

LEARNING THROUGH THE HAZE: ACCOMMODATING MEDICAL MARIJUANA IN THE SCHOOL SETTING

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Over the past few years, we have seen a steadily increasing number of states enact legislation legalizing marijuana for recreational or medical use. There are currently a total of 34 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands that permit the use of medical marijuana, while 12 states permit the prescription of low-THC cannabidiol (CBD) products for certain medical conditions.

More states are joining the ranks of those who have approved the use of medical marijuana or CBD on what seems a near-daily basis. This rapidly changing landscape of marijuana laws at the state level, with no contemporaneous movement at the federal level, has caused considerable head scratching for school administrators as they grapple with the use of medical marijuana by students on school property.

MARIJUANA ON SCHOOL GROUNDS? PROCEED WITH CAUTION

The primary concern for public school administrators is that marijuana is still listed as a Schedule I controlled substance under federal law, which means the federal government continues to take the position there is no acceptable medical use of the drug. Accordingly, the use of medical marijuana within 1,000 yards of school property could cause schools who receive federal funding to run afoul of the Drug Free Workplace Act and cause a loss of that federal funding.

While that result remains a theoretical possibility, the Department of Justice has been consistent in its position

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that it does not intend to interfere with the regulation of marijuana at the state level and continues to take a backseat approach. In addition, because federal agencies have broad discretion in enforcing drug-free workplace requirements, it is likely any loss of federal funding would occur only after less damaging options have failed.

Nonetheless, administrators of both public and private schools should approach the use of medical marijuana by students on school property with caution. There is currently little guidance, even at the state level, to assist administrators in developing appropriate and defensible policies. A handful of states—including Illinois, Colorado, Maine, and New Jersey—have enacted legislation authorizing students to consume medical marijuana on school property under certain conditions. Still others, including Washington and Florida, have preferred to allow consumption of medical marijuana on school grounds while leaving the specific rules governing use up to the individual school districts. Yet the vast majority of states have remained silent on what is perceived as a potentially controversial issue.

CONSERVATIVE APPROACH COULD BE BEST POLICY

In the absence of definitive guidance, schools are advised to take a conservative approach regarding the use of medical marijuana on school grounds. One option is to require students to leave school grounds to consume medical marijuana and then return to school after it is administered so that none of the product is ever present on school property. This approach, however, while avoiding any potential conflict with drug-free workplace requirements, could lead to litigation by parents claiming their students are being deprived of a free appropriate public education (FAPE) as required under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

That is precisely what happened in Illinois in January 2018, when the parents of a 6th grade student suffering from debilitating seizures filed suit after the school district refused to allow her to use medical cannabis on school property. Because the student required multiple doses throughout the day, which were administered by way of a medicinal patch, the school's refusal to allow her to use the drug on school property effectively precluded her from

attending school. The judge agreed with the parents and ordered the district to allow the student to return to class. This case ultimately led to a revision in Illinois law to permit such use under certain specified conditions.

POSSIBLE POLICY APPROACH

Unless use of medical marijuana at school is expressly prohibited by state law, an alternative option offers a reasonable middle ground that mitigates risk for both public and private schools in those states where use of medical marijuana or CBD is permitted. Such policies could permit the use of non-euphoric, low-THC medical cannabis on school grounds under the following conditions:

- Students using medical cannabis products must be a registered qualifying patient under the existing state law;
- A parent, guardian, or other individual is a registered caregiver authorized to possess and administer the product under existing state law;
- Only product in a non-smokable form may be administered;
- Only a parent, guardian, or other individual who is a registered caregiver may administer the product;
- The product must be administered in a private setting away from other students and may not be administered in a manner that would create a disruption or cause exposure to other students;
- Students cannot be punished for use of a medical cannabis product on school grounds; and
- No member of a school's staff should administer a medical cannabis product to a student.

CONCLUSION

The use of medical marijuana on school grounds remains a challenging issue for school administrators and policymakers at all levels. It remains unclear how the continued expansion of marijuana legalization at the state level will ultimately be dealt with at the federal level.

In the meantime, administrators must maintain a delicate balance between their obligation to accommodate students with disabilities and the contradiction presented between state and federal law. Administrators and policymakers are strongly encouraged to remain current with their state and local laws and to consult legal counsel when implementing policies that either permit or exclude use of medical marijuana or CBD on school grounds.

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