Vaping in Texas Public Schools

According to the Texas Education Agency, in 2018 over 330,000 middle and high school students reported use of vaping devices, also called electronic or e-cigarettes. This represents 13% of all Texas students in grades 6-12. Overall, youth use of vaping has more than quadrupled from 3% in 2012 to 13% in 2018 (Texas Youth Tobacco Survey, 2018). This article discusses the steps that school districts and state lawmakers are taking to prevent student vaping in response to this troubling trend.

1. **Is vaping prohibited for students in Texas public schools?**

   Yes. By state law, school boards must prohibit students from smoking, using, or possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property. Tex. Educ. Code § 38.006(b).

   Many districts have adopted language from TASB’s Model Student Handbook. The Model Student Handbook states, “[s]tudents are prohibited from possessing or using any type of tobacco product, electronic cigarettes (e-cigarettes), or any other electronic vaporizing device, while on school property at any time or while attending an off-campus school-related activity. The district and its staff strictly enforce prohibitions against the use of all tobacco products, e-cigarettes, or any other electronic vaporizing device, by students and all others on school property and at school-sponsored and school-related activities.”

2. **Is vaping permitted by adults on school property or at school events?**

   No. School boards must prohibit *anyone* from smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property. Tex. Educ. Code § 38.006(b)(1). School boards must also ensure that district personnel enforce the policies on school property. Tex. Educ. Code § 38.006(b)(3). Typically, a school district prohibits vaping (as well as smoking and related activities) at TASB Policy Codes DH, FNCD, and GKA, as well as in the district’s student code of conduct, student handbook, and employee handbook.

   This prohibition covers all individuals, regardless of whether they are adult students, active military, employees, volunteers, parents, or visitors.
3. **Why doesn’t the word vaping appear in the Texas Education Code or school district policies?**

Texas law refers to vaping as the use of an e-cigarette. *E-cigarette* means an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term does not include a prescription medical device unrelated to the cessation of smoking.

The term includes:

- A device regardless of whether it is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and
- A component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.


4. **What disciplinary consequences may be imposed if a student is caught with a vaping device?**

In 2023, the 88th Texas Legislature amended the Texas Education Code to make e-cigarette related offenses a mandatory placement in a disciplinary alternative education program (DAEP).

Students who possess, use, sell, give, or deliver e-cigarettes, including component parts, are subject to mandatory placement in the DAEP. Tex. Educ. Code § 37.006(a)(2)(c-2). In addition to discipline for the vaping device, students may face disciplinary consequences for any substance inside the vaping device. For example, students may face discretionary expulsion for offenses related to any amount of marijuana, a dangerous drug, or controlled substance. Tex. Educ. Code § 37.007(b)(2)(A).

In addition to imposing disciplinary consequences, the Legislature also expanded educational and support services that may be provided to students to include e-cigarettes in addition to drugs and alcohol.

Finally, the Legislature created unique provisions for how to handle students with offenses related to marijuana, THC, e-cigarettes, alcohol, or abusable volatile chemicals when the DAEP is at capacity. If the DAEP is at capacity, the student must be placed in in-school suspension (ISS). If a position becomes available at the DAEP before the expiration of the placement, then the student must be transferred to the DAEP for the remainder of the placement. If a DAEP is at capacity at the time another student is being placed in DAEP for a violent offense under Texas Education Code section 37.007, as defined by commissioner rule, then the student who committed a marijuana, THC, e-cigarette, alcohol, or abusable
volatile chemical offense may be removed and placed in ISS. If a position in the DAEP becomes available, the student who was placed in ISS must be transferred back to the DAEP. Tex. Educ. Code § 37.009(a-1).

5. **Do school districts have an obligation to warn students and parents about vaping?**

   Yes. Each school district’s local school health advisory council (SHAC) is required by law to publish notice in the student handbook and on the district’s website that the district has adopted and enforces policies and procedures that prescribe penalties for tobacco and e-cigarette use. Tex. Educ. Code § 28.004(k)(3)(C).

   In addition, the local SHAC is charged with recommending instruction to prevent substance abuse. Tex. Educ. Code § 28.004(c)(2)(E). *Substance abuse* means a patterned use of a substance, including alcohol or a controlled substance as defined by Texas Health and Safety Code chapter 481, in which a person consumes the substance in amounts or with methods that are harmful to the person’s self or to others. Tex. Educ. Code § 5.001(9). The SHAC could recommend student instruction about the risks of vaping.

6. **What is the legal age for purchasing cigarettes, e-cigarettes, and tobacco products?**

   In Texas, the legal age for purchasing cigarettes, e-cigarettes, or tobacco products is 21. It is an offense punishable by a fine not to exceed $100 to possess, purchase, consume, or receive such products under the age of 21 or to falsely represent oneself as 21 years of age in order to possess, purchase, consume, or receive such a product. Tex. Health & Safety Code § 161.252(a), (d). State law prohibits selling or giving cigarettes, e-cigarettes, or tobacco products to a person under the age of 21 and requires proof of identification for the sale of cigarettes, e-cigarettes, or tobacco products to a person under the age of 30. The law includes an exception if the person to whom the product is sold at least 18 years of age and presents at the time of purchase a valid military identification card of the U.S. military or state military forces. Tex. Health & Safety Code § 161.252(c-1). One motivation for the legislature to change the legal age for purchasing tobacco and e-cigarettes was to get the products out of the hands of the school-age population.

7. **What resources can school districts use to teach students and parents about the risks of vaping?**

   Several free online resources can help.

   - The University of Texas Health Science Center (UTHHealth) collaborates on the largest school-based health promotion program in the U.S., the Coordinated Approach to Child Health, or CATCH. CATCH offers a free training module on vaping called “Catch My Breath.”
• The Texas Department of State Health Services maintains a website on Electronic Cigarettes and Vaping, which includes links about how to talk to young people about the risks.

• The Centers for Disease Control (CDC) maintains an Electronic Cigarette website providing information about the health risks. The CDC also published an online fact sheet titled E-cigarettes and Youth: What Educators and Coaches Need to Know.

• The Texas Education Agency also offers resources about substance abuse prevention.
  ▪ Substance Abuse Prevention and Intervention Resources
  ▪ Evidence Based Prescription Drug Awareness Programs

• The Texas Department of State Health Services and the Texas School Safety Center offer online fact sheets and presenter notes at SayWhat! Live Tobacco-free

This document is continually updated at tadb.org/services/legal-services/tadb-school-law-eresource/students/documents/vaping-in-texas-public-schools.pdf. For more information on school law topics, visit TASSB School Law eSource at schoollawesource.tasb.org.

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