

Education Law

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AALRR Alert



Don't Let New Recreational Marijuana Laws Leave You Dazed & Confused Regarding Student Discipline

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On November 8, Californians passed Proposition 64, legalizing the nonmedical (recreational) use of marijuana for adults 21 years or older in California. Under California law, approved ballot measures take effect after the election unless otherwise specified. Accordingly, people over the age of 21 in California are now allowed to “possess, process, transport, purchase, obtain, or give away” not more than 28.5 grams of marijuana or not more than 8 grams of concentrated cannabis. People over age 21 in California are also allowed to “[s]moke or ingest marijuana or marijuana products.” Paradoxically, the *sale* of nonmedical marijuana in California remains illegal for the time being, as licensing and other regulations on the recreational marijuana industry will take effect by January 1, 2018. Despite all this legislation, any use of marijuana—recreational or medical—remains illegal under the federal Controlled Substances Act. (21 U.S.C. §§ 801 et seq.) The federal Drug Enforcement Administration continues to classify marijuana as a “Schedule I” drug, meaning it finds no currently accepted medical

use and a high potential for abuse. Significantly, federal law preempts state law, meaning a state and its electorate cannot make marijuana completely “legal.”

Previously, our firm published a blog regarding medical marijuana law (California’s Compassionate Use Act) and its interplay with employee and student discipline for school districts. [\[Click here.\]](#)

The Education Code provisions on student discipline are currently unaffected by Proposition 64. Education Code section 48900 continues to recognize the following acts as grounds for suspension or expulsion when other legal requirements (such as special education procedures) and evidentiary showings (other means of correction) are not feasible or repeatedly failed to bring about proper conduct and/or the nature of the act renders the presence of the pupil on campus a danger to physical safety, where applicable, are met:

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

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(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

In addition, Education Code section 48915, at subdivision (c)(3), provides that “[u]nlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code” shall result in a recommendation for expulsion.

Significantly, Proposition 64 did not amend or repeal the schedules of controlled substances set forth in Health & Safety Code section 11053 et seq. (Health & Safety Code section 11054(d)(13) classifies marijuana as a “Schedule I” “hallucinogenic” substance.) Additionally, Proposition 64 did not amend or repeal Health & Safety Code section 11014.5, which includes within the definition of “[d]rug paraphernalia” materials such as “chamber pipes,” “roach clips,” and “bongs.” Additionally, Proposition 64 did not legalize recreational marijuana use for persons under the age of 21, and given all students in the K-12 *general* education context would be under the age of 21, their use of marijuana could not be deemed lawful.

Previously, we offered that California’s medical marijuana laws did not confer upon school-age children a right to use, possess, or be under the influence of marijuana at school

under the California Supreme Court’s reasoning in *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920. There are no legal age limits on who may qualify as a medical marijuana patient under the CUA. However, the CUA does not “legalize” marijuana; instead, it provides qualified medical marijuana patients with a defense to violations of certain specified California criminal laws. In *Ross*, the Court made clear that medical marijuana patients do not have a “right” to use medical marijuana and such use need not be accommodated outside the criminal law context.

Regarding federal laws governing special education, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, we recognize further that continued federal illegality of marijuana does not bode well for disabled students claiming violation of rights secured by these aforementioned laws in the context of student discipline matters. While special education and Section 504 students are subject to manifestation determinations and other protections that attach to student discipline of disabled students, we do not believe that California’s new law creates a “discipline exemption” for marijuana offenses until such time as a court of law says otherwise or the legislature explicitly creates such an exemption.

It remains to be seen how Proposition 64 may be revised, amended, and impacted by further legislative and

regulatory action. Accordingly, we advise schools to consult with their legal counsel as the relevant laws are revised.