



**Texas Association of School Boards**

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## **Vaping in Texas Public Schools**

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Use of vaping devices, also called electronic or e-cigarettes, has had a sudden rise among teens. According to the Texas Education Agency, over 330,000 middle and high school students reported vaping in 2018. 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). In addition to cancer-causing chemicals, e-cigarettes contain nicotine, a highly addictive substance that can be harmful to young brains. Centers for Disease Control and Prevention, [About Electronic Cigarettes](#) (Nov. 26, 2019).

The Texas Department of State Health Services (DSHS) is investigating suspected cases of pulmonary disease among individuals who report vaping and has updated its *Update on Investigation of Vaping-Related Pulmonary Illness*. For more information, see Tex. Educ. Agency, [To the Administrator Addressed Letter Re: Vaping-Related Pulmonary Illness](#) (Jan. 17, 2020).

In response to this troubling trend, school districts are taking steps to prevent the spread of e-cigarette use among students.

### ***Q: Is vaping prohibited for students in Texas public schools?***

A: 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."

### ***Q: Is vaping permitted by adults on school property or at school events?***

A: 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.

**Q: *Why doesn't the word vaping appear in the Texas Education Code or school district policies?***

A: 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.

Tex. Health & Safety Code § 161.081(1-a).

**Q: *Is a student subject to disciplinary consequences if he or she is caught with a vaping device?***

A: Yes. TASB's Model Student Code of Conduct lists as *prohibited items* "tobacco products; cigarettes; e-cigarettes; and any component, part, or accessory for an e-cigarette device." The model code of conduct also prohibits possessing, using, giving, or selling paraphernalia related to any prohibited substance, as well as using, abusing, or selling look-alike drugs, which may include vaping devices or substances in some cases.

Because vaping devices can be used to ingest illegal drugs, it is important to note that codes of conduct prohibit illegal drugs, including:

- possessing, using, giving, or selling alcohol or an illegal drug, and
- possessing seeds or pieces of marijuana, even in less than a usable amount.

For more information about the use of a vaping device to ingest CBD, THC, or other forms of cannabis, see TASB Legal Services' [Legal Questions about CBD and Marijuana in Schools](#).

Possession of a prohibited item may lead to a range of disciplinary consequences. Possession of certain prohibited items like drugs or drug paraphernalia may lead to expulsion, while lesser offenses may lead to consequences such as in-school suspension, out-of-school suspension, or placement in a disciplinary alternative education program.

**Q: Do school districts have an obligation to warn students and parents about vaping?**

A: Yes. To reach parents, each school district's local school health advisory council 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, local school health advisory councils are 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 the 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). A local council could recommend student instruction about the risks of vaping.

**Q: How did the law on cigarettes, e-cigarettes, and tobacco products change in the most recent legislative session?**

A: By raising the legal age for purchasing the products. In 2019, the Texas Legislature took the important step of changing the legal age for purchasing cigarettes, e-cigarettes, or tobacco products to 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 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.

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

A: Several free online resources can help.

- The University of Texas Health Science Center (UTHealth) 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 [E-Cigarettes and Vaping](#), which includes links about how to talk to young people about the risks.
- The Centers for Disease Control (CDC) maintains an [E-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 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, and references to online resources are hyperlinked, at [tasb.org/services/legal-services/tasb-school-law-esource/students/documents/vaping-in-texas-public-schools.pdf](https://tasb.org/services/legal-services/tasb-school-law-esource/students/documents/vaping-in-texas-public-schools.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

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