

HEOA Campus Safety Provisions – Comments to Proposed Regulations

U.S. Department of Education

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Bold = emphasis added

Reporting and Disclosure of Information (§ 668.41(a))

Comment: One commenter requested clarification of what would be considered an “on-campus student housing facility.” Specifically, the commenter questioned how this definition should be applied in cases in which there are public-private partnerships or third parties who may own or control property on areas contiguous to the campus or on university-owned property.

Discussion: The Department recognizes that there are a myriad of possible arrangements that an institution may have for housing facilities for students. Regarding whether a particular student housing facility is an “on-campus” facility, we refer to the current definition of the term “campus” in § 668.46(a). To clarify, **any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus is considered an on-campus student housing facility.**

Changes: None.

Missing Student Notification Procedures (§ 668.46(h))

Comment: A number of commenters requested clarification of how the proposed requirement in § 668.46(h) relates to requirements under the Family Educational Rights and Privacy Act (FERPA). Under this section, institutions must provide students living in an on-campus student housing facility an option to register a confidential contact person to be notified in the case that the student is determined missing.

Discussion: Although missing student contact information would be considered part of a student’s education records under FERPA, section 485(j) of the HEA, as amended by section 488(g) of the HEOA, requires that students be provided the option to register “confidential” contact information. This indicates that a student’s contact information should receive greater privacy protections than FERPA provides. Under section 485(j) of the HEA, only authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this confidential contact information. We view a student’s identification of a contact person pursuant to section 485(j) of the HEA and § 668.46(h) as providing permission for law enforcement personnel to contact the identified individual under the circumstances identified in these statutory and regulatory provisions.

Changes: None.

Comment: Some commenters expressed concern that the proposed notification procedures in § 668.46(h)(2) may lead to unnecessary alarm on the part of parents, guardians, and emergency contact persons, as well as a needless burden on campus and local law enforcement agencies. Specifically, they requested clarification that the notification procedures would only take effect if, after a brief

investigation, the missing student report is found to be valid. In addition, several commenters requested clarification about the 24 hour time period requirements associated with the notification procedures, suggesting that an institution's policy statement must explicitly state that the institution must make the notification within 24 hours after an official determination has been made that the student has been missing for 24 hours.

Discussion: The proposed regulations in § 668.46(h)(2) specify that an institution's notification procedures must go into effect within 24 hours after a student has been officially determined to have been missing for 24 hours by the law enforcement agency, as applicable. This does not preclude an institution from either making a determination that a student is missing before the student has been missing for a full 24 hours or initiating notification procedures as soon as it determines that the student is missing. A brief investigation as suggested by the commenter would presumably be included in this official determination, e.g., authorities could check sources such as Facebook in trying to determine whether the student is missing. We agree, nevertheless, that the regulations could be clearer in delineating the 24 hour time periods.

Changes: Section 668.46(h) is revised to clarify the time frame within which notification must occur.

Comment: A commenter stated that the regulations in § 668.46 were unclear and suggested a new structure.

Discussion: We reviewed the commenter's suggested language, but we continue to believe the current structure is sufficiently clear. This language reflects the tentative agreement reached by the Team V committee during negotiated rulemaking, and the Department wishes to preserve this agreement.

Changes: None.

Annual Fire Safety Report - Definitions of Terms (§ 668.49(a))

Comment: One commenter suggested that the definition of value of property damage should be revised to include only the damage to property, furnishings, and equipment that is owned, leased, or otherwise controlled by the institution. The commenter argued that it could be burdensome for institutions to determine the value of property and contents that are owned by third parties and that this information could be deemed private by the other party. In addition, the commenter suggested that institutions should have the option to provide explanatory text and clarifying information for estimates of property damage. The concern was that a high dollar value may create false concern as to the safety on campus, when in reality, a high value could be from damage to a single piece of expensive equipment.

Discussion: The definition of the value of property damage applies to an on-campus student housing facility and includes the value of property and the contents within. The Department recognizes that many of the contents on a property may be owned by third parties. However, because the statute requires that information be provided about damage caused by fires in on-campus student housing facilities, this estimate should include the value of property that is not owned or controlled by the institution.

Although an institution may not be able to determine the exact value of the contents, it must give the most accurate estimate possible in order to be in compliance with the regulation. With regard to explanatory text, institutions have the flexibility to include additional information in the annual fire safety report. In reporting statistics to the Department, the Web-based collection tool will include space for institutions to include explanatory text for each item that will be viewable on the public Web site.

Changes: None.

Comment: One commenter stated that the definition of fire in § 668.49(a) was ambiguous and needed to be clarified. Specifically, the commenter suggested that phrases such as “open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner” and “place” could be interpreted differently by institutions and, therefore, could undermine the consistency of the definition of “fire” for statistical and comparative purposes. Further, the commenter suggested an alternate definition drawn from insurance law that would include the concept of a “hostile fire,” or one that includes any combustion that cannot be controlled, escapes from where it was initially set and confined, and that was not intended to exist. The commenter also questioned the feasibility of gathering statistics on each instance of a fire that does not result in injury, death, or property damage, suggesting that reports of insignificant fires will obscure attention to serious fire problems or trends.

Discussion: Section 485(i)(1)(A) of the HEA requires that institutions collect and report statistics on the number of fires in each on-campus student housing facility, and section 485(i)(3) of the HEA further requires that institutions maintain a log of all fires that occur in any on-campus student housing facility. **The Department and non-Federal negotiators worked diligently to define the term fire, understanding that it is difficult to devise a definition that will cover all of the fires that we intend to be included yet still exclude the ones that we do not. The negotiators reached a tentative agreement on the definition of fire, and the Department wishes to preserve this language.** We continue to believe that the definition set forth in the proposed regulations can reasonably be interpreted and applied by institutions. In addition, under the HEA all fires will be included in the institution’s statistics and in the fire log. Therefore, the definition of fire arguably may not be limited to only fires that result in injury, death, or property damage. Further, as stated in the preamble to the NPRM, an institution’s policies regarding fire safety do not affect the classification of whether a fire meets the definition of fire. As an example, one commenter suggested that a candle wick might be a “place” that is intended to contain burning, but that student residence hall policies might prohibit candles, rendering the candle wick no longer a “place” intended to contain a flame because the candle should not be there at all. However, a candle wick is still a place intended to contain burning, regardless of whether candles are prohibited under an institution’s policies. **The Department anticipates including additional examples in a revised version of the Handbook for Campus Crime Reporting to provide guidance to institutions in complying with these regulations.**

Changes: None.

Annual Fire Safety Report - Statistics (§ 668.49(b) and (c))

Comment: One commenter suggested that an institution should not be responsible for tracking an individual with a fire-related injury who has separated from the university for the purpose of potentially including that individual in the institution’s statistics on fire-related deaths. If that individual dies within one year of sustaining injuries as a result of a fire, then the institution may not know whether that individual died as a result of those injuries.

Discussion: The regulations do not require an institution to track an individual that separates from, and is no longer in contact with, the institution. However, the institution is expected to make a reasonable effort to ascertain whether an individual’s death is considered a fire-related death, as defined in § 668.49(a). For example, if an individual with fire-related injuries is hospitalized a few miles from the institution, the institution may reasonably be expected to track this person for potential inclusion in the institution’s statistics. By contrast, if an individual separates from the institution and travels to another country, the institution may not be expected to track them for inclusion in the institution’s statistics.

Changes: None.

Annual Fire Safety Report - Description of Policies (§ 668.49(b))

Comment: One commenter suggested that we revise the language related to the reporting of fire statistics under proposed § 668.49 to specify that these statistics include fires that are reported to a “campus fire authority.”

Discussion: Institutions are expected to collect information about, and report on, all fires regardless of whether they were reported to a campus fire authority. Fires may be reported to a variety of authorities at an institution other than a campus fire authority (e.g., to a residence life officer). The intent of the regulations is to include these fires in an institution’s statistics and fire log.

Changes: None.

Comment: Two commenters suggested that the Department require that institutions have fire doors and other doors in the path of exit from a fire inspected at least annually and disclose in their annual fire safety report how often the doors are inspected. The commenters noted that proper maintenance and inspection of every fire safety system element is critical to ensure that these elements can function in the case of a fire.

Discussion: We define a fire safety system in § 668.49(a) as “any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire,” listing elements including, among others, sprinkler systems, fire detection devices, stand-alone smoke alarms, and fire doors and walls as examples of what might be included in a fire safety system. The commenter correctly states that maintenance and inspection of a fire safety system can help ensure that the elements are properly functioning. Institutions are required to describe the fire safety system in each on-campus student housing facility, and an institution may provide information about how often the elements of each fire safety system are inspected or maintained in this description. **The Department expects that an institution will adequately maintain the elements of its fire safety systems. However, we do not intend to specify a maintenance or inspection schedule for each of these elements.**

Changes: None.

Annual Fire Safety Report - General (§ 668.49)

Comment: One commenter suggested a number of minor changes to a variety of provisions, including:

- Replacing the phrase “may include” in the definition of a fire-related injury in § 668.49(a) with the word “includes”;
- Replacing the words “faculty, staff” in the definition of a fire-related injury in § 668.49(a) and in the requirement that an institution include policies regarding fire safety education and training programs in its annual fire safety report in § 668.49(b)(6) with the word “employees”;
- Replacing the words “resulting from” in the definition of a fire-safety system in § 668.49(a) with “of”;
- Replacing the phrase “smoke, water, and overhaul” in the definition of value of property damage in § 668.49(a) with “smoke and water”; and
- Revising the § 668.49(c)(1)(ii) to read “The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center.”

Discussion: We agree to make some of these changes. In particular, we agree with the commenter that institutions should include the number of persons who received fire-related injuries, as opposed to the actual number of injuries, as a single person may have more than one injury. We also agree that the term “employees” is more precise than the words “faculty, staff” and have revised the regulations accordingly.

Changes: We have **revised the language in § 668.49(c)(1)(ii) to clarify that the number of injuries refers to the number of people with fire-related injuries.** We have also **replaced the words “faculty, staff” with the word “employees” in both § 668.49(a) and § 668.49(b)(6).**

Comment: One commenter suggested that we revise § 668.43 to include two additional disclosures specified in the HEOA that require institutions to disclose their policies on vaccination, and information on diversity of the student body.

Discussion: The Department is not addressing all of the self-implementing provisions of the HEOA in these regulations. We intend to publish separate regulations covering these new disclosures.

Changes: None.