



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

December 8, 2016

**To:** Superintendents, Member School Districts (K-12)  
**From:** Jennifer E. Nix *JEN*  
Assistant General Counsel  
**Subject:** **Proposition 64: Adult Use of Marijuana Act – Effect on Schools**  
**Memo No. 41-2016**

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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 school 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, the law specifically makes it illegal to use medical marijuana within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the use occurs within a residence; or on a schoolbus; and to smoke recreational marijuana or use recreational marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in an appropriately licensed business, and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.<sup>2</sup> Additionally, it is impermissible 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>3</sup>

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<sup>1</sup> Health and Safety Code § 11362.3.

<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.”

<sup>3</sup> Health and Safety Code § 11362.3.



Possession of any amount of marijuana is a misdemeanor crime under Federal law.<sup>4</sup> As recipients of Federal funds, it is important that you continue to have policies that prohibit possession and use of marijuana on school campuses because receipt of Federal funding is often tied to compliance with Federal laws.

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>

Accordingly, under Federal and California law, it continues to be illegal to both possess and to use marijuana or cannabis on a school campus when children are present.

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, schools are permitted to discipline the student or employee for such action.

Schools have the legal authority to suspend or expel students who possess, use, sell, furnish, or are under the influence of any controlled substance, an alcoholic beverage, or any intoxicant of any kind.<sup>6</sup> Proposition 64 did not alter the designation of marijuana and cannabis as Schedule I controlled substances under California law.<sup>7</sup> Schools can suspend for drug offenses that occur while on school grounds, while going to or coming from school, during the lunch period (whether on or off campus), and/or during, or while going to or coming from, a school-sponsored activity.<sup>8</sup>

Districts may discipline employees for being at work under the influence of a controlled substance or other intoxicants. For example, school districts have the legal authority to dismiss permanent certificated employees for alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children.<sup>9</sup> Classified collective bargaining agreements typically list grounds for discipline of classified employees to include possession or consumption of 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 regulations prohibiting employees from being under the influence of a controlled substance or alcohol while on duty, and employees may be disciplined for violating policies and regulations. As mentioned above, marijuana remains classified as a controlled substance, so these 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.

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<sup>4</sup> 28 U.S.C. § 844.

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

<sup>6</sup> Education Code § 48900(c).

<sup>7</sup> Health and Safety Code § 11054.

<sup>8</sup> Education Code § 48900(s).

<sup>9</sup> Education Code § 44932.



Schoolbus drivers<sup>10</sup> are explicitly prohibited from use of marijuana prior to engaging in a safety-sensitive function. Those individuals are subject to federal law and regulations that require alcohol and drug testing, and school districts employing school bus drivers are required to establish a drug and alcohol testing program.<sup>11</sup> Drivers are prohibited from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions, such as transporting students when the driver has used any controlled substance, subject to a medical exception.<sup>12</sup> Additionally, employers are not allowed to permit a driver to operate a schoolbus if the employer has knowledge that the driver has used a controlled substance.<sup>13</sup> The U.S. Department of Transportation has made it clear that its regulated drug testing program does not permit the use of Schedule 1 drugs for any reason, even if the person resides in a state that makes medical or recreational marijuana legal.<sup>14</sup> Accordingly, Medical Review Officers will not verify a drug test “negative” if an employee tests positive for marijuana or cannabis regardless of whether the employee lives in a state that has legalized either medical or recreational marijuana.<sup>15</sup> Additionally, schoolbus drivers can be subject to drug and alcohol testing pursuant to applicable board policies or collective bargaining agreement provisions.

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>10</sup> The information in this paragraph is also applicable to drivers of “school transportation vehicles,” which include vehicles schools use for transporting children that are not defined as “schoolbuses” under federal law. Section 34520.3 of the Vehicle Code requires such drivers to comply with federal drug and alcohol testing requirements.

<sup>11</sup> Code of Federal Regulations, Title 49, Parts 40 and 382.

<sup>12</sup> 34 C.F.R. § 382.213. Please note that this prohibition is on use, and does not require that the driver actually be under the influence at the time he or she reports for duty.

<sup>13</sup> *Id.*

<sup>14</sup> <https://www.transportation.gov/odapc/medical-marijuana-notice>;  
<https://www.transportation.gov/odapc/dot-recreational-marijuana-notice>.

<sup>15</sup> *Id.*