



Position Paper

HEA Drug Provision Rehabilitation Clause Cost to Restore Financial Aid after Conviction for Drug Offense in District Court

Text of the Provision¹

The following provision was contained in subsection (r) of section 484 of the Higher Education Act of 1998 (see 20 U.S.C. 1091(r)).

(r) Suspension of eligibility for drug related offenses.-

(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:

If convicted of an offense involving:

The possession of a controlled substance:

Ineligibility Period

First Offense - 1 year

Second Offense - 2 years

Third Offense - Indefinite

The sale of a controlled substance:

Ineligibility Period

First Offense - 2 years

Second Offense - Indefinite

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 two unannounced drug tests; or

(B) the conviction is reversed, set aside, or otherwise rendered nugatory.

(3) DEFINITIONS- In this subsection, the term `controlled substance' has the meaning given the term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).'

(2) EFFECTIVE DATE- The amendment made by paragraph (1), regarding suspension of eligibility for drug-related offenses, shall apply with respect to financial assistance of cover the costs of attendance for periods of enrollment beginning after the date of enactment of this Act.

¹ From the web site www.ed.gov

Consequences

Persons convicted in district court for a first-time drug offense while receiving student financial aid lose eligibility for their loan, grant, or work-study for one year from the date of conviction. In effect, their student loan becomes due, their grant must be repaid, and/or they lose their job and are forced to drop out of school.

Persons have not entered a college or university and are applying for financial aid with a drug conviction in district court are unable to receive any otherwise eligible grant, loan or work study job for one year from the date of conviction. Therefore, they may not be able to enroll in school for one or two semesters, depending on the conviction date.

The rehabilitation clause in the HEA drug provision provides students or future students the ability to reinstate eligibility before the end of the one-year suspension. In order to comply with the rehabilitation clause an acceptable drug rehabilitation program must include two unannounced drug tests. It must also:

- Be qualified to receive funds from federal, state, or local government, or a state-licensed insurance company, or,
- Be administered or recognized by a federal, state, or local government agency or court, or a state-licensed hospital, health clinic, or medical doctor²

DPFKS contacted several local treatment facilities to find out how much it would cost to complete one the rehabilitation and there are several types of costs incurred to meet the rehabilitation clause:

1. All facilities require an evaluation be completed at a minimum cost of \$100.00.
2. The minimum rehabilitation course provided by DCCCA would be the *Challenge* program. This program is 2 hours/2days per week for 8 weeks, with a minimum of 2 random drug tests and individual therapy sessions as needed. The cost of this program is a sliding scale ranging from \$280 to \$1,230 depending upon total family income. Each drug screen is \$15.00.

Therefore the total cost currently of someone convicted in District Court for first-time possession of marijuana offense would incur the following costs (not including the fine imposed by the court, loss of pay or work study):

Type of cost	Comments	Minimum	Maximum
Bond out of jail	10% of total bond	50	250
Attorney's fee	range of cost	150	400
KBI Lab fee	mandatory in district court	400	400
Court Costs	minimum imposed by court	117	117
Probation Fee	imposed by court	25	25
Evaluation	non-DUI drug evaluation	125	150
Treatment program	32 hours/2 drug tests	280	1,230
Individual Sessions	per hour cost	<u>80</u>	<u>800</u>
Total		\$1,227	\$3,372

If you add the cost of loss of wages, court imposed fines, possible loss of job if the person was on work study, the minimum cost to someone to use the rehabilitation clause of the HEA drug provision could easily be \$2,500 to \$5,000 dollars.

This cost is more than waiting one or two semesters to get back in school. Since these students are already on financial aid, it is unlikely their have the support system to pay for "rehabilitation."

² Text from the Education Department's web site, http://www.fafsa.ed.gov/faq003.htm#faq003_6

Conclusion

The HEA already excludes students receiving lower than a “C” average in their studies from receiving federal financial aid. The Drug Provision, therefore, only denies aid to students who are doing well in school.

The Department of Education reports that among students who left four-year colleges before the beginning of their second year, 36% did not return within five years; 50% of those leaving two-year institutions did not return within five years.

The additional penalty of requiring a person to attend “rehabilitation” in addition to court-imposed penalties is now being challenged by the ACLU in a lawsuit filed to challenge the HEA drug provision as unconstitutional.

Moving prosecutions of low-level drug offenders to municipal courts, and out of district and federal court, removes the barrier caused by the HEA drug provision to higher education by otherwise eligible federal aid applicants.