I wonder what the PED and the state will do to get these students back in school that have been out due to school districts refusing to allow medical cannabis on campus? The school district in [redacted] where [redacted] used to attend refuses to allow his medication in school which he needs during the day to access his education, has already refused to administer it and continues to, due to it being federally illegal. This new rule change has not changed anything. So what will happen to these districts or administrations that refuse to uphold State law? These students CAN NOT go another school year without their education! Its sad that no one is doing anything to help these children! Again this law isn’t helping! It is sad to see [redacted] how he just want to go back to school to learn and be with his friends. Its wrong and should be a criminal offense to do this to young children! Its sad that the secretary of the PED said she would bring in his mother [redacted] to help with this law and such and then not even notify her of this! Its sad the government has to be shady when dealing with children! I’m tired of the discrimination and harm being done to these young minds including [redacted] (the two students I’m aware of) I’m sure there are others! I think I read somewhere that there are approximately 175 students on medical cannabis in this state. This needs to be made a priority! This is a medicine like all other medication and needs to be treated as such! The PED, state of NM, and the department of health need to step up already and help these students and families! This state need to make all students and education a priority not just Prek. Thanks for hearing me out! Sincerely, Julie Morales
My son did his senior research paper on this issue and cannabis in schools was one part of it. I wanted to include this into the comments from another student. Included is his power point and part of his essay.

Essay

The first reason medical cannabis needs to be allowed in public areas is so patients or students can take it at school. The medical cannabis program is growing and the amount of people being prescribed this medicine is increasing as well as the approved conditions this medicine can treat. There are many conditions that are found in children including schizophrenia, epilepsy or seizure disorders, cancer, anorexia, PTSD (post-traumatic stress disorder), and many more. The approved conditions vary from state to state. Children between the ages of 4 to 18 are required to attend school, however, if these children are in school and are diagnosed this medicine the law contradicts it being administered to patients on school campuses because it is classified as a schedule 1 drug. More gray area in regards to the law. In New Mexico medical cannabis is approved and prescribed to children. There are currently two students that have been in the news for not being allowed to take their medication when needed on school campus and are no longer in school receiving the education they are entitled to, as every other student. One of these students is in our own community and used to attend [REDACTED]. He has been out of school and missing so much including valuable learning experiences, therapies, friends, most of his 4th grade year and now going on his entire 5th grade year (almost a total of two academic years), that can never be replaced. The other little girl is just barely a kindergartener and used to attend [REDACTED].
Both mothers of these students are fighting for change to the laws so that their children can return to school. They have been up in Santa Fe at the round house pushing for changes and pleading with senators and lawmakers to protect these patients on the medical cannabis program and to make changes to the laws (KRQE & KOAT). These students are being discriminated and denied their human rights. Every other schedule drug is allowed to be administered on campus including amphetamine and methylphenidate which are used to treat ADHD (attention deficit hyperactivity disorder). ADHD has been diagnosed in 9.5 percent of children in the United States between the ages of 3-17.

The eleven year boy has been diagnosed with ADHD, PTSD, and schizophrenia and is being treated with medical cannabis as a prescription medication and due to this cannot attend school because he needs access to his medication at school and on campus (Campbell, 2019). The five year old girl is also prescribed medical cannabis to treat Dravet Syndrome (a severe form of epilepsy) which needs to be administered her medication three times a day to keep her seizures under control, is in the same boat as the eleven year old boy, not in school, not living a normal child’s life simply because of their medication (Perea 2018). This is not fair that most students can dose at school, but, yet these others are not even allowed to, even though it is a prescription medication like these other medications. Their cannabis is not being used as an “illegal drug” for recreational use or because of drug addiction, it is not being abused! It is simply being used as a needed prescribed medication to treat a series of medical conditions. These innocent young students should not be punished or denied their right to a free appropriate education! A girl from Schaumburg, Illinois is back in school after a federal judge declared it was okay for her to take her medication to school after her parents sued the school district in federal court (Christensen 2018). The states of Washington, New Jersey, Maine, and Colorado require their schools to allow students to use their legal prescriptions on campus, according to 2016 information from the education policy team Education Commission of the States.
To Whom It May Concern,

Despite being an advocate for Medical Cannabis, I am appalled by this rule. It completely ignores the reality of SMOKING cannabis.

I submit that someone carefully consider the following questions, before this rule is implemented:

While the proposed rule seems to imply that only edibles or oils will be medically prescribed, it is doubtful that this will be the reality. The medical cards that people recieve now, do NOT provide any guidelines as to what kind or how much cannabis a person needs to consume. And before you begin to say that we are talking about children and their prescriptions will be different, what will you tell an 18-year old in high school who has such a card?

Also, are you confident that a younger teenager with intense anxiety or depression will recieve a limited presrcription that does not include smoking cannabis?

How on earth is a school supposed to allow a student to smoke? In many schools, it will set off the smoke detectors.

Are we then to allow the student to sit outside to smoke? Where other students, parents and community will see them? Wouldn't that violate FERPA?

What about the reality of second hand smoke? As a young woman, I acquired a second hand buzz when a family member was smoking their medical cannabis. So, I know that such a thing is extremely possible. How is a school supposed to ensure that other students aren't exposed? What about staff? If a staff member is assigned to "administer" the medicine, doesn't that mean they have to be in the same room as the student?

Thank you for the consideration of my concerns. I strongly urge PED to reconsider this Proposed Rule 6.12.10 Medical Cannabis.

Charity Cheung
Deming Intermediate Teacher
Good Morning,

Please see the attached public comment document for Rio Rancho Public Schools in reference to Proposed Rulemaking 6.12.10.

Rio Rancho Public Schools appreciates the opportunity to comment on the pending rulemaking for the implementation of Senate Bills 204 and 406 passed during the 2019 Regular Legislative Session.

If you do have any clarification questions please let us know.

Thank you,

Tonna Burgos, Ed.S.
Rio Rancho Public Schools
Executive Director of Student Services
505-896-0667 ext 51177, 51129 or 51123
Fax 505-994-9723

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Rio Rancho Public Schools Public Comment

Rio Rancho Public Schools appreciates the opportunity to comment on the pending rulemaking for the implementation of Senate Bills 204 and 406 passed during the 2019 Regular Legislative Session.

1. This proposed rule seems to violate the requirements of NMSA 1978, Section 14-4-5.7 regarding the validity and enforceability of rules that conflict with statute. No rule is valid or enforceable if it conflicts with statute. 14-4-5.7(A).

   A. 6.12.10.8(A)(1) and (A)(6)(a)&(b). This section of the proposed rule appears to make it mandatory for school districts to authorize the possession, storage and administration of medical cannabis by parents and legal guardians AND by designated school personnel, whereas the statute allows a district to choose one or both groups for this authorization but does not mandate both be authorized. Id.

   B. 6.12.10.7. This section of the proposed rule contains definitions that are worded differently and may conflict with those in statute: certifying practitioner, designated school personnel, medical cannabis, and written certification. To the extent that these definitions are different from the statutory definitions, they are resolved in favor of the statutory definition. 14-4-5.7(B).

   C. 6.12.10.11. This section of the proposed rule appears to require a school district to have a written communication from the federal government indicating a withholding or withdrawal of federal education funding. This appears to conflict with the statute that only requires a school district to “reasonably determine that it would lose, or has lost, federal funding” as a result of implementation. It is possible for a district to reasonably determine it will lose federal funding without a letter from a federal agency to that effect and there may be funding, other than education funding, that could be lost as a result of implementation.

2. Because this rule appears to require school districts to provide for storage and administration of medical cannabis by school personnel, it requires school districts or school employees to violate the federal Controlled Substances Act, 21 U.S.C. 841, et. seq., which prohibits the possession and distribution of illegal drugs. Violations of the CSA carry serious penalties including some mandatory minimum prison sentence requirements. Id. These violations include enhanced penalties for individuals over the age of 18 who distribute illegal drugs to individuals under the age of 21 and those who possess illegal drugs at a school. 21 U.S.C. 859 and 860.
While the United States Department of Justice, in a memo dated August 29, 2013, clarified its priorities in prosecuting marijuana-related violations of the CSA, DOJ listed “[p]reventing the distribution of marijuana to minors” as its top priority. This guidance is often cited as a reason for individuals to be less-concerned with violating federal marijuana laws; however, there is no reason for the memo to comfort school districts or school employees who will be “forced” by this proposed rule to engage in possession and distribution to minors. At the close of the memo, DOJ reserves the right to prosecute any organization or person who violate the CSA and neither state law or the DOJ’s own guidance memo is a defense to a violation of federal law.

3. School Nurses do not dispense substances such as herbs or dietary supplements that are not FDA approved. While there has been some recent work to evaluate the effectiveness of cannabis products for the treatment of medical conditions, they fall under these categories since they are NOT FDA approved or regulated. A doctor cannot prescribe medical cannabis and a nurse cannot monitor expected outcomes.

A school nurse may only administer prescription medications according to a provider’s orders that are in a pharmacy-labeled container (NMAC 16.12.27 Definitions--“administration of medications”, a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board to administer medications;) OR over the counter medications with a form signed by a parent or legal guardian according to the directions on the package labeling that adhere to strict FDA guidelines.

A medical cannabis card is NOT a physician's order. While a medical provider needs to certify the patient's diagnosis, the provider is NOT prescribing medical cannabis. SB 406--"qualified patient" means a person who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification." The student must possess a Medical Marijuana Card; the school must have documentation (i.e. a birth certificate) on file that confirms the card belongs to the student.

The Right Dose is one of the 7 Rights of Medication Administration. Cannabis preparations are currently formulated by a dispensary or an individual who has a "personal production license." The dosage of THC can vary widely, thereby making expected outcomes difficult to identify. According to SB 406, "cannabis": (1) means all parts of the plant Cannabissativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent" (< 3/10% = hemp.) Section of SB 406 states, "THC CONTENT--NO LIMITATION.--The department shall not limit the amount of THC concentration in a cannabis product."

4. Requiring a school board to identify the school personnel who are designated to perform responsibilities of possession, storage and administration of medical cannabis seems to violate the spirit, if not the letter, of HB 212. Placing this responsibility on a school board (at any level other than policy) is probably a violation of the Public School Code which empowers the superintendent to “employ, fix the salaries of, assign, terminate or discharge all employees of the school district.” NMSA 1978, 22-5-14(B)(3). This requirement also ignores operational realities of the school environment where schools encounter daily administrative challenges but school boards only meet a couple of times per month.
5. As a matter of law, a release from a primary caregiver will not have the legal effect desired if a minor repudiates any release signed by the caregiver and institutes a claim for personal injury, civil rights violations or medical malpractice after reaching the age of majority. A release from a caregiver will also not protect the released parties from third-party claims, such as crashes involving hypothetical students who receive a dose of cannabis that impairs their ability to drive or operate machinery that injures others. While the rule cannot conflict with the requirement that such a release be provided, this rule should contain as many provisions that would better protect schools and school employees, such as a requirement that a primary caregiver indemnify, defend and hold harmless the released parties from ANY and ALL claims experienced by the released parties as a result of the use of medical cannabis.

6. The rule does not address the use of vehicles on campus by students who may be under the influence of medical cannabis.
Dear Mr. Sena,

Please find comment from Albuquerque Public Schools regarding the proposed rule for medical cannabis.

Thank you,

Heather Dahl, Ph.D.
Policy Analyst/Government Affairs Liaison | Albuquerque Public Schools

Cell: 505-350-1649 | heather.dahl@aps.edu | PO Box 25704 Albuquerque, NM 87125-0704
Dear Mr. Sena:

Thank you for allowing feedback on proposed rule change, 6.12. 10 N.M.A.C., Medical Cannabis in Schools, from the New Mexico Public Education Department. While the rule helps to explain the process of medical cannabis in schools, federal law does not recognize or protect medical cannabis possession or use; the federal government can prosecute people who are otherwise protected under state medicinal cannabis laws.

Though school districts desire to support the needs of all students to participate in public education, we cannot support a rule that, on its face, puts our employees at risk of violating federal law. Albuquerque Public Schools expresses concern for this rule in five main areas: protection for employees from criminal and civil liability; designation of school personnel, rather than parents; provisions and sources for training for districts and school boards; information required for administration and dosage; exemptions for districts from the rule. In sum, APS believes this rule exerts demands on the district that exceed those required in SB 406 and SB 204 and puts school districts between choosing to honor state or federal law.

There remain several areas in which the imposition of this rule, and the subsequent creation of district policy would put employees at risk for criminal and civil liability. Only through state and federal law, not PED rule, can employees be guaranteed of protection from civil or criminal liability for following this rule. According to Senate Bill 406, the parent or legal guardian must act as the Primary Caregiver. In addition, in order to allow the use of cannabis in a child under 18 they must be informed by a patient’s practitioner the risk and benefits to their child for using Cannabis. It further outlines that the primary caregiver-(parent) must consent in writing that they consent to its use, will be the primary caregiver and they will be the individual controlling the dosage and frequency of use. These exceptions for parents to not be liable to criminal proceedings also hinge on the amount of supply. These protections for parent providers do not seem to equally apply to school personnel in this section of law, nor do they address the possible situation when the cumulative collection of medicine at a school site, for multiple students, may exceed the limit defined by department rule. In addition, SB 406 states that “participation in a medical use of cannabis program by a qualified patient or primary caregiver does not relieve the qualified patent or caregiver from … Criminal prosecution or civil penalty for possession or use of cannabis:… at a public park, recreation center, youth center or other public place.” Many schools share property with public parks and field trips and after school activities take place in these venues. This rule does not protect school personnel from personnel liability when carrying cannabis for students to off-site activities. In addition, SB 204 provides so that districts/charter schools may adopt policies that restrict the types of designated school personnel who may administer medical cannabis to qualified students. This needs to be defined in 6.12.10.8.B. so school districts/charter schools do not designate a person who can lose their license by administering medical cannabis (e.g. school nurses).
This rule requires schools to designate personnel responsible for storage and administration; both SB 406 and SB 204 do not require school personnel, making parental administration an option. In both SB 406 SB 204, districts are directly to draft policies and procedures “to authorize the possession, storage, and administration of medical cannabis by parents and legal guardians, or by designated school personnel.” This rule requires a stricter interpretation of the law. Not only does this rule require schools to designate school personnel it requires policies for “disciplining a school employee who refuses to administer medical cannabis.” Permitting students into schools who use medical cannabis is far different than requiring involvement of employees.

This rule requires the school board to provide training for the medical cannabis policy. School boards are not equipped to provide this training. In all other areas the Department of Health provides this training to schools. PED should work with the Department of Health to create resources and training.

This rule provides insufficient information about dosage requirements to be consistent with other medicine stored and administered in schools. NMAC 6.12.10.10.B.9 states that the “primary caregiver” must “provide… a new package or container with clearly labeled identifiers including the qualified student’s name, date of birth, and dosage allotment, upon enrollment in a new public school following disenrollment, withdrawal, transfer or graduation from another school.” In order to safely administer any medication the information provided must also contain needs the dosage amount, the time of administration, how to give it and the parents need to provide the appropriate delivery and measurement device (e.g. teaspoon, medicine cup, dropper). Furthermore, the labeled containment MUST match the providers and caregivers provided treatment plan. If the plan is changed, the parent must provide a new updated treatment plan and appropriate labeled container of cannabis. This rule needs language that also says that a new plan is needed every school year or when the treatment plan is changed and it is only valid for a calendar year.

This rule, 6.12.10 NMAC also takes a much stricter interpretation for exemption than that provided in SB 204 and SB 406, essentially, not allowing any district option to exempt from this rule. In 6.12.10.11 Exemption from Rule; Appeal procedures: “A school district or charter school may seek an exemption from implementing the provisions of this rule if it receives written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn.” This section seems to be in conflict with Senate Bill 204 and 406 that state that the bill may not apply to a school district/charter school that “reasonably determines that it would lose or has lost federal funding as a result of implementation the provisions of subsection A.” PED should provide a process, outlined in rule, to allow districts to demonstrate this request with support from PED for districts within the range of reasonable. Verification of the loss of federal funding as well as the criminal and liability of employees, exceed the burden of “reasonable.”

If you should have, any questions or concerns please contact Heather Dahl, APS Government Affairs and Policy, at heather.dahl@aps.edu.

Sincerely,

Raquel Reedy
Superintendent
To whom it may concern:

SB 406 and SB 204 each provide, in Section 1(A) that “local school boards and the governing bodies of charter schools shall authorize by rule the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings…."

By its use of the word “or,” it is clear that the Legislature did not intend to require boards to authorize medical cannabis possession, storage, and administration by both parents/guardians and designated school personnel. The legislature intended that the medical use of cannabis be allowed in schools, but it did not state that designated school personnel had to administer it. The Legislature left it up to local boards to determine that parents could administer but that school personnel may not.

The proposed rule clouds that issue and makes it appear more likely than not that board must require both parents/guardians and school personnel to administer. Proposed 6.12.10.8 is the main problem.

A. Policies and Procedures. Each local school board or governing body shall establish policies and procedures for the possession, storage, and administration of medical cannabis as follows:

(1) School district and charter school policies and procedures shall:
   (a) Prohibit students from possessing, storing, or self-administering medical cannabis in a school setting;
   (b) Require the primary caregiver to deliver the medical cannabis in a container clearly labeled with:
       (i) The student’s name and date of birth; and
       (ii) The dosage allotment;

(2) Prohibit qualified students from storing the medical cannabis in the school setting;

(3) Require the provision of a secure location with a locked storage container that is accessible only by designated school personnel;
require the immediate return of medical cannabis used in a school setting outside of school premises to a locked storage container;

require the designated school personnel responsible for storage of the qualified student’s medical cannabis to return any unused medical cannabis to the primary caregiver at the end of each school year or upon disenrollment, withdrawal, transfer, or graduation of the qualified student, whichever occurs first;

address the administration of medical cannabis in school settings during the school day by:

(a) primary caregivers; and

(b) designated school personnel;

The final rule should be explicit that school can choose to have parents administer, can choose to have school personnel administer, and can do both, but are not required to do both so long as medical cannabis is administered by somebody.

Dan Castille

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