

# CLIENT NEWS BRIEF

## School Districts May Develop A Policy Permitting Parents To Administer Medical Marijuana To Students On Campus

On October 9, 2019, Governor Gavin Newsom signed Senate Bill (SB) 223, which allows local educational agencies to adopt a policy regarding administration of medicinal cannabis to students on campus. The new law, referred to as "Jojo's Act," becomes effective on January 1, 2020, and was named after a San Francisco teenager who takes medicinal cannabis to control serious seizures. Jojo's Act adds section 49414.1 to the California Education Code and authorizes, but *does not require*, school districts, county offices of education, and charter schools to adopt a policy to permit a parent or guardian to possess and administer medicinal cannabis at a school site to a student who is a "qualified medical cannabis patient" under California law.

### Requirements Under Jojo's Act

Under Jojo's Act, a school district, county office of education, or charter school may *elect* to adopt a policy allowing for the administration of medicinal cannabis to a student at school by a parent or guardian. If such a voluntary policy is adopted, Jojo's Act requires that the policy include the following:

1. Before administering the medicinal cannabis, the parent or guardian must provide to an employee of the school a valid written medical recommendation for medicinal cannabis for the pupil to be kept on file at the school;
2. The parent or guardian must sign in at the school site before administering the medicinal cannabis;
3. The parent or guardian shall not administer the medicinal cannabis in a manner that disrupts the educational environment or exposes other pupils; and
4. After the parent or guardian administers the medicinal cannabis, the parent or guardian must remove any remaining medicinal cannabis from the school site.

School districts, county offices of education, and charter schools should also consider including and/or addressing the following if a policy is adopted:

1. "Medicinal cannabis" in a smokeable or vapeable form is prohibited under Jojo's Act;
2. Under Jojo's Act, local educational agencies may rescind the policy at a regularly-scheduled board meeting, or at a special board meeting under certain conditions, for any reason, including if the agency is at risk of losing federal funding due to the policy;
3. Jojo's Act does not allow or require school employees, in any way, to administer cannabis to students;
4. Jojo's Act provides that any records collected related to the administration of medicinal cannabis to a student must be treated as a *medical record* subject to all provisions of state and federal law that govern the confidentiality and disclosure of *medical records*; and
5. Jojo's Act does not limit the tetrahydrocannabinol (THC) content of medicinal marijuana permitted to be administered at school. Unlike cannabidiol or CBD, which does not create a "high," THC is the

October 2019  
Number 57



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cannabinoid that creates the psychoactive effects of cannabis, which can make a person experience a “high.” Some students who take cannabis for medical purposes require medicinal cannabis with THC content. State law does create limits on the content of THC in cannabis product.

## Remaining Questions

Jojo’s Act leaves several questions unanswered, including those related to record keeping, discipline, and administration:

1. As noted above, Jojo’s Act deems records related to medicinal marijuana administration on school campuses “medical records” rather than student education records. This appears to be the Legislature’s attempt to apply the Health Insurance Portability and Accountability Act (HIPAA) to these particular records, rather than applying the Family Educational Rights and Privacy Act (FERPA). However, HIPAA contains a provision stating that medical records maintained by school districts become education records, which are governed by FERPA rather than HIPAA. Thus, the provision of Jojo’s Act applying HIPAA to these medicinal marijuana records, seemingly conflicts with federal law. It remains to be seen how this will impact school districts.
2. Notably absent from the Act is any reference to discipline. The Education Code provides that students *may* be suspended and/or recommended for expulsion when they unlawfully possess, use, or are under the influence of marijuana. (Ed. Code, §§ 48900(c); 48915(a).) Jojo’s Act does not address how to reconcile the authorized administration with the prohibition against possession, use, or being under the influence on campus. This conflict requires careful consideration in any policy.
3. Jojo’s Act does not provide an alternative for students whose parents or guardians cannot come onto campus during the school day to administer medication.

## Other Limited Circumstances Authorizing Use of Medicinal Cannabis on Campus

Even without a policy under Jojo’s Act, educational agencies may be required to allow medicinal cannabis use on campus under other limited circumstances. Such circumstances include FDA-approved cannabis-based medications and judicial orders requiring a school district to administer cannabis to a student at school. (See [2018 Client News Brief Number 56](#); [2018 Client News Brief Number 55](#).)

## Takeaways

The intersection of cannabis, education, disability, and equal access law is quickly developing and changing. We recommend you reach out to legal counsel who understands the nuances of this area of law, or to a Lozano Smith attorney with any questions regarding administration of medicinal cannabis on school campuses, including the possibility of developing a policy under Jojo’s Act.

If you have any questions regarding SB 223, or would like to discuss student rights or discipline matters related to cannabis use, please contact an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).