

Chicago Daily Law Bulletin®

Volume 164, No. 115

Serving Chicago's legal community for 163 years

Medical marijuana goes to school?

On May 17, in a nearly unanimous vote, the Illinois Senate approved a bill that permits parents, guardians and caregivers to administer medical marijuana to qualifying students on school premises and school buses.

Gov. Bruce Rauner's signature is all that is required for the bill to become law. The bill, referred to as Ashley's Law, will amend the School Code by adding Section 22-33 and will take effect immediately upon becoming law.

Ashley's Law arose out of a civil lawsuit in the U.S. District Court for the Northern District of Illinois. The lawsuit was brought by the parents of Ashley Surin, a then 11-year-old student with leukemia, against the board of education for *Schaumburg School District 54, A.S., et al. v. Board of Education for Schaumburg School District 54*, No. 1:18-cv-00181 (N.D. Ill., Jan. 10, 2018).

Ashley's parents claimed that the school district violated the 14th Amendment by failing to allow administration of a THC patch and cannabis oil to Ashley while she was in school. According to the family, the patch and oil help control Ashley's leukemia-related seizures and epilepsy.

The family's attorney argued that the ban of marijuana on school grounds was simply a legislative oversight. Notably, when the legislature passed the Compassionate Use of Medical Cannabis Pilot Program Act in 2014, it failed to account for the fact that young children may be prescribed and need medical marijuana.

During an issue hearing on the

matter, state Assistant Attorney General Thomas Ioppolo indicated that the Illinois attorney general would not prosecute school employees for dispensing the prescribed medical marijuana. U.S. District Judge John Robert Blakey issued an emergency order in favor of the family and its counsel, holding that Ashley could return to school with use of medical marijuana during the school day.

He noted that state officials would have to address the state law prohibition on possession or use of marijuana at school.

In direct response to Blakey's directive to state legislators, Ashley's Law (HB4870) provides the following:

"[A] school district, public school, charter school or non-public school shall authorize a parent or guardian or any other individual registered with the Department of Public Health as a designated caregiver of a student who is a registered qualifying patient to administer a medical cannabis infused product to the student on the premises of the child's school or on the child's school bus if both the student (as a registered qualifying patient) and the parent or guardian or other individual (as a registered designated caregiver) have been issued registry identification cards under the Compassionate Use of Medical Cannabis Pilot Program Act. After administering the product, the parent or guardian or other individual shall remove the product from the school premises or the school bus."

The law further specifies that (1) the administration of cannabis must not create a dis-

ZARIA N. UDEH

Zaria Udeh, an associate at Robbins Schwartz, focuses her practice on education law, special education and student issues in particular. Udeh counsels school districts and community colleges with respect to individual education program meetings, 504 accommodations, Office of Civil Rights complaints, due process hearings, residency hearings, student discipline matters, board policy review, Freedom of Information Act requests, Family Educational Rights and Privacy Act compliance and contract review.

ruption to the school's educational environment or expose the product to other students; (2) the school or district may not discipline or deny a student from attending school who is administered a medical cannabis infused product by a parent, guardian or caretaker; (3) schools may not authorize the use of a medical cannabis infused product if the school district or school would lose federal funding as a result of the authorization; and (4) school staff are not required to administer a medical cannabis infused product to a qualified student.

The law also requires that school districts, public charter schools and nonpublic schools must adopt a policy implementing such.

If the measure becomes law, Illinois schools will have to engage in the task of trying to understand what Ashley's Law means for them. Illinois has the benefit of being able to reflect upon school district policy models and examples of school-based practices elsewhere.

Of the many states that have

legalized medical or recreational marijuana, Colorado, Delaware, Florida, Maine and New Jersey are states that have permitted students to use medical marijuana at school through the passage of state legislation.

In Washington state, schools are not legally required to permit on-site medical marijuana use for students, but do have the option to allow its use in accordance with school medication policies. The approach to establishing practices and policies by the districts and schools in those states is varied.

Illinois schools, if the bill is signed into law, will eventually need to adopt policies regarding who may act as a designated caregiver and the reasonable parameters for the administration and use of medical marijuana at schools.

In addition to considering how to develop reasonable policies and practices around the administration of medical marijuana at school, Illinois schools must still be cognizant of the federal prohibition against marijuana use.

The landscape is seemingly ever-changing as it relates to the U.S. Justice Department's guidance and position on this issue.

There is no bright line for schools to rely on indicating whether or not there will be any negative response from federal agencies or whether federal funding will be jeopardized in any way.

It will be the complicated work of school attorneys, administrators and legislators to navigate the uncertain territory of medical marijuana use at school in Illinois moving forward.