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## The Future of CBD and Medical Marijuana In Public Schools

*By: Richard M. Blau, chair of GrayRobinson's alcohol beverage, food law, and cannabis industry departments*

At a May 4, 2020 meeting of the Asheville City Schools Board of Education, officials approved a revised drug policy that allows the use of CBD, the non-euphoric chemical compound found in cannabis. Asheville City Schools diverged from several neighboring districts – Buncombe, Transylvania, and Henderson - which forbade CBD use in their school systems this winter.

In its adoption of Policy 4325 (Drugs and Alcohol), the Board deleted possession or use of cannabidiol (CBD) from the enumerated list of prohibited student behaviors. A copy of the revised policy is accessible on the ACS website at: <https://drive.google.com/file/d/1Uqv5s5kQtJUjR-rMvU9skJadbGmn5nl8/view>

Although most states have not updated their legal codes to permit student use of CBD in public schools, the trend toward expanded legalization is growing. In August of 2019, California legislators approved changes in the state's law that allow parents to bring non-smokeable CBD and medical marijuana products onto public schools for administering to authorized students in accordance with a physician's recommendation. Similarly, the District of Columbia school system clarified its policy on medical marijuana in September of 2019, allowing health professionals will administer medical marijuana to students in schools.

Whether this trend will continue depends on the decisions made by elected officials, as well as school boards and education policy leaders. In assessing the role schools can or should play in the possession and use of CBD products by students at school, a careful analysis should include consideration of the following key points:

- 1. Start the analysis with a review of existing state laws.** Most states have adopted some form of a "School Medication Law," which typically outlines the circumstances under which school employees and volunteers can administer "drugs" to students.
- 2. Defining what constitutes a "drug."** How the state's School Medication Law defines the term "drug" is key to any analysis of CBD in the school system. For example, in numerous states, "drug" is defined as any substance

recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them. Under such a law, school employees or qualified volunteers typically may administer a non-prescription or prescription “drug” under certain circumstances. The prescription drug requires doctor’s prescription or other approval of a physician. A non-prescription drug usually can be administered only in compliance with the written instructions of the pupil’s parent or guardian if the pupil’s parent or guardian consents in writing and supplies the drug in its original manufacturer’s packaging which lists the ingredients and dosage.

- 3. Recognizing that CBD is still not an approved “drug.”** CBD (other than the pharmaceutical Epidolex) has not been approved for prescription by the Food and Drug Administration (FDA) and is not listed as a drug in the United States pharmacopoeia. Accordingly, CBD does not technically meet the definition of a “drug” under most state School Medication Laws. Further, even if it did, a non-prescription drug product typically must be prepackaged for use by consumers and labeled in accordance with the requirements of state and federal law, in order to be administered on a public school campus. Because the FDA has not approved CBD for sale as a drug, it is likely that CBD products do not qualify as non-prescription drugs that

school employees or volunteers are authorized to administer within the scope of many states' School Medication Laws.

4. **May students possess CBD on campus?** At this point, in many states it remains an open question as to whether students may possess CBD products at school for self-administration. The FDA has not approved CBD products as dietary supplements and the majority of states' laws only permit the possession of CBD products by a student with medical authorization. In this environment, many education policy makers will opt for the safest course, *i.e.*, restricting the possession and use of CBD products at school.
5. **A potential solution.** A reasonable compromise balancing health needs against campus safety would entail adoption of a policy permitting the storage of physician-authorized CBD in a specific location, probably in the nurse's office, in its original packaging, and permitting its self-administered use, subject to the school authorities being furnished with the appropriate physician's certificate and parental/guardian documentation.
6. **A few caveats.** There may be circumstances in which a student is not capable of self-administration due to age or physical limitation. In such cases, a careful assessment should be undertaken to determine whether a school board should adopt a policy that allows an employee or volunteer

to administer or assist in the administration of CBD at school. Such a practice may not necessarily carry with it the legal protections afforded by some states' School Medication Laws. Moreover, if a school board adopts such a policy, the board should consult with its insurer and may consider obtaining from parents a waiver and indemnification of claims. Boards also will need to consider whether a student who consumes or possesses CBD on district property or at district functions without the required physician's certificate and/or in violation of board policy should be disciplined and, if so, to what extent.

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Mr. Blau has been rated "Band 1" by Chambers USA since 2007. He also is listed in Best Lawyers in America, and is "AV" rated by Martindale-Hubbell. A substantial portion of Mr. Blau's professional efforts are focused on trade regulations, litigation

and dispute resolution involving regulated products such as alcohol beverages, tobacco, firearms and explosives, and most recently medical marijuana and cannabis. He has been involved extensively with the legalization of cannabis in Florida since its outset with passage of the Compassionate Medical Cannabis Act of 2014 (SB 1030) into law on June 6, 2014.