



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

December 8, 2016

**To:** Superintendents/Presidents/Chancellors, Member Community  
College Districts

**From:** Jennifer E. Nix *JEN*  
Assistant General Counsel

**Subject:** Proposition 64: Adult Use of Marijuana Act – Effect on  
Community Colleges  
Memo No. 21-2016CC

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On November 8, 2016, a majority of California voters voted to pass Proposition 64, the Adult Use of Marijuana Act. Proposition 64 legalized the possession and use of recreational marijuana and the growth of personal-use marijuana plants effective November 9, 2016, and legalized the purchase of recreational marijuana by adults aged 21 years and older effective January 1, 2018.

The change in the law does not permit any person to possess or use recreational or medical marijuana on a community college campus.

It remains illegal to smoke or otherwise consume marijuana or cannabis in public, and to smoke marijuana anywhere tobacco smoking is banned.<sup>1</sup> Additionally, if you have a K-12 school, day care center (including a child development center under Education Code section 79120 *et seq.*), or youth center on your campus, the law explicitly makes it illegal to possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.<sup>2</sup>

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<sup>1</sup> Health and Safety Code § 11362.3. Recently, Governor Brown vetoed Assembly Bill 1594, which would have prohibited all persons from smoking or using tobacco products on the campuses of California Community Colleges, stating that: “The governing boards of our public colleges and universities already have the authority and are fully capable of setting smoking policies on their campuses.” You should check your policies to determine whether tobacco smoking has been banned.

<sup>2</sup> *Id.*; Health and Safety Code § 11362.79. Proposition 64 explicitly provided that one of its purposes was to “[p]rohibit the consumption of marijuana in a public place unlicensed for such use, including near K-12 schools and other areas where children are present.” The newly passed law does not appear to, by its terms, prohibit possession or use of marijuana on community college campuses. *See, e.g.*, Health and Safety Code § 33680 and Education Code § 80 (distinguishing “school districts” and “schools” from “community colleges”).

Possession of any amount of marijuana remains a misdemeanor crime under Federal law.<sup>3</sup> As recipients of Federal funds, it is important that you continue to have policies that prohibit possession and use of marijuana on community college campuses because receipt of Federal funding is often tied to compliance with Federal laws. For example, community college districts are subject to the Drug Free Schools and Communities Act, 20 U.S.C. section 7101 *et seq.*, which requires institutions receiving Federal financial assistance to establish drug and alcohol abuse prevention programs for students and employees; the Drug Free Workplace Act of 1988, 41 U.S.C. section 81, which requires all Federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a grant from a Federal agency.<sup>4</sup> Failure to comply with those laws could result in a district losing its eligibility for financial aid. We recommend that community college districts review and revise policies to ensure that the policies are consistent with Federal law and to implement no-smoking policies as is appropriate. You can also address potential confusion among staff and students through educational programs about district policies and the consequences of campus marijuana use.

It is also a misdemeanor crime under California state law for: (1) a person of any age to possess more than 28.5 grams of marijuana or more than 4 grams of concentrated cannabis; (2) a person under the age of 21 to possess any amount of marijuana without a medical marijuana card; or (3) any person to possess any amount of marijuana on the grounds of any school providing instruction in kindergarten and/or grades 1 through 12 during the hours the school is open or when any school-related programs are occurring.<sup>5</sup>

Although nothing in the law expressly makes it illegal for a student or employee to arrive on campus under the influence of marijuana or cannabis, Districts are permitted to discipline the student or employee for such action.

Districts have the legal authority to discipline, up to and including suspension and expulsion, for good cause, when other means of correction have failed to bring about proper conduct, or when the presence of the student causes a continuing danger for the physical safety of others, consistent with due process requirements and the rules of student conduct adopted by the governing board.<sup>6</sup> Accordingly, Districts continue to be permitted to discipline students if use of marijuana or cannabis violates the rules of student conduct or causes a continuing danger for the physical safety of others.

Districts may discipline employees for being at work under the influence of a controlled substance or other intoxicants. For example, community college districts may dismiss academic employees for causes that may apply, depending on the circumstances, when an academic employee is under the influence of or abusing marijuana, such as unsatisfactory performance, evident unfitness for service, and persistent violation of or refusal to obey certain rules and regulations.<sup>7</sup> Classified collective bargaining agreements typically list grounds for discipline of

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<sup>3</sup> 28 U.S.C. § 844.

<sup>4</sup> In addition, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act), 20 U.S.C. § 1092(f), requires districts to address alcohol and drugs in the Annual Security Report (ASR). Failure to comply with the Clery Act can result in significant Federal fines.

<sup>5</sup> Health and Safety Code § 11357.

<sup>6</sup> Education Code § 76030.

<sup>7</sup> Education Code § 87732.



classified employees to include possession or consumption of alcohol or controlled substances, as well as reporting to work while under the influence of an intoxicant. In addition, many districts have implemented board policies and administrative procedures prohibiting employees from being under the influence of a controlled substance while on duty, and employees may be disciplined for violating policies and regulations. Proposition 64 did not alter the designation of marijuana and cannabis as Schedule I controlled substances under California law.<sup>8</sup> Accordingly, district policies and collective bargaining agreement provisions will continue to cover an employee under the influence of marijuana or cannabis following the legalization of recreational marijuana.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>8</sup> Health and Safety Code § 11054.