

PRESENTED AT**39th Annual School Law Conference****February 15-16, 2024****AT&T Conference Center, Austin, Texas****Student Issues: Vaping****Benjamin Castillo****Shareholder****O'Hanlon, Demerath & Castillo****D'Ann Lacey Bey****General Counsel****Lewisville ISD****Author Contact Information:**

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STUDENT ISSUES: VAPING

Examining the impact of recent Texas legislation on student disciplinary actions related to vaping, this presentation offers legal professionals an in-depth look into the evolving landscape of student rights, school policies, and the implications for future legal proceedings.

Youth Vaping Epidemic

The tobacco product landscape has evolved from cigarette smoking to smokeless and electronic products such as E-cigarettes, also known as vapes. Vapes use a battery to heat a special liquid into an aerosol users inhale.¹ Many “special liquids” come in flavors, including fruit and mint, making them appealing to youth. Most vapes are attractively designed to look like everyday objects such as pens, USB flash drives, lipstick, etc. Despite their appealing design, vapes contain harmful ingredients, including formaldehyde and acrolein, which can cause irreversible lung damage.² Vapes may also be used for the delivery of marijuana and other illicit drugs.

A recent survey conducted by the CDC reported that 10% (2.80 million) of U.S. middle school (grades 6-8) and high school (grades 9-12) students use tobacco products.³ Among those who reported tobacco use, 25.2% used e-cigarettes daily.⁴ The e-cigarette usage numbers among children have sparked great concern, so much so that the U.S. Surgeon General has declared *youth e-cigarette usage a health epidemic*.⁵ Additionally, there have been several lawsuits nationwide between school districts and the Juul e-cigarette provider, citing e-cigarettes as a public nuisance and dangerous to youth.⁶

¹ American Lung Association. *What is an E-Cigarette*, 2023. <https://www.lung.org/quit-smoking/e-cigarettes-vaping/whats-in-an-e-cigarette>

² *Id.*

³ https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s_cid=mm7244a1_w

⁴ *Id.*

⁵ Smokin Cessation, A Report of the Surgeon General, U.S. Department of Health and Human Services, 2020. <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-full-report.pdf>

⁶ Forbes, Juul Lawsuit Update January 2024. <https://www.forbes.com/advisor/legal/product-liability/juul-lawsuit-update/>

On December 17, 2019, several California school districts sued an e-cigarette company, Juul, for their marketing of e-cigarettes to minors.⁷ The lawsuit sought damages for Juul's marketing strategy, advertising, and product design, which targeted minors, resulting in an increased use of e-cigarettes in schools.⁸ The petition explained the effects Juul has had on schools and the issues involved with preventing the use of e-cigarettes on campus.⁹ Some of the effects explained include administrators banning USBs, hiring additional staff to monitor student vaping, using specialized detectors in restrooms, specialized student counseling, after-school programs, installing cameras near restrooms, etc.¹⁰ All these effects are costly, and the petition explains that school districts will require years of expensive actions to adequately address the epidemic.¹¹ The petition also mentions the impact of Juul on student attendance and suspensions and how this affects the overall funding Districts receive (as funding is often based on attendance).¹² As of today, the school districts and Juul have reportedly reached a billion-dollar settlement. This lawsuit and settlement are a reminder of the significant effects e-cigarettes have had and will continue to have on schools.

Texas Schools & Recent Legislation

The 88th Texas Legislature passed House Bill 114 in response to the growing concerns regarding substance abuse in schools, namely the “vaping epidemic.”¹³ HB 114 requires that public schools place students caught with a vape device on school grounds or at a school-

⁷ San Mateo County Board of Education et. al. v. Juul Labs, Inc. No. 3:2019-cv-08210.
https://www.smcoe.org/employees/assets/files/About_FIL/County%20Office%20of%20Education_FIL/News_FIL/failed_complaint.SMCBoE.pdf

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ HB 114 Bill Analysis. <https://capitol.texas.gov/tlodocs/88R/analysis/html/HB00114H.htm>

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