

term "personal consumption" will include but is not limited to possession and consumption in any form, of cannabis in a residence or other non-public place," or in venues licensed to permit cannabis consumption (i.e. a shop licensed for pot smoking.)

Unlike Proposition 215, the new proposed initiative directly addresses employment. Under Proposition 19, Section 11304 of the Health & Safety Code would provide: "No person shall be...discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act.... Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected."

mance."

**A** manager who merely smells clothes will not be enough. If he or she smokes marijuana before work, however, as he or she pleases, as long as performance is not "impaired." That standard will lead to workplace issues, for example, may well disagree on whether performance was "actually impaired." And the

# Rights of Students in

By David M. Grey

**N**ow that school is back in session, a review of the rights of public school students under the law seems appropriate. Public schools, like any other public entity, are bound by the United States and California Constitutions and a variety of statutes. The rules dictating what rights students have run the gamut from what they can wear and say while at school to school records, discipline and the rights of students with disabilities.

**Right of Access to School Records:** Parents have an absolute right to access their children's pupil records. Pupil records are documents maintained by the school relating to the pupil and can include grades, teacher and staff comments, statistical information, attendance and discipline records. Education Code Section 49069. The school must provide copies of the pupil records within five business days after an oral or written record request. The school may charge only for the actual cost of copying the records. Education Code Section 56504. There is also a right to challenge the content of a student's school record. Challenges must be presented to the school in writing. A challenge to a school record can be based on inaccuracy, unsubstantiated conclusion or inference outside of the observers area of competence or not based upon personal observation, is misleading or violates the student's right to privacy. Education Code Section 49070. Finally, parents have a right to include a statement or response to disciplinary action that must be included as part of the student's record. Education Code Section 49072.

**Rights of Students Subjected to Discipline:** Suspensions and expulsions are the most serious forms of discipline imposed upon students and are governed by Education Code Section 48900 et. seq. These provisions specify when and how students may be suspended or expelled. Contained in these provisions are rights given to students that limit when the school may resort to suspension and expulsion. For example, students cannot be suspended or expelled for the use of force or violence when in self-defense.

Education Code Section 48900(a)(2). Suspensions shall be imposed only when other means of correction fail to bring about proper conduct, except in cases of physical injury, dangerous weapons (think guns, knives, explosives), controlled substances (drugs and alcohol), robbery, extortion, or if the student's presence at school causes a danger to persons or property or would threaten to disrupt the educational process. Education Code Section 48900.5.

**Freedom of Expression:** Students do not shed their First Amendment rights to freedom of expression at school. However, it would be a mistake to think that the right of student expression is accorded

the same deference given outside of school. The U.S. Supreme Court has ruled that, "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). The special characteristics of the school environment dictate how student's First Amendment rights are applied. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969). In *Tinker*, the U.S. Supreme Court upheld the right of students to protest the war by wearing black armbands, which did not

## The rules dictating what rights students have run the gamut from what they can wear and say while at school to school records, discipline and the rights of students with disabilities.

"materially and substantially disrupt the work and discipline of school. By contrast in *Fraser* a student's use of "offensively lewd and indecent speech" justified discipline, although the court did not expressly determine that the speech "substantially disrupted the work and discipline at school". In *Morse v. Frederick*, 551 U.S. (2007), the U.S. Supreme Court ruled that student's First Amendment rights were not violated when he was suspended for displaying a banner at a school sanctioned event that contained the phrase, "Bong hits for Jesus." Perhaps the message from the Supreme Court is that traditional political speech merits more protection at school than expressions containing sexual or illegal drug use content.

California law appears to more strongly protect student rights to freedom of expression than the U.S. Supreme Court. For example, a student may not be disciplined solely on the basis of speech that



# Public School



when engaged in outside of school, is protected from government restrictions by the First Amendment. Education Code Section 48950(a). Common sense statutory exceptions to this rule allow for prohibitions against harassment, threats and intimidation unless otherwise constitutionally protected. Education Code Section 48950(d). Likewise, reasonable time, place and manner restrictions are appropriate. Education Code Section 48950(f). Notwithstanding the First Amendment, schools may prohibit expression that is obscene, defamatory or that creates a clear and present danger of unlawful action, or substantial disruption of orderly operation of school. Education Code Section 48907.

**School Dress Codes and Uniforms:** Many public schools impose dress codes and uniform requirements for their students. Schools, however, must allow parents to choose not to have their children comply with the uniform policy. Education Code Section 35183(e). Similarly, no student can be penalized academically or discriminated against, or even denied attendance at school, if they are not in uniform. Education Code Section 35183(g). Finally, students may deviate from the school uniform and wear the dress of nationally recognized youth organizations on the days of a scheduled meeting. Education Code

Section 35183 (g).

**Rights of Disabled Students:** Both federal and state law give disabled students the right to a free appropriate public education uniquely tailored to meet their individual needs. Recognized disabilities include autism, deafness, blindness, specific learning disabilities, speech and language impairments, emotional disturbances, orthopedic impairments and a general category of other health impairments, which includes attention deficit disorders among others. With very few exceptions, schools are obligated to formally assess a student for eligibility for special education upon a request from the parent. If the parent disagrees with the school's assessment, they may be entitled to an independent assessment paid for by the school. Once eligible for special education, the student should be given an individualized education plan to meet their unique needs.

These are but a few of the many rights granted to students. Schools are obligated to have written policies in each of these areas, which should be furnished to the public upon request.

**David M. Grey** is an education attorney representing students throughout California and can be reached at [david@greyslaw.com](mailto:david@greyslaw.com).