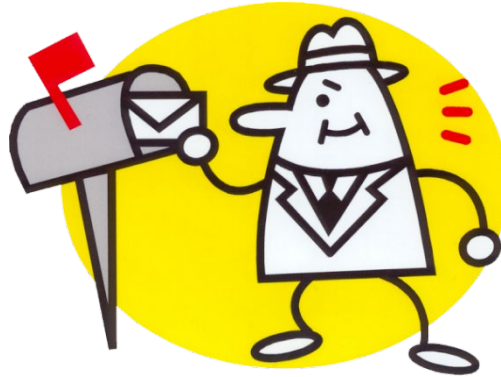


LEGAL MAILBAG – February 29, 2024



By Julia V. Wilde, Partner, Shipman & Goodwin LLP - GUEST COLUMNIST

The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

As a faithful reader, I was interested to read your column last week, addressing a fellow administrator’s question seeking guidance to help with concerns related to marijuana use around school premises in the wake of the legalization of recreational marijuana use in Connecticut. [Legal Mailbag February 22, 2024](#). My colleague inquired about appropriate school response to the lingering smell of marijuana on school grounds, and the particularly notable increase during arrival and dismissal times when parents are rolling up in their vehicles (see what I did there?).

As always, I found your response to be insightful, especially in terms of how we might involve law enforcement if we suspect that a parent or guardian is under the influence and the discussion of a direct appeal to parents. However, in thinking further about the topic, a corollary issue came to mind. Student safety, as you noted, is always a priority, and that priority often extends beyond the schoolhouse doors. As educators, we are all mindful of our obligations as mandated reporters under the laws protecting against the abuse and neglect of children in our state. This leads to my question. Does Legal Mailbag have any advice regarding what impact the legalization of marijuana has on the role of school employees and officials as mandated reporters of suspected abuse and neglect? Now that it’s legal to light up, do we still have to report parental drug use or suspected drug use to DCF?

Signed,
Dazed AND Confused in CT

Dear Dazed:

Thanks for bringing up this important point. As with any new legislation, the interplay with existing laws and regulations is always an important consideration, and often an opportunity for learning over time. As Legal Mailbag opined last week, there is no clear legal answer as to how schools should (or must) address marijuana use on school property. Indeed, Public Act 21-1 (now codified in the Connecticut General Statutes as Chapter 420h, Regulation of Adult-Use Cannabis) does not specifically address or prohibit the use of cannabis on school grounds (although it does restrict the advertisement of cannabis or cannabis products near elementary and secondary schools). The law, however, makes at least some reference to the mandated reporting statutes you refer to, and to proceedings initiated by the Department of Children and Families (“DCF”), so let’s start there.

Conn. Gen. Stat. Sec. 21a-422a(2) states that the presence of cannabinoid metabolites (i.e. Tetrahydrocannabinol, or THC) in the bodily fluids, or bloodstream of a child’s parent or legal guardian:

shall not form the sole or primary basis for any action or proceeding by the Department of Children and Families, or any successor agencies provided, nothing in this subdivision shall preclude any action or proceeding by such department based on harm or risk of harm to a child or the use of information on the presence of cannabinoid metabolites in the bodily fluids of any person in any action or proceeding.

Having been specifically included in the new law, DCF issued an [FAQ](#) addressing the question of how the new law affected the Department. DCF concluded that while the new law legalizes the use of marijuana in the State of Connecticut, DCF also recognizes that the use of marijuana by any adult – or by any child—may still pose a risk to a child and could impact their social emotional well-being. DCF made clear that the use of cannabis cannot form the primary basis for any action of proceeding by DCF, but that they will continue their practice of assessing parental capacity and impact on the ability to care for the child. On July 15, 2022, the DCF Commissioner issued a memorandum clarifying this, which can be found [here](#).

The key takeaway for school employees, and for mandated reporters in general, is that under the law, while marijuana use itself, as indicated by the presence of THC in one’s bloodstream or other bodily fluids, cannot be the primary basis for any DCF action, the effects of such use could still constitute neglect and pose risk of physical or emotional harm to a child. DCF’s Policy Manual, [Section 22-1](#) defines the term “drug endangered child” to include a child whose caregiver’s substance misuse interferes with their ability to parent and provide a safe environment. [Section 21-7](#) of the DCF Policy Manual, addressing Substance Use Disorder Screening and Testing, was updated in 2022 and clearly states that while a positive cannabis test shall not form the sole or primary basis for a DCF proceeding, DCF may still initiate an action or proceeding based on harm or risk of harm to a child. The policy makes clear that information on the presence of THC in the bodily fluids of any person may be included in any action or proceeding and that DCF shall continue to assess parental capacity and the impact on the ability to care for the child regardless of the outcome of any cannabis test. Legal Mailbag notes too, that the increased availability of cannabis and cannabis products could lead to increased risk of physical harm to children through accidental ingestion.

In short, while the use of marijuana by adult caregivers may now be legal, use or misuse that puts a child at risk of harm still runs afoul of state care and protection laws. Thus, the legalization of marijuana really doesn't impact your obligations as a mandated reporter. A simple analogy would be to consider how the use or abuse of alcohol has historically been considered in this context. The bottom line is that if, in the ordinary course of your employment or profession, you have reasonable cause to suspect or believe that any child under age 18 has been abused or neglected, has sustained a nonaccidental physical injury or an injury that is at variance with the history given of the injury or is placed at imminent risk of serious harm, you must report. This responsibility is neither negated nor abridged by the statutory legalization of cannabis in our state.