Vaping, Drug Use Trends & The Impact On Our Public Schools?

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Presenter

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This presentation is intended as a summary of law only, and is not meant as legal advice. Please consult your attorney to obtain legal advice.
Governor Christie Declares Opioid Crisis a Public Health Emergency

January 17, 2017

Cited 22% increase in drug overdose deaths from 2014 – 2015

20% of adolescents with opioid prescriptions report misuse
President Trump Declares Opioid Crisis a Public Health Emergency

• 200% Increase in rate of overdose deaths involving opioids from 2000 – 2014
• 61% of all drug overdose deaths lined to opioids
Brief Case Study......
Four 11th Grade English Students...
Backpack Search
Pocket Search
Backpack Search

Wallet Search
Probable Cause

Reasonable Suspicion
Where Do Students Get Pot In Legal States?
Where Do Students Get Pot In Legal States?

Parents

Family

Friends
Where would you get marijuana, marijuana edibles, oils, or DAB?

- From the internet: 23.2%
- At a party: 38.6%
- Buy it from a stranger: 33.9%
- From a friend: 16.2%
- At school: 11.0%
- My friend's home (without permission): 5.5%
- My friend's home (with permission): 3.1%
- My home (without permission): 16.2%
- My home (with permission): 16.2%
Have you ever been to a party hosted by adults where underage drinking was permitted?

One Out OF Every Six Students!
What Is Bagging????????
Dabbing????????
Parent Heads-Up Before Your Students
Text Them
Dabbing is inhaling the potent vapors from concentrated marijuana oil which is up to 80% THC, the psychoactive element in marijuana. In comparison, a pot cigarette contains up to 18% THC. The intense high from concentrated pot oil can literally knock you unconscious. According to an account of a NORML event in California, one person nearly cracked their skull on the sidewalk and another experienced marijuana smoker broke her two front teeth when she passed out cold after ‘dabbing’.

Another grave danger lies in the process of making homemade concentrated ‘hash’ oil. Concentrated marijuana oil is also known as Butane Hash Oil (BHO). It is made by firing up the marijuana plant material with butane, a highly flammable and toxic solvent. This intense burn releases the THC and other compounds out of the plant and concentrates them. The butane then needs to be removed by further heating the concentrate. Adding heat to a highly flammable substance is dangerous business. Any remaining butane becomes a gas at room temperature and easily ignites, even with a small spark of static electricity.
Where Do Kids Get It?
Well the average bud you're smoking or vaping can be anywhere from 15-20% THC on average unless you have dispensary access, whereas dabs, even lower quality can vary from 60-90% THC. With my tolerance level taking one dab is the equivalent of smoking around half a bowl to myself. Obviously it most likely won’t be the same for you or someone else which is why you have to figure it out for yourself! Plus if you're like me and just enjoy experimenting with different intake methods dabs are a cool way to mix it up. Just be careful because they can be verrrry powerful.

Dabs are strong, but it's still just good ol' THC and friends. The first time I tried a dab it felt like the equivalent of having smoked two, one-gram joints of really good weed. Personally I find that vaping and dabbing are the least harsh on your lungs (to me it stands to reason as you are not consuming a lot of burnt carbon and other smoke by-products), but I will note that my friends who consume a lot of tobacco find dabs to be extremely harsh.
CANDY KING SALE
ALL CANDY KING ICE E-LIQUID
$12.95/100ML
**Hidden Vape**  
22714 Ventura Blvd.  
Woodland Hills, CA 91364  
(818) 222-8828  

Ticket #10520957  
Customer: RACHEL REEVES  
10/10/15, 3:33:43 PM PDT  

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Tender: VISA  
165.64
Shop now for $16.19
Use coupon NKD100 and get it for $10.99
Have a Coke and a Vape----This rocks! I would love one of these! I wish it...
New Drug Trends
Education News……

• ‘Academic Doping’ on the rise: Numbers of students abusing ADHD drugs increasing
• New Heroin? ADHS drug abuse similar to opioids
• In Their Own Words: ‘Study Drugs’
Why Are Owners Hurting Their Pets?
Questions?..... Concerns?
Legal Requirements Related to Vaping, Suspected Drug Use and Searches

David Nash, Esq.
LEGAL ONE Director
School District Smoking Policy?

School District Vaping Policy?

School District Drug Abuse Policy?

Smoking vs. Vaping vs. Drug Abuse Policies?
Relevant Statute on Vaping

• NJ Smoke-Free Air Act, N.J.S.A. 26:3D-55, et seq.

• Bars the use of electronic smoking devices in public buildings, including schools

• If a person is found in violation of the act, may be subject to a fine of $250 for first offense, $500 for the second offense and $1,000 for each subsequent offense

• Local departments of health and State DHSS have jurisdiction. Municipal courts have jurisdiction to impose fines.
Sample Policy Language

Any pupil found to be smoking any form of electronic smoking device will be required to submit to a screening for controlled dangerous substances (“CDS”) if the staff member who found the pupil using the device has reasonable suspicion that the pupil may be under the influence of CDS. Electronic smoking devices will be confiscated from those pupils found to be in possession of same. If the student is required to submit to a CDS screen and the screening result is positive for the presence of CDS, then the electronic smoking device will be tested for the presence of CDS.
NJSIAA Policy Comparison

FORMER
In the event of a positive test result under the NJSIAA’s “General Prohibition Against Performance Enhancing Drugs,” a transgender student’s use of a banned substance may be considered by the NJSIAA medical review officer as a medical reason for the positive result.

CURRENT
In the event of a positive test result under the NJSIAA’s “General Prohibition Against Performance Enhancing Drugs,” a transgender student’s use of a banned substance shall be considered by the NJSIAA medical review officer as a medical reason for the positive result.

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FERPA—Permissible Release of Education Records Without Consent

• Education records may be released **without consent** in the K-12 context:
  • **To school officials with legitimate educational interests.**
    • *Note:* A contractor, consultant, volunteer or other party to whom the school has outsourced institutional services may be considered a school official *if*:
      • the person performs an institutional function or service for which the school would otherwise use employees;
      • is under the direct control of the school with respect to use and re-disclosure of records; and
      • is subject to FERPA’s requirements governing use and re-disclosure of personally identifiable information
  • **To schools in which a student seeks to enroll.**
  • **To certain government agencies for specific purposes, and other purposes specified in federal regulations.**
Nurses & Other Staff

- Nurses may disclose medical information in education records to “school officials with legitimate educational interests” under FERPA
- Includes teachers, bus drivers, IEP team members, I&RS members
NJ Law on Confidentiality

• All information about student or staff member’s involvement in a school intervention or treatment program for alcohol or other drug abuse must be kept strictly confidential **EXCEPT** information related to drug distribution efforts or information regarding a clear and present danger to students or others.

• NJAC 6A: 16-4.5
Disclosure of Information on Drug and Alcohol Use Under 42 CFR Part 2

• Mandatory Disclosures under federal law
  • Child abuse and neglect
  • When cause of death is being reported
  • With a valid court order

• Permissive Disclosures under federal law
  • Medical emergency
  • Reporting crimes that occur on program premises or against staff
  • To entities having administrative control
  • To outside auditors, evaluators, central registries, researches
Student Confidentiality

• Best practice to retain confidentiality to greatest extent legally permissible

• Legal requirement to maintain confidentiality for student participating in comprehensive drug and alcohol counseling program, even if reveal information on drug use in home

• However, must report if:
  • Student suspected of being under the influence in school
  • Student in imminent danger to self or others
  • Student victim of abuse or neglect
  • Student victim of HIB or engaged in HIB
  • Student involved in drug distribution activities
Reporting requirements

• If staff suspect student under the influence of alcohol, controlled dangerous substances other than steroids, or any other chemical:
  • Must report as soon as possible to principal and SAC or school nurse or school physician
  • Principal or designee must notify the parent and CSA, and arrange for an immediate medical exam (parent’s doctor, school physician or ER)
  • If student has to remain home after medical exam, SAC (or someone with school nurse, school psychologist, school counselor, school social worker or student personnel services endorsement) must conduct an alcohol and other drug assessment of student and a “reasonable investigation” of the situation to determine the student’s need for educational programs
  • If student’s use of alcohol or other drugs presents a danger to student’s health and wellbeing, SAC (or someone with school nurse, school psychologist, school counselor, school social worker or student personnel services endorsement) must initiate a referral for treatment for alcohol or other drug abuse
Reporting Requirements (cont’d)

• If staff suspect student use of anabolic steroids:
  • Must report as soon as possible to principal and SAC or school nurse or school physician
  • Same procedure as above for notice and medical examination
  • Same procedure as above for investigation and referral for treatment
• CSA may (but not required to) disclose student’s identity to law enforcement
• NJSA 18A: 40A-12; NJAC 6A: 16-4.3
Reporting requirements, cont’d

• If staff suspect student or staff member unlawfully possess, or in any way are involved in distribution of a CDS including steroids or drug paraphernalia:
  • Must report as soon as possible to principal
  • Principal must notify CSA
  • CSA must notify county prosecutor or other designated law enforcement official
  • Identities of students or staff members who voluntarily seek and participate in voluntary drug treatment or counseling program shall not be disclosed if person is not reasonably believed to be distributing illegal drugs

• NJAC 6A: 16-6.3
Board of education requirements

• Title 18A requires boards of education to:
  • Establish comprehensive substance abuse intervention, prevention and treatment programs
  • Develop a clear policy statement that outlines the district’s program to combat substance abuse & provides for identification, evaluation, referral for treatment and discipline of students who are substance abusers
  • Distribute copies of policy statement annually to students and parents
  • Develop policies & procedures for evaluation, referral and treatment of students abusing substances on school property
Board of education requirements, cont’d

- Develop in-service training for teachers to recognize and respond to substance abuse by students
- Establish an outreach program to provide substance abuse education to parents and legal guardians
- Prohibit smoking of any substance on school grounds, except as part of classroom instruction or theatrical production
Statute on Required PD for Staff


• a. The Commissioner of Education, in consultation with the Commissioner of Health, shall develop an inservice training program for public school teachers to enable the teachers to recognize and respond to substance abuse by public school pupils. The program shall, at a minimum, include:

• (1) Instruction to assist the teacher in the identification of the symptoms and behavioral patterns which might indicate that a child may be involved in substance abuse;

• (2) Appropriate intervention strategies; and,

• (3) Information on the State, local and community organizations which are available for the prevention, early intervention, treatment and rehabilitation of individuals who show symptoms of substance abuse.

• The inservice training program required pursuant to this section shall be updated at regular intervals in order to insure that teaching staff members have the most current information available on this subject.

• b. Each local board of education shall insure that all teaching staff members in the district who are involved in the instruction of pupils are provided with the inservice training program developed pursuant to this section. The inservice training program of the local board of education shall also include information concerning the policy of the board regarding the referral for treatment of pupils involved in substance abuse, as required pursuant to section 5 of this act.
Key Code Provisions

• 6A:16 Programs to Support Student Development
  • Subchapter 3 – Comprehensive Alcohol, Tobacco, and Other Drug Abuse Programs
  • Subchapter 4 – Procedures for Alcohol and Other Drug Abuse Intervention
  • Subchapter 6 – Law Enforcement Operations for Alcohol, Other Drugs, Weapons and Safety
FACTS

• Conduct Unbecoming Tenure charges filed against Vice Principal for violation of NJSA 18A:40A-12
  • VP failed to arrange for an immediate medical examination of high school students referred to him by staff members who suspected that the students were under the influence of drugs or alcohol.
  • VP had served the SD for 34 years with a previously unblemished record.

• During a 5 year span, the VP allegedly failed to properly send additional students for testing after staff members reported suspected drug use by the students.

• Commissioner held some of the incidents were handled improperly. Which ones???
Joseph Graceffo v. SD of Wayne
September 21, 2000

DECISION

- Granted. Permanent reduction of one step on the salary guide and forfeit all salary and benefits for the first 120 days of suspension.
  - Decision upheld on appeal by Commissioner and State Board of Education

RATIONALE:

- The VP made a conscious decision not to arrange for an immediate medical examination when required to do so.

- Once a staff member reports that a student appears to be under the influence of alcohol or drugs and articulates the specific indicators that form the basis for his conclusion, a principal or his designee does not have the discretion to reject that conclusion.

- Both NJSA 18A:40A-2 and the Board’s policy are clear in requiring that the principal or his designee immediately notify the parents or guardian of a student reported to be under the influence of drugs or alcohol and arrange for an immediate medical examination of that student.
Limits on Confidentiality/Privilege

Hamilton Township BOE v. Young - 5/2/14

SUMMARY:

• Tenured Student Assistance Coordinator (SAC) charged with Conduct Unbecoming
• Students had a disagreement about a drug deal (marijuana exchanged for cash) and went to the SAC to settle the dispute
• SAC directed the two students to give each other back what they had brought to the deal, in her presence.
• SAC failed to report the drugs.
• Lied to administrators during the investigation.

DECISION: Tenure Charges Sustained.
Immunity For Reporters

Staff members who report suspected child abuse, HIB, drug & alcohol use, teen dating violence, or suicidal ideation in good faith are immune from legal liability
For more information...

• LEGAL ONE website - [http://njpsa.org/legalonenj/](http://njpsa.org/legalonenj/)
  • LEGAL ONE & ASAP NJ – School Law for SACs Certificate Program

• [dnash@njpsa.org](mailto:dnash@njpsa.org)

• (609) 860-1200

• NJDOE website – Safe and Drug Free Schools
  • [http://www.state.nj.us/education/students/safety/](http://www.state.nj.us/education/students/safety/)

• NJ Administrative Code -