

The Higher Education Amendments

by Joel Epstein

On October 7, 1998, President Clinton signed into law H.R. 6, the Higher Education Amendments. Included in this large package of federal education legislation are a number of provisions that may offer assistance to college and university student drinking and other drug use prevention efforts. These new laws appear to represent important developments in the evolving attitude of the public toward student drinking and other drug use and disorder.

Summary of Section 119

Higher Education Amendments Section 119, *The College Initiative to Reduce Binge Drinking and Illegal Alcohol Consumption*, communicates the "sense of Congress" concerning how institutions of higher education (IHEs) should address the problem of high-risk drinking on campus. These amendments offer important advice to college administrators concerned about maintaining a safe and drug-free campus.

While Section 119 is an important statement of congressional support for a college initiative, the section has no force of law. Specifically, Section 119 recommends that all IHE presidents should

- Appoint a task force of stakeholders to fully examine student and academic life at the institution.
- Provide maximum opportunities for alcohol-free residence living and recreational and leisure activities.
- Adopt a "zero tolerance" policy for illegal consumption of alcohol.
- Vigorously enforce student disciplinary sanctions for alcohol violations. IHEs should refer students for assistance, including campus counseling, if appropriate.
- Eliminate alcoholic beverage-related sponsorship of on-campus events. Limits on advertisement and promotion of alcoholic beverages on campus should be adopted.
- Foster town/gown alliances.

None of these recommendations existed in the old legislation.

Summary of Section 120

Section 120, *Drug and Alcohol Abuse Prevention*, another section of the amendments, contains a codification of the Drug-Free Schools and Campuses Act (DFSCA). Under the new legislation, authority for the prevention program moves from the U.S. Department of Education's Office of Elementary and Secondary Education (OESE) to the Office of Postsecondary Education (OPE). The section also calls for a school recognition program. Section 120 replaces Section 4122 of the Improving America's Schools Act (IASA).

Section 120 (a)(2) specifically codifies the DFSCA Biennial Review and places restrictions on school eligibility for federal funds. According to a recent comparison report of H.R. 6 prepared by Ernest K. Nicholson and Lavona Grow of the U.S.



Department of Education's Office of Elementary and Secondary Education, both Section 120 and the DFSCA require that certification of on-campus prevention efforts be made available to the Secretary of Education and to the public. DFSCA and Section 120 both require that certification of efforts must be reported in a biennial review. Institutions of higher education are given 30 days to appeal when a determination to terminate financial aid is made. The judge hearing the appeal can *toll* or extend the time for appeal and is the final arbiter of disputes.

Section 120 (e) and (f) also require

- enactment of a program of grants and contracts to IHEs permitting for support of the Higher Education Center for Alcohol and Other Drug Prevention to provide training, technical assistance, evaluation, dissemination, and associated services as determined by the Secretary of Education. The legislation authorized \$5 million for grants and contracts in Fiscal Year 1999, but no funds were appropriated.
- establishment of a National Recognition Awards Program for innovative and effective alcohol and other drug abuse prevention programs in IHEs. The legislation authorized \$750,000 in FY 1999 and \$750,000 were appropriated under Higher Education Amendments Title VII-B. Five of the awards are earmarked for alcohol abuse prevention while five are for drug prevention programming. Other requirements include
 - published results of the National Recognition Awards Program due no later than January 1 of the academic year
 - a \$50,000 prize for maintenance and improvement of an existing prevention program for each award
 - inclusion of the program's application guidelines and review process

Summary of Section 484

Section 484, *Student Eligibility*, is amended to authorize the suspension of a student's federal loan eligibility if he or she has been convicted of a drug-related offense. Specifically, Section 484, which became effective on enactment of the Higher Education Act, is amended by adding a new subsection (r), *Suspension of Eligibility for Drug-Related Offenses*. In the relevant part, the section states

Joel Epstein, J.D., is senior associate and attorney with the Higher Education Center for Alcohol and Other Drug Prevention.

This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number ED-99-CO-0094. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.



PREVENTION UPDATES

"(1) **IN GENERAL.** A student who has been convicted of any offense under any federal or state law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title during the period beginning on the date of such conviction and ending after the interval specified in the following table:

STUDENT INELIGIBILITY FOR GRANTS, LOANS, OR WORK ASSISTANCE

For *possession* of a controlled substance, ineligibility period is

First conviction	1 year
Second conviction	2 years
Third conviction	Indefinite

For *sale* of a controlled substance, ineligibility period is

First conviction	2 years
Second conviction	Indefinite

"(2) **REHABILITATION.** A student whose eligibility has been suspended under paragraph (1) may resume eligibility before the end of the ineligibility period determined under such paragraph if
 "(A) the student satisfactorily completes a drug rehabilitation program that
 "(i) complies with such criteria as the secretary shall prescribe in regulations for purposes of this paragraph and
 "(ii) includes 2 unannounced drug tests or
 "(B) the conviction is reversed, set aside, or otherwise rendered nugatory [null and void]"

The Department of Education has announced that Sec. 484 will not become effective until July 1, 2000.

Summary of Sections 826 and 827
 Higher Education Amendments Sections 826 and 827 concern grants to IHEs to prevent violent crimes against women and to study sexual assault crime; amend and expand campus crime provisions; and deny federal student financial aid to students convicted of drug possession and sales convictions.

Specifically, Section 826, *Grants to Combat Violent Crimes Against Women on Campuses*, authorizes the U.S. Attorney General, in consultation with the Secretary of Education, to make grants to IHEs to develop and strengthen effective security and investigation strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women on campuses. The new legislation also develops partnerships with local criminal justice authorities and community-based victim services agencies.

Applications for grants are to be submitted to the attorney general and compliance with federal campus crime reporting requirements is mandated, with IHEs required to submit an annual performance report to the attorney general. The legislation, which had no counterpart under the old legislation, appropriates \$10 million for the program in FY 1999.

Section 827, *Study of Institutional Procedures to Report Sexual Assaults*, provides for a national study to examine procedures undertaken after an IHE

receives a report of sexual assault. According to Section 827, the report will analyze the IHE's definition of sexual assault; publications and dissemination of information; training and personnel; on-campus and off-campus reporting

options; resources available for victims' safety, confidentiality, medical health, and related activities; prevention policies; effective strategies and practices for disciplining perpetrators; on-campus disciplinary procedures; and types of punishments.

The report is due no later than September 1, 2000. The legislation appropriates \$1 million for the report.

Summary of Section 952

Section 952, *Alcohol or Drug Possession Disclosure*, another section of the Higher Education Amendments relevant to prevention, authorizes IHEs to disclose to parents and guardians violations of institutional policies or rules in addition to local, state, and federal laws governing the use or possession of alcohol or a controlled substance if the student is under 21 and if the IHE determines that the student has committed a violation with respect to such use or possession.

According to Nicholson and Grow, the old legislation, Section 444 of the General Education Provisions Act, only allowed disclosure of violations of local, state, or federal laws governing the use or possession of alcohol or a controlled substance.

Section 952, originally part of the Warner amendment, so named for its sponsor Senator John Warner (R-Virginia), clearly allows IHEs to disclose violations of not only local, state, and federal laws but also institutional policies and rules governing the use or possession of alcohol or controlled substances.

Summary of the Campus Crime Provisions

According to the *H.R. 6 Conference Report*, the Higher Education Amendments also contain changes designed to make campuses safer in general. H.R. 6's campus crime provisions require campuses to

- Expand the types of crimes campuses must report to include manslaughter and violations reported to the campus judicial system
- Expand hate crime reporting
- Require open campus crime logs, with explicit victim privacy protection
- Expand the reporting locations to include new separate categories for institution buildings that are "off campus" (such as a food court frequented by students) and public property that is adjacent to the campus (such as streets and sidewalks)

H.R. 6 also requires the Secretary of Education to collect and make public annual campus crime statistics and to send a one-time report on campus crime statistics to Congress by September 1, 2000. Lastly, the bill requires the Secretary of Education to notify Congress of each institution found not in compliance with the crime disclosure requirements.

Sources

H.R. 6 Conference Report, Campus Crime Provisions, 105th Congress, 1998.

H.R. 6, Higher Education Amendments of 1998 (Enrolled Bill [Sent to President]), October 1998.

Ernest K. Nicholson and Lavona Grow, *Comparison Report of H.R. 6 Amendments Related to SDFS Programs* (Washington, D.C.: U.S. Department of Education's Office of Elementary and Secondary Education, 1998).

Links

The **U.S. Department of Education** has posted the full text of H.R. 6, as well as other supporting and analytic documents, on its Website.

www.ed.gov/offices/OPE/PPI/Reauthor/

THOMAS—Legislative Information on the Internet is a free service of the Library of Congress. THOMAS allows users to conduct searches of the text of congressional bills and enacted legislation, and to research the legislative history of pending and enacted legislation. THOMAS users can do a "quick search" of the text of bills for the 105th Congress from the THOMAS homepage. Searches by word/phrase or by bill number are offered.

<http://thomas.loc.gov/home/thomas2.html>

Security On Campus, Inc. (S.O.C.), maintains a comprehensive Website devoted to campus crime and violence. The national, nonprofit organization was founded in 1987 by Howard and Connie Clery after their daughter, Jeanne, was raped, beaten and, murdered by a fellow student at Lehigh University in 1986. S.O.C. is also dedicated to assisting campus victims in the enforcement of their legal rights. www.soconline.org/

