



# Drugs, Substance Abuse, and Public Schools

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*A Legal Guide for School Leaders Amidst Evolving Social Norms  
With a foreword by the National Association of School Nurses*

AN **nsba** PUBLICATION



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NSBA thanks the National Association of School Nurses for reviewing and providing input to this publication.

## FOREWORD



A third grade student comes to school days after being diagnosed with type 1 diabetes, requiring insulin and treatment in case of low blood glucose. An assistant principal finds a ninth grade student hidden behind a car vaping in the high school parking lot. School district leaders attend a community conversation hosted by the state health department – the topic of discussion: the opioid epidemic. These reality-based scenarios require school board guidance and policy development. School nurses and other local school professionals implement school board policies to support student health, safety, and readiness to learn.

As a partner in support of student success and well-being, the National Association of School Nurses (NASN) worked closely with the National School Boards Association (NSBA). NASN members possess expertise to inform evidence-based policies and practices for safe medication administration in schools. We are pleased to collaborate with NSBA in the review of this legal guide for school leaders. School nurses observe the home and community factors that impact student health and learning and work with the school team and link with community-based resources to support students. These data are shared with school boards to inform their policy making. Topics such as medical marijuana use in schools and drug use by students require knowledge of federal and state laws. This legal guide provides responses to the questions school leaders are asking, making the guide useful and practical for school boards. NASN applauds NSBA for gathering and organizing current state laws on drugs and substance use as they relate to schools.

*Drugs, Substance Abuse and Public Schools: A Legal Guide for School Leaders Amidst Changing Social Norms*, reflects the NSBA's mission to advocate for equity and excellence in public education through school board governance and NASN's mission to optimize health and learning for all students by advancing school nursing practice. School boards will find the information needed to write policies and implement practices that support healthy, safe, and supported students.

Donna Mazyck  
Executive Director  
National Association of School Nurses



# INTRODUCTION



Today more than ever issues of drugs and medications in schools present a challenging landscape for school boards and school officials. This legal guide is intended to help schools navigate the complicated patchwork of federal, state and local laws and regulations governing the presence and use of both authorized medications and illicit drugs in school. From medication management to increasingly novel issues such as medical marijuana, to the rise of troubling trends affecting children such as the opioid addiction and e-cigarettes, to student privacy rights and discipline, this publication will guide school board members in policy making and school board officials in identifying issues and appropriate responses to help ensure student well being and to maintain safe school environments. The National School Boards Association is especially pleased to be joined by the National Association of School Nurses in this effort, and we acknowledge their generous review. Our hope is that this guide, which will live digitally on the NSBA website and will be available through many of our state association members, will help school leaders proactively prepare for and meet the many challenges, new and old, in this area.

Thomas J. Gentzel  
Executive Director & CEO  
National School Boards Association



## **I. MEDICATIONS AT SCHOOL**

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### **Q1. What policies and procedures are needed to ensure that all student medications at school are properly stored and administered?**

Some states have laws or standards that establish specific policies for administration of medications in schools that apply to all school districts in that state.<sup>1</sup> This prevents significant discrepancies between school districts within the state and reduces confusion for parents of medicated children and prescribing health care professionals. When state laws or guidelines do not exist, school health professionals, consulting physicians, and medical advisory committees should be involved in this process.<sup>2</sup>

Well-written policies and procedures will enable schools to fulfill their obligations to provide needed health-related services to students during the school day with consistency. School policies and procedures should address:

- delegation (when permissible by state law), training, and supervision of unlicensed assistive personnel (UAP);
- student confidentiality;
- medication orders;
- medication doses that exceed manufacturer's guidelines;
- proper labeling, storage, disposal, and transportation of medication to and from school;
- documentation of medication administration;
- rescue and emergency medications;
- off-label medications and investigational drugs;
- prescription and over-the-counter (OTC) medications;
- complementary and alternative medications; and
- psychotropic medications and controlled substances.<sup>3</sup>



## Individualized Healthcare Plans

**What** – An Individualized Healthcare Plan (IHP) is a written document that describes the medical needs of a student during the school day and outlines how the school will provide healthcare services to the student, along with specific student outcome goals.

**Why** – IHPs are created for students whose healthcare needs affect or have the potential to affect their safe and optimal school attendance and academic performance.<sup>4</sup> IHPs fulfill administrative and clinical purposes including management of healthcare conditions to promote learning; facilitating communication, coordination, and continuity of care among service providers; and evaluation/revision of care provided.<sup>5</sup>

**How** – IHPs are typically developed using steps based on the nursing process:

1. **Assessment:** The school nurse collects comprehensive data pertinent to the student's health and/or situation.
2. **Nursing Diagnosis:** The school nurse analyzes the assessment data to determine the diagnoses or issues.
3. **Outcome Identification:** The school nurse identifies expected outcomes for a plan individualized to the student or the situation.
4. **Planning:** The school nurse develops a plan that prescribes strategies and alternatives to attain expected outcomes.
5. **Implementation:** The school nurse implements the identified plan.
6. **Evaluation:** The school nurse evaluates progress toward attainment of outcomes.<sup>6</sup>

**Whom** – The IHP usually is developed and managed by the school nurse, in collaboration with the student, family, and healthcare providers.

**When** – Usually the school nurse implements, manages, and evaluates the IHP at least yearly and as changes in a student's health status occur to determine the need for revision and evidence of desired student outcomes.

## Q2. Who can administer medications to students at school? Under what circumstances may unlicensed assistive personnel (UAP) do so?

Ideally, registered professional school nurses should be responsible for administering medication in the school setting. To administer any prescribed medication, schools should require a written statement from the parent and the physician that provides the name of the drug, the dose, approximate time it is to be taken, and the diagnosis or reason the medication is needed.<sup>7</sup>

When a school nurse is not available, it is recommended that a trained and supervised unlicensed assistive personnel (UAP) who has the required knowledge, skills, and composure to deliver specific school health services do so, under the guidance of a licensed Registered Nurse (RN). A licensed RN, or a school nurse, may delegate duties that allow UAPs to provide standardized routine health services. UAPs operate under the supervision of the nurse, and on the basis of physician guidance and a school nursing assessment of the unique needs of the student and the suitability of delegation of specific nursing tasks.<sup>8</sup>

The nurse determines which nursing services can be delegated and then selects, trains, and evaluates the performance of a UAP (within the personnel policies of the school district), audits school medication records and documents, and conducts refresher classes throughout the school year.<sup>9</sup> The training, certification, and supervision of a UAP should be determined by national and state nursing organizations and state nurse practice laws. In most circumstances, a medication UAP should be an ancillary health office staff member (health assistant/aide) who is also trained in basic first aid and district health office procedures.<sup>10</sup>

The administration of certain medications may be specifically designated by law as a “nursing function” that may not be delegated to a UAP, such as those that are required to be given intravenously or subcutaneously, or those that need to be specifically measured, or for which the dosage must be based upon the symptoms in question.<sup>11</sup> Most states now expressly permit non-medical personnel to administer some emergency injectable medications, such as EpiPens for allergies and glucagon for diabetes.<sup>12</sup> Other medications, such as those that must be rectally administered in emergency situations, like the commonly prescribed emergency medication for epilepsy called Diastat, vary more widely state by state.<sup>13</sup>

In some instances, older and responsible students should be allowed to self-medicate at school with over-the-counter medications and certain prescription medications (albuterol for asthma, insulin for diabetes) when this is recommended by the parent and physician.<sup>14</sup> Schools should obtain written notification from parents acknowledging that the school bears no responsibility for ensuring the medication is taken. School districts allowing such self-medication often establish clear policy stating that if a student shares his/her medication with classmates, the school will immediately confiscate the medication and revoke the student’s privilege of self-administration.

### **Q3. Should schools include the administration of a medication in student’s IEP or Section 504 plan?**

Section 504 of the Rehabilitation Act<sup>15</sup> and the Individuals with Disabilities Education Act (IDEA)<sup>16</sup> provide protection for students with disabilities by requiring schools to make reasonable accommodations, to provide special education and related services, and to allow for safe inclusion of these students in school programs. These federal laws do not cover all students who require medications during the school day (e.g., short-term), and are not specific about how administration of medications should be conducted in school.<sup>17</sup>

If a student with a qualifying disability under the IDEA and/or Section 504 requires the administration of medication during the school day, such administration is typically deemed to be a related service to which the student is entitled as part of his accommodations and/or special education services under these statutes.<sup>18</sup>

Under Section 504, in addition to the development of an IHP, parents and the student are entitled to an evaluation and meetings using a team process that involves the parents to determine what accommodations are necessary and/or appropriate for the student.<sup>19</sup> A similar process takes place under IDEA as a student's Individualized Education Program (IEP) is developed and modified.

**Q4. Should school districts allow parents/guardians to volunteer to administer medications to their children? Does it matter whether the parent is a licensed medical professional? What policies and procedures should be in place if the district determines that parent volunteers may administer medication to their own or other children (such as on field trips)?**

Maybe. Some parents who are accustomed to providing medication and other services to their children may volunteer to do so on field trips and at school events. Even when state law does not prohibit this practice, schools should ensure that the parents are aware that while the school may allow parents to provide such services to their students, they are not required to do so.<sup>20</sup> Without proper documentation of the fact that the parents have requested to provide these services, it may appear that the school is unwilling or ill-equipped to provide them.<sup>21</sup> Schools should document in a student's Section 504 plan the procedures to be followed when a parent provides certain accommodations, and should state clearly that the school is able and willing to provide the services if the parents is unwilling or unable to do so. In many cases, it is helpful (and in some cases necessary) to set forth protocols for parents who voluntarily choose to provide services for their child on a regular basis to notify the school when they are not able to do so for a specific event.<sup>22</sup>

In some cases, there may be a parent with current nursing qualifications who volunteers to serve in his/her nursing capacity on school trips or at school events. Schools should be cautious about how they handle these arrangements, as the volunteer nurses would be providing professional services, not just general volunteer services. Schools should review their insurance policies and contact their carriers, where necessary, to determine whether a volunteer nurse would be covered under the school's liability coverage. While schools should check with their carriers to be sure, it is likely that coverage effectively will extend to the volunteering parent. If the school determines that it is necessary or beneficial to hire the individual on a per diem basis, it also should make sure that such action is not in violation of any bidding requirements or other legal obligations.

**Q5. Who should administer medication in school if trained medical staff are not available?**

On rare occasions when a member of the health office staff (RN, licensed practice nurse, or UAP health assistant/aide) is not available, other willing volunteer school staff may be trained by the licensed RN to assume specific limited tasks such as single dose medication delivery or lifesaving emergency medication administration.<sup>23</sup> In those instances, it is important for the school district to identify and satisfactorily address medical liability issues for the district, the nurse, and the voluntary nonmedical staff member who is serving temporarily as UAP.

## **Q6. Are there any legal protections for school nurses, other staff, or the district for administering medications to students?**

State laws provide tort immunity for school officials, including school nurses, though that immunity varies by state. Federal courts have recognized that federal, state, and local officials, including school officials, are entitled to qualified – not absolute – immunity when they are sued for damages in cases claiming violations of the Constitution and federal law.<sup>24</sup> The Supreme Court has not definitively decided if qualified immunity shields school nurses regarding violations of administering medications, though some federal courts have extended the right to school nurses in the Fourth Amendment (search/seizure) context.<sup>25</sup>

School districts should seek legal advice when they assume the responsibility for giving medication during school hours. Liability coverage should be provided for the staff, including nurses, teachers, athletic staff, principals, superintendents, and school board members.<sup>26</sup>

Schools should establish protocols for the documentation of all medications given at school, whether emergency or routine. Some schools use a log; others use a computer-based student medical record system. Any errors

### **The Opioid Crisis**

Every day, more than 115 people in the U.S. die after overdosing on opioids.<sup>28</sup> Unintentional drug overdose is one of the leading causes of preventable death in the country.<sup>29</sup> According to the Centers for Disease Control and Prevention (CDC), the rate of overdose among high school students nearly doubled from 1999 to 2015.<sup>30</sup> From 2014 to 2015, overdose deaths increased by 19% among high school aged children (15-19).<sup>31</sup> A study conducted to estimate risk of future opioid misuse among high school adolescents found that legitimate opiate use in the high school years (to manage pain) is “independently associated with a 33% increase in the risk of future opioid misuse after high school.”<sup>32</sup>

Naloxone is a medication designed to rapidly reverse opioid overdose. It is an opioid antagonist—it binds to opioid receptors and can reverse and block the effects of other opioids. It can very quickly restore normal respiration to a person whose breathing has slowed or stopped as a result of overdosing with heroin or prescription opioid pain medications. There are three FDA-approved formulations of naloxone: 1) injectable (professional training required); 2) autoinjectable; and 3) prepackaged nasal spray.<sup>33</sup>

Some states have increased access to naloxone by passing legislation protecting prescribers and dispensers. Currently, 35 states give immunity to third-party prescribers and those who dispense naloxone to an overdose victim. A third-party prescriber is a pharmacist who prescribes a drug to a person other than for whom the drug is intended. Here, naloxone is made available to people who are likely to be near a person who is overdosing, often users themselves or concerned family members. In a school setting, the third party could be a school nurse or member of the school's administration. Currently, 46 states permit pharmacists to prescribe naloxone to third parties, while five continue to prohibit the practice.<sup>34</sup>

in medication administration at school need to be reported to at least one common supervisor so that patterns of errors can be identified, and corrective action can be taken. Measures taken by school administrators after a medication error must be designed so that they do not discourage staff self-reporting of errors.<sup>27</sup>

**Q7. Given that the FDA classifies naloxone as a prescription-only drug, should school districts have a supply of naloxone available to administer to individuals who have overdosed? What state level naloxone administration laws include schools as a site for having naloxone on hand?**

Maybe. The pharmaceutical company that makes Narcan (currently the only available FDA-approved nasal spray version of naloxone) offers limited free doses to libraries, YMCAs, and high schools in the U.S.<sup>35</sup> In the school setting, school nurses are the most likely to administer naloxone to an overdosing student, but other personnel may be on the scene first.<sup>36</sup>

Some school districts have hesitated to participate in this program, asserting that the risk of liability is greater than the potential benefit. Others, alternatively, note “the severity of the opioid problem has overwhelmed any concerns they might have about the optics of naloxone.”<sup>37</sup>

Many states have Good Samaritan laws that protect bystanders and first responders who help in an emergency; these laws usually apply in the school setting. Depending on the state, school personnel are immune from civil and/or criminal liability when they assist in an overdose emergency at school. When a naloxone dispenser acts within the scope of her employment and administers naloxone to an overdose victim at school, the law usually presumes that the person is acting in the state’s interests by preventing an overdose. She is usually protected not only by newer naloxone legislation, but also by her state’s tort immunity laws, and the extension of Good Samaritan laws.<sup>38</sup>

### **Emergency Plans**

Stocking emergency medications is a solid practice, but not a substitute for emergency action plans that call for notifying first responders. School districts should develop clear emergency action policies and procedures, and actively train staff to follow them. Staff should call 911 in a medical emergency, including one requiring the administration of emergency medication.

**Q8. Should school districts have certain common emergency medications on hand beyond student-specific prescriptions taken in accordance with an individualized healthcare plan, 504 plan or IEP?**

Yes. For lifesaving emergency medications to be effective, they must be accessible immediately in emergency situations. Schools should make the availability of such medications (e.g., autoinjectable epinephrine, albuterol, rectal diazepam, and glucagon) a high priority. To maintain medication security and safety and to provide for timely treatment, school procedures should specify where medications will be stored, who is responsible for the medication, who will regularly review and replace outdated medication, and who will carry the medication for field trips.

Schools also need an adequate supply of emergency medications in the event of a school lock-down or evacuation. Parent-supplied extra medication and/or school-supplied stock medications (including but not limited to autoinjectable epinephrine and albuterol inhalers) are among the emergency or urgent care medications that need to be available in these circumstances.<sup>39</sup>

**Q9. When certain drugs (e.g., epinephrine autoinjectors) necessary to student care are unavailable (e.g., due to shortages or exorbitant costs), what alternatives does a school district have? Is it acceptable to administer expired drugs? What protocols should be in place?**

In August 2018, the FDA announced that it would extend the expiration date on some EpiPens by four months, indicating that expired epinephrine can still potentially save lives. FDA recommends to schools that expired undesignated (stock) epinephrine autoinjectors should not be discarded until they can be replaced with new ones. Moreover, schools should allow students to carry or store their prescribed autoinjectors past the expiration date until in-date autoinjectors become available.<sup>40</sup> School districts should check their state laws regarding expired medications, as some state nursing regulations do not allow school boards to accept or administer expired medications, regardless of the FDA's statement.

All prescription medications brought to school should be in original containers appropriately labeled by the pharmacist or physician. Except for self-carry medications, they should be stored securely in accordance with manufacturer directions. Controlled substances must be double-locked. The school nurse, licensed practice nurse, or delegated, trained UAP must be available and have access to the medications at all times during the school day. All medications should be returned to the parents at the end of the school year or disposed of in accordance with existing laws, regulations, and standards.

## II. MARIJUANA

### Marijuana 101

Marijuana is a species (*Cannabis sativa* L.) of the Hemp family of plants, under the genus *Cannabis* L, which is also called “hemp.”<sup>41</sup> “Marijuana” is commonly used interchangeably with “cannabis,” while “hemp” commonly refers to a cannabis plant that contains less than .3 percent THC (explained below).<sup>42</sup> Marijuana produces resin containing compounds called cannabinoids.<sup>43</sup>



The two well-known cannabinoids are tetrahydrocannabinol (THC) and cannabidiol (CBD), both of which produce drug-like effects in the human body. THC is the main psychoactive component of the cannabis plant. It is the primary agent responsible for creating the “high” associated with recreational cannabis use.<sup>44</sup> CBD, on the other hand, is non-psychoactive; it will not get the user “high.” For this reason, CBD appears more frequently than THC in dietary and natural supplements.

Marijuana is a controlled substance in the U.S., which means its possession is prohibited without specific licensing. Medical marijuana use is legal in some states, and some have legalized recreational use. (See Chart C, p. 39.)

On December 12, 2018, the U.S. Congress passed legislation that will legalize the use of CBD, one of hemp’s byproducts, at the federal level.<sup>45</sup> This change in federal law likely will lead to increased availability of CBD-infused products in retail outlets. The law also will permit farmers to legally grow industrial hemp.<sup>46</sup>

### **Q10. If a student is prescribed or is a registered user of medical marijuana, must a school district permit the use of the drug on school premises or provide other accommodations for the individual’s use of medical marijuana?**

No. The majority of states that allow the use of medical marijuana by law still bar its consumption in public places, which includes school property and school buses. Currently Colorado, Delaware, Florida, Illinois, Maine, New Jersey, Oklahoma, Pennsylvania, Washington, and West Virginia allow specific uses on school grounds, with parameters. Ohio’s medical marijuana law neither requires a public place to allow the use of medical marijuana, nor prohibits any public place from allowing the use of medical marijuana.

Colorado, Delaware, Illinois, and New Jersey permit parents to give their child non-smokable medicinal marijuana-derived products at school. In 2018, Colorado expanded its law to allow school staff to administer the medication. Washington and Florida allow school districts to decide for themselves whether to allow the drug on campuses. Maine expanded state regulations to permit medical marijuana use at school, according to the Education Commission of the States. (See Chart A, p. 26.)

Proposed legislation in California would let school boards decide whether to allow medical cannabis at schools



if a child has a doctor's note. Currently, the drug cannot be prescribed because, with limited exceptions, it is illegal under federal law — classified as one that has “no accepted medical use.”<sup>47</sup> States that allow use of cannabis for medicinal purposes require patients and medical providers to register.

**Q11. May a school allow a student to use medical marijuana on school grounds without violating federal law? How does this affect any federal funds the district may receive?**

Maybe. Marijuana is still listed on Schedule I of the federal Controlled Substances Act. Some states that permit the use of medical marijuana on school grounds allow schools to prohibit such use if they lose federal funding because of implementing that policy.<sup>48</sup> States that allow use of cannabis for medicinal purposes require patients and medical providers to register.

Some school officials have expressed opposition to state laws and policy allowing medicinal marijuana use at school, citing the risk to federal funds, including money for school breakfasts and lunches for low-income students, which are contingent on schools being drug-free zones. Others, including the California Schools Boards Association, have supported new laws similar to those adopted in the states of Washington, Florida, Colorado, New Jersey, and Maine, to enable a governing board to adopt a policy allowing the administration of medical marijuana on campus where appropriate to create a more accessible education program for students with severe medical issues that may be treated with marijuana products.<sup>49</sup>

State courts have started to address the interaction of state and federal law regarding marijuana use. Some have ruled that medical marijuana laws do not conflict with federal law because they merely carve out a narrow exemption to criminal prosecution under state law, leaving federal authorities to prosecute at their discretion.<sup>50</sup>

**Q12. If a school decides to permit student use of medical marijuana, who should administer it? Where should it be stored?**

States that permit medical marijuana use in schools (currently Colorado, Delaware, Florida, Illinois, Maine, New Jersey, Oklahoma, Pennsylvania, Washington, and West Virginia) regulate who administers it and how it is stored. (See Chart A, p. 26.) Delaware and Oklahoma expressly prohibit nurses from administering medical marijuana. Colorado's statute directs that the primary caregiver will administer and “remove any remaining medical marijuana in a nonsmokeable form from the grounds of the preschool or primary or secondary school, the school bus, or school-sponsored event.”<sup>51</sup> Illinois' statute contains similar language.<sup>52</sup> (See Chart B, p. 34)

**Q13. What steps should school districts take to verify that a student is a registered user of medical marijuana and that the person administering it is legally permitted to do so?**

States authorizing the use of medical marijuana at school specify by statute who must register as both users and caregivers, and how they must do so. (See Chart A, p. 26.)

School district policies often reflect state statutory requirements. For example, the Boonton Township Board of Education in New Jersey has implemented a medical marijuana policy, which states: “Students authorized to use medical marijuana, including adult students, are not authorized by law to self-administer the medication



on school grounds, on the school bus or at school sponsored activities. In all cases, a primary caregiver shall be required to assist with the administration of the prescribed medical marijuana on school grounds, on the school bus, or at school sponsored activities subject to law and this board policy. In order for the prescribed medical marijuana to be legally administered, the student and primary caregiver shall possess a current registry identification card. The NJDOH shall issue a registry identification card only upon certification from a licensed physician in the State with whom a qualifying patient has a bona fide physician-patient relationship".<sup>53</sup>

The New Jersey School Boards Association (NJSBA) recommends that if a school board "wishes to create additional protocols above the legal minimum to verify the registration status and ongoing authorization, a modified policy version is available upon request [to NJSBA] that contains additional discretionary protocols for checking registration cards and encouraging the development of an individualized health care plan."<sup>54</sup>

#### **Q14. Can a school prohibit students from possessing, using, or distributing medical marijuana at school?**

States that allow medical marijuana use in schools restrict who may possess the marijuana on school property. In most instances, possession is limited to the caregiver responsible for administering the marijuana. For example, Colorado's medical marijuana statute only allows a "primary caregiver" to possess and administer the marijuana. Delaware and Illinois likewise limit possession and administration to the primary/designated caregiver. (See Chart B, p.34) Under no circumstances do state medical marijuana laws allow students to distribute marijuana on school property.

#### **Q15. Can a school district regulate a student's legal use of marijuana (whether medical or recreational) off-campus?**

In those states allowing medical marijuana use, a student who holds a valid user's card is protected from criminal prosecution. There are no reported court decisions ruling whether a school district could impose discipline on a student's statutorily-protected use of medical marijuana off-campus. It is likely such discipline would not be upheld by the courts. In addition, some states limit school districts' authority to discipline off-campus student conduct.<sup>55</sup>

States that have legalized recreational marijuana restrict its use to individuals 21 years of age or older. It is, therefore, unlikely that recreational marijuana laws would apply to K-12 students.

### III. TOBACCO AND RELATED PRODUCTS

#### Tobacco and E-Cigarette Use

The health risks of frequent tobacco use have been known for some time, and lawmakers at all levels – federal, state, and local – have passed regulations to restrict tobacco use to protect both the user and those who would be subjected to second hand smoke. The CDC reports that although “[t]obacco use is the leading cause of preventable disease, disability, and death in the U.S.... [e]very day, about 3,200 young people aged 18 or younger try their first cigarette.”<sup>56</sup> Cigarette smoking rates for both adults and youth have decreased by half since 1965, but one in seven U.S. adults smokes cigarettes, and about one quarter of the population is exposed to second-hand smoke. Nine out of 10 smokers report trying their first cigarette before age 18.<sup>57</sup> With the rise of alternatives to smoking including e-cigarettes, states are reporting an increase in youth tobacco use.<sup>58</sup> The CDC estimates that 3.9 million U.S. middle and high school students use at least one tobacco product.<sup>59</sup>

School districts across the country restrict the use of tobacco products by students. Many now address student use of e-cigarette products.

#### Q16. May schools prohibit the possession and use of tobacco products at school by students?

Yes. Courts have consistently found that individuals do not have a constitutionally-protected right to smoke, except in certain limited contexts involving traditional use of tobacco in religious or cultural ceremonies.<sup>60</sup> To be found constitutional, laws and policies restricting smoking need only be found to be rationally related to the legitimate government interest of protecting the health of the public by limiting the effects of second-hand smoke.<sup>61</sup> In the school context, layers of federal, state, and local law restrict use of tobacco and related products in school buildings and on school grounds.

The federal Pro-Children Act of 1994, 20 USC §6081 et seq., prohibits any person from allowing smoking in an indoor educational facility that received federal funding through states or local governments.<sup>62</sup> This federal law specifically allows states and localities to further restrict tobacco use.<sup>63</sup> Whereas the federal law prohibits use of tobacco indoors, some state laws restrict its use in areas adjacent to school grounds, at school-related events, etc.<sup>64</sup>

#### Q17. May schools prohibit vaping devices, such as e-cigarettes?

Yes. About 49 states, including the District of Columbia, regulate youth access to electronic nicotine delivery systems (ENDS), or e-cigarettes, requiring that youth be a minimum age to purchase.<sup>65</sup> Some states include e-cigarettes in the state law definition of tobacco products, and some have started to regulate packaging of e-cigarette products.<sup>66</sup>

States have started to pass laws prohibiting the sale, use, and/or possession of ENDS by minors. Maryland, for example, passed a law adding ENDS to the list of tobacco products retailers are prohibited from selling to minors, and minors are prohibited from using or possessing, with civil penalties starting at \$300 for a first violation.<sup>67</sup> School districts in Maryland have informed students that school resource officers can issue citations for use or possession of ENDS.

## E-cigarettes and Related Products

The CDC reports that ENDS are now the most commonly used tobacco product by young people. These include e-cigarettes, vape pens, and e-hookahs. An e-cigarette product works by heating a liquid that contains nicotine, flavorings, and other chemicals to create an aerosol that the user inhales into his/her lungs. There is often a visible vapor – hence the term “vape” or “vaping.” Nicotine is a highly addictive chemical, potentially harmful to adolescent brain development. The added chemicals in e-cigarette liquids contain small particles of chemicals such as the flavoring diacetyl, which has been linked to a serious lung disease, and heavy metals including lead.

Although e-cigarette use among U.S. youth decreased in 2016, which may have been due to prevention and control strategies by federal, state, and local authorities, results from 2018 National Youth Tobacco Survey showed a dramatic increase in e-cigarette use among youth over the past year.<sup>68</sup>

The federal Food and Drug Administration (FDA) regulates tobacco products and prohibits the sale and distribution of such products to minors.<sup>69</sup> The FDA recently targeted the Juul Labs company, which makes an e-cigarette product that looks like a USB “thumb” drive, can be re-charged in a USB port, and is offered in array of flavors. The FDA requested that the company come up with a plan to mitigate and slow widespread use of its products by young people. The company announced in late 2018 that it would no longer sell most of its flavored e-cigarette pods in stores or promote its products in social media.<sup>70</sup>



**Some e-cigarettes are made to look like regular cigarettes, cigars, or pipes.  
Some resemble pens, USB sticks, and other everyday items.**

Source: Centers for Disease Control and Prevention,  
[https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/about-e-cigarettes.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html).

### **Q18. Is vaping an acceptable method of administering medical marijuana?**

The form of marijuana that may be administered medicinally varies state by state. Some states prohibit the use of medical marijuana in smokable form, limiting use to non-smokable forms, such as edibles and oils. New York state, however, allows for vaping medical marijuana, with certain limitations. (See Chart B , p. 34.)

## **IV. SCHOOL AUTHORITY TO DISCIPLINE AND STUDENT RIGHTS**

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### **Q19. What student rights should schools keep in mind when developing policy and making decisions regarding student discipline for drug involvement?**

Students in public schools retain a number of constitutional rights vis-a-vis their schools, though those rights are not coexistent with those of adults in other settings,<sup>71</sup> and must be considered “in light of the special characteristics of the school environment.”<sup>72</sup> Although federal courts often defer to the decisions of educators regarding student discipline, they have recognized constitutional limits to school official authority in several contexts.

**First Amendment Free Speech.** “In the absence of a specific showing of constitutionally valid reasons to regulate their speech,” the Supreme Court said in 1969, “students are entitled to freedom of expression of their views.”<sup>73</sup> Students have a right to free speech and expressive conduct under the First Amendment, unless that speech “materially disrupts classwork or involves substantial disorder or invasion of the rights of others,”<sup>74</sup> constitutes a threat, is obscene or lewd, is school-sponsored speech, or promotes illegal drug use or criminal activity.<sup>75</sup>

The Supreme Court has ruled that illegal drug-related speech can be regulated by schools. In *Morse v. Frederick*, 551 U.S. 393 (2007), the Court decided that a public school could discipline a student who had unfurled a banner at a school-sanctioned event that read “Bong Hits for Jesus.”<sup>76</sup> Finding the principal reasonably could have interpreted the banner to promote illegal drug use, and because deterring drug use by schoolchildren is an “important—indeed, perhaps compelling” public interest, the Court determined that the principal’s action was constitutionally permissible. The Court noted that “drug abuse can cause severe and permanent damage to the health and well-being of young people,” that schools have been charged with conveying this message to youth, and that Congress provided billions of dollars to schools for education programs on the dangers of illegal drug use.<sup>77</sup>

**Fourth Amendment right against unreasonable search and seizure.** The Fourth Amendment “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” arises frequently when school officials address unauthorized use of drugs in schools. In fact, the key cases decided by the Supreme Court regarding the Fourth Amendment in schools have arisen in drug and tobacco search scenarios. In 1985, the Supreme Court decided — in a case involving the search of a student’s purse for cigarettes, which yielded marijuana and a list of students — that school officials may search students when it is reasonable under all the circumstances.<sup>78</sup> Generally, this means the search has to be justified at its inception, meaning it’s likely to turn up evidence of a violation of law or school rules, reasonably related in scope to the original reason for the search, and “not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”<sup>79</sup> The Court decided in 2009 that a school official’s search of a 13-year-old student’s underwear upon suspicion of possession of ibuprofen in violation of school rules was not justified in scope.<sup>80</sup>

To address a perceived problem with drug use among youth, some districts require drug testing of student athletes and participants in extra-curricular activities. In 1995, the Supreme Court held that public schools could conduct random drug tests on student athletes, and in 2002, the Court expanded that authority to students participating in competitive extracurricular activities generally.<sup>81</sup> Some districts also require drug testing based on a specific suspicion. A research study indicates that between 1998 and 2011, 14% of middle and 28% of high school students attended schools with student drug testing, whether random or suspicion-based.<sup>82</sup>

Courts deciding drug search cases, including searches by canines, note that the privacy rights of students must be balanced against the duty of schools to maintain a safe environment conducive to learning, and the reduced expectations of privacy in students have in school buildings.<sup>83</sup>

**Fifth Amendment right against self-incrimination.** When students are suspected of illegal use of drugs, school officials often partner with law enforcement, whether a School Resource Officer (SRO) or outside officer, to investigate. School officials should keep in mind that students do have some limited rights under the Fifth Amendment's guarantee against self-incrimination, especially when law enforcement is involved in an interrogation. Courts generally have rejected the argument that students must be given a "Miranda warning" of their right to remain silent during custodial questioning by school officials,<sup>84</sup> but some state appellate courts have taken a harder look when the school official conducting the interrogation is a school resource officer and the questioning results in criminal charges.<sup>85</sup>

One state supreme court has ruled that school officials who searched and questioned a student were not agents of the police, and therefore not required to provide Miranda warnings, even though the school had a written agreement with local police to report crimes.<sup>86</sup> In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the Supreme Court held that specific consideration of a defendant's age is not required when determining whether the defendant knowingly and voluntarily waived his or her Miranda rights; but in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), the Court held that "a child's age properly informs the Miranda custody analysis," especially when the questioning takes place in school. At least one state attorney general has written an opinion stating that a school official who interviews a student at the request or direction of a law enforcement agency must advise the student of his or her Miranda rights before proceeding.<sup>87</sup>

**Fourteenth Amendment due process.** The Supreme Court has found that when the state has extended public education as a right under its laws and constitution, a student has a property interest in his education, and therefore is entitled to some minimal due process – the opportunity to be heard – before he is excluded from school.<sup>88</sup> A student subject to suspension or expulsion for a drug-related offense, just like other offenses, must be given an opportunity to tell his side of the story before the discipline is imposed.

It is important to be aware that these federal constitutional protections constitute a "floor" of available rights. State constitutions and laws, as well as local policy, may provide greater rights. School officials should consult with their state school boards association and Council of School Attorneys (COSA) member for specific standards in their state.

**Q20. May a school district discipline a student for being under the influence of a drug or alcohol while at school? May a school district require an impairment assessment onsite if a student is suspected of being under the influence of drugs or alcohol?**

Yes, in most cases. Virtually every school district's code of student conduct prohibits students from being intoxicated from either drugs or alcohol while at school or at school-sponsored activities.<sup>89</sup> A school district may require an impairment assessment if state law allows. For example, New York's Cooperstown Central School District policy provides for "assessment of any individual who is referred and/or presents with altered perception or behavior reducing that individual's ability to function appropriately in the academic environment."<sup>90</sup>

New Jersey law instructs school districts to "adopt and implement policies and procedures for the assessment, intervention, referral for evaluation, referral for treatment, and enforcement of the code of student conduct, pursuant to N.J.A.C. 6A:16-7, for students whose use of alcohol or other drugs has affected their school performance, or for students who consume or who are suspected of being under the influence of or who possess or distribute ... substances on school grounds pursuant to N.J.S.A. 18A:40A-9, 10, and 11."<sup>91</sup>

**Q21. When can a school district require a student to submit to drug or alcohol testing?**

Outside of the extra-curricular context detailed above, because a drug or alcohol test would be considered a "search," raising Fourth Amendment protections (see Question 19), school officials would need to have reasonable suspicion of drug or alcohol use that violated school rules or laws to require a student to submit to such a test. The U.S. Court of Appeals for the Third Circuit has held that due process rights of a student reasonably suspected of drug use were not violated by a requirement that she submit to urine and blood tests to determine presence of drugs.<sup>92</sup> Rumors of drug use likely would not be enough to require a student to take a drug test.<sup>93</sup>

**Q22. Can a school district require a student to undergo/continue participating in drug/alcohol treatment as a condition of attending school or participating in extracurricular activities?**

Yes, within the context of releasing a student early from a suspension or expulsion, sometimes known as conditional early reinstatement or abeyance contact, a school district generally may allow a student facing a suspension or expulsion for a drug or alcohol related infraction to avoid discipline if he/she agrees to a substance abuse program. The length of the program usually cannot exceed the maximum suspension term for the offense level.<sup>94</sup>

**Q23. Can a school district prohibit a student found to have committed a drug/alcohol infraction, whether on or off campus, from participating in extracurricular activities?**

Yes, within reason. A school has the right to exclude a student from any extracurricular activities if he/she has committed a drug or alcohol infraction.<sup>95</sup> It is well-established that participating in extracurricular activities is a privilege rather than a right. Thus, schools can impose higher disciplinary standards on students who participate in these activities.<sup>96</sup> The courts reason that extracurricular activities are "usually conducted outside the classroom before or after regular school hours, usually carry no credit, are generally supervised by school officials or others, are academically non-remedial, and are of a voluntary nature for participants."<sup>97</sup> Due process is not required when a school denies a student extracurricular participation, unless the school board has established policies for suspending or expelling students from extracurricular activities.<sup>98</sup> Courts have upheld the suspension of students

from interscholastic athletics for violating regulations prohibiting smoking, drinking, use of drugs, or other disciplinary infractions, including off-campus and off-season conduct, providing the regulations so stipulate.<sup>99</sup> Members of athletic teams and other extracurricular groups (drama, band, debate, cheerleading, and clubs) often are selected through a competitive process, and students have no property right to be chosen.<sup>100</sup>

**Q24. What special rules apply to the discipline of IDEA-covered students who are alleged to have violated the district's drug policies or federal/state law?**

For drug-involved students with disabilities served under the IDEA, school officials should be mindful of the requirements of the student's IEP and remain in consultation with staff familiar with the student's disability needs when enforcing school rules and disciplining the student.

If school officials seek to suspend or expel a student served under the IDEA for more than 10 days, the school must conduct a manifestation determination to decide whether the conduct was a manifestation of the student's disability. If the conduct is a manifestation of the child's disability, the problem must be addressed through a functional behavioral assessment and implementation of a behavioral intervention plan. Also, the child must be returned to the placement from which he or she was removed unless the parents agree to a change.

If the conduct is not a manifestation of the student's disability, the school system may discipline the student in the same manner as a nondisabled student but must provide educational services during the removal.

All the procedural protections of the IDEA are available to a child who at the time of the misconduct has not yet been found eligible for special education if the school had prior "knowledge" that the child had a disability. A school has "knowledge" of a disability if:

- The parent has expressed concern in writing that the child may need special education or has requested an evaluation;
- The behavior or the performance of the child demonstrates the need for services; or
- A teacher has expressed a specific concern about a pattern of behavior demonstrated by the child directly to the special education director or other supervisory personnel.

However, the school district can place the student in an interim alternative educational setting for up to 45 school days, regardless of the manifestation outcome, if the student possesses a weapon; possesses/uses illegal drugs or sells/solicits controlled substances; or inflicts serious bodily harm to someone while on school property.<sup>101</sup>

School officials may, under federal regulations, report a crime committed by a child with a disability to law enforcement; and law enforcement officials may exercise their responsibilities to enforce criminal laws committed by students with disabilities served under IDEA. The school must ensure that the child's special education and disciplinary records are transmitted to the entity to which the school reports the crime but must follow the procedures required by the Family Educational Rights and Privacy Act.<sup>102</sup> This generally will require parent consent, or a court order or subpoena, which would require parent notice.



**Q25. Does student alcoholism or illicit substance use or chemical dependency qualify as a disability under the IDEA or Section 504/ADA? If so, does this change how a district may discipline a student found to have committed a drug or alcohol infraction?**

Although alcoholism, substance abuse, chemical dependency, or simple use of substances is pervasive among youth, and often impacts academic progress and social/emotional functioning, chemical abuse and chemical dependency are not recognized as “disabilities” under the IDEA. Substance use alone does not trigger a school district’s obligation to evaluate the student for special education eligibility.

Section 504 of the Rehabilitation Act of 1974 and its regulations,<sup>103</sup> which prohibit discrimination on the basis of disability in programs receiving federal financial assistance, do not protect a student who is currently engaging in the illegal use of drugs, when a school acts on the basis of such use. People who are no longer engaging in the illegal use of drugs and in a rehabilitation program are covered, however. Section 504 permits schools to discipline students with disabilities who use drugs or alcohol to the same degree as students without disabilities, though alcoholism is not specifically excluded from the definition of “disability.”

**Q26. What considerations should a school district address in its code of conduct provisions concerning student involvement with illicit substances?**

School officials should work closely with their state school boards association and COSA member attorney to determine what topics should be addressed in student codes of conduct with respect to student drug and substance use, as many criminal offenses and specific procedures will be dictated by state law. Generally, such policies include the components below.

- Definition of what constitutes a prohibited or restricted “substance” or “drug.” This may include synthetics, look-alikes, edibles, and prescription drugs used outside of the prescription parameters;
- Descriptions and definitions of the types of drug-related activities that are prohibited, including what constitutes “possession” and “constructive possession,” as well as locations covered under the code of conduct;
- Clear explanation of penalties for violations, including the number of offenses;
- Description and notice of the district’s search and seizure policy;
- Description and notice of the district’s interrogation policy;
- Description and notice of the district’s student drug testing policies, including under what circumstances students will be randomly tested, or tested based on suspicion of drug use;
- Description of the district’s drug-sweep procedures, if any, including use of canines;
- Description of the district’s procedures if a student displays indication of intoxication or drug use at school, including the odor of marijuana or alcohol.



## V. STUDENT EDUCATIONAL PERFORMANCE AND DRUG USE

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### **Q27. If school leaders suspect that a student's educational performance is affected by his/her established or suspected chemical dependence, what are the school district's responsibilities toward that student?**

School officials should explore how they can support the student, starting with a referral to counselors or other practitioners who see patients with chemical dependency. That process may result in a determination of whether the student is eligible for special education services.

### **Q28. Should school districts address a special education student's chemical dependency in his/her IEP?**

It is generally unwise to address chemical dependency in a student's IEP. As explained above, chemical dependency is not a recognized disability category under the IDEA. School districts do not have an obligation to address behaviors and to established goals related solely to that dependency.

### **Q29. May a school district delay an educational evaluation of a student it suspects is actively using chemicals?**

Active substance use can affect an educational evaluation in several ways. It can affect academic performance, interactions with others in the educational environment, and performance on evaluative tests, producing an inaccurate picture of the student's current functioning. Substance or chemical use may mimic mental health disorders, including depression, bipolar disorder, and anxiety. Falsely identifying a student under the category of "serious emotional disturbance" or "other health impairment" could be harmful to the student, especially when special education services ignore the problem and enable continued chemical use. For these reasons, a school district may desire to delay an educational evaluation of a student who is actively using substances.<sup>104</sup>

Generally, a school district must follow federal timelines for evaluating a student. Although best practice dictates that the student abstain from substance use during testing, that abstention is difficult to obtain for a long enough period to obtain accurate test results. And some state regulations specifically say that a student may not be found eligible under the category of emotional or behavior disorder if the adverse effects on educational performance is attributable to illegal chemical use.<sup>105</sup>

Under federal law, however, a school district cannot delay evaluation of a student to await the student's cessation of drug use.<sup>106</sup> School districts have "child find" responsibility to identify students eligible for service under IDEA. Generally, a district cannot determine the effect of the student's chemical use upon his eligibility without conducting an evaluation.

**Q30. Can a school district require a student to undergo a chemical health assessment as part of an educational evaluation?**

The IDEA does not prohibit a school district from including a chemical health assessment as part of an educational evaluation to determine student's eligibility for special education services. As with all evaluations, the district will have to obtain parent consent before evaluating the student. Some states protect communications with chemical dependency counselors as confidential information, which may limit the district's ability to access or use the evaluation in a due process hearing. It is advisable to inform the parent and student that the chemical health assessment will not create a counselor-patient privilege and ask the parent and student to waive any right to assert such a privilege.<sup>107</sup>

## **VI. STUDENT PRIVACY AND DRUG USE**

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**Q31. What does federal law require schools to do to keep student medication and drug involvement information confidential?**

Student health records maintained by a school are covered as education records under the Family Educational Rights and Privacy Act (FERPA),<sup>108</sup> and generally not by the Health Insurance Portability and Accountability Act (HIPAA).<sup>109</sup>

Drug and alcohol treatment records of students kept by any institution receiving federal assistance are protected under Drug Abuse Office and Treatment Act (1976) 21 USCA §§1101 , 1102 , 1115 , 1171 , 1177-1179 , 1181. These requirements apply to all records relating to the identity, diagnosis, prognosis, or treatment of any student involved in any federally assisted substance abuse program. All records must be maintained in a locked and secure area. Because these regulations are generally stricter, records to which they apply should be maintained separately from other educational records. Usually, records may not be disclosed without written consent of the student. Under applicable state law, minor clients with legal capacity must give consent for any release of information, including to the minor's parents. If state law requires parental consent to obtain treatment, then both parent and student must give consent before disclosure of information.<sup>110</sup>

Because these federal regulations and laws may or may not apply to a particular school district's records pertaining to a student's drug involvement, school officials should consult with the state school boards association and COSA member attorney when developing records policy.

**Q32. How do applicable laws address continuity of care communications between healthcare providers and school nurses when a student returns to school from inpatient drug use treatment?**

When a student returns to school from an inpatient or outpatient drug or alcohol use treatment, her records must remain confidential. The Confidentiality of Alcohol and Drug Abuse Patient Records (CFR Title 42 Part 2) regulation specifies restrictions concerning the disclosure and use of patient records that include all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program that is

conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.<sup>111</sup> The requirements of FERPA and HIPAA must also be considered.

Information contained in records covered by 42 CFR Part 2 can be shared if written consent is obtained. A minor must always sign the consent form for a program to release information even to his or her parent or guardian.<sup>112</sup> Some states require programs to obtain parental permission before providing treatment to a minor.<sup>113</sup> In these states only, programs must get the signatures of both the minor and a parent, guardian, or other person legally responsible for the minor.<sup>114</sup>

42 CFR Part 2 requires patient written records to be in a secure room, locked file cabinet, safe, or other similar container. The regulations also require programs to adopt written procedures to regulate access to patients' records.<sup>115</sup>

Some states have outlined strategies regarding a school nurse's role when addressing a student's drug abuse.<sup>116</sup> School nurses should make appropriate referrals to agencies like social services, drug/alcohol treatment services, behavioral health services, and child protection teams. A school nurse should also solve ethical dilemmas often associated with substance abuse and assess, support, and participate in community prevention efforts surrounding substance abuse.<sup>117</sup>

## RESOURCES

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### Federal Government

- Centers for Disease Control and Prevention
  - Smoking and Tobacco Use main page: <https://www.cdc.gov/tobacco/index.htm>.
  - State Facts Sheets by state, including rates of tobacco and e-cigarette use: <https://www.cdc.gov/tobacco/about/osh/state-fact-sheets/illinois/>
- Substance Abuse and Mental Health Services Administration
  - Substance Abuse Confidentiality Regulations, <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>
- U.S. Department of Health and Human Services
  - "E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General," [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf)

### Organizations

- American Academy of Pediatrics <https://www.aap.org>
  - National Association of School Nurses <https://www.nasn.org>
  - Public Health Law Center <https://publichealthlawcenter.org/>
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**CHART A****STATES PERMITTING MEDICAL MARIJUANA USE BY STUDENTS AT SCHOOL****Colorado: C.R.S.A. § 22-1-119.3**

(2)(b) If a school's administration receives notice from a student's parent or legal guardian that the student may be in possession of his or her prescribed medications, the school's administration shall ensure that such notice is provided to the student's teachers and the school nurse or other person who is designated to provide health services to students at the school.

(3)(c) A student shall not possess or self-administer medical marijuana on school grounds, upon a school bus, or at any school-sponsored event, except as provided for in paragraph (d) of this subsection (3).

(3)(d)(I)(A) A primary caregiver may possess, and administer to a student who holds a valid recommendation for medical marijuana, medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event. The primary caregiver shall not administer the nonsmokeable medical marijuana in a manner that creates disruption to the educational environment or causes exposure to other students.

(B) After the primary caregiver administers the medical marijuana in a nonsmokeable form, the primary caregiver shall remove any remaining medical marijuana in a nonsmokeable form from the grounds of the preschool or primary or secondary school, the school bus, or school-sponsored event.

(II) Nothing in this section requires the school district staff to administer medical marijuana.

(III) A school district board of education or charter school may adopt policies regarding who may act as a primary caregiver pursuant to this paragraph (d) and the reasonable parameters of the administration and use of medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event.

(IV) This paragraph (d) does not apply to a school district or charter school if:

(A) The school district or charter school loses federal funding as a result of implementing this paragraph (d);

(B) The school district or charter school can reasonably demonstrate that it lost federal funding as a result of implementing this paragraph (d); and

(C) The school district or charter school posts on its website in a conspicuous place a statement regarding its decision not to comply with this paragraph (d).

(V) Student possession, use, distribution, or sale or being under the influence of a cannabinoid product inconsistent with this paragraph (d) is not permitted.

(VI) This paragraph (d) shall be known as "Jack's Law".

(d.5)(I) Medical marijuana in a nonsmokeable form shall not be administered at a school pursuant to this subsection (3)(d.5) unless a written plan for the administration of medical marijuana in a nonsmokeable form is agreed to and signed by the school principal or his or her designee and a parent or legal guardian.

(II) Prior to the administration of medical marijuana in a nonsmokeable form at school, the student's parent or legal guardian shall complete and submit to the school the documentation required by rule of the state board of education, including but not limited to:

(A) A written medical marijuana recommendation that includes the signature of one of the recommending physicians and the purpose, recommended dosage, frequency, and length of time between dosages of the medical marijuana in a nonsmokeable form to be administered; and

(B) A written statement from the student's parent or legal guardian releasing the school, and employees and volunteers of the school, from liability, except in cases of willful or wanton conduct or disregard of the criteria of the treatment plan.

(III)(A) Subject to the requirements specified in subsections (3)(d.5)(I) and (3)(d.5)(II) of this section, school personnel may possess, and administer to a student who holds a valid recommendation for medical marijuana, medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event. The school personnel shall not administer the nonsmokeable medical marijuana in a manner that creates disruption to the educational environment or causes exposure to other students. If a student who is subject to the provisions of this subsection (3)(d.5) takes a school trip outside of the state of Colorado or participates in a school activity outside of the state of Colorado, the provisions of this subsection (3)(d.5) do not apply for the time during which the student is engaged in the trip or activity outside of the state of Colorado.

(B) Nothing in this subsection (3)(d.5) requires any school personnel to administer medical marijuana. Administration of medical marijuana in a nonsmokeable form is at the discretion of the parent or legal guardian, the school principal or his or her designee, or the designated school personnel.

(C) It is an exception from the state's criminal laws for school personnel to possess and administer medical marijuana in a nonsmokeable form in compliance with this subsection (3)(d.5) to a student who holds a valid recommendation for medical marijuana, except as otherwise provided in section 18-18-406.3.

(IV) A school may adopt policies regarding who may act as school personnel pursuant to this subsection (3)(d.5) and the reasonable parameters of the administration and use of medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event.

(V) This subsection (3)(d.5) does not apply to a school if:

(A) The school loses federal funding as a result of implementing this subsection (3)(d.5);

(B) The school can reasonably demonstrate that it lost federal funding as a result of implementing this subsection (3)(d.5); and

(C) The school posts on its website in a conspicuous place a statement regarding its decision not to comply with this subsection (3)(d.5).

(VI) Student possession, use, distribution, or sale, or a student being under the influence, of a cannabinoid product inconsistent with this subsection (3)(d.5) is not permitted.

(VII) The student's parent, guardian, or designee shall deliver the student's medical marijuana in a nonsmokeable form, in a container that contains clearly labeled instructions or the plan for administration must clearly specify instructions for the dosing, timing, and delivery route instructions from one of the student's recommending physicians, to the person designated by the school as the person who secures the medical marijuana before the student attends school for the school day. The person who secures the medical marijuana in a nonsmokeable form shall place the medical marijuana in a locked storage container. After the school personnel administers the medical marijuana in a nonsmokeable form, the school personnel shall place the medical marijuana in a locked medical marijuana storage container designated by the school. The person who secures the medical marijuana in a nonsmokeable form shall return any unused medical marijuana to the student's parent, guardian, or designee at the end of each school day. The student shall not handle the medical marijuana in a nonsmokeable form on the grounds of the school, school bus, or school-sponsored event.

(VIII) Neither this section nor any other state or federal law, including without limitation the "Individuals with Disabilities Education Act", 20 U.S.C. sec. 1400 et seq., as amended, and section 504 of the "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended, may be used to require a school or any employee or volunteer thereof to store medical marijuana on the grounds of a school, school bus, or school-sponsored event or to administer medical marijuana.

(IX) For purposes of this subsection (3)(d.5), "school personnel" means school personnel designated by agreement between the principal or his or her designee and a parent or legal guardian.

(e) Notwithstanding the provisions of section 22-33-106(1)(d)(II), a school district or charter school may not discipline a student who holds a valid recommendation for medical marijuana solely because the student requires medical marijuana in a nonsmokeable form as a reasonable accommodation necessary for the child to attend school.

(f) A school district or charter school may not deny eligibility to attend school to a student who holds a valid recommendation for medical marijuana solely because the student requires medical marijuana in a nonsmokeable form as a reasonable accommodation necessary for the child to attend school.

(4) The state board of education may promulgate rules for the implementation of this section.

(5) A school district board of education that adopts a policy pursuant to subsection (1) of this section shall be exempt from rules promulgated by the state board of education pursuant to the "Colorado Schoolchildren's Asthma, Food Allergy, and Anaphylaxis Health Management Act", section 22-1-119.5.

**Delaware: 16 Del.C. § 4904A**

(a)(2) Except as provided in subsection (b) of this section, possessing marijuana, or otherwise engaging in the medical use of marijuana:

- a. In a school bus;
- b. On the grounds of any preschool or primary or secondary school; or
- c. In any correctional facility.
- d. In any health care or treatment facility operated by the Department or funded contractually through the Department.

(a)(3) Smoking marijuana:

- a. In any form of transportation; or
- b. In any public place.

(b) *School exceptions.*—Notwithstanding subsection (a) of this section, a designated caregiver registered pursuant to § 4908A of this title may possess for the purpose of administering, and may administer to a minor qualifying patient medical marijuana oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The designated caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of doses prescribed per day of medical marijuana oil which is kept at all times on their person. Provided further, this exception shall only apply within the physical boundaries of the State of Delaware.

**Florida: F.S.A. § 1006.062**

(8) Each district school board shall adopt a policy and a procedure for allowing a student who is a qualified patient, as defined in s. 381.986, to use marijuana obtained pursuant to that section. Such policy and procedure shall ensure access by the qualified patient; identify how the marijuana will be received, accounted for, and stored; and establish processes to prevent access by other students and school personnel whose access would be unnecessary for the implementation of the policy.

**Illinois: 105 ILCS 5/22-33**

(b) Subject to the restrictions under subsections (c) through (g) of this Section, a school district, public school, charter school, or nonpublic school shall authorize a parent or guardian or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under

the Compassionate Use of Medical Cannabis Pilot Program Act. After administering the product, the parent or guardian or other individual shall remove the product from the school premises or the school bus.

(c) A parent or guardian or other individual may not administer a medical cannabis infused product under this Section in a manner that, in the opinion of the school district or school, would create a disruption to the school's educational environment or would cause exposure of the product to other students.

(d) A school district or school may not discipline a student who is administered a medical cannabis infused product by a parent or guardian or other individual under this Section and may not deny the student's eligibility to attend school solely because the student requires the administration of the product.

(e) Nothing in this Section requires a member of a school's staff to administer a medical cannabis infused product to a student.

(f) A school district, public school, charter school, or nonpublic school may not authorize the use of a medical cannabis infused product under this Section if the school district or school would lose federal funding as a result of the authorization.

(g) A school district, public school, charter school, or nonpublic school shall adopt a policy to implement this Section.

### **New Jersey: N.J.S.A. 18A:40-12.22**

a. A board of education or chief school administrator of a nonpublic school shall develop a policy authorizing parents, guardians, and primary caregivers to administer medical marijuana to a student while the student is on school grounds, aboard a school bus, or attending a school-sponsored event.

b. A policy adopted pursuant to subsection a. of this section shall, at a minimum:

(1) require that the student be authorized to engage in the medical use of marijuana pursuant to P.L.2009, c. 307 (C.24:6I-1 et al.) and that the parent, guardian, or primary caregiver be authorized to assist the student with the medical use of marijuana pursuant to P.L.2009, c. 307(C.24:6I-1 et al.);

(2) establish protocols for verifying the registration status and ongoing authorization pursuant to P.L.2009, c. 307 (C.24:6I-1 et al.) concerning the medical use of marijuana for the student and the parent, guardian, or primary caregiver;

(3) expressly authorize parents, guardians, and primary caregivers of students who have been authorized for the medical use of marijuana to administer medical marijuana to the student while the student is on school grounds, aboard a school bus, or attending a school-sponsored event;

(4) identify locations on school grounds where medical marijuana may be administered; and

(5) prohibit the administration of medical marijuana to a student by smoking or other form of inhalation while



the student is on school grounds, aboard a school bus, or attending a school-sponsored event.

c. Medical marijuana may be administered to a student while the student is on school grounds, aboard a school bus, or attending school-sponsored events, provided that such administration is consistent with the requirements of the policy adopted pursuant to this section.

**Oklahoma: 63 O.S. § 420A, et seq.**

According to Oklahoma State Department of Education’s “Medical Marijuana FAQs”:

- Students may not self-administer medical marijuana on school property
- School personnel, including nurses, are prohibited from possessing and/or administering medical marijuana to students
- School districts may adopt a policy authorizing a student license holder to have access to his or her medical treatment on school property. If a district adopts such a policy, a student’s parent(s), legal guardian and/or caregiver should be permitted to bring an appropriate dosage of a student’s recommended medical marijuana product(s) to the school for the parent/legal guardian/caregiver (as applicable) to administer to the student.

*If a district adopts such a policy, the school should establish a place for a parent/legal guardian/caregiver to meet the student and administer the student’s dosage of medical marijuana product(s). In the same manner, schools must provide an appropriate space for the administration of insulin injections or space for a student to nurse or express milk for an infant. (This could be one designated space for all such student medical needs, or separate spaces, depending on the school’s available space and any relevant scheduling or privacy considerations.) Further, a school district policy should require that a record be kept of the name of the student to whom the medicine was administered, the date the medicine was administered, the dosage administered and the name of the person who administered the medicine.*

As a part of any policy, schools should require a parent/legal guardian/caregiver (as applicable) to provide the current and valid license for the student, any caregiver license(s) associated with the student, and a written authorization form, to include the following as applicable:

- Copy of the student’s current and valid medical marijuana license and any associated caregiver’s license;
- Purpose of the medication;
- Time to be administered;
- Dosage to be administered;
- Termination date for the administration of the medicine;

- Side effects to be observed, if any, the management of such effects and student allergies to food and/or medicine;
- Emergency instructions, as appropriate;
- Written acknowledgement assuming all responsibility for the provision, administration, maintenance and use of medical marijuana under state law, and release of liability for any injury, personal or otherwise, to a student which results from the acts or omissions of the parent/guardian/other licensed caretaker in administering or possessing the medical marijuana; and,
- Other appropriate information.

The same prohibitions that exist relating to the use of tobacco in schools and/or on school property now also extend to all smokable, vaporized, vapable and e-cigarette medical marijuana on such property. As such, and because the Smoking in Public Places and Indoor Workplaces Act and the 24/7 Tobacco-free Schools Act (70 O.S. § 1210.213) prohibit the use of tobacco (now inclusive of all smokable, vaporized, vapable and e-cigarette medical marijuana), these forms of medical marijuana may not in any instance be used or consumed by a patient license holder (adult or minor) on school property.\* School property includes, but is not limited to, buildings, physical grounds, motor vehicles and any school-sponsored or school-sanctioned event or activity. See 70 O.S. § 1210.212.

### **Pennsylvania: 35 P.S. § 10231.2104**

The Pennsylvania Department of Education has not yet promulgated regulations on possession and use of medical marijuana at school. However, the Pennsylvania Departments of Health and Education have issued the following “Recommended Guidance” in the interim:

A parent, legal guardian or caregiver may administer medical marijuana to their child/student on school premises provided that the parent, legal guardian or caregiver: (1) provides the school principal with a copy of the Safe Harbor Letter; and (2) notifies the school principal, in advance, of each instance in which the parent or caregiver will administer the medical marijuana to the child/student. The school principal shall provide notification to the school nurse in each instance a parent or caregiver will be administering medical marijuana to the child/student as well. The parent/caregiver shall follow all school protocols applicable to visitors to the school during the school day. A parent, legal guardian or caregiver shall bring to the school and administer the medical marijuana to their child/student without creating a distraction and shall promptly remove any excess medical marijuana and related materials from the school premises after the administration of medical marijuana is complete. The school shall provide a secure and private location for the parent/legal guardian/caregiver to administer the medical marijuana to the student. Students themselves shall not be permitted to possess any form of medical marijuana at any time on school property or during any school activities on school property.

### **Washington: Wash. Rev. Code § 69.51A.060**

Schools are not required to allow the use of medical marijuana on school property but may permit such use.

Such use must be in accordance with school policy relating to medication use on school grounds.

**West Virginia: W. Va. Code, § 16A-15-5**

The Department of Education shall promulgate rules within six months of the effective date of this section regarding the following:

- (1) Possession and use of medical cannabis by a student on the grounds of a preschool, primary school and a secondary school.
- (2) Possession and use of medical cannabis by an employee of a preschool, primary school and a secondary school on the grounds of such school.

The West Virginia Department of Education has not yet issued any rules.

## CHART B

### STATE MEDICAL MARIJUANA LAWS

State	Statute Citation	Allows Use in School	Restrictions as Exactly Stated in the State Law
AK	Alaska Stat. § 17.37.040 (d) (3), (5)	N	The Act does not permit use of medical marijuana in workplace, school bus, within 500 feet of school grounds.
AZ	Ariz. Rev. Stat. § 36-2802	N	The MMA does not prevent the imposition of penalties for possessing or engaging in the medical use of marijuana on a school bus, or on the grounds of any preschool or primary or secondary school.
AR	AR Const. Amend. 98, § 6	N	Use of medical cannabis is prohibited in a school bus, on the grounds of any preschool or primary or secondary school.
CA	Cal. Health & Safety Code § 11362.79 (b), (c)	N	<p>This article does not authorize a qualified patient or person with an identification card to engage in the smoking of medical cannabis under any of the following circumstances:</p> <p>This article does not authorize a qualified patient or person with an identification card to engage in the smoking of medical cannabis under any of the following circumstances:</p> <p>(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medicinal use occurs within a residence.</p> <p>(c) On a school bus.</p> <p>SB 1127 vetoed by Governor Sept. 28, 2018 (Proposed legislation would allow parent or legal guardian to possess and administer medical marijuana to qualified student).</p>
CO	C.R.S.A. § 22-1-119.3	Y	<p>c) A student shall not possess or self-administer medical marijuana on school grounds, upon a school bus, or at any school-sponsored event, except as provided for in paragraph (d) of this subsection (3).</p> <p>(d)(I)(A) A primary caregiver may possess and administer to a student who holds a valid recommendation for medical marijuana, medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event. The primary caregiver shall not administer the nonsmokeable medical marijuana in a manner that creates disruption to the educational environment or causes exposure to other students.</p> <p>(B) After the primary caregiver administers the medical marijuana in a nonsmokeable form, the primary caregiver shall remove any remaining medical marijuana in a nonsmokeable form from the grounds of the preschool or primary or secondary school, the school bus, or school-sponsored event.</p>

			<p>(II) Nothing in this section requires the school district staff to administer medical marijuana.</p> <p>(III) A school district board of education or charter school may adopt policies regarding who may act as a primary caregiver pursuant to this paragraph (d) and the reasonable parameters of the administration and use of medical marijuana in a nonsmokeable form upon the grounds of the preschool or primary or secondary school in which the student is enrolled, or upon a school bus or at a school-sponsored event.</p>
CT	C.G.S.A. § 21a-408a	N	<p>2) The ingestion of marijuana (A) in a motor bus or a school bus or in any other moving vehicle, (B) in the workplace, (C) on any schoolgrounds or any public or private school, dormitory, college or university property, unless such college or university is participating in a research program and such use is pursuant to the terms of the research program</p>
DE	16 Del.C. § 4904A	Y	<p>b) <i>School exceptions.</i>— Notwithstanding subsection (a) of this section, a designated caregiver registered pursuant to § 4908A of this title may possess for the purpose of administering, and may administer to a minor qualifying patient medical marijuana oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The designated caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of doses prescribed per day of medical marijuana oil which is kept at all times on their person. Provided further, this exception shall only apply within the physical boundaries of the State of Delaware.</p>
FL	F.S.A. § 381.986 (2018) and F.S.A. § 1006.062	Y	<p>§ 381.986</p> <p>(14) Exceptions to other laws.—</p> <p>(f) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section and pursuant to policies and procedures established pursuant to s. 1006.62(8), school personnel may possess marijuana that is obtained for medical use pursuant to this section by a student who is a qualified patient.</p> <p>§ 1006.062</p> <p>(8) Each district school board shall adopt a policy and a procedure for allowing a student who is a qualified patient, as defined in s. 381.986, to use marijuana obtained pursuant to that section. Such policy and procedure shall ensure access by the qualified patient; identify how the marijuana will be received, accounted for, and stored; and establish processes to prevent access by other students and school personnel whose access would be unnecessary for the implementation of the policy.</p>

HI	HRS § 329-122	N	<p>(e) The authorization for the medical use of cannabis in this section shall not apply to:</p> <p>(2) The medical use of cannabis:</p> <p>(A) In a school bus, public bus, or any moving vehicle;</p> <p>(C) On any school grounds;</p>
IL	105 ILCS 5/22-33	Y	<p>(b) Subject to the restrictions under subsections (c) through (g) of this Section, a school district, public school, charter school, or nonpublic school shall authorize a parent or guardian or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the Compassionate Use of Medical Cannabis Pilot Program Act.</p>
ME	22 M.R.S.A. § 2426	Y	<p>1-A. School exceptions. Notwithstanding subsection 1, paragraph B, a primary caregiver designated pursuant to section 2423-A, subsection 1, paragraph E may possess and administer marijuana in a nonsmokeable form in a school bus and on the grounds of the preschool or primary or secondary school in which a minor qualifying patient is enrolled only if:</p> <p>A. A medical provider has provided the minor qualifying patient with a current written certification for the medical use of marijuana under this chapter; and</p> <p>B. Possession of marijuana in a nonsmokeable form is for the purpose of administering marijuana in a nonsmokeable form to the minor qualifying patient.</p>
MD	MD Code, Health - General §§ 13-3301 to 13-3316	N	<p>May not smoke cannabis: (1) in any public place or (2) in a motor vehicle.</p> <p><i>Marijuana: Comparison of State Laws Allowing Use for Medicinal Purposes</i>, National Alliance for Model State Drug Laws (2017), <a href="http://www.namsdl.org/library/5E330F37-EFA5-DDDE-0EF7018E59FC7C95/">http://www.namsdl.org/library/5E330F37-EFA5-DDDE-0EF7018E59FC7C95/</a>.</p>
MA	M.G.L.A. 94C App. § 1-7	N	<p>D) Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.</p>
MI	MCL 333.26427	N	<p>§ 7 prohibits using medical marijuana in a school bus or near a school</p>
MN	Minn. Stat. § 152.32, subd. 2.	N	<p>The statute prohibits (2) possessing or engaging in the use of medical cannabis:</p> <p>(i) on a school bus or van;</p> <p>(ii) on the grounds of any preschool or primary or secondary school</p>

MT	Mont Code Ann. § 50-46-320	N	Prohibits the use of medical marijuana: (ii) in a school or a postsecondary school as defined in 20-5-402; (iii) on or in any property owned by a school district or a postsecondary school; (iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes; (v) in a school bus or other form of public transportation
NV	N.R.S. 453A.300	N	Prohibits: 2) If the possession of the marijuana or paraphernalia occurs on school property.
NH	N.H. Rev. Stat. Ann. § 126-X:3	N	Prohibits (d) The possession of cannabis in any of the following: (1) The building and grounds of any preschool, elementary, or secondary school, which are located in an area designated as a drug free zone
NJ	N.J.S.A. 18A:40-12.22	Y	a. A board of education or chief school administrator of a nonpublic school shall develop a policy authorizing parents, guardians, and primary caregivers to administer medical marijuana to a student while the student is on school grounds, aboard a school bus, or attending a school-sponsored event.
NM	N. M. S. A. 1978, § 26-2B-5	N	Prohibits: possession or use of cannabis: (a) in a school bus or public vehicle; (b) on school grounds or property;
NY	McKinney's Public Health Law § 3362	N	2. Notwithstanding subdivision one of this section: (a) possession of medical marihuana shall not be lawful under this title if it is smoked, consumed, vaporized, or grown in a public place, regardless of the form of medical marihuana stated in the patient's certification.
NC	N.C.G.S.A. § 90-113.100	N	N/A
ND	N.D. Cent. Code § 19-24.1-33	N	Prohibits: 2. Possessing or consuming usable marijuana: a. On a school bus or school van that is used for school purposes; b. On the grounds of any public or private school; c. At any location while a public or private school sanctioned event is occurring at that location
OH	R.C. § 3796.24	Maybe	Medical marijuana provision neither: 4) Requires any public place to accommodate a registered patient's use of medical marijuana; [nor] (5) Prohibits any public place from accommodating a registered patient's use of medical marijuana;
OK	63 O.S. § 420A et seq.	Y	See: <i>FAQs: Medical Marijuana</i> , Oklahoma State Department of Education (updated Sept. 10, 2018), <a href="https://sde.ok.gov/newsblog/2018-09-10/faqs-medical-marijuana">https://sde.ok.gov/newsblog/2018-09-10/faqs-medical-marijuana</a>

OR	Or. Rev. Stat. § 475B.015	N	Prohibits the use in public places, including school property. provision of Oregon Medical Marijuana Act affirmatively authorizing the use of medical marijuana was preempted by Federal Controlled Substances Act, which explicitly prohibited marijuana use without regard to medicinal purpose. <i>Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries</i> (2010) 230 P.3d 518 (2010)
PA	35 P.S. § 10231.2104	Y	The Department of Education shall promulgate regulations within 18 months of the effective date of this section regarding the following: (1) Possession and use of medical marijuana by a student on the grounds of a preschool, primary school and a secondary school. (2) Possession and use of medical marijuana by an employee of a preschool, primary school and a secondary school on the grounds of such school. See: Guidance for Schools and School Districts, <i>Pennsylvania Department of Health</i> (2018) <a href="https://www.health.pa.gov/topics/programs/Medical%20Marijuana/Pages/School.aspx">https://www.health.pa.gov/topics/programs/Medical%20Marijuana/Pages/School.aspx</a>
UT	N/A	N/A	N/A
RI	216-RICR- 20-10-3.11	N	The Act and these Regulations shall not permit the smoking of marijuana: a. In a school bus or other form of public transportation; b. On any school grounds;
VT	18 V.S.A. § 4474c	N	Prohibits: 3) The smoking of marijuana in any public place, including: (A) a school bus, public bus, or other public vehicle; (C) any school grounds
VA	VA Code Ann. § 18.2-251.1	N	N/A
WA	Wash. Rev. Code § 69.51A.060	Y	(4) Nothing in this chapter requires any accommodation of any on-site <b>medical</b> use of <b>marijuana</b> in any place of employment, in any <b>school</b> bus or on any <b>school</b> grounds, in any youth center, in any correctional facility, or smoking marijuana in any public place or hotel or motel. However, a school may permit a minor who meets the requirements of RCW 69.51A.220 to consume marijuana on school grounds. Such use must be in accordance with school policy relating to medication use on school grounds. Schools are not required to permit on-site use of medical marijuana but are permitted to allow it if they choose. <a href="https://www.ecs.org/medical-marijuana-in-schools-state-legislation-and-policy-considerations/">https://www.ecs.org/medical-marijuana-in-schools-state-legislation-and-policy-considerations/</a>
WV	W. Va. Code, § 16A-15-5	Y	The Department of Education shall promulgate rules within six months of the effective date of this section regarding the following: (1) Possession and use of medical cannabis by a student on the grounds of a preschool, primary school, and a secondary school.
DC	DC ST § 7-1671.05	N	Administration of marijuana restrict to private residence or medical treatment facility. (See DC ST § 7-1671.03).



## CHART C

### STATE RECREATIONAL MARIJUANA LAWS

State	Statue Citation	Age Restriction	Other Restrictions as Exactly Stated in the State Law
AK	AS § 17.38.020	21 years or older	Prohibits consumption in public
CA	Cal.Health & Safety Code § 11362.1- § 11362.3	21 years or older	§ 11362.3 prohibits:  Smoking cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present at school, day care center, or youth center.  Smoking cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present at school, day care center, or youth center.
CO	C.R.S.A. Const. Art. 18, § 16	21 years or older	Prohibits consumption that is conducted openly and publicly or in a manner that endangers others.
ME	28-B M.R.S.A. Ch. 1 et seq.	21 years or older (see 22 M.R.S.A. § 2383)	<b>Marijuana</b> use and possession are prohibited in school buses. (See 05-071 CMR Ch. 81, § 6)
MA	M.G.L.A. Pt. I, T. XV, Ch. 94G et seq.	21 years or older	Prohibits the possession or consumption of marijuana or marijuana accessories on the grounds of or within a public or private school where children attend classes in preschool programs, kindergarten programs or grades 1 to 12, inclusive, on a school bus, in any youth center, or on the grounds of or within any correctional facility or detoxification facility.
MI	Voters approved Proposal 1 amending state constitution	21 years or older	Public use prohibited.
NV	N.R.S. T. 40, Ch. 453D et seq.	21 years or older	Prohibits smoking or otherwise consuming marijuana in a public place. (See N.R.S. 453D.400)
OR	O.R.S. § 475B.005	21 years or older	Prohibits the use of marijuana items in a public place. (See O.R.S. § 475B.381)
VT	18 V.S.A. § 4230a	21 years or older	Prohibits consumption in public place.
WA	RCWA 69.50.101 et seq.	21 years or older	Prohibits consumption in public place. (See RCW 69.50.445)
D.C.	DC ST D. VIII, T. 48, Subt. III, Ch. 9 et. Seq.	21 years or older	Prohibits consumption in public place. (See DC ST § 48-911.01)

# ENDNOTES

- <sup>1</sup> See, e.g., Massachusetts General Laws Chapter 71, Section 54B; Regulations 105 CMR 210.001 et seq.
- <sup>2</sup> “Guidelines for the Administration of Medication in Schools,” Committee on School Health, American Academy of Pediatrics, <http://pediatrics.aappublications.org/content/112/3/697#xref-ref-2-1>.
- <sup>3</sup> “Medication Administration in Schools Position Statement,” National Association of School Nurses (2017) <https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-medication>.
- <sup>4</sup> “Individualized Healthcare Plans: Role of the School Nurse,” National Association of School Nurses, <https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-ihps>.
- <sup>5</sup> *Id.*, citing Hermann, D, “Individualized Healthcare Plans,” In C. Silkworth, M. Arnold, J., Harrigan, & D. Zaiger, (Eds.), *Individualized healthcare plans for the school nurse: Concepts, Framework, Issues and Applications for School Nursing Practice* (pp. 1-4). North Branch, MN: Sunrise River Press (2005).
- <sup>6</sup> “Individualized Healthcare Plans: Role of the School Nurse,” National Association of School Nurses <https://www.nasn.org/advocacy/professional-practice-documents/position-statements/ps-ihps>.
- <sup>7</sup> *Id.*
- <sup>8</sup> Any delegation of nursing duties must be consistent with the requirements of state nurse practice acts, state regulations, and guidelines provided by professional nursing organizations.
- <sup>9</sup> Gilsbach, Erin, “Do We Need a Nurse,” National School Boards Association, April 2018. Available to COSA members at <https://www.nsba.org/when-do-we-need-nurse-0>.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Id.*
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> “Policy Statement – Guidance for the Administration of Medication in School,” American Academy of Pediatrics, <http://pediatrics.aappublications.org/content/pediatrics/124/4/1244.full.pdf>.
- <sup>15</sup> 29 U.S.C. §794 (2018).
- <sup>16</sup> 29 USC §1400 et seq. (2018).
- <sup>17</sup> “Policy Statement – Guidance for the Administration of Medication in School,” American Academy of Pediatrics, <http://pediatrics.aappublications.org/content/pediatrics/124/4/1244.full.pdf>.
- <sup>18</sup> Gilsbach, Erin, “Do We Need a Nurse,” National School Boards Association, April 2018. Available to COSA members at <https://www.nsba.org/when-do-we-need-nurse-0>, citing *Collier County Sch. Dist.*, 110 LRP 7471 (SEA FL 09/15/09); and *Birmingham City Bd. of Educ.*, 33 IDELR 236 (SEA AL 2000).
- <sup>19</sup> See 34 CFR § 300.34, 300.35, and 300.36.
- <sup>20</sup> See *Sarasota County (FL) Sch. Dist.*, 60 IDELR 261 (OCR 2012).
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