Legal Update

March 2, 2020

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin

Subject: Use of Hand Sanitizer in Schools Permissible

Memo No. 09-2020

In light of the COVID-19 (Coronavirus) appearance in California, the Centers for Disease Control and Prevention ("CDC") and the California Department of Public Health ("CDPH") are recommending that schools make hand sanitizer available to students and staff. The CDC, the CDPH, and the California Department of Education ("CDE") specifically recommend use of alcohol-based sanitizers as they are effective at killing the flu virus.

There have been questions about whether or not alcohol-based hand sanitizers are subject to the Healthy Schools Act of 2000 ("HSA"), which put into place notification, posting, and training requirements associated with pest management.1 The California Department of Pesticide Regulation ("CDPR") is the lead state agency providing HSA compliance assistance to school sites throughout California. CDE and CDPR work together to interpret the law and provide accurate information to school sites throughout California.

CDPR has issued guidance that hand sanitizers are not pesticides and do not fall under the HSA, as pesticides are used to kill microbes on inanimate objects, like

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1 The Healthy Schools Act (AB 2260, Statutes of 2000, Ch. 718) was signed into California law in September 2000; amended by AB 405 (Statutes of 2005, Ch. 566) in October 2005; amended by AB 2865 (Statutes of 2006, Ch. 865) in September 2006; and amended by SB 1405 (Statutes of 2014, Ch. 848) in September 2014.

The complete text of the Healthy Schools Act is located in four different California codes:

1. Education Code, Division 1, Part 10.5, Chapter 5, Article 4 (commencing with Section 17608; and add Sections 17611.5 and 17614) and Division 4, Part 27, Chapter 6, Article 4 (Section 48980.3);
2. Food and Agricultural Code, Division 7, Chapter 2, Article 17 (commencing with Section 12996; and add Section 13186.5);
3. Business and Professions Code, Division 3, Chapter 14, Article 5 (addition of Section 8593.2); and
4. Health and Safety Code, Division 2, Chapter 3.4, Article 1 (Section 1596.794) and Article 2 (Section 1596.845).
desks or countertops; whereas, products used to kill microbes in or on a person, are not pesticides. Please see the attached handout\(^2\) from the CDPR that clarifies that hand sanitizer and antibacterial soaps do not fall under the HSA requirements. Please be aware that disinfecting wipes and disinfecting sprays do fall under the HSA requirements.

CDE has advised:

1. Good hand hygiene is vitally important in preventing the spread of the flu. The Centers for Disease Control and Prevention (CDC) recommends that students and staff wash their hands often with soap and water for 20 seconds or use a hand sanitizer, especially after coughing or sneezing.

2. California's Department of Public Health (CDPH) and the CDC recommend alcohol-based sanitizers as being effective to kill the flu virus. The CDC states other hand sanitizers that do not contain alcohol may be useful, however there is less evidence on their effectiveness compared to that on hand washing and alcohol-based sanitizers. Therefore, CDPH recommends alcohol-based sanitizers for use in schools.

3. There is no statute or regulation which prohibits schools from providing hand sanitizers for use by students and staff, especially in settings where soap and water are not readily available, such as portable classrooms. Many California schools are making hand sanitizers available to their students and staff.

4. Provisions of the Education Code relating to alcoholic beverages do not apply to alcohol-based sanitizers. Schools with "zero tolerance" or other policies forbidding alcohol are recommended to make an exception for alcohol-based sanitizers. Appropriate instruction and supervision in the use of sanitizers should, of course, always be given.

5. As always, school districts must cooperate with and follow orders issued by a local or state public health officer to protect public health.\(^3\)

Please contact our office with questions regarding this Legal Update or any other legal matter.

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\(^2\) https://apps.cdpr.ca.gov/schoolipm/school_ipm_law/hand_sanitizers.pdf

\(^3\) https://www.cde.ca.gov/ls/he/hn/handsanitizers.asp
What About Hand Sanitizers?

Do hand sanitizers fall under the Healthy Schools Act (HSA) requirements?
No, hand sanitizers are not pesticides and do not fall under the HSA.

Why?
If the product is used to kill microbes in or on a **person**, then it is not a pesticide, and is instead regulated by the Food and Drug Administration.
If the product is used to kill microbes on **inanimate objects**, like desks or countertops, then it is a pesticide that is regulated by the U.S. Environmental Protection Agency and the Department of Pesticide Regulation.

Is HSA Training Required?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</thead>
<tbody>
<tr>
<td><strong>DISINFECTING WIPES</strong></td>
<td><strong>DISINFECTING SPRAY</strong></td>
</tr>
<tr>
<td><strong>HAND SANITIZER</strong></td>
<td><strong>ANTIBACTERIAL SOAPS</strong></td>
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Disinfecting wipes and Disinfecting sprays are used on **desks, counters, doorknobs, and toys**. The U.S. EPA and DPR regulate these products.

Hand Sanitizers and Antibacterial soaps are used on **hands**. The FDA regulates these products.

For more information about antimicrobial pesticides, check out the National Pesticide Information Center: [http://npic.orst.edu/factsheets/antimicrobials.html](http://npic.orst.edu/factsheets/antimicrobials.html)

Questions? [https://apps.cdpr.ca.gov/schoolipm/](https://apps.cdpr.ca.gov/schoolipm/) or [ccipmlist@cdpr.ca.gov](mailto:ccipmlist@cdpr.ca.gov)