

# All the Kids Are Doing It! Should getting high keep you out of higher ed?

Many of us are familiar with the nightmare that is filling out the Free Application for Federal Student Aid (FAFSA), a form used by the federal government to determine a student's eligibility for federal financial aid to help pay for college. Depending on your circumstance, you may or may not have paid any special attention to Question 23, which reads:

*Have you been convicted for the possession or sale of illegal drugs for an offense that occurred while you were receiving federal student aid (such as grants, work-study, or loans)?*

This question has been the subject of much debate since it was introduced 20 years ago, and it has impacted thousands of students' capacity to pay their college tuition in this country.

The **Higher Education Act (HEA)** was enacted in 1965 to "... expand postsecondary education opportunities, particularly for low-income individuals, and to increase the affordability of postsecondary education for moderate-income families." The federal assistance was made available to students in the form of work-study opportunities, grants like the Pell Grant and federal student loans. It was not until 1998 that the **Aid Elimination Penalty**, also known as the Drug Provision, was added to the HEA. The provision makes students with any type of drug conviction, including misdemeanor possession of marijuana, ineligible for any type of federal financial aid money, including loans and work-study.

The ramifications of this new policy were quickly made evident. According to the 2005 Government Accountability Office report, more than 41,000 students were denied financial aid in the 2003-04 school year because of drug-related offenses. Of those, 29,000 would have been otherwise eligible for federal student loans and 18,000 would have been eligible for Pell Grants. Since then, more than 1,000 students a year have lost full or partial financial aid eligibility because of a drug conviction, and many more don't apply for aid at the risk of being rejected.

This law disproportionately affects low-income students of color who, due to the racist enforcement of drug laws, are the most likely to have encountered the criminal justice system. The law does not deny eligibility to students with other types of criminal convictions (yes, even murder), and does nothing to address the disparities between states that have legalized or decriminalized marijuana possession and those that still treat it as a criminal offense. The law effectively punishes students a second time for a crime they've already paid for. It is neither a deterrent nor a rehabilitative measure, and only hurts those who need financial aid most.

In 2006, the Aid Elimination Penalty was scaled back to apply only to offenses committed while in school and receiving Title IV aid, and students may now resume eligibility if they complete an approved drug rehabilitation program. Unfortunately, the law does not allocate funding for that rehab, and it is absurd to think that students who can't afford college could afford expensive rehabilitation programs or take the time off from work to attend.

To be fair, Question 23 has evolved considerably over the past 20 years, and now attempts to better inform students about eligibility requirements, but the scope of the provision is still not clear to those filling out the FAFSA. In 2017, the American Bar Association made a resolution urging congress to

repeal restrictions on federal financial aid eligibility for students with drug convictions, to revise the FAFSA to eliminate the question and to notify students who were deemed ineligible of the changes to the form. The alternatives to this problematic provision of the HEA are actually quite simple: eliminate the question, at least for first time applicants, and do a better job of expanding opportunities for low-income students to access higher education.

Recent legislation like the **Second Chance Pell Program** and the **Aim Higher Act** are examples of what can be done to encourage incarcerated individuals and those with drug convictions to pursue higher education, but it will take political willpower and public support for these measures to succeed. The HEA is coming up for reauthorization soon, and one can only hope that it continues to be improved over time and can better achieve what it was intended to do: help kids in need to get the education that they deserve.