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**COMMENTS ON PROPOSED AMENDMENTS TO
REGULATIONS FOR SCHOOL HEALTH PROGRAMS
[216-RICR-20-10-4]
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The ACLU of Rhode Island offers the following comments in response to the Department of Health's proposed amended regulations governing school health programs.

Medical Marijuana Administration

We strongly support the inclusion of Section 4.23, which would provide for the administration of medical marijuana and CBD oil to students in school by parents, their designees, and school nurses. We also urge the adoption of two clarifying amendments to this section, which are noted below.

Because of a parental complaint our organization dealt with two years ago, we are well aware of the importance of the need for this regulation. A middle school student with a very serious seizure disorder was taking CBD oil, with medical approval, to control her seizures. The student's school refused to administer the medicine and even refused to allow the child's parent to administer it there. Instead, the parent was forced to take her child to the school parking lot to administer it (and for a while before then, she was required to take her child completely off the school premises).

The burden on the parent was enormous. It was just as significant for the student, who had to be removed from the classroom, sometimes a few times a day, in order to have her medicine administered in the lot by her mother. The student lost critical class time as a result. This was cruel and unnecessary, and it helped lead to the General Assembly's passage of legislation in 2019

explicitly authorizing parental and school nurse administration of medical marijuana. There is therefore no reason that school nurses should not be administering this medicine to students who, for documented medical reasons, legally make use of it. Nor should there be barriers for parents who wish to administer the medication themselves during school hours.

The proposed regulations establish a series of safeguards and limitations that address any otherwise-legitimate concerns that might be raised about administering these medications in the school setting. While it will not affect many families, this regulation will be extremely beneficial for those whom it does.

Having said that, we do have two clarifying amendments to suggest:

1. Section 4.23.1(C) appropriately bars schools from disciplining or expelling students who use medical marijuana. We urge that this protection be expanded so that students are not discriminated against in any other way in the school setting. It would be just as unfair, for example, to deny students the right to participate in extra-curricular activities or other school events solely on that basis. We therefore recommend amending this subsection as follows:

C. The school may not discipline or otherwise discriminate against a student who is administered medical marijuana and may not deny the student's eligibility to attend school solely because the student requires the administration of medical marijuana.

2. Section 4.23.2(A)(3) allows school nurses to opt out of administering medical marijuana to students. In light of the protections provided by state law and these regulations, we find it unfortunate and troubling that any school nurse would refuse to provide an appropriate medication to an ailing student. We think it sets a dangerous precedent and should be rejected. But if such an exemption is to be allowed, it is essential that the school make available another nurse or, with the parent's consent, another school employee to administer the medication. A student should not be forced to suffer, or their parents burdened with the need to administer the medicine themselves,

because a school nurse refuses to do their job. We therefore recommend the following amendment to this subsection:

3. Nothing in this Part requires a school nurse to administer medical marijuana to a student, provided that the school nurse's decision not to administer medical marijuana applies to all students authorized to use medical marijuana; provided, further, however, that the school shall make arrangements for another nurse or for a school employee, with parental consent, to administer the medication.

Self-Carry and Self-Administration of Medication

In light of the revisions being made to the sections regulating the administration of medical marijuana to students, we believe it appropriate to further raise an issue we have raised before and that remains of concern to our organization. Currently, regulations regarding the carrying and personal administration of over-the-counter medication essentially provide for a “zero tolerance” policy for students who are in the possession of these medications. Under Section 4.24.3, it is entirely at the discretion of the school to adopt policies as to whether to allow for the self-carrying and self-administration of common over-the-counter medications such as Midol, Tums, or, until legislation was enacted this year, sunscreen.

The example of sunscreen is indicative of the problem that this regulation continues to perpetuate – a sweeping ban on all over-the-counter medications, even those that clearly provide a health benefit to students. The current policy simply does not give proper deference to student autonomy. Worse, it can cause students to shrug off appropriate limitations on medication use. Schools are an important place to teach students lessons about the potential dangers of drug abuse. But when they paternalistically impose bans on high school students carrying aspirin, or require a seventeen-year-old student to seek and obtain permission to bring Midol to school, some students understandably turn off all messages about drugs.

To address this problem, we urge that Section 4.24.3(A)(1) be amended as follows:

School districts or school authorities ~~may~~ shall develop protocols or procedures to permit students to self-carry and/or self-administer medication that does not require a licensed prescriber's note. In developing such protocols or procedures, school districts or school authorities must give consideration to such factors as the age of the child, the duration of the need for the medication, and the ability of the child to self-administer.

We thank you for your consideration of our comments, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments.

Submitted by:

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