

CLIENT NEWS BRIEF

Non-Binding Order from OAH Requires School District Administer Medical Marijuana on Campus

In a non-binding order, a California state administrative law judge from the Office of Administrative Hearings (“OAH”) ruled that a public school district must allow a student’s nurse to administer medical marijuana, as needed, on campus and transportation. The September 21, 2018 decision in *Student v. Rincon Valley Union Elementary School District* (2018) OAH Case No. 2018050651 is unprecedented, but is not binding on other school districts.

Background

The case arose from a dispute over whether the Rincon Valley Union School District was required to allow the student to attend a district program and transportation since she required administration of a rescue medication for seizures during the school day, which contains Tetrahydrocannabinol (“THC”)—the part of the marijuana plant that creates a “high.” The 5-year-old student has Dravet Syndrome, a disorder that causes severe and frequent seizures, and uses THC oil as a rescue medication to stop seizures when they occur.

Marijuana, medical or otherwise, is currently not allowed on public school campuses in California, as it is a Schedule I drug and is illegal under the federal Controlled Substances Act (“CSA”). Thus, for the past two years, the Rincon Valley Union School District paid for the student to attend a private preschool, where she could keep the THC oil at school, and have it administered by a nurse when she had a seizure, all pursuant to an individualized education program (“IEP”).

In May 2018, the student’s IEP team met to discuss her Kindergarten program. The parents wanted their child to attend Kindergarten at a public school and still have access to her THC rescue medication, while at school. The school district explained that allowing the student to possess marijuana on campus or on a public school bus would violate state and federal laws, banning such use of marijuana. Accordingly, the district offered the student in-home specialized instruction with nursing services. The parents did not agree with the district’s proposed in-home program, arguing that the student should be able to attend a public school like her non-disabled peers *and* have access to, and administration of her THC rescue medication at school and on school district-provided transportation.

Because the parents disagreed with the district’s proposed in-home program for their child, they filed a due process complaint, arguing that the IEP was not the least restrictive environment (“LRE”) and did not provide their child with a free appropriate public education (“FAPE”) under the Individuals with Disabilities Education Act (“IDEA”). They also filed a motion for “stay-put.”

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Order Regarding Stay-Put

The right to “stay put” ensures that a child may remain in his or her current

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educational placement until a due process case is resolved. In determining a “stay put” placement, judges look to the last agreed-upon and implemented IEP. Additionally, if a child, like the student in this case, is “applying for initial admission to a public school, [the child] shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.” (20 U.S.C. § 1415(j).) On July 19, 2018, the judge granted the parents’ motion for stay-put.

The stay-put order required the district to implement the student’s May 2017 IEP, and specifically afforded the student:

[P]lacement in a general education kindergarten on a public school campus among Student’s nondisabled peers; transportation from home to school and back on a school-operated bus or by such other means as the parties may agree upon; and the *same availability of nursing services and THC oil* as a rescue medication during transportation and on the campus as was agreed upon and implemented by the May 22, 2017 IEP.

Because this case dealt with a student who was applying for initial admission to a public school—Kindergarten, the judge found that her “stay-put” placement was a “public school program” or general education Kindergarten class. The judge went on to hold that because “The IEP team also stated: ‘[Student] requires a program that can administer her emergency medication (THC oil) in the event of a seizure’” the district was required to provide her with her THC oil as a rescue medication.

Decision on the Merits

Pursuant to the stay put order, the student began attending Kindergarten, on the public school campus, pending the judge’s decision on the merits of the case—whether the district’s proposed home-instruction program offered the student a FAPE. The due process hearing was held on July 25, 2018.

At the due process hearing, the district’s Assistant Superintendent for Student Services testified that if it were not for the illegality of possession of THC on a public school campus, the public school would be the LRE for student. Based on this testimony and the progress the student made in her preschool program, the judge ruled that the district’s proposed in-home program was not the LRE for the student and therefore denied her a FAPE.

The judge then went further, stating that the possession and transportation of the THC rescue medication by the nurse assigned to the student was in compliance with California state law. As to the CSA—which at this time bars possession and use of any marijuana derivative—the judge stated that there is no “realistic prospect” that the student or student’s nurse would be prosecuted for violating the CSA. In conclusion, the judge stated that it was “not reasonable” for the district to exclude the student from campus based on a “theoretical concern for a federal law that is at present unenforced and unenforceable.”

The judge did not address potential risk for loss of federal funding due to allowing marijuana on campus. Also notably absent from the decision is any discussion of the discipline provisions of the Education Code, which permit discipline for possession and use of marijuana. The judge ordered the district to convene an IEP meeting within thirty days to “place student on a public school campus among her peers with her emergency medication available.”

This decision is not binding on any other school districts besides Rincon Valley Union School District, nor binding on other judges. Additionally and of note, this decision is a significant departure from a previous OAH order, where a different judge from OAH denied a student’s motion for stay put, where the IEP stated that a student with a seizure disorder needed access to cannabidiol (or “CBD,” another derivative of marijuana, but unlike THC, it does not create a “high”) on campus. (*Student v. Sylvan Union School District* (2014) OAH Case No. 2014010077 “Sylvan”). The judge in the *Sylvan* case stated that, “OAH will not turn a blind eye, under the guise of stay put, to an IEP that calls

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for unlawful criminal activity under other state and federal statutes simply because the parties had previously agreed upon and implemented the unlawful provisions.”

Takeaways

Because this decision is not binding and it fails to address several components of state and federal law regarding the presence of marijuana on public school campuses, school districts and parents should not presume this case to mean that all students in California can now have access to medical marijuana on campus, or that districts are required to administer same. This area of the law continues to rapidly develop and change. Thus, a school district facing a request for a student to have access to medical marijuana at school should contact legal counsel.

We encourage you to listen to the webinar [Getting Blunt: An Update on Marijuana in Schools](#), presented by Aimee Perry and Alyssa Bivins, which discusses the issues raised in this article in greater detail. Look out for the next Getting Blunt webinar to remain up to date in this rapidly evolving area of the law.

If you have any questions regarding medication administration in general, or this ruling, contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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