and the campus community, and is inimicable to the academic learning process. The University of Maryland is therefore committed to having a campus that is free of the illegal or abusive use of drugs and alcohol. In keeping with this commitment, it is the policy of the University that the illegal or abusive use of drugs or alcohol is prohibited on University property or as part of University activities. The University will not hire anyone who is known currently to abuse drugs or alcohol.

In order to inform all University employees of their responsibilities under this policy, and to meet the University's responsibilities as set forth in the Drug-Free Schools and Communities Act Amendments of 1989, Public Law 101-226, and the Maryland Higher Education Commission's Policies Concerning Drug and Alcohol Abuse Control, the following information is provided:

- I. Prohibited conduct.
- II. Disciplinary sanctions that the University will impose on employees.
- III. Applicable legal sanctions under federal, state and local laws.
- IV. Health risks associated with the use of illegal drugs and the abuse of alcohol.
- V. Drug and alcohol counseling, treatment and rehabilitation programs available on campus.

I. PROHIBITED CONDUCT

The following policies and rules are consistent with those mandated under the Federal Drug Free Workplace Act of 1988, and the State of Maryland Substance Abuse Policy.

- (1) All employees in the workplace must be capable of performing their duties.
- (2) Employees are prohibited from:
 - (a) Abusing alcohol or drugs;
 - (b) Committing a controlled dangerous substance offense;
 - (c) Committing an alcohol driving offense;
 - (d) Working under the influence of alcohol;
 - (e) Working under the inappropriate influence of prescription drugs or over-the-counter drugs;
 - (f) Working under the influence of a controlled dangerous substance.

- (3) When the University learns or, based on observation or reliable information, suspects that an employee has committed a controlled dangerous substance or alcohol offense at the workplace, the University shall refer the matter to an appropriate law enforcement authority for further investigation and prosecution.
- (4) All employees shall cooperate fully with law enforcement authorities in the investigation and prosecution of suspected criminal violations.
- (5) An employee charged with an alcohol driving offense or a controlled dangerous substance offense shall report a finding of guilty, an acceptance of a plea of nolo contendere, or a probation before judgment to his or her supervisor within 5 work days.
- (6) The supervisor shall report the final conviction of an alcohol driving offense or a controlled dangerous substance offense immediately to the Director of Personnel, and in the case of a controlled dangerous substance offense only, to the Director of the Office of Research Administration and Advancement ("ORAA"). In the event it is determined by the University that an employee convicted of a controlled dangerous substance offense which occurred in the workplace was employed in the performance of a federal contract or grant, the Director of ORAA shall notify the Sponsoring federal agency within 10 days of receiving notice from the employee or otherwise receiving actual notice thereof.

"Controlled substances" and "illegal drugs" prohibited under this policy are those set forth in Schedules I through V in Article 27, part 279 of the Annotated Code of Maryland. "Sensitive employee" means an employee whose classification or position has been designated sensitive by the University. "Sensitive employees" include, but are not limited to, campus police officers and employees whose job duties require them to have a Commercial Drivers License.

II. Alcoholic Beverages on University Premises

The Office of Campus Activities' Alcohol Policy controls the use, possession or distribution of alcohol by employees on University premises at University sponsored activities. This policy prohibits the possession or use of alcohol by any person under the age of 21 or the furnishing of alcohol to a person known to be under the age of 21. Alcoholic beverages otherwise may not be possessed, consumed or distributed by employees at University sponsored events occurring on University premises for which a state or local alcohol license is required, unless the sponsor of the event has complied with the Office of Campus Activities' Alcohol Policy guidelines and has obtained advance written approval from the Office of Campus Activities. Copies of this policy are available from the Office of Campus Activities. Questions about state and local alcohol license requirements may be directed to the Campus Legal Office at 405-4945.

III. POLICY ON POSSESSION OR USE OF COMMON CONTAINERS OF ALCOHOL

I. Prohibited Conduct

The University prohibits the possession or use of kegs, beer balls, punch bowls, and other common containers of alcoholic beverages of a similar nature on University property, except for possession and use resulting from licensed purchases by the University's Department of Dining Services.

II. Disciplinary Sanctions

The University may take appropriate legal action, including but not limited to issuance of no access citations or institution of trespass proceedings against any individual found in violation of this policy. If the individual is a student or an employee of the University, additional administrative penalties may also be taken.

IV. DISCIPLINARY SANCTIONS THAT THE UNIVERSITY WILL IMPOSE ON EMPLOYEES

- (1) The first time a sensitive employee is convicted of an at-the-workplace alcohol driving offense, or found under the influence of alcohol while at-the-workplace, the employee shall be suspended for 15 days and required to successfully participate in an alcohol treatment program designated by the UMCP Faculty/Staff Assistance Program ("FSAP").
- (2) A sensitive employee convicted of an off-the-workplace alcohol driving offense, and a non-sensitive employee convicted of any alcohol driving offense shall:
 - (a) On the first conviction be referred to the FSAP, and in addition, be subject to any other appropriate disciplinary actions;
 - (b) On the second conviction, at a minimum, be suspended for at least 5 days, be referred to the FSAP, be required to participate successfully in a treatment program, and in addition, be subject to any other appropriate disciplinary actions, up to and including termination;
 - (c) On the third conviction, be terminated.
- (3) A sensitive employee convicted of any controlled dangerous substance offense shall be terminated.
- (4) A sensitive employee who tests positive for a controlled dangerous substance as a result of a random drug test shall be suspended for 15 work days and be required to successfully participate in a drug treatment program designated by the FSAP.

- (5) A sensitive employee who abuses a legally prescribed drug or an over-the-counter drug shall, on the first offense:
- (a) Be suspended for 5 work days; and
 - (b) Be required to participate successfully in a drug treatment program designated by the FSAP.
- (6) **General Sanctions.** Any employee found to be in violation of any of the provisions of this policy shall be subject to disciplinary action under applicable University personnel policies and applicable penalties contained in Article 64A of the Annotated Code of Maryland. Disciplinary action includes sanctions up to and including termination. As a condition of continued employment, the University may require an employee to successfully participate in a drug abuse assistance or rehabilitation program.

V. LEGAL SANCTIONS UNDER FEDERAL, STATE AND LOCAL LAWS RELATING TO ALCOHOL AND DRUG USE

Employees at the University of Maryland at College Park are subject to federal, state, and local laws for the possession and distribution of illegal drugs.

Federal law states that it is unlawful to possess a controlled substance, including marijuana, cocaine, LSD, PCP, heroin, designer drugs, etc.¹ If the substance is cocaine, or contains a cocaine base, the penalty for simple possession is a fine and/or imprisonment from 5 to 20 years. For other illegal drugs, the penalty for simple possession is a fine of at least \$1000 and/or imprisonment up to 3 years. The penalties increase if the possession includes intent to manufacture, distribute, or dispense a controlled substance, especially if done near a public or private elementary, vocational, or secondary school or a public or private college or university. Additionally, any person who violates this law shall be liable for an amount up to \$10,000 in civil penalties.

In addition to Federal laws, the State of Maryland has its own laws dealing with distribution, manufacturing, and possession of controlled substances. For instance, any person who unlawfully manufactures or distributes any narcotic drug may be fined up to \$25,000 and may be imprisoned for up to 20 years for a first offense.²

Employees at Maryland are subject to state and local laws for drinking and obtaining alcohol. It is illegal in the State of Maryland for any person under 21 to drink alcohol.³ It is also

¹Federal Law Title 21 USC, Sections 841 and 844 to 845

²Md. Ann. Code Art. 27, Section 286

³Md. Code Art. 27, Section 400A

illegal for a person under 21 to falsify or misrepresent his or her age to obtain alcohol, or to possess alcoholic beverages with the intent to consume them.⁴ It is also illegal in most situations to furnish alcohol to a person under 21.⁵ The penalty is a fine of up to \$500 for a first offense, and up to \$1000 for repeat offenses.

In addition, state law dictates that it is illegal to possess alcohol in an open container in any parking lot of any shopping center or retail store, unless given permission by the owner. The penalty is a fine of up to \$100.⁶ It is also illegal to consume alcohol on any public property or highway, unless authorized by the governmental entity which has jurisdiction over the property, with penalties including a fine of up to \$100.⁷

Employees are also subject to state and local laws governing drinking and driving. A person may not drive or attempt to drive while intoxicated or under the influence of alcohol.⁸ Individuals under 21 with a blood alcohol level ("B.A.L.") of only .02 (approximately 1 drink) will be charged with a violation of a restricted license and result in suspended license until the age of 21.⁹ Any individual with a B.A.L. of .07 or more will result in a violation of Driving While Under the Influence.¹⁰ A B.A.L. of .10 or more will result in a violation of Driving While Intoxicated.¹¹ Any of these violations will result in fines, imprisonment, or both.

It is also unlawful to drive while under the influence of any Controlled Dangerous Substances whether or not they are illicit (prescribed or unlawfully obtained).¹² A person can still be charged with these violations even though they possess a driver's license from another state.

⁴Md. Ann. Code Art. 27, Sections 400 to 403

⁵Md. Ann. Code Art. 27, Section 401A

⁶Md. Ann. Code Art. 2B, Section 214, 215

⁷Md. Ann. Code Art. 2B, Section 211, 213

⁸Md. Ann. Code Transportation Art., Section 21-902

⁹Md. Ann. Code Transportation Art. Sections 16-113(b)

¹⁰Md. Ann. Code Court and Judicial Proceedings Art. Sections 10-307(d)

¹¹Md. Ann. Code Courts and Judicial Proceedings Art. Section 10-307(e)

¹²Md. Ann. Code Transportation Art. Sections 21-902(c)(d)