



## MEMBER ALERT

### MEDICAL MARIJUANA

The Compassionate Use Act of 1996 (Health & Safety Code Section 11362.5) allows minors and adults to possess and use “medical marijuana” if recommended by their physician. Health & Safety Code Section 11362.7 allows such individuals to obtain medical marijuana identification cards intended to protect them from arrest and prosecution by state authorities. Against this background, school districts are being forced to address new situations involving students and employees who possess or are using “medical marijuana.” This Member Alert provides practical advice for dealing with these issues.

#### I. STUDENTS

Students and their parents argue that the Compassionate Use laws prohibit a school district from taking any adverse action against a student possessing or using (being under the influence of) marijuana while on campus, during district-sponsored events, or while in transportation to/from school or events. Contrary to these arguments, school districts are permitted to discipline any student found to be in violation of existing federal and state laws, board policies, or administration regulations.

1. Federal Laws Barring Use/Possession Still Apply. The U.S. Supreme Court has held that California’s medical marijuana laws do not negate federal drug laws. *Gonzales v. Raich*, 545 U.S. 1 (2005). Federal law still makes possession or use of marijuana illegal and therefore prohibited on campus.
2. No Repeal of Education Code Section 48915. H&S Section 11362.5 did not mention, modify, repeal, or negate Education Code Section 48915 (discipline for drug possession). There is no legislative history suggesting the Compassionate Use laws were intended to prevail over any provision of the Education Code. H&S Code Section 11362.79 also states that it is illegal to use marijuana within 1,000 feet of a school, on a school bus, or in a manner otherwise prohibited by law. These laws should be read together in support of existing district policies.
3. Compassionate Use Laws Were Not Intended to Create Rights Beyond Immunity from Criminal Prosecution. The sole purpose of the Compassionate Use laws was to prevent criminal liability; the laws were never intended to create new or independent rights beyond this limited scope. *Ross v. Raging Wire Telecommunications, Inc.*, 42 Cal.4th 920 (2008.) There is no legal basis to conclude that a student has obtained supplemental rights to possess/use drugs on campus merely because state officials (but not federal officials) will not criminally prosecute him/her. There are numerous enforceable restrictions on student conduct that do not involve “criminal” acts; anti-drug policies are simply another form of this general right of schools to manage their sites and students under their care, custody, and control.
4. The Obligations of Safety to All Students. There have been recent instances of “spiked” brownies and other tainted materials appearing on school campuses that have been provided to unsuspecting students. Students on “open campuses” are also leaving campus during lunch hours to use marijuana (a particular concern with young, inexperienced drivers) before returning to campus. Any rule other than “zero tolerance” creates safety concerns for students and the district,

particularly when a school district can be named in litigation for the off-campus activities of students. *E.g., Hanson v. Reedley Joint Union High School Dist.*, 43 Cal.App.2d 643 (1941) [holding district liable for negligence of student, operating her own vehicle, due to claimed knowledge by supervising teacher of safety-related issues].

5. Treatment as a Medication. No student has a right to personally possess “medication” (prescription or over-the-counter) while on campus or at a district-sponsored event; any medication must be provided to school personnel for safe storage. *Education Code Section 49423.* However, marijuana is not subject to the “prescription” standards set forth in Section 49423 because federal law prohibits a physician from “prescribing” marijuana, as opposed to “recommending” its use. School personnel storing/providing access to the drug could also face legal jeopardy from federal authorities. Thus, marijuana could not even be managed by the school district in the manner required under state law.
6. Disability Laws do not Trump Other Cited Laws and Regulations. Neither the Americans with Disabilities Act nor any other state or federal disability rights law can compel a school district to engage in actions that would violate another provision of federal law. Arguments regarding use or possession based on disability rights laws have no legal foundation.

Because there are other alternatives that comply with state and federal laws, and there is no evidence that the Compassionate Use laws were ever intended to apply to the school setting, there is no basis to conclude that school districts are obligated to deviate from current Board Policies and Administrative Regulations regarding prohibited drug use or possession at any district-related event merely because a particular student is permitted access to “medical marijuana.”

## II. EMPLOYEES

School districts also have no present obligation to allow any employee to possess or use marijuana while on campus or to be under the influence of the drug at any time during the work day. School districts may refuse to employ or terminate any employee who violates its drug policies and federal laws. *Ross v. Raging Wire Telecommunications, Inc., supra* [permitting employer to refuse employment to individual who failed preemployment drug test arising from use of medical marijuana]; H&S Code Section § 11362.785.

Legislation seeking to change this result has been introduced. SB 129 (Leno) seeks to declare it “unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment or otherwise penalize a person, if the discrimination is based upon the person's status as a qualified patient or a positive drug test for marijuana, except as specified.” The bill is in the Senate Judiciary Committee, where it seems to have enough votes to move forward. Opponents note that the bill would place certain California employers, including school districts, in violation of the federal Drug-Free Workplace Act.

## III. CONCLUSION

Based on existing state and federal laws and regulations, school districts may continue to enforce all policies and procedures that prevent the possession or use of “medical marijuana” in any manner affecting the school district’s sites and operations. Should you have any question or concern regarding these issues, or should you receive a claim of “discrimination” from a student or employee using “medical marijuana,” please immediately contact the Business or Risk Management Department.