

General Institution  
DRAFT as of 5/11/15

**BP 3550 DRUG FREE ENVIRONMENT AND DRUG PREVENTION  
PROGRAM**

**References:**

Drug Free Schools and Communities Act, 20 U.S. Code Section 1145g;  
34 Code of Federal Regulations Sections 86.1 et seq.;  
Drug Free Workplace Act of 1988, 41 U.S. Code Section 702

***NOTE: This policy is legally required.***

The District shall be free from all drugs and from the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees.

The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in all facilities under the control and use of the District.

Any student or employee who violates this policy will be subject to disciplinary action (consistent with local, state, or federal law), which may include referral to an appropriate rehabilitation program, suspension, demotion, expulsion, or dismissal.

There are physical and psychological health risks associated with drug and alcohol abuse.

The Chancellor shall assure that the District distributes annually to each student and employee the information required by the Drug-Free Schools and Communities Act Amendments of 1989 and complies with other requirements of the Act.

❖ **From the current CLPCCD Policy 2315 titled Drug-Free Workplace**

~~The Chabot-Las Positas Community College District is committed to maintaining a drug and alcohol-free work place in accordance with the requirements of the U.S. Drug Free Workplace Act of 1988, the California State Drug-Free Workplace Act of 1990, and a drug and alcohol-free college environment for students and employees in accordance with the requirements of the Drug-Free Schools and Community Act Amendment of 1989. The District certifies that it will provide a drug and alcohol-free environment by taking the actions required by these Acts.~~

~~It is the intent of the District to make a good faith effort to continue to maintain a drug and alcohol-free environment through implementation of this policy.~~

~~Procedures to implement this policy are included in the Administrative Rules and Procedures.~~

**❖ From the current CLPCCD Policy 4060 titled Alcohol and Controlled Substances Testing [\[Language to be considered for incorporation into AP 3550\]](#)**

~~This policy shall be applicable only to those employees of the District who hold a commercial driver's license which is necessary to perform job-related duties such as operating a commercial motor vehicle. Any additional policies that cover other than the Department of Transportation mandate or cover non-safety-sensitive employees will be specifically identified as such.~~

~~The department of Transportation mandates that the use of beverages containing alcohol or substances including any medication such that alcohol is present in the body while performing FHWA covered business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an Evidential Breath testing device (EBT).~~

~~The Federal regulation mandated that no covered employee shall perform safety-sensitive function within four hours after using alcohol.~~

~~No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.~~

~~No covered employee shall remain on duty or operate a commercial motor vehicle while that employee possesses alcohol unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol (prescription or over-the-counter).~~

~~No covered employee shall use alcohol during on-duty time while performing safety-sensitive functions.~~

~~No covered employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.~~

~~No covered employee shall refuse to submit to any test required by law or this policy.~~

~~No covered employee shall report for duty or remain on duty requiring the performance of safety sensitive functions when the covered employee uses or possesses any controlled substances, except when the use or possession is pursuant to the instruction~~

~~of a physician who has advised the driver that the substances does not adversely affect the driver's ability to safely operate a commercial vehicle.~~

~~The District, in compliance with federal law (Vol. 59 Federal Register No. 31), shall implement and enforce the procedures for testing of alcohol and controlled substances.~~

Procedures to implement this policy are included in the ~~Administrative Rules and Procedures~~ [AP 3550 titled Drug Free Environment and Drug Prevention Program](#).

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**NOTE:** The **red ink** signifies language that is **legally required** and recommended by the Policy and Procedure Service and its legal counsel. The language in **black ink** is from current CLPCCD Policy 2315 titled Drug-Free Workplace adopted on January 16, 1996 and revised on May 21, 2002 and current CLPCCD Policy 4060 titled Alcohol and Controlled Substances Testing adopted on March 19, 1996. The language in **blue ink** is included for consideration. The language in **green ink** was added during the review with Wyman, David, and Kit on 4-4-14. The note in **purple ink** was added by David on 5/11/15.

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**Date Adopted:**

*(This policy replaces current CLPCCD Policies 2315 and 4060)*

## Legal Citations for BP 3550

### Drug Free Schools and Communities Act Amendment of 1989 and Federal Drug Free Workplace Act of 1988

#### Drug-Free Schools and Communities Act (DFSCA), and Drug-Free Schools and Campuses Regulations

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)<sup>1</sup> 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.** If audited, failure to comply with the Drug-Free Schools and Campuses Regulations may cause an institution to forfeit eligibility for federal funding.<sup>2</sup>

In order to certify its compliance with the regulations, an IHE must adopt and implement a drug prevention program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees both on school premises and as part of any of its activities. Creating a program that complies with the regulations requires an IHE to do the following:

1. Prepare a **written policy** on alcohol and other drugs.
2. Develop a sound method for **distribution of the policy** to every student and IHE staff member each year.
3. Prepare a **biennial review report** on the effectiveness of its alcohol and other drug (AOD) programs and the consistency of policy enforcement.
4. Maintain its biennial review report on file, so that, if requested to do so by the U.S. Department of Education, the campus can submit it.

### **Title 34: Education**

#### **[PART 86—DRUG AND ALCOHOL ABUSE PREVENTION Subpart A—General](#)**

##### **§ 86.1 What is the purpose of the Drug and Alcohol Abuse Prevention regulations?**

The purpose of the Drug and Alcohol Abuse Prevention regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which added section 1213 to the Higher Education Act. These amendments require 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 drug prevention program as described in this part.

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

**Title 34: Education**

**PART 86—DRUG AND ALCOHOL ABUSE PREVENTION Subpart A—General**

**§ 86.2 What Federal programs are covered by this part?**

The Federal programs covered by this part include—

- (a) All programs administered by the Department of Education under which an IHE may receive funds or any other form of Federal financial assistance; and
- (b) All programs administered by any other Federal agency under which an IHE may receive funds or any other form of Federal financial assistance.

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

**§ 86.3 What actions shall an IHE take to comply with the requirements of this part?**

- (a) An IHE shall adopt and implement a drug prevention program as described in §86.100 to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.
- (b) An IHE shall provide a written certification that it has adopted and implemented the drug prevention program described in §86.100.

(Approved by the Office of Management and Budget under control number 1880–0522)

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

**§ 86.4 What are the procedures for submitting a drug prevention program certification?**

An IHE shall submit to the Secretary the drug prevention program certification required by §86.3(b).

(Approved by the Office of Management and Budget under control number 1880–0522)

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

**§ 86.5 What are the consequences if an IHE fails to submit a drug prevention program certification?**

(a) An IHE that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE receives or desires to receive assistance.

**§ 86.6 When must an IHE submit a drug prevention program certification?**

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE has submitted a drug prevention program certification.

(b)(1) The Secretary may allow an IHE until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that—

- (i) Describes each part of its drug prevention program, whether in effect or planned;
- (ii) Provides a schedule to complete and implement its drug prevention program; and
- (iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3) An IHE shall submit a request for an extension to the Secretary.

(Approved by the Office of Management and Budget under control number 1880-0522)

## § 86.7 What definitions apply to this part?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

- Department
- EDGAR
- Secretary

(b) *Other definitions.* The following terms used in this part are defined as follows:

*Compliance agreement* means an agreement between the Secretary and an IHE that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

*Institution of higher education* means—

- (1) An institution of higher education, as defined in 34 CFR 600.4;
- (2) A proprietary institution of higher education, as defined in 34 CFR 600.5;
- (3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and
- (4) A vocational school, as defined in 34 CFR 600.7.

## **DRUG-FREE WORKPLACE ACT OF 1988 THE FEDERAL LAW**

This law, enacted November 1988, with subsequent modification in 1994 by the Federal Acquisition Streamlining Act (raising the contractor amount from \$25,000 to \$100,000), requires compliance by all organizations contracting with any U. S. Federal agency in the amount of \$100,000 or more that does not involve the acquisition of commercial goods via a procurement contract or purchase order, and is performed in whole in the United States. It also requires that all organizations receiving federal grants, regardless of amount granted, maintain a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. The Law further requires that all individual contractors and grant recipients, regardless of dollar amount/value of the contract or grant, comply with the Law.

Certification that this requirement is being met must be done in the following manner:

- By publishing a statement informing all covered employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the covered workplace, and what actions will be taken against employees in the event of violations of such statement.
- By providing **ALL** covered employees with a copy of the above-described statement, including the information that as a condition of employment on the Federal contract or grant, the employee must abide by the terms and conditions of the policy statement.

For Federal contractors this encompasses employees involved in the performance of the contract. For Federal grantees all employees must come under this requirement as the act includes all "direct charge" employees (those whose services are directly & explicitly paid for by grant funds), and "indirect charge" employees (members of grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program).

Among "indirect charge" employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage. Any other person who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers who are not on the grantee's payroll, but on the payroll of contractors working for the grantee, are not covered even if physical place of employment is in the grantee's workplace.

By establishing a continuing, drug-free awareness program to inform employees of the dangers of drug abuse; the company's drug-free workplace policy; the penalties for drug abuse violations occurring in the workplace; the availability of any drug counseling, rehabilitation, and/or employee assistance plans offered through the employer.

By requiring each employee directly involved in the work of the contract or grant to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not less than five (5) calendar days after such conviction.

By notifying the Federal agency with which the employer has the contract or grant of any such conviction within ten (10) days after being notified by an employee or any other person with knowledge of a conviction.

By requiring the imposition of sanctions or remedial measures, including termination, for an employee convicted of a drug abuse violation in the workplace. These sanctions may be participation in a drug rehabilitation program if so stated in the company policy.

By continuing to make a "good-faith" effort to comply with all of the requirements as set forth in the Drug-Free Workplace Act.

All employers covered by the law are subject to suspension of payments, termination of the contract or grant, suspension or debarment if the head of the contracting or granting organization determines that the employer has made any type of false certification to the contracting or grant office, has not fulfilled the requirements of the law, or has excessive drug violation convictions in the workplace. Penalties may also be imposed upon those employing a number of individuals convicted of criminal drug offenses as this demonstrates a lack of good faith effort to provide a drug-free workplace. The contract or grant officer may determine the number on a case-by-case basis.

Employers who are debarred are ineligible for other Federal contracts or grants for up to five (5) years. Compliance may be audited by the Federal agency administering the contract or grant.

**The Drug-free Workplace Act does not require employers to establish an employee assistance program (EAP) or to implement drug testing as a part of the program.**

Source: Federal Registers April 11, 1988 & May 25, 1990 & the Federal Acquisition Streamlining Act of 1994 (FASA).