MARIJUANA AND THE DRUG FREE SCHOOLS AND CAMPUSES

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As states and localities across the nation legalize and decriminalize marijuana, both as a medicine and recreational drug, institutions of higher education 9 IHE's struggle with how to address the social and cultural changes with students, staff, and faculty, and how to balance conflicting legal mandates. Federal law has not changed, and marijuana still remains classified as a Schedule I drug. As a result, regardless of state and local law changes, institutions of higher education are expected to continue to abide by the Drug Free Schools and Campuses Act (Edgar Part 86) by maintaining policies which prohibit marijuana possession, use, or distribution by students, staff, and faculty. Even medical marijuana is not permitted under federal law. This, of course, raises several implications for higher education. An institution that knowingly permits possession, use, or distribution of marijuana is at risk of losing, and even having to repay federal funding, although few, if any institutions have been required to do so.

Students arriving on campus with a prescription for medical marijuana may present the greatest challenge for institutions. Under federal law, marijuana prescriptions cannot and should not be honored. Students with medical marijuana prescriptions would be required to store and use such medications at off-campus locations, most commonly requiring off-campus residency. For institutions with on-campus residency requirements, such arrangements may not be possible. As a workaround, but one that is not without legal risk, some institutions have considered and offered accommodations to allow such students to live off-campus. While such actions may reduce conflict between those students with prescriptions and the campus, offering such accommodations are not required under Federal Disability Law as the Federal scheduling of marijuana still considers possession and use as a violation of law. Offering such an accommodation might even be considered a violation of the Drug Free Schools and Campuses Regulations.

As more students and employees come to campus with medical marijuana prescriptions, some will likely argue that disability laws protect their marijuana use, yet such arguments are in vain under federal law which continues to schedule Marijuana as a Schedule I drug. A growing body of case-law reinforces this position.

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In *James v. City of Costa Mesa*, James and other plaintiffs sued the municipality for perceived violation of their rights for accommodation after the municipality had prohibited the sale of marijuana within city limits. Prior to the prohibition of marijuana sales, the plaintiffs had acquired their marijuana from dispensaries within the city limits. Once prohibited, the plaintiffs believed discrimination was occurring, based on discrimination under Title II of the ADA, which provides that public entities shall not discriminate in the provision of public services. Both the district court and an appeals court agreed that unless marijuana was rescheduled as a legal drug, the ADA could not be used as a means of overcoming discrimination. For higher education, this suggests that IHE's are not required to provide accommodations for students who have medical marijuana prescriptions.

Employee use of marijuana may also be of concern. In many situations it is clear that on-campus use during work hours is not allowed by the Drug Free Workplace Act and the Drug Free Schools and Campuses Acts. Even with a medical prescription, federal disability laws do not allow for accommodations of on-campus use. Furthermore, legalization of recreational and/or medicinal marijuana does not allow employees to report to work impaired, or bring marijuana paraphernalia to campus.

Off-campus use of marijuana by students and employees may be seen as a gray area, especially if users are not arriving on campus in impaired states. This is not to say that institutions cannot sanction off-campus behavior, even if local and state laws allow such behavior.

In *Coats v. Dish Network,* the plaintiff argued that Dish Network improperly terminated him from the company as a result of his off-work, yet legal by state statutes marijuana use, and that the termination was in violation of a Colorado state law the prevented businesses from firing employees for off-duty, lawful activities. Coats argued he never used marijuana while working, and was being discriminated for his off-work medicinal marijuana use. In *Coats*, both the district, appellate, and Colorado Supreme Court upheld the ruling that Dish Network had the right to terminate Coats. Had the matter gone before the U.S. Supreme Court, it is likely a similar ruling would had been offered. Although the issue has not yet been tested, specifically in court, it is likely that an institution would be able to enforce and sanction off-campus use of marijuana, even if local and state law allows such use, so long as student conduct codes are written appropriately.

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Any college campus that permits the use of marijuana by any staff, faculty, or student will risk losing all federal funding for that school. Despite changes in societal views regarding marijuana, federal law has not changed, and therefore institutions of higher education must maintain and continue to monitor, enforce, and sanction student and employee marijuana use as they have since the creation of the Drug Free Schools and Campuses Act in 1989.

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