

Possession of CBD Oils by Students

by Julie M. Slavens, ISBA Staff Attorney (jslavens@isba-ind.org)

Last year the Indiana General Assembly passed a law that defined low THC hemp extract products and excluded such products from the controlled substances schedule under Indiana law. The state law, by excluding hemp extract or any product containing the hemp extract from the state controlled substance schedule, relegated these products to being over-the-counter drugs or prescription drugs; thus they are no longer illegal drugs in the state. There was no related change in the federal definition of controlled substances until December 2018, when the United States Congress passed the Farm Bill of 2018 which excluded hemp from the schedule of controlled substances under federal law. With the passage of this federal law, hemp extract-containing products are legal on a national level and can be purchased in retail stores or prescribed by a doctor.

One of the common products containing hemp extract is CBD oil. Some students may be or are using these products as over-the-counter products or may have a medical prescription for CBD oil. Last summer, ISBA advised its members to address the use of such products in its administration of medication policy as this is the policy that covers the use and possession of prescription or over-the-counter drugs by students while at school. ISBA made revisions to its sample policy on the administration of medication and sent it out to its members.

ISBA revised its sample student discipline rule on the possession of marijuana to address the change in state law. The revision indicated the possession of low THC extract products would not violate the rule. The possession of such products would potentially violate the administration of medication policy. The student could be disciplined for violating the administration of medication policy if the school had a discipline rule prohibiting the violation of any board policy or rules, which the ISBA sample discipline rules include as a separate rule.

Some school corporations may want to prohibit the possession of the low THC extract products in a clearer fashion other than by the administration of medication policy alone. This may be done by adding a provision to the student rule prohibiting the possession of controlled substances, even though the hemp extract products are no longer controlled substances. To do so, the following provision, or a similar one, may be added to the student rule prohibiting possession of controlled substances:

Low THC Extract products as defined by state law are included in this rule and/or violations of the school corporation administration of medication policy are included in this rule.

For ease of reference, the ISBA sample rule on prohibiting the possession of controlled substances follows:

Possessing, using, transmitting, or being affected by any controlled substance, prescription drug, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, intoxicant or depressant of any kind, or any paraphernalia used in connection with the listed substances. Also prohibited is the consumption of any of the stated substances immediately before attending school or a school function or event.

(Cont'd from page 2)

Opinion

After the complaint had been filed, the board conceded the procedure it used to select the applicant for the board vacancy violated the Open Door Law. At a subsequent meeting, the board made the ballots it originally used public and had each board member identify his/her ballot. In his resolution of the complaint, the Public Access Counselor acknowledged the board's attempt to cure the violation, but still concluded that the board violated the Open Door Law by using the secret ballot.



NSBA Annual Conference

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Also, ISBA will be hosting a boxed luncheon for Indiana attendees at the Marriott Philadelphia Downtown on Saturday, March 30, from 12:00 – 2:00pm.



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