



**How Will Public Schools Be Affected By
New Jersey's Legalization of Marijuana?**

As many New Jersey residents are aware, during the November 2020 election, the voters approved a State constitutional amendment to legalize marijuana for recreational, non-medicinal purposes. The amendment took effect on January 1, 2021 and legalized the recreational use of marijuana, also known as cannabis, for individuals who are twenty-one (21) years old and over, as well as the cultivation, processing, and retail sale of marijuana. More recently, on February 22, 2021, Governor Murphy signed three (3) separate bills (A21, A1897, and A5342) legalizing the recreational use of cannabis by adults and creating a regulated adult-use cannabis market in New Jersey, following an extended dialogue between the Governor and State legislators concerning the legislation's provisions on underage use and possession.

Assembly Bill A21 (P.L. 2021, c.16), the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, made it legal for adults to engage in the personal use of marijuana, subject to regulation by the State, and decriminalized the possession of small amounts of marijuana. Assembly Bill A1897 (P.L.2021, c.19) instituted reforms pertaining to the legal ramifications of marijuana offenses and increasing awareness of the availability of expungement relief for individuals whose criminal records include marijuana offenses. Finally, Assembly Bill A5342 (P.L.2021, c.25) addressed the underage possession and consumption of various forms of cannabis and the legal consequences for such conduct.

The State's legalization of marijuana by adults over age twenty-one (21) presents a number of issues for school boards and school administrators, above and beyond the review and updating as needed of any board policies and regulations that may require revision as a result of the new legislation. Specifically, school districts should be aware of the following issues and concerns which may be relevant to employees, students, and public schools in general:

1. Restrictions on Use, Possession, and Advertising on School Property

At the outset, it must be emphasized that the new law explicitly states that it is not "intended to permit any person to possess, consume, use, display, transfer, distribute, sell, transport, or grow or manufacture cannabis or cannabis items in a school." To the contrary, the law provides that any person of legal age who knowingly brings, possesses, or consumes such cannabis items "on any property used for school purposes which is owned by any school or school board," absent express written permission of the school board or administration, is guilty of a disorderly persons offense. Any person may also be subject to a civil penalty for possessing an amount of cannabis that exceeds the lawful amount, or for selling or otherwise providing cannabis to a person under age twenty-one (21).

The new law also imposes heightened penalties for individuals who engage in unlawful use, possession, or similar conduct while on school property, within one thousand (1,000) feet of school property, or on a school bus. Therefore, notwithstanding New Jersey's legalization of marijuana, it is still unlawful for students and staff to possess or be under the influence of marijuana while on school premises or at a school-sponsored activity or event, absent a documented medical condition that warrants the use of marijuana for medicinal purposes.

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If a school district has a reasonable suspicion that a staff member or a student is under the influence of non-medicinal marijuana while on school grounds or at a school event or activity, the district may require the staff member or student to be tested for marijuana use, in accordance with the district's policies. However, the mere presence of cannabinoid metabolites in the bodily fluids of a student engaged in conduct permitted under the new laws may not form the basis upon which to penalize the student, unless failing to do so would cause the school district to violate a federal contract or lose federal funding.

To the extent that a district may conduct a search of a student for purposes of determining whether he or she is in possession of marijuana in the school setting, the search should be conducted by a school official or staff member, as opposed to a school resource officer or another type of law enforcement officer, and must be supported by a reasonable suspicion for conducting the search. Districts should be aware that under the new law, law enforcement officers are not permitted to arrest, detain, or take into custody anyone under the age of twenty-one (21) for the underage possession or consumption of alcohol or marijuana, and officers who violate this prohibition are subject to a criminal charge for a deprivation of civil rights.

Nevertheless, school districts would be well-advised to report to local law enforcement any and all instances of possession of marijuana and/or marijuana paraphernalia on school grounds or at a school-sponsored event or activity, despite that there may or may not be any legal consequences applicable to such conduct. In any event, law enforcement will most likely be obligated to document the report, even if only for purposes of determining whether the incident may constitute a first or subsequent offense, whether a parent or guardian should be notified, and/or whether any civil penalties may apply. On the other hand, a district should not report to law enforcement any staff member's personal use of marijuana that occurs off school grounds, outside of the school setting and school events and activities, and outside of the work environment (assuming such conduct does not involve students or minors in any way), as such recreational use on a school employee's own personal time outside of school has now been decriminalized.

The State's new marijuana law further indicates that with respect to students and staff members present on school property used for school purposes, any of the following may constitute "reasonable articulable suspicion" of a crime: (a) the odor of cannabis or burnt cannabis; (b) the possession of or the suspicion of possession of marijuana, even if the amount possessed would otherwise be lawful; and (c) the possession of or the suspicion of possession of marijuana, without evidence of a quantity that exceeds the amount which may be lawfully possessed, in proximity to any amount of cash or currency. Therefore, if the district reasonably suspects that a student or staff member is under the influence of or in possession of marijuana while on school grounds, the district may rely upon any of these factors to support requiring the student or staff member to be tested for marijuana use. Of course, the district should first ensure that the student or staff member does not have any documented medical needs that would make him or her eligible for an exemption from the restrictions on marijuana use or possession described above.

In addition, the law imposes a number of restrictions on the advertising and display of cannabis items and cannabis paraphernalia, and prohibits such advertising within two hundred (200) feet of any elementary or secondary school. However, this prohibition specifically excludes advertisements within the premises of cannabis retailers.

2. Discipline of Students and Staff for Marijuana Use or Possession

School districts remain authorized to impose disciplinary consequences upon students who are found in possession of or to be under the influence of marijuana, absent a legitimate and documented medical exemption, pursuant to any relevant provisions of the Code of Student Conduct. Similarly, districts continue to have the legal authority to prohibit staff members from possessing or being under the influence on school premises or during any school-sponsored event or activity, and to discipline staff who violate this prohibition, assuming the staff member does not have a documented medical condition warranting medicinal marijuana use. Just as school districts can and do prohibit the possession and consumption of alcohol on school grounds and at school functions, as well as being under the influence of alcohol, by both students and staff, districts may also impose the same prohibitions with respect to marijuana, and should ensure that their board policies and regulations are drafted accordingly.

3. Employment Concerns

Despite that districts are entitled to discipline employees who are under the influence or possess marijuana on school premises or at a school-sponsored function, the law prohibits employers from taking employment action against a current employee or refusing to hire an employees or prospective employees based solely upon recreational use of marijuana use on their own time, outside of the work environment. Therefore, districts generally may not rely upon a positive drug test showing recent marijuana use by an employee as the sole disqualification for employment. An exception may apply, of course, if there is a rational basis for doing so which is reasonably related to the employment, including the responsibilities of the position. For example, districts can and should decline to hire or terminate a bus driver based upon a drug test establishing recent marijuana use, in view of the specific nature of the job responsibilities of a school bus driver. Furthermore, school boards may not require an applicant for employment to disclose or reveal, or take any adverse action against an applicant based on an arrest, charge, conviction, adjudication of delinquency, civil penalty, or community service for certain marijuana-related offenses.

However, the new legislation specifically provides that nothing in the law requires an employer to amend or repeal, or affect, restrict or preempt the rights and obligations of employers to maintain a drug and alcohol free workplace. In addition, the law does not require an employer to permit or accommodate the use, consumption, being under the influence, possession, transfer, display, transportation, sale, or growth of cannabis or cannabis items in the workplace, or to affect the ability of employers to have policies prohibiting cannabis use or intoxication by employees during work hours.

4. Recreational Use of Marijuana by Students Outside of School

School districts and their administrators should be aware of the legal consequences for minor students, as well as students over age eighteen (18), who are found in possession of or to have consumed marijuana off school grounds and outside of the school environment. While it is unlawful for individuals under twenty-one (21) to possess or consume marijuana recreationally, the legal consequences for knowingly possessing or consuming marijuana for an individual between ages eighteen (18) and twenty-one (21) are limited to a civil penalty of up to fifty dollars (\$50.00). For minors under age eighteen (18), the possession or consumption of marijuana is subject to a series of

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warnings. A first offense may be addressed with a warning directly to the minor by a law enforcement officer, and not to his or her parent or legal guardian. However, although the law does not prohibit a school district from notifying a student's parent or guardian in this instance, it will typically be advisable for the district to notify the parent or guardian of a student who has been found in violation of the Code of Student Conduct due to the possession or consumption of marijuana on school grounds or at a school activity or event.

For a minor under age eighteen (18) who has possessed or consumed marijuana as a second-time offense, a warning may be issued to the minor and to the parent or guardian by a law enforcement officer, who must also provide "informational materials about how to access community services provided by public or private agencies and organizations that shall assist the person with opportunities to access further social services, including but not limited to counseling, tutoring programs, mentoring services, and faith-based or other community initiatives." Finally, a third such offense by a minor and any subsequent offenses are subject to "a write-up issued by a law enforcement officer to the underage person indicating that a third or subsequent violation has occurred, which includes the person's name, address, and date of birth," with notification to the parent or guardian, including a referral for accessing the community services described above.

The Busch Law Group will continue to provide legal updates on these and other significant issues related to New Jersey's legalization and regulation of personal marijuana use, as necessary. Should you have any questions or concerns, our attorneys are always available to assist you.

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