



# School and Campus Safety Programs and Requirements in the Elementary and Secondary Education Act and Higher Education Act

**Gail McCallion**

Specialist in Social Policy

**Rebecca R. Skinner**

Specialist in Education Policy

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## Summary

In the United States, more than 75 million students are enrolled in elementary and secondary schools and institutions of higher education (IHEs). Safeguarding their security while they pursue an education is a paramount concern of federal, state, and local governments, as well as the school districts, schools, and institutions that enroll these students. The December 14, 2012, shooting deaths of 20 children and 6 adults at Sandy Hook Elementary School in Newtown, CT, have heightened congressional concerns about school security.

Both the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA; P.L. 107-110), and the Higher Education Act of 1965 (HEA) contain requirements regarding crime and student safety. The ESEA also includes specific grant programs that support efforts to prevent school violence.

The ESEA authorizes the federal government's major programs to assist disadvantaged students, address teacher quality issues, provide support to limited English proficient and immigrant students, prevent school violence and drug abuse, and provide support for public school choice in elementary and secondary schools. While the prevention of school violence is not the primary focus of the ESEA, several ESEA programs could potentially contribute to this effort, most notably ESEA Title IV, Part A, the Safe and Drug-Free Schools and Communities Act (SDFSCA). In addition, the ESEA contains specific provisions related to students attending unsafe schools—the Unsafe School Choice Option.

The HEA authorizes the federal government's major student aid programs that support postsecondary education attendance, as well as other significant programs such as those providing aid to special groups of IHEs and support services to enable disadvantaged students to complete secondary school and enter and complete college. While the HEA does not authorize specific programs to address campus crime and security issues, Section 485(f) of Title IV of the HEA contains statutory requirements related to campus crime and security, known collectively as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act). Institutions must comply with these requirements to participate in the federal student aid programs and other programs authorized by Title IV (e.g., Pell Grants).

This report discusses these provisions and programs as they apply to elementary and secondary schools and IHEs. It begins with a description of programs and requirements included in the ESEA, which is followed by a discussion of relevant requirements included in the HEA.

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## Overview

In the United States, more than 75 million students are enrolled in elementary and secondary schools and institutions of higher education (IHEs).<sup>1</sup> During the 2009-2010 school year (most recent data available), there were 33 school-associated violent deaths in elementary and secondary schools.<sup>2</sup> In 2010, students aged 12-18 were victims of approximately 828,400 nonfatal crimes at school, including thefts, simple assault, rape, sexual assault, robbery, and aggravated assault. At IHEs in 2011, about 31,823 criminal incidents were reported as having occurred on campus, including 16 incidents of murder, 3,396 forcible sex offenses, 2,440 aggravated assaults, and 20,072 burglaries.<sup>3</sup>

The December 14, 2012, shooting deaths of 20 children and 6 adults at Sandy Hook Elementary School in Newtown, CT, have heightened concerns about school security. Safeguarding the security of students as they pursue an education is a paramount concern of federal, state, and local governments, as well as the school districts, schools, and institutions that enroll these students. Both the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA; P.L. 107-110), and the Higher Education Act of 1965 (HEA) contain requirements regarding crime and student safety. The ESEA also includes specific programs that support efforts to prevent school violence. While the HEA does not authorize specific programs to address campus crime and security issues, Section 485(f) of Title IV of the HEA contains statutory requirements related to campus crime and security, known collectively as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). Institutions must comply with these requirements to participate in the federal student aid programs and other programs authorized by HEA Title IV (e.g., Pell Grants).

This report discusses these provisions and programs as they apply to elementary and secondary schools and IHEs. It begins with a description of programs and requirements included in the ESEA, which is followed by a discussion of relevant requirements included in the HEA. Where available, the most recent funding level for each program is provided.<sup>4</sup>

## Recent Developments

On December 14, 2012, the Sandy Hook Elementary School in Newtown, CT, was attacked by a 20-year-old armed man. He shot and killed 20 6- and 7-year-old children and 6 adults at the school, in addition to his mother at her home and himself.

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<sup>1</sup> U.S. Department of Education, National Center for Education Statistics. (2012). *Digest of Education Statistics: 2011*, Table 2; available at [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_002.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_002.asp).

<sup>2</sup> U.S. Department of Education, National Center for Education Statistics. (2012). *Indicators of School Crime and Safety: 2011* (NCES 2012-002); available at <http://nces.ed.gov/pubs2012/2012002.pdf>.

<sup>3</sup> CRS compilation of data available from the U.S. Department of Education, Office of Postsecondary Education, Campus Crime Statistics Online, available at <http://ope.ed.gov/security/>.

<sup>4</sup> In some instances, where activities can be supported with funds allocated at the discretion of a Secretary, current funding may not be available.

This tragedy has focused congressional attention on what can be done to avoid future attacks, and what federal programs are currently available to address school violence. This report discusses U.S. Department of Education (ED) programs that address school safety.

This tragedy has also increased congressional interest in federal policies regarding access to guns and mental health services. For information on gun control issues, see CRS Report RL32842, *Gun Control Legislation*, by William J. Krouse; for information on CRS experts on public health and emergency management see CRS Report R40904, *Public Health and Emergency Preparedness: CRS Experts*, by Sarah A. Lister; and for information on the federal response to emergencies more broadly see CRS Report R42845, *Federal Emergency Management: A Brief Introduction*, coordinated by Bruce R. Lindsay.

## **Elementary and Secondary Education Act (ESEA)**

The ESEA, whose programs are administered primarily by ED, includes the federal government's major programs to assist disadvantaged students, address teacher quality issues, provide support to limited English proficient and immigrant students, prevent school violence and drug abuse, and provide support for public school choice.<sup>5</sup> While the prevention of school violence is not the primary focus of the ESEA, there are several ESEA programs that could potentially contribute to this effort, most notably ESEA Title IV, Part A, the Safe and Drug-Free Schools and Communities Act (SDFSCA). In addition, the ESEA contains specific provisions related to students attending unsafe schools.

This section of this report first discusses the SDFSCA program and the activities it authorizes. It then provides a summary of additional ESEA programs that could support mental health programs for students. The section concludes with an examination of the Unsafe Schools Choice Option, with which all elementary and secondary schools receiving funds under the ESEA are required to comply.

### **SDFSCA<sup>6</sup>**

#### **Brief History**

As previously mentioned, the SDFSCA is the federal government's major initiative to prevent drug abuse and violence in and around elementary and secondary schools. The SDFSCA was initially enacted in 1994 (P.L. 103-382) in response to concerns about increased school violence and drug use among school-aged youth.<sup>7</sup> The 1994 legislation extended, amended, and renamed the Drug-Free Schools and Communities Act of 1988 (DFSCA; P.L. 100-297). Violence prevention was added to DFSCA's original drug abuse-prevention purpose by incorporating the Safe Schools Act. The Safe Schools Act was originally created by Title VII of the Goals 2000:

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<sup>5</sup> For more information about programs authorized by the ESEA, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner.

<sup>6</sup> CRS Report RL34496, *Safe and Drug-Free Schools and Communities Act: Program Overview and Reauthorization Issues*, by Gail McCallion.

<sup>7</sup> On October 20, 1994, President William J. Clinton signed into law the Improving America's School Act (P.L. 103-382), which reauthorized the ESEA, and created the SDFSCA as Title IV.

Educate America Act of 1994 (P.L. 103-227). Funding was authorized for federal, state, and local programs to assist schools in providing a disciplined learning environment free of violence and drug use, including alcohol and tobacco.

The SDFSCA was subsequently reauthorized as part of the ESEA in P.L. 107-110, the No Child Left Behind Act of 2001. The SDFSCA program as authorized supports two major grant programs—one for State Formula Grants and one for National Programs. Like all No Child Left Behind Act (NCLBA) programs, the authorization of appropriations for the SDFSCA expired at the end of FY2008; funding has continued to be provided for National Programs through appropriations legislation. Reauthorization of the SDFSCA as part of a comprehensive reauthorization of the ESEA may be considered by the 113<sup>th</sup> Congress.

### **Current Program Operation**

FY2009 was the last year that funding was provided for the State Formula Grant Program. Since FY2010, funding has only been provided for National Programs. The State Formula Grant Program distributed grants to all LEAs, as required by law. Critics argued that this resulted in funding being spread too broadly to support quality interventions. The Obama Administration proposed significant changes to the SDFSCA as part of its proposal to reauthorize the ESEA. The proposal would have consolidated several smaller programs into a new broader program titled “Successful, Safe, and Health Students.”<sup>8</sup> Presently, the SDFSCA program funds several National Programs (see discussion on National Programs). In addition, the SDFSCA includes a provision requiring all states receiving ESEA funds to have a law requiring not less than a one-year expulsion for any student who brings a firearm to school.<sup>9</sup>

Total funding for SDFSCA was considerably lower in FY2012 than it was in years when the State Formula Grant Program also received funding. The SDFSCA program received a total of \$65 million in funding in FY2012. In contrast, for FY2009, the last year in which State Formula Grants received funding, the total funding for SDFSCA equaled \$435 million: \$295 million for State Formula Grants, and \$140 million for National Programs.

### **Overview of the SDFSCA State Formula Grant Program as Authorized**

#### ***Grants to States***

To receive an allotment under the SDFSCA State Formula Grant program under the provisions included when it was last authorized through NCLBA, a state is required to submit an application, providing extensive information to ED that includes, among other things, a comprehensive plan to provide safe, orderly, and drug-free schools and communities through activities that meet the “principles of effectiveness” under Section 4115(a) of the SDFSCA.<sup>10</sup> Funded activities are

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<sup>8</sup> For information on reauthorization proposals see CRS Report RL34496, *Safe and Drug-Free Schools and Communities Act: Program Overview and Reauthorization Issues*, by Gail McCallion.

<sup>9</sup> The chief administering officer of a local educational agency may modify this expulsion requirement on a case-by-case basis. In addition, the LEA may provide the student with educational services in an alternative setting (§4141).

<sup>10</sup> As has been noted, although the NCLBA authorization of appropriations for SDFSCA expired at the end of FY2008, appropriations for State Formula Grants continued to be provided through FY2009. Subsequently, State Formula Grants have not been funded, but appropriations for National Programs have continued to be provided (most recently through a government-wide continuing resolution that provided funding through March 27, 2013 by P.L. 112-175).

required to foster a safe and drug-free learning environment supporting academic achievement. States are required to develop their applications in coordination with all appropriate state officials, and to coordinate all funded activities with other relevant programs, including the governor's drug and violence prevention programs.<sup>11</sup> The application must include the results of a needs assessment for drug and violence prevention activities in the state based on the state's evaluation of relevant data, including detailed information on illegal drug use and violence among youth. The state must indicate how the needs assessment will be used to establish state performance measures, in consultation with LEAs, for funded programs; and how the state will provide technical assistance as needed, and how it will monitor, assess, and report on progress toward meeting performance goals.

### ***Grants to LEAs***

States are required to distribute at least 93% of their grant after reservations via formula to LEAs. To receive a SDFSCA grant, LEAs are required to submit an application to the state education agency (SEA). The application must include, among other things, a detailed explanation of the LEAs' comprehensive plan for drug and violence prevention and an assurance that funded activities meet the SDFSCA "principles of effectiveness" contained in Section 4115(a). The application must describe how the plan will be coordinated with other agencies and what performance measures will be put in place and evaluated. The application must be developed in consultation with experts, state and local officials, and representatives from the schools to be served. The LEA is required to provide assurances that it has, or the schools to be served have, appropriate policies in place prohibiting, among other things, the illegal possession of weapons, and that the school has implemented prevention activities designed to create and maintain a safe, disciplined, and drug-free environment. The LEA is required to provide an assurance that it will implement security procedures both at school and while students are on their way to and from school. It must also provide an assurance that the LEA has, or schools to be served have, a crisis management plan for responding to violent or traumatic events on school grounds.<sup>12</sup>

The programs and activities provided by the LEA are required to be designed to prevent or reduce violence. They also must create a well-disciplined environment that includes consultation among school personnel to identify the early warning signs of violence. While some authorized activities might be more directly relevant to the prevention of school violence, many if not all of the allowable activities could potentially contribute to these efforts. Below is a list of the authorized activities that are most closely related to prevention or amelioration of school violence:

- Acquiring and installing metal detectors and related devices;
- Reporting criminal offenses committed on school property;
- Developing and implementing comprehensive school security plans or obtaining technical assistance on such plans;
- Supporting safe zones of passage for students to and from school;

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<sup>11</sup> State governors are permitted to use up to 20% of their state's grant allocation for comprehensive activities to deter youth from using drugs and committing violent acts in schools. Governors award these funds as discretionary grants to LEAs, community-based organizations (CBs), other private or public entities, or consortia thereof.

<sup>12</sup> ED maintains a website that provides links to resources of potential use to school leaders developing a crisis management plan. More information is available at <http://www.ed.gov/admins/lead/safety/emergencyplan/index.html>.

- Violence prevention and education activities to reduce victimization due to prejudice and intolerance;
- Alternative education programs for violent or drug-abusing students, particularly students who have been or are at risk of being suspended or expelled;
- Developing and implementing character education programs as part of drug and violence prevention that takes into account the views of students' parents;
- Expanded and improved school-based mental health services, including early identification of violence and illegal drug use, assessment, and counseling services for students, parents, families, or school personnel by qualified providers;
- Conflict resolution programs, including peer mediation programs and youth anti-crime and anti-drug councils and activities;
- Counseling, mentoring, referral services, and other student assistance practices and programs, including assistance from qualified mental health service providers;
- Programs that encourage students to confide in and seek advice from trusted adults regarding violence and illegal drug use;
- Establishing and maintaining a school safety hotline;
- Programs that respond to the needs of students who are faced with domestic violence or child abuse;
- Professional development and training in prevention education, early identification and intervention, mentoring, or rehabilitation referral, for school personnel, parents, and interested community members;
- Hiring and mandatory training of school security personnel;
- Conducting nationwide background checks on all school personnel and prospective employees to see whether they have been convicted of a crime that bears upon the employee's fitness to be employed by the LEA and to work with children;
- Creating an action plan and providing training to school personnel to prevent youth suicide.

## **National Programs**

The SDFSCA provides general authority to the Secretary to award grants for a wide variety of National Programs to prevent substance abuse and support violence prevention. Authorized National Programs that may be of help in ameliorating the impact of a crisis or traumatic event include the following:

- **Readiness and Emergency Management for Schools:** This competitive grant program provides funds to LEAs to strengthen and improve their emergency response and crisis plans at the district and school levels. LEAs are required to form partnerships and collaborate with community organizations, local law enforcement agencies, heads of local government, and offices of public safety, health, and mental health as they review and revise these plans. Plans are

required to be coordinated with state or local homeland security plans and must support the implementation of the National Incident Management System (NIMS).<sup>13</sup> Grants may be used for training school safety teams and students, conducting facility audits, informing families about emergency response policies, implementing an Incident Command System (ICS),<sup>14</sup> conducting drills and tabletop simulation exercises, preparing and distributing copies of crisis plans, and, to a limited extent, for purchasing school safety equipment. Grantees under this program may receive support in managing and implementing their projects and sustaining their efforts over time from the Readiness and Emergency Management for Schools Technical Assistance Center.<sup>15</sup>

- **Project SERV (School Emergency Response to Violence):** This program provides education-related services to schools that have been disrupted by a violent or traumatic crisis. LEAs and IHEs are eligible to apply for these grants. Project SERV provides grants of up to \$50,000 for short term needs (up to 6 months); and grants of up to \$250,000 for extended services (for a period of up to 18 months). LEAs and IHEs may apply for both Immediate Services funding and Extended Services funding; however, a separate application must be submitted for each. Project SERV funds may be used for a wide variety of activities, including mental health assessments, referrals, and services for victims and witnesses of violence; enhanced school security; technical assistance in developing a response to the crisis; and training for teachers and staff in implementing the response. Appropriations for this program are requested on a no-year basis, to remain available for obligation at the federal level until expended. Thus, funds can be carried over from year to year in the event that there are no school-related crises in a given year.<sup>16</sup>
- **Safe Schools/Healthy Students (SS/HS) grant program:** The SS/HS initiative is funded jointly by ED and the U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA). The program is administered by ED, SAMHSA, and the U.S. Department of Justice (DOJ). The SS/HS initiative is a discretionary grant program that provides schools and communities with federal funding, via LEAs, to implement an enhanced, coordinated, comprehensive plan of activities, programs, and services that focus on healthy childhood development and the prevention of violence and alcohol and drug abuse. Grantees are required to establish partnerships with local law enforcement, public mental health, and juvenile justice agencies/entities. Currently the program only receives funding from ED and HHS. The program received \$17 million in ED funding for FY2012.<sup>17</sup>

In addition, there are three authorized activities within the National Grant Program that have never received funding—Hate Crimes Prevention, the School Security and Resource Center, and

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<sup>13</sup> For more information about NIMS, see <http://www.fema.gov/emergency/nims/index.shtm>.

<sup>14</sup> For more information about ICS, see <http://training.fema.gov/EMIWeb/IS/is100.asp>.

<sup>15</sup> Additional information is available at <http://rems.ed.gov/>.

<sup>16</sup> Project SERV, administered by ED, was created following the 1999 Columbine shootings.

<sup>17</sup> The Safe Schools/Healthy Students Act was first funded in 1999, following several school shootings in the late 1990s.

the National Center for School and Youth Safety. Other specifically authorized National Programs that have received funding in the past, but are not currently funded include data collection by the National Center for Education Statistics on the incidence and prevalence of illegal drug use and violence in elementary and secondary schools; the Safe and Drug-Free Schools and Communities Advisory Committee; the National Coordinator Program; the Community Service Grant Program; Grants to Reduce Alcohol Abuse; and mentoring programs.

## **ESEA Programs Focused on Mental Health**

In addition to support that may be available through the SDFSCA program the ESEA includes three programs that address issues related to student mental health: (1) The Elementary and Secondary School Counseling program, (2) Grants for the Integration of Schools and Mental Health Systems, (3) and Promotion of School Readiness through Early Childhood Emotional and Social Development. All three programs are authorized under Title V-D, but only the Elementary and Secondary School Counseling program is currently funded. A brief description of each program follows.

### **Elementary and Secondary School Counseling Program**

The Elementary and Secondary School Counseling Program is authorized under ESEA Title V-D-2. The program provides competitive grants to LEAs to establish or expand elementary and secondary school counseling programs. Programs that receive funding under this program must meet several requirements, including having a program that is comprehensive in addressing the counseling and educational needs of all students; increases the range, availability, quality, and quantity of counseling services; expands services through qualified staff; involves public and private entities in collaborative efforts to enhance the program and promote integrated services; and provides appropriate staff training. If program appropriations are less than \$40 million, all grants must be used to establish or expand counseling programs in elementary schools. If appropriations equal or exceed \$40 million, not less than \$40 million must be used to establish or expand counseling programs in elementary schools. The program received funding of \$52 million in FY2012.

### **Grants for the Integration of Schools and Mental Health Systems**

The Grants for the Integration of Schools and Mental Health Systems program is authorized under ESEA Title V-D-14, Section 5541. Under this program, the Secretary may award competitive grants or enter in contracts or cooperative agreements with SEAs, LEAs, or Indian tribes for the purpose of increasing student access to quality mental health care by developing innovative programs to link local school systems with the local mental health system. The program last received funding of \$6 million in FY2010.

### **Promotion of School Readiness Through Early Childhood Emotional and Social Development (Foundations for Learning)**

The Promotion of School Readiness Through Early Childhood Emotional and Social Development program is authorized under ESEA Title V-D-14, Section 5542. The Secretary, in consultation with the Secretary of Health and Human Services, is permitted to award Foundations for Learning Grants to LEAs, local councils, community-based organizations, and other public or

nonprofit private entities to assist eligible children with school readiness. Children eligible for assistance must be under the age of seven and must meet two or more of the following characteristics:

- The child has been abused, maltreated, or neglected;
- The child has been exposed to violence;
- The child has been homeless;
- The child has been removed from child care or an early education program for behavioral reasons or is at risk for removal;
- The child has been exposed to parental depression or other mental illness;
- The child's family income is below 200% of the poverty line;
- The child has been exposed to parental substance abuse;
- The child has had early behavioral and peer relationship problems;
- The child had a low birth weight;
- The child has a cognitive deficit or developmental disability.

Funds may be used for several purposes, including to deliver services to eligible children and their families that foster eligible children's emotional, behavioral, and social development; coordinate and facilitate access by eligible children and their families to relevant community resources; and provide ancillary services (e.g., transportation, child care) to facilitate the delivery of services and activities. The program last received funding of \$1 million FY2010.

## **USCO**

The NCLBA established a new Unsafe School Choice Option (USCO) policy under ESEA Title IX-E-2. The USCO policy is administered by the Office of Safe and Drug-Free Schools at ED. Under the USCO policy, in order to be eligible to receive ESEA funding, states are required to establish statewide policies under which students who attend persistently dangerous public elementary or secondary schools, or who become victims of a violent crime while in or on the grounds of the public elementary or secondary schools they attend, must be offered the opportunity to transfer to another public school within the same LEA. It should be noted that each state is permitted to define what constitutes a "persistently dangerous" school.

Each year, states must certify their compliance with USCO requirements prior to receiving ESEA funding for the next year. States are required to develop their USCO policies in consultation with a representative sample of LEAs within the state. ED has issued non-regulatory guidance outlining the steps that states must take to comply with the USCO policy. These steps include the following:

- Establish a state USCO policy;
- Identify persistently dangerous schools;
- Identify types of offenses that are considered to be violent criminal offenses;
- Provide a safe public school choice option; and

- Certify compliance with USCO.<sup>18</sup>

States were required to implement the USCO beginning with the 2002-2003 school year. Each state's USCO policy is somewhat different. While most states establish some threshold number of violent offenses relative to school enrollment that must be exceeded for either two or three consecutive years in order for a school to be designated as persistently dangerous, the definitions of violent offenses or incidents measured tend to vary considerably across states. Typically, states' USCO policies identify which crimes or types of crimes constitute violent offenses, although these tend to differ from state to state. Some state policies reference primarily felony offenses (e.g., homicide, manslaughter, aggravated assault, or sexual assault). Others also reference violation of weapon possession laws (e.g., Gun-Free Schools Acts), or drug possession laws. Some state policies also consider student expulsions for offenses such as drug or alcohol possession, or violence.<sup>19</sup>

Limited information is available on schools being determined to be persistently dangerous, and on students transferring to different schools under the USCO policy. The U.S. Department of Education, Office of Safe and Healthy Students reports that for 2003-2004, 47 schools were identified as persistently dangerous (5 states); for 2004-2005, 39 schools were identified as persistently dangerous (4 states); and for 2005-2006, there were 36 schools identified (7 states).<sup>20</sup> More recently, based on Consolidated State Performance Reports submitted by states for the 2009-2010 school year, a total of 266 schools were identified as being persistently dangerous: 13 schools in Maryland, 113 schools in New York, 124 schools in Pennsylvania, and 16 schools in Puerto Rico.<sup>21</sup>

Since the enactment of the NCLB, federal funds have not generally been provided specifically to address the needs of persistently dangerous schools. However, Section 5502, Title V, Charter 5 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28) authorized and appropriated funding for grants to address youth violence and related issues for persistently dangerous schools. The \$8.6 million appropriation was provided for FY2007 only. LEAs in which at least one school was identified as persistently dangerous during the 2006-2007 school year were eligible to apply for funding. Grants were awarded to LEAs in New York, Pennsylvania, South Dakota, and Texas.<sup>22</sup>

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<sup>18</sup> U.S. Department of Education, *Unsafe School Choice Option: Non-Regulatory Guidance*, May 2004, p. 6, available at <http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>.

<sup>19</sup> For a compilation of criteria used by the various states to identify persistently dangerous schools, see Education Commission of the States, *Persistently Dangerous School Criteria*, compiled by Gloria Zradicka, September 2004, available at <http://www.ecs.org/clearinghouse/52/98/5298.pdf>.

<sup>20</sup> U.S. Department of Education, Safe and Drug-Free Schools and Communities Advisory Committee, *Unsafe School Choice Option Report*, 2006, at <http://www.ed.gov/about/bdscomm/list/sdfscac/topics.html#Unsafe>, and U.S. Department of Education, Safe and Drug-Free Schools and Communities Advisory Committee Meeting, October 23, 2006, *Unsafe School Choice Option presentation*, <http://www.ed.gov/about/bdscomm/list/sdfscac/kesner10-06.ppt>.

<sup>21</sup> For more information on the Consolidated State Performance Reports submitted for the 2009-2010 school year, see <http://www2.ed.gov/admins/lead/account/consolidated/sy09-10part1/index.html>, Item 1.7.

<sup>22</sup> For more information about the grant awards, see <http://www.ed.gov/programs/persistentdanger/awards.html>.

## **Higher Education Act (HEA)**

The HEA, whose programs are administered by ED, includes the federal government's major student aid programs that support postsecondary education attendance, as well as other significant programs such as those providing aid to special groups of IHEs and support services to enable disadvantaged students to complete secondary school and enter and complete college. Although important support from outside of the HEA is provided through multiple federal agencies for activities such as research and development, the federal government's presence in postsecondary education is shaped to a substantial degree by the HEA.

The principal objective of the HEA is to expand postsecondary education opportunity, particularly for low-income individuals, and increase college affordability.<sup>23</sup> Title IV of the HEA authorizes programs that provide student financial aid (e.g., student loans, Pell Grants) to support attendance at a variety of postsecondary education institutions. In order to participate in these programs, IHEs must meet specific institutional eligibility requirements, including requirements related to campus crime and security.

This section of this report begins with an overview of institutional eligibility requirements that institutions must meet to participate in the Title IV programs. That is followed by a detailed discussion of the campus crime and security requirements included in the HEA, including provisions to enforce compliance with these requirements. The section concludes with an examination of funding and related support available for complying with these requirements and addressing campus crime and security issues, as well as a discussion about crime statistics and information made publicly available.

### **HEA Title IV Institutional Eligibility Requirements**

To participate in the Title IV federal student aid programs, institutions must meet specific criteria, including requirements related to program offerings, student enrollment, and operations.<sup>24</sup> For example, Title IV eligible IHEs must be licensed to operate in the state in which they are located, be accredited by an accrediting agency or association recognized by the Secretary, and meet eligibility and certification requirements established by ED. Institutions that do not meet these requirements are ineligible to participate in the Title IV programs, meaning that students attending these institutions are unable to access federal student aid. While not all postsecondary institutions in the United States are Title IV-eligible institutions, the vast majority are.

### **Campus Crime and Security Requirements in the HEA**

Campus crime and security requirements were first included in the HEA with the enactment of the Student Right to Know and Campus Security Act (P.L. 101-542) in 1990. Title II of this act,

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<sup>23</sup> For more information about HEA, including federal student aid programs authorized by the HEA, see CRS Report RL34654, *The Higher Education Opportunity Act: Reauthorization of the Higher Education Act*, by David P. Smole et al.

<sup>24</sup> For more information about institutional eligibility requirements, see CRS Report RL33909, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Reauthorization Issues*, by Rebecca R. Skinner.

the Crime Awareness and Campus Security Act of 1990, amended the HEA. HEA campus crime and security requirements were subsequently amended in 1992, 1998, 2000, and 2008.

Under current law, Section 485(f) contains the statutory requirements related to campus crime and security. These requirements are collectively known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act).<sup>25</sup> Institutions must comply with these requirements to participate in Title IV programs.

As part of these requirements, each institution<sup>26</sup> is required to provide an annual security report to all current students and employees and to any prospective students or employees, upon request, that provides information about campus security policies and campus crime statistics.<sup>27</sup> The report must include, at a minimum, the following items:

- Statement of current campus policies regarding procedures for the reporting of criminal actions or other emergencies occurring on campus and the institution's response to these reports.
- Statement of current policies concerning security and access to campus facilities, including residence halls, and security considerations used in the maintenance of campus facilities.
- Statement of current policies concerning campus law enforcement, including the relationship between campus security personnel and state and local law enforcement agencies, and policies to promote the accurate and prompt reporting of all crimes to campus police and appropriate law enforcement agencies.
- Description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage them to be responsible for their own security and the security of others.
- Description of programs designed to inform students and employees about crime prevention.
- Statistics on criminal offenses reported to campus security or local police agencies that occurred on campus, in dormitories or other student residential facilities on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year and two preceding calendar years for which data are available.<sup>28</sup>

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<sup>25</sup> The campus crime and security requirements were named for Jeanne Clery, a freshman at Lehigh University who was asleep in her residence hall before she was raped and murdered in 1986. The 1998 HEA amendments formally named the law in memory of Ms. Clery.

<sup>26</sup> An institution must comply with these requirements for each separate campus (34 CFR 668.46).

<sup>27</sup> Regulatory requirements for the annual security report and reporting and disclosure of information are included in 34 CFR 668.41 and 34 CFR 668.46.

<sup>28</sup> Criminal offenses must be reported in the following categories: murder; sex offenses, forcible or nonforcible; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; arson; and arrests or persons referred for disciplinary action for liquor law violations, drug-related violations, and weapons possession. For each of these criminal offenses, except for those in the last category, and for larceny-theft; simple assault; intimidation; destruction, damage or vandalism of property; or other crimes involving bodily injury to any person, if the victim in any of these types of crimes was deliberately selected due to the individual's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability, the crime must be reported as a hate crime. The statistics must be compiled according to the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of (continued...)

- Statement of policy concerning the monitoring and recording through local police agencies of criminal activity of off-campus student organizations that are recognized by the institution, including those organizations with off-campus housing.
- Statement regarding the possession, use, and sale of alcoholic beverages and enforcement of state underage drinking laws, and a statement regarding the possession, use, or sale of illegal drugs and enforcement of federal and state laws and a description of drug and alcohol abuse programs required under the act.<sup>29</sup>
- Statement indicating where information about registered sex offenders may be obtained.
- Statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic or cellular communication. These policies must include having procedures to “immediately notify the campus community” about a significant emergency or dangerous situation occurring on campus that involves an immediate threat to the health and safety of students or staff, unless such notification would “compromise efforts to contain the situation.” The policies must also include procedures to publicize emergency response and evacuation procedures in a manner designed to reach students and staff. There must also be procedures to test emergency response and evacuation procedures on an annual basis.
- Statement of policy regarding the institution’s sexual assault prevention programs and procedures that will be followed if a sexual offense has occurred.

Institutions are also required to make timely reports to the campus community on crimes considered to be a threat to students or employees that have been reported to campus police or local law enforcement. Statutory language notes that these reports must be made in a manner that is “timely” and will aid in the prevention of similar occurrences.<sup>30</sup>

Each institution that has a police or security department is also required to maintain a daily crime log that includes the nature, date, time, and general location of each crime, as well as the disposition of the complaint, if known. All entries, unless prohibited by law or where disclosure of the information would jeopardize the confidentiality of the victim, must be made public within two business days of the initial report. Information may also be withheld if there is evidence that releasing such information would jeopardize an ongoing investigation, cause a suspect to flee, or result in the destruction of evidence. The information must be released, however, once these factors are no longer a concern.

HEA, Section 485 includes additional requirements related to campus safety and security that are not part of the Clery Act. Section 485(i) requires each IHE that participates in any Title IV program and maintains on-campus housing to publish an annual fire safety report, to be available to the public and submitted to the Secretary that contains information about fire safety

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(...continued)

Investigation, and the modifications of these definitions included in the Hate Crimes Statistics Act. These statistics must be submitted annually to ED. (See 34 CFR 668.46 for related regulatory requirements.)

<sup>29</sup> See HEA, §120 for more information about the required drug and alcohol abuse programs.

<sup>30</sup> See 34 CFR 668.46 for related regulatory requirements.

practices and standards at the institution and provides data on fires that occurred in on-campus housing facilities. In addition, Section 485(j) requires each IHE that participates in any Title IV program and maintains on-campus housing to develop missing person procedures for students living on-campus.

## **Enforcement of Requirements**

As previously discussed, institutional compliance with the Clery Act, as well as all safety and security requirements included in Section 485, is required for participation in Title IV programs.<sup>31</sup> All institutions that are eligible to participate in these programs are required to sign a Program Participation Agreement (PPA), which conditions an institution's initial and continued participation in any Title IV program on the institution's compliance with the relevant statutory and regulatory requirements. The PPA also lists specific requirements with which an institution must comply. Included on this list is a requirement that the institution certify that it has established a campus security policy and that it has complied with the disclosure requirements of the Clery Act.<sup>32</sup>

The PPA includes an additional reporting requirement related to safety and security. Upon written request, an IHE is required to disclose to the alleged victim of any violent crime or nonforcible sex offense, the results of any disciplinary proceeding conducted by the IHE against the alleged perpetrator of the crime or offense.<sup>33</sup> If the alleged victim of such crime or offense dies as a result of such crime or offense, the next of kin may request the aforementioned information.

While failure to comply with the requirements of the PPA can result in a loss of Title IV eligibility, if it is determined that an institution has substantially misrepresented the number, location, or nature of crimes, the institution may be subject to civil penalties. For each violation or misrepresentation, the Secretary may impose a fine not to exceed \$25,000.<sup>34</sup>

## **Other Relevant Provisions in the HEA**

HEA Title VIII-L authorizes the Secretary to award competitive grants, required to be matched with non-federal funds, to IHEs and consortia of IHEs to develop emergency communications systems, measures to improve campus safety, and mental health service coordination with local agencies.<sup>35</sup> It also authorizes the Secretary, in consultation with the Attorney General and the Secretary of Homeland Security, to advise IHEs on model emergency response policies, procedures, and practices and to disseminate information on these policies, procedures, and practices.<sup>36</sup> The Secretary is also required to coordinate with the Secretary of Homeland Security and other agencies to develop and maintain procedures to address the needs of IHEs in the event of a natural or manmade disaster for which the President has declared a major disaster or emergency.<sup>37</sup> HEA Title VII-L also authorizes the Secretary to establish and promulgate

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<sup>31</sup> §§487(a)(7) and (12).

<sup>32</sup> §487(a)(12).

<sup>33</sup> §487(a)(26).

<sup>34</sup> §487(c)(3)(B).

<sup>35</sup> §821.

<sup>36</sup> §822.

<sup>37</sup> §823.

regulations for an Education Disaster and Emergency Relief Loan Program for IHEs impacted by major disasters to help fund recovery and operations.<sup>38</sup> It also requires the Secretary, in consultation with the Secretary of Homeland Security and the Attorney General to undertake the following: (1) disseminate model emergency response policies; (2) develop preparation, response, and recovery procedures for IHEs involved in disasters; and (3) provide guidance for IHEs relating to student mental health issues with a potential to cause harm.<sup>39</sup>

## **Funding and Related Support**

IHEs do not receive specific funding from the federal government to aid in compliance with these requirements. ED has published a resource for IHEs on the requirements of the Clery Act, it is titled the “Handbook for Campus Crime Reporting.”<sup>40</sup> It provides procedures, examples, and references for IHEs to use in complying with the Clery Act requirements.

ED provides support for campus-based violence prevention through the SDFSCA.<sup>41</sup> One SDFSCA National Program, *Grants to Prevent High-Risk Drinking and Violent Behavior Among College Students*, provided funds to IHEs to develop, enhance, implement, and evaluate campus-based or community-based prevention strategies designed to reduce high-risk drinking and violent behavior among college students.<sup>42</sup> Grants were made to consortia of IHEs and other public and private nonprofit organizations. SDFSC National Program funds were also used to support the Higher Education Center for Alcohol and Other Drug Abuse and Violence Prevention.<sup>43</sup> The Center served as ED’s primary provider of services related to alcohol and drug abuse and violence prevention in higher education. One aspect of the Center’s mission was to assist ED in serving IHEs in developing and implementing programs to promote campus and community safety by preventing violence among college students. For example, the Center published a newsletter, *The Catalyst*, which provided information about relevant innovative practices at IHEs. However, the Center was defunded in 2012. Most recently, it had received a four year contract from ED for the period between September 1, 2009, through August 31, 2013. ED funded the first three years of this contract, but on June 25, 2012, it notified the Center that it would not be exercising its option to fund the final year of the contract (September 1, 2012, to August 31, 2013).

## **Public Information Availability**

As previously discussed, the Clery Act requires IHEs to make information about crime public and to submit an annual report on campus security to ED. In addition to the measures taken by individual IHEs to provide this information to current and prospective students and their families, ED makes the data publicly available online. ED maintains a campus crime statistics website known as the Campus Safety and Security Data Analysis Cutting Tool (CSSDACT).<sup>44</sup> For each

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<sup>38</sup> §824.

<sup>39</sup> §825.

<sup>40</sup> The handbook is available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>.

<sup>41</sup> U.S. Department of Education. *Justifications of Appropriation Estimates to the Congress: Fiscal Year 2008, Volume I*, p. F-31.

<sup>42</sup> Additional information about this program is available at <http://www.ed.gov/programs/dvphighrisk/index.html>.

<sup>43</sup> Additional information about the Center is available at <http://www.ed.gov/about/offices/list/osdfs/resources>.

<sup>44</sup> The CSSDACT can be accessed at <http://ope.ed.gov/security/>.

Title IV eligible IHE, data are reported on the number of criminal offenses, hate crimes, and arrests over the most recent three-year period for which data are available. Information is provided to indicate whether the data include incidents occurring in residence halls and whether data include local statistics. Data are provided on criminal offenses, hate crimes, arrests, disciplinary actions, and five statistics.

## **Author Contact Information**

Gail McCallion  
Specialist in Social Policy  
gmccallion@crs.loc.gov, 7-7758

Rebecca R. Skinner  
Specialist in Education Policy  
rskinner@crs.loc.gov, 7-6600