

Summary of Cannabis Laws for School Districts

California Purchasers Health Care Coalition (CCHP)

Presented by Cynthia D. Vargas
September 28, 2019



Controlled Substances Act

- Federal law
- Categorizes drugs into five distinct classifications (Schedules I-V)
 - Acceptable medical use
 - Potential for abuse/dependency
- Quick mention of AB – suicide prevention



Cont. Controlled Substances Act

- Cannabis classified as a Schedule I drug
- Schedule I drugs are
 - High potential for abuse
 - Have no currently accepted medical use in treatment in the U.S.
 - Lack of accepted safety for use of the drug or other substance under medical supervision
- Federal law prohibits doctors from *prescribing* Schedule I drugs
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Safe and Drug-free Schools and Community Act

- Federal law
- Aimed at preventing illegal use of alcohol, tobacco and drugs
- Encourages school districts to foster a safe and drug-free learning environment
- School districts receive federal funding for promoting conduct consistent with the Act



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- Allows patients to legally possess/cultivate marijuana for medical use pursuant to recommendation or approval by a California licensed physician
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Why Compliance with Federal/State Laws on Marijuana Matter

- Federal funding – noncompliance may jeopardize federal funding programs and grants
- Liability (civil and/or criminal) – noncompliance may unnecessarily expose the district and individuals (e.g., parents) to liability for unlawful use, possession, etc. of marijuana by minors



Impact on Student Discipline

- Disciplinary procedures and policies may be applied to students even if they have a recommendation for medical marijuana in any form



Cont. Impact on Student Discipline

- 48900(c) – Unlawfully possessed, used, sold, or otherwise furnished or been under the influence of a controlled substance...
- 48900(d) – Unlawfully offered, arranged, or negotiated to sell a controlled substance...
- 48900(j)- Unlawfully possessed or unlawfully offered, arranged or negotiated to sell drug paraphernalia



Cont. Impact on Student Discipline

- Discipline for medical marijuana use?
- Discipline for recreational use?
 - Still “illegal” whether its medical or recreational use
- Students found using marijuana beyond 1000 feet of school grounds, day care center or youth center?



Reasonable Accommodations – Section 504, IEPs, Health Care Plans

- CCUA only permits physicians to recommend, but not prescribe the use of marijuana
- Marijuana cannot be administered by school staff or self-administered by the student or a parent or guardian at school
- District may only provide lawful accommodations through its programs



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- OAH agreed with all of the district's arguments and denied the request for stay put, opining that an IEP cannot require a district to engage in "unlawful criminal activity."



Impact on Prospective and Current Employees

- Neither CCUA nor AUMA creates a right for employees to use or be under the influence of marijuana at work
- Employers still free to operate drug-free workplaces and may deny:
 - use, consumption, possession, transfer, display, transportation, sale or growth of marijuana in the workplace



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- Reasonable accommodations for medical condition?
- Drug screening (pre-employment or during employment)?
- Non-smoking/vaping forms of marijuana used on school grounds?
- Possession on school grounds?



Impact on Parents/Other Community Members

- Parent (or other non-employee adult) uses marijuana on campus
 - Edible?
 - Injection?
 - Drops?
 - Vape/Smoke?
- Parent smokes marijuana 1000 feet away from school but during school hours or after school when all students are let out?



What Continues to Be Unlawful

- It remains illegal to:
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Cont. What Continues to Be Unlawful?

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- Establish marijuana businesses (e.g., dispensaries) within 600 feet of schools and other areas where children are present



Other Notable Federal Laws Relating to Schools

- Omnibus Transportation Employee Testing Act of 1991
 - Requires drug and alcohol testing of drivers, pilots and other “safety-sensitive” jobs that are under the jurisdiction of the Department of Transportation
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Determining Whether a Person is Under the Influence

- No proven mechanism for detecting recent use of marijuana
- Administrators may document specific, articulable facts that raise reasonable suspicion
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Coats v. Dish Network, LLC (2015) 350 P.3d 849

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September 28, 2019



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Presented by Cynthia D. Vargas
September 28, 2019



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- Categorizes drugs into five distinct classifications (Schedules I-V)
 - Acceptable medical use
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- Quick mention of AB – suicide prevention



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Summary of Cannabis Laws for School Districts

California Purchasers Health Care Coalition (CCHP)

Presented by Cynthia D. Vargas
September 28, 2019



Controlled Substances Act

- Federal law
- Categorizes drugs into five distinct classifications (Schedules I-V)
 - Acceptable medical use
 - Potential for abuse/dependency
- Quick mention of AB – suicide prevention



Cont. Controlled Substances Act

- Cannabis classified as a Schedule I drug
- Schedule I drugs are
 - High potential for abuse
 - Have no currently accepted medical use in treatment in the U.S.
 - Lack of accepted safety for use of the drug or other substance under medical supervision
- Federal law prohibits doctors from *prescribing* Schedule I drugs
 - Doctors today may *recommend*, but not prescribe



Safe and Drug-free Schools and Community Act

- Federal law
- Aimed at preventing illegal use of alcohol, tobacco and drugs
- Encourages school districts to foster a safe and drug-free learning environment
- School districts receive federal funding for promoting conduct consistent with the Act



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- The California Department of Education and Federal Department of Education could audit school districts' compliance with the purpose of the Act



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Why Compliance with Federal/State Laws on Marijuana Matter

- Federal funding – noncompliance may jeopardize federal funding programs and grants
- Liability (civil and/or criminal) – noncompliance may unnecessarily expose the district and individuals (e.g., parents) to liability for unlawful use, possession, etc. of marijuana by minors



Impact on Student Discipline

- Disciplinary procedures and policies may be applied to students even if they have a recommendation for medical marijuana in any form



Cont. Impact on Student Discipline

- 48900(c) – Unlawfully possessed, used, sold, or otherwise furnished or been under the influence of a controlled substance...
- 48900(d) – Unlawfully offered, arranged, or negotiated to sell a controlled substance...
- 48900(j)- Unlawfully possessed or unlawfully offered, arranged or negotiated to sell drug paraphernalia



Cont. Impact on Student Discipline

- Discipline for medical marijuana use?
- Discipline for recreational use?
 - Still “illegal” whether its medical or recreational use
- Students found using marijuana beyond 1000 feet of school grounds, day care center or youth center?



Reasonable Accommodations – Section 504, IEPs, Health Care Plans

- CCUA only permits physicians to recommend, but not prescribe the use of marijuana
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Sylvan Union School District (OAH)

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- Parent filed for stay-put of the student's IEP and argued that the administration away from school disrupted the student's school program because student was resistant to returning to school.



Sylvan Union School District (OAH)

- The district argued that administration of CBD oil on campus (1) violated the CCUA because district personnel are not "primary caregivers" and marijuana cannot be used within 1,000 feet of a school; (2) violated the Education Code because school personnel can only administer prescribed medication and a student cannot possess marijuana on campus and would be subject to discipline for doing so; and (3) violated the Safe and Drug-Free Schools and Community Act.
- OAH agreed with all of the district's arguments and denied the request for stay put, opining that an IEP cannot require a district to engage in "unlawful criminal activity."



Impact on Prospective and Current Employees

- Neither CCUA nor AUMA creates a right for employees to use or be under the influence of marijuana at work
- Employers still free to operate drug-free workplaces and may deny:
 - use, consumption, possession, transfer, display, transportation, sale or growth of marijuana in the workplace



Cont. Impact on Prospective and Current Employees

- Reasonable accommodations for medical condition?
- Drug screening (pre-employment or during employment)?
- Non-smoking/vaping forms of marijuana used on school grounds?
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Impact on Parents/Other Community Members

- Parent (or other non-employee adult) uses marijuana on campus
 - Edible?
 - Injection?
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- Parent smokes marijuana 1000 feet away from school but during school hours or after school when all students are let out?



What Continues to Be Unlawful

- It remains illegal to:
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42 Cal.4th 920

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Coats v. Dish Network, LLC (2015) 350 P.3d 849

- The Supreme Court in Colorado, which legalized recreational and medical use of marijuana long ago, upheld the right of employers to prohibit its use on and off the job.
 - A quadriplegic who used marijuana to ease painful spasms, was fired from his job after he failed a drug test. The employee argued that he used marijuana only at home, it did not affect his job performance and his drug use complied with state laws.
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Practice Pointers

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Practice Pointers

- Consider providing training via:
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At the end of the day...

- ...Marijuana is still considered **ILLEGAL** by the federal government.
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