



Medical Marijuana in Schools

John F. Kennedy

Y. Jun Roh

Sam W. Minner

Cuddy & McCarthy, LLP

Federal

Schedule I drugs, substances, or chemicals are defined as **drugs with no currently accepted medical use** and a high potential for abuse.

Some examples of Schedule I drugs are:

heroin, lysergic acid diethylamide (LSD),
marijuana (cannabis), 3,4-
methylenedioxymethamphetamine (ecstasy),
methaqualone, and peyote

<https://www.dea.gov/drug-scheduling>

State

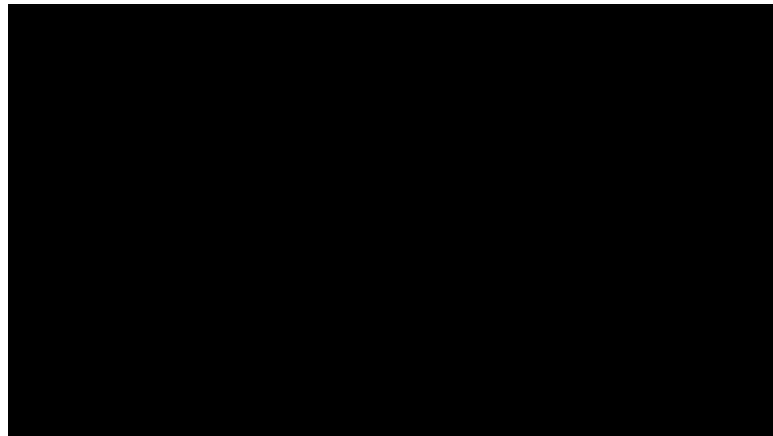
Lynn and Erin Compassionate Use Act

A. A qualified patient or a qualified patient's primary caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of cannabis if the quantity of cannabis does not exceed an adequate supply; provided that a qualified patient or the qualified patient's primary caregiver may possess that qualified patient's harvest of cannabis.

D. Subsection A of this section shall not apply to a qualified patient under the age of eighteen years, unless:

- (1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of cannabis to the qualified patient and to a parent, guardian or person having legal custody of the qualified patient; and
- (2) a parent, guardian or person having legal custody consents in writing to:
 - (a) allow the qualified patient's medical use of cannabis;
 - (b) serve as the qualified patient's primary caregiver; and
 - (c) control the dosage and the frequency of the medical use of cannabis by the qualified patient.

NMSA 1978 § 26-2B-4



Before SB 204

Past experience has shown that children prescribed medical cannabis would be taken off campus by their parent or guardian to administer the medication.

- This may have led to children being removed from school and puts the burden of administration on parents
- Could cause harmful delays in administering medication for emergent conditions, where time may be of the essence, such as severe forms of epilepsy.

SB 204

A. Except as provided pursuant to Subsection C of this section, local school boards and the governing bodies of charter schools **shall** adopt policies and procedures to authorize the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings; provided that:

- (1) a student shall not possess, store or self-administer medical cannabis in a school setting;
- (2) a parent, legal guardian or designated school personnel shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis;
- (3) a written treatment plan for the administration of the medical cannabis is agreed to and signed by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian; and

(4) before the first administration of medical cannabis in a school setting, the qualified student's parent or legal guardian completes and submits documentation as required by local school board or charter school rules that includes a:

- (a) copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act; and
- (b) written statement from the qualified student's parent or legal guardian releasing the school and school personnel from liability, except in cases of willful or wanton misconduct or disregard of the qualified student's treatment plan.

B. A school board or the governing body of a charter school may adopt policies that:

- (1) restrict the types of designated school personnel who may administer medical cannabis to qualified students;
- (2) establish reasonable parameters regarding the administration and use of medical cannabis and the school settings in which administration and use are authorized; and
- (3) ban student possession, use, distribution, sale or being under the influence of a cannabis product in a manner that is inconsistent with the provisions of this subsection.

C. The provisions of Subsection A of this section shall not apply to a charter school or school district if:

- (1) the charter school or school district reasonably determines that it would lose, or has lost, federal funding as a result of implementing the provisions of Subsection A of this section; and
- (2) the determination is appealable by any parent to the secretary, based on rules established by the department.

D. A public school, charter school or school district shall not:

- (1) discipline a student who is a qualified student on the basis that the student requires medical cannabis as a reasonable accommodation necessary for the student to attend school;
- (2) deny eligibility to attend school to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or a school-sponsored activity; or
- (3) discipline a school employee who refuses to administer medical cannabis.

E. As used in this section:

(1) “certifying practitioner” means a health care practitioner who issues a written certification to a qualified student;

(2) “designated school personnel” means a school employee whom a public school, charter school or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of this section;

(3) “medical cannabis” means cannabis that is:

(a) authorized for use by qualified patients in accordance with the provisions of the Lynn and Erin Compassionate Use Act; and

(b) in a form that is not an aerosol and **cannot be smoked or inhaled** in particulate form as a vapor or by burning;

(4) “qualified student” means a student who demonstrates evidence to the school district that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis in accordance with the provisions of that act;

(5) “school” means a public school or a charter school;

(6) “school setting” means any of the following locations during a school day:

(a) a school building;

(b) a school bus used within the state during, in transit to or in transit from a school-sponsored activity;

(c) a public vehicle used within the state during, in transit to or in transit from a school-sponsored activity in the state; or

(d) a public site in the state where a school-sponsored activity takes place; and

(7) “written certification” means a statement in a qualified student's medical records or a statement signed by a qualified student's certifying practitioner that, in the certifying practitioner's professional opinion, the qualified student has a debilitating medical condition and the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student. **A written certification is not valid for more than one year from the date of issuance.**

NMSA 1978 § 22-1-*

Who Administers the Medication?

- The statute **Does not** permit a student to possess marijuana at school or allow self-medication.
- So Who Can?
 - A parent or legal guardian
 - Designated school personnel
 - Does not require school employees to administer marijuana to students. School employees may refuse without fear of discipline. qualifications for this position are not defined in SB 204.
 - N.M.S.A. 1978, § 22-10A-3 states that “...any person...administering medications...shall hold a valid license or certificate from the department authorizing that person to perform that function.”

How Can the Medication be Administered?

- The statute **Does not** permit the smoking or vaporization of marijuana on a district property. The medication must be administered in a manner that does not create a disruption or expose others to the marijuana.
- Such medication is often administered to children by means of an orally ingested liquid kept in a large syringe. Food, topical patches, and creams/ointments are other possible delivery methods.

Mandatory, Unless...

- The statute requires a school district or charter school to implement such a policy, unless it **reasonably determines** that it would lose, or has lost, federal funding as a result.
- Applicable sources of federal funding are those requiring “drug-free school zones” as a condition of receipt.

Funding

- We have not found any instances of federal funding being revoked in response to a school district enacting a policy pursuant to analogous statutes around the country.
- However, numerous districts have opted out with a determination that such loss would occur.

Debilitating Medical Conditions

- (1) **cancer;**
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) **seizure disorder, including epilepsy;**
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department;
- (8) amyotrophic lateral sclerosis;
- (9) Crohn's disease;
- (10) hepatitis C infection;
- (11) Huntington's disease;

- (12) inclusion body myositis;
- (13) inflammatory autoimmune-mediated arthritis;
- (14) intractable nausea or vomiting;
- (15) obstructive sleep apnea;
- (16) painful peripheral neuropathy;
- (17) Parkinson's disease;
- (18) posttraumatic stress disorder;
- (19) severe chronic pain;
- (20) severe anorexia or cachexia;
- (21) spasmodic torticollis;
- (22) ulcerative colitis; or
- (23) any other medical condition, medical treatment or disease as approved by the department;

NMSA 1978 § 26-2B-3





What About Employees?

EMPLOYMENT PROTECTIONS.—

A. Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, it is unlawful to take an adverse employment action against an applicant or an employee based on conduct allowed under the Lynn and Erin Compassionate Use Act.

B. Nothing in this section shall:

- (1) restrict an employer's ability to prohibit or take adverse employment action against an employee for use of, or being impaired by, medical cannabis on the premises of the place of employment or during the hours of employment; or
- (2) apply to an employee whose employer deems that the employee works in a safety-sensitive position.

"safety-sensitive position" means a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another.

Still Unclear...

- How to determine that someone is currently under the influence of marijuana (drug screenings can't indicate the time of use accurately enough)

Thank You!

Cuddy & McCarthy, LLP

John F. Kennedy

jkennedy@cuddymccarthy.com

Y. Jun Roh

jroh@cuddymccarthy.com

Sam W. Minner

sminner@cuddymccarthy.com