

# Higher Education: How High?

Understanding the Parameters of Marijuana Possession and Use on Campuses in States that Have Legalized Marijuana



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**CSPEN Conference 2019**



**GALLEGOS**  
LEGAL GROUP

# UNDERSTANDING WHEN CANNABIS IS ILLEGAL



# THE CONTROLLED SUBSTANCES ACT

## Schedule I

### Marijuana:

All parts of the  
plant *Cannabis*  
*sativa* L.

**BUT NOT HEMP**

21 U.S.C. §§ 812  
(c)(10) & 802(16)

### Tetrahydrocannabinols (THC) except for THC in "hemp."

**THC:** The psychoactive  
component of cannabis.

21 U.S.C. § 812(c)(17)





# MARIJUANA VERSUS HEMP



## Similarities

- Both **Cannabis Sativa**
- Both can produce high amounts of **CBD**

## Differences

- **Percentage of THC:** MJ - Up to 30%; Hemp - No more than 0.3% THC
- **Legality:** MJ-Illegal under CSA; Hemp removed from CSA
- **Cultivation:** MJ-Carefully cultivated to produce female plants & optimize breed's characteristics; Hemp-cultivated to maximize size and yield
- **Use:** MJ-Recreational & Therapeutic; Hemp-Products Including:
  - Paper, clothing, building materials, and plastic
  - Food products
  - CBD

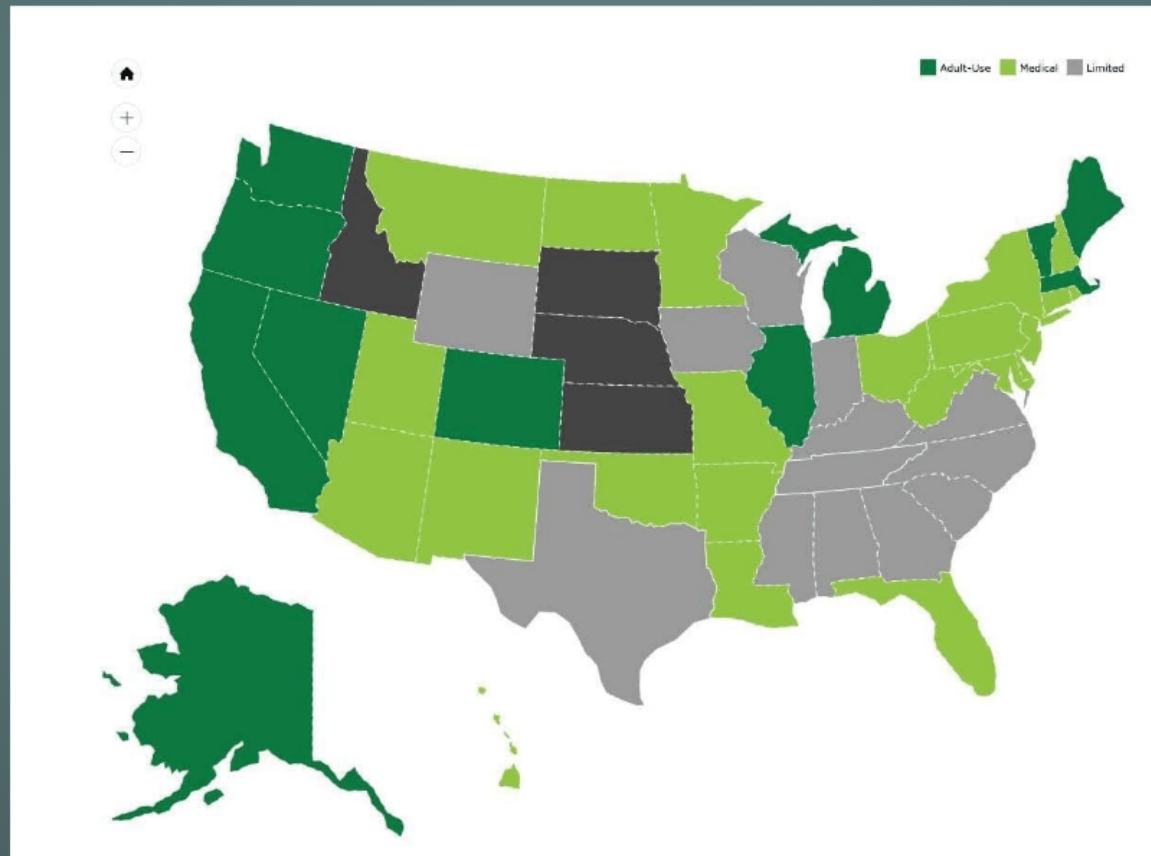




**WHAT ABOUT CBD?**

# GANJA-GRAPHY

Summary of legal status of cannabis in each of the States.



Map found at <https://thecannabisindustry.org/ncia-news-resources/state-by-state-policies/>



# LEGAL STATUS OF CANNABIS IN USA

<u>FULLY LEGAL</u>	<u>MEDICAL ONLY</u>	<u>LIMITED</u>	<u>ENTIRELY ILLEGAL</u>
ALASKA	ARKANSAS	ALABAMA	IDAHO
CALIFORNIA	ARIZONA	GEORGIA	KANSAS
COLORADO	CONNECTICUT	INDIANA	NEBRASKA
ILLINOIS	DELAWARE	IOWA	SOUTH DAKOTA
MAINE	FLORIDA	KENTUCKY	
MASSACHUSETTS	HAWAII	MISSISSIPPI	
MICHIGAN	LOUISIANA	NORTH CAROLINA	
NEVADA	MARYLAND	SOUTH CAROLINA	
OREGON	MINNESOTA	TENNESSEE	
VERMONT	MISSOURI	TEXAS	
WASHINGTON	MONTANA	VIRGINIA	
	NEW HAMPSHIRE	WISCONSIN	
	NEW JERSEY	WYOMING	
	NEW MEXICO		
	NEW YORK		
	NORTH DAKOTA		
	OHIO		
	OKLAHOMA		
	PENNSYLVANIA		
	RHODE ISLAND		
	UTAH		
	WEST VIRGINIA		





# ILLINOIS LAW

ILLINOIS





**COLE MEMORANDUM**

**UMM... YEAH, DID YOU GET THAT  
MEMO?**



Office of the Deputy Attorney General


*The Deputy Attorney General*

Washington, D.C. 20530

February 14, 2014

**RESCINDED**

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Related Financial Crimes



A man with grey hair and glasses, wearing a dark blue suit, white shirt, and patterned tie, is seated at a wooden podium. He is looking down and smiling slightly. A microphone is positioned in front of him. To his left, there are two blue water bottles. The background is a large, stylized green leaf pattern.

**Accepting the Cole Memo "for now"**

**April 10, 2019**





# TRIAD OF FEDERAL LAWS

DFSCA

34 CFR Part 86

Drug-Free Schools and  
Communities Act: 20  
U.S.C. § 1011i

FDFWA

34 CFR Part 84

Federal Drug-Free  
Workplace Act, 41  
USC 8102

CSA

21 USC 801 et seq.

Controlled Substances  
Act, 21 USC 801, et  
seq.





# DFSCA & FDFWA

Requirements under Title IV of the HEA



# DRUG-FREE SCHOOLS & COMMUNITIES ACT and FEDERAL DRUG-FREE WORKPLACE ACT

## Requirements under HEA

- 1) Develop & implement program to prevent unlawful possession, use, or distribution of illicit drugs and alcohol by students & employees.
- 2) Disseminate annual notification to students & employees of:
  - Standards of conduct that clearly **prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol** by students and employees on its property or as part of any of its activities;
  - Clear statement that **institution will impose sanctions** on students & employees (consistent with local, State, and Federal law) with description of sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct.
  - Description of sanctions for violating federal, state, and local law and campus policy;
  - Description of health risks associated with alcohol and other drug use; and
  - Description of treatment options.
- 3) Biennial review of program's effectiveness and consistency of the enforcement of sanctions.

**NOTICE**

**FEDERAL DRUG-FREE WORKPLACE**

**Additional Requirement for Schools Participating in Campus-Based Programs**

**THIS IS A**

School must notify the Department and take "appropriate action" when it learns of an employee's conviction under any criminal drug statute.

**DRUG-FREE  
WORKPLACE**

# SUMMARY OF SALIENT REQUIREMENTS

- Prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol
- Impose sanctions for violations





# Munchios

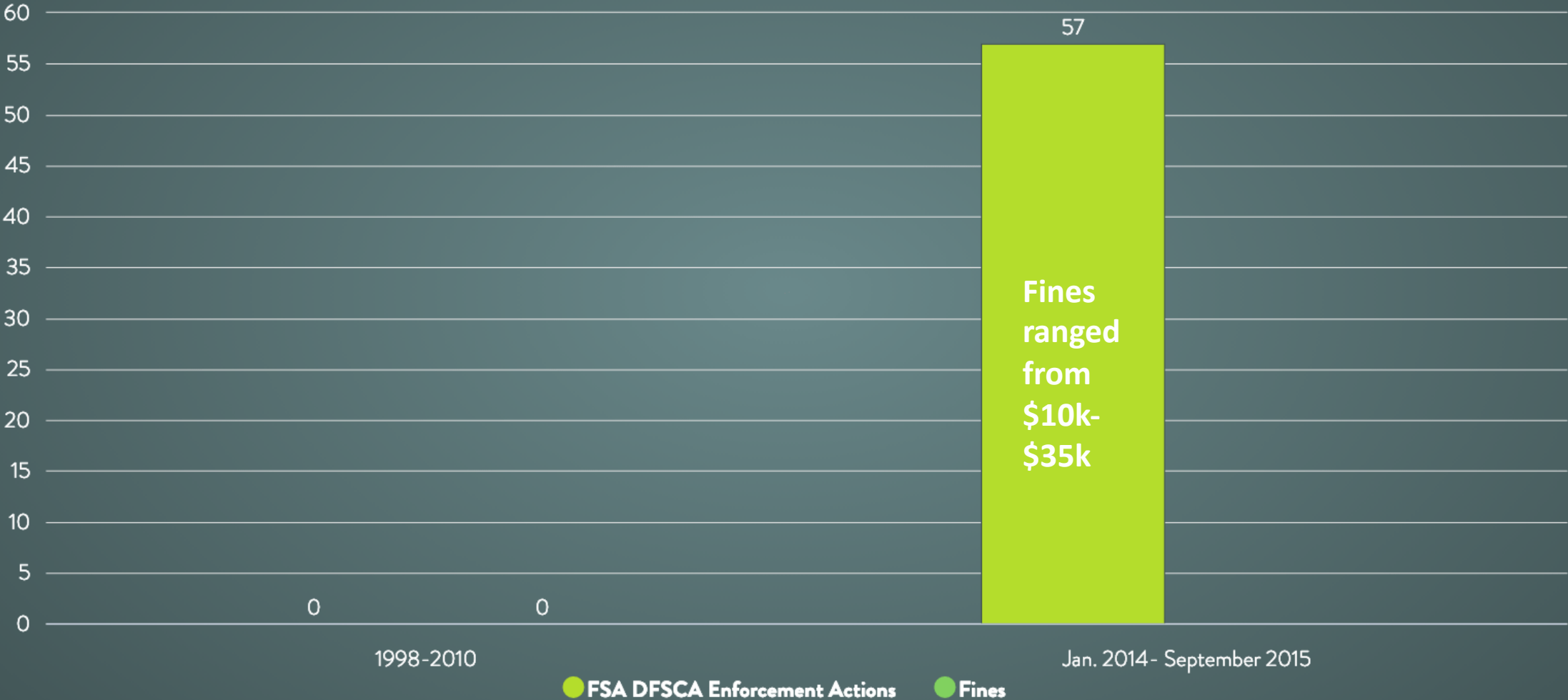
A LIGHT-TASTING CRISPY SNACK!

POTATO CRISPS

**\$2 ONLY**



# FSA ENFORCEMENT ACTIONS: 1998-2015







**MAY A TITLE IV SCHOOL PERMIT MARIJUANA USE OR  
POSSESSION IN STATES WHERE IT IS LEGAL?**

**NO...BUT**



**OPTIONS**






**TIPS**

# MORE RECOMMENDATIONS

- Become more familiar with all of the requirements of the DFSCA
- Disseminate disclosures not only once a year but every time you hire someone and every time you enroll a student
- Continuously monitor effectiveness of your policy and consistency of enforcement
- Have cross-section of staff responsible for biennial review (not single compliance officer)





**State v. Maestas**  
417 P.3d 774 (AZ 2018)



# GUIDANCE

*Complying with the Drug-Free Schools & Campuses Regulations (ED  
2006)*

<https://safesupportivelearning.ed.gov/sites/default/files/hec/product/dfs>



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Yolanda Gallegos established her law firm, Gallegos Legal Group, over 20 years ago and has represented private sector schools throughout the country for 30 years. Her practice focuses on guiding postsecondary schools through critical events such as governmental and accreditor investigations and operational adjustments required in response to regulatory changes. She is a frequent speaker and writer on a variety of regulatory topics affecting higher education including her chapter on the Violence Against Woman Act regulations, which was published by Thomson Reuters in its book, "Emerging Issues in College and University Security."