The ABC's of Comprehensive K-12 School Commercial Tobacco Policies

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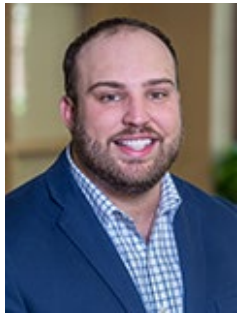
at Mitchell Hamline School of Law

PRESENTERS

Rachel Callanan, MNM, JD
Senior Staff Attorney
National Technical Assistance
Rachel.Callanan@mitchellhamline.edu

Colin Welker
Policy Analyst
National Technical Assistance
Colin.Welker@mitchellhamline.edu

COMMERCIAL TOBACCO CONTROL TEAM



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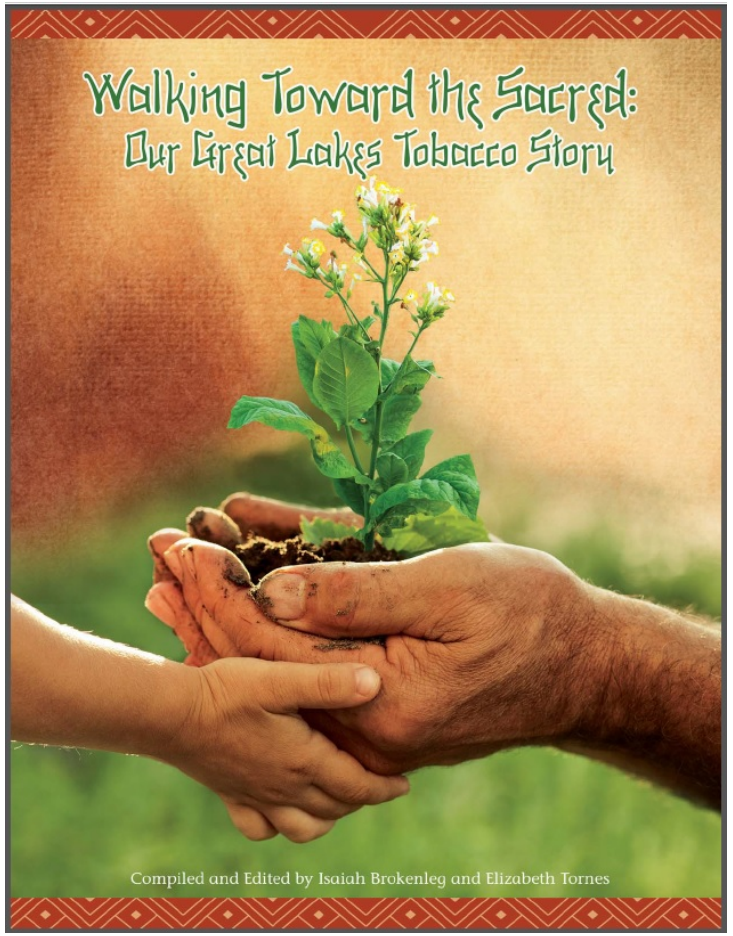
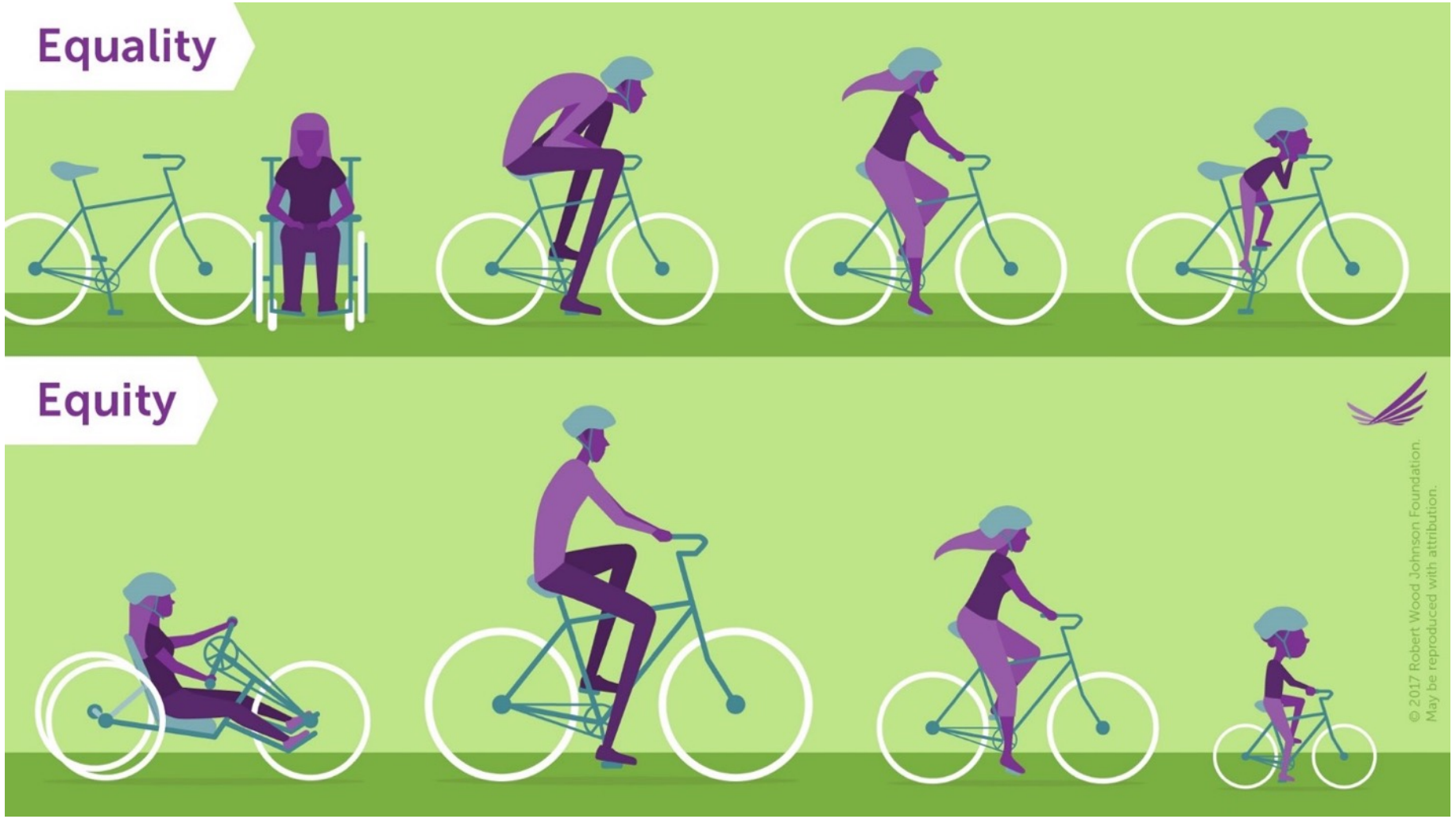
HISTORICAL AND CULTURAL CONTEXT
RESPECTING SACRED TOBACCO



Tobacco traditions have been passed down for generations. Tobacco plants have been considered sacred for many Indigenous people.

National Native Network: Keepitsacred.org



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AGENDA

1. PHLC's Model K-12 Policy—Key components
2. Enforcement—Alternative measures
3. Alternative Measures—Examples

WHAT SCHOOLS CAN DO

Review current policy and curriculum.

Parent education.

Promote health messaging and offer support throughout school.

Litigation.

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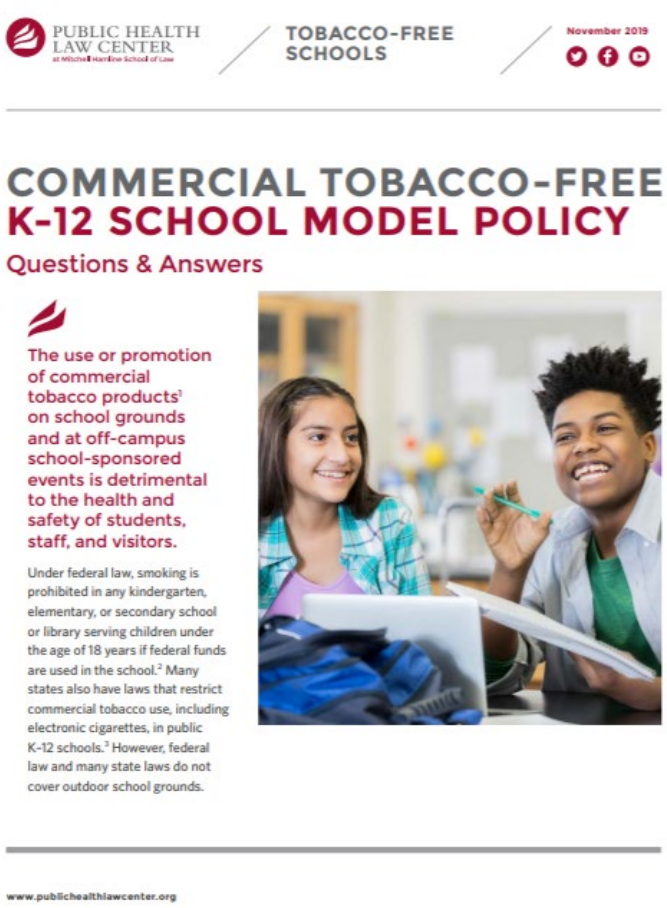
MODEL FOR K-12 SCHOOLS:
COMMERCIAL TOBACCO-FREE POLICY



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COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY

Questions & Answers

The use or promotion of commercial tobacco products[1] on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.

Under federal law, smoking is prohibited in any kindergarten, elementary, or secondary school or library serving children under the age of 18 years if federal funds are used in the school.[2] Many states also have laws that restrict commercial tobacco use, including electronic cigarettes, in public K-12 schools.[3] However, federal law and many state laws do not cover outdoor school grounds.

www.publichealthlawcenter.org

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COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY

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https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/smoke-free-tobacco-free-places/schools

KEY COMPONENTS OF THE MODEL
SUMMARY

- Comprehensive definition of commercial tobacco products to include current and future tobacco products, as well as non-nicotine containing substances
- Prohibits the following items on campus (inside and outside buildings) and at off-campus, school-sponsored events:
  - Tobacco products and tobacco-related devices, which include electronic cigarettes,
  - Imitation tobacco products (such as candy cigarettes), and
  - Lighters;
- Prohibits receipt of donations/curricula from tobacco-related industries;
- Prohibits promotion of tobacco products; and
- Includes effective and holistic enforcement options for student violations that do not include suspension and expulsion.

KEY COMPONENTS OF THE MODEL

- Findings
- Purpose
- Definitions
- Policy provisions
- Exceptions
- Opportunities for cessation/peer support programs
- Enforcement
- Effective date

KEY COMPONENTS: COMPREHENSIVE DEFINITIONS
FOR COVERAGE, CLARITY, AND COMPLIANCE

:

What

- Smoking, use, carrying/possessing
  - Electronic smoking device
  - Cigarettes, cigars, other combustibles
  - Smokeless (chew)
  - Imitation products
- Promotion, selling

Who

- Parent/guardian
- Administrator
- Staff
- Student
- Visitor
- Tobacco Industry

Where/When

- Any time, 24/7
- Off-campus, school-sponsored event
- School (inside)
- School (outdoor property)

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KEY COMPONENTS OF THE MODEL
POLICY PROVISIONS

- **Students**– Prohibited from possessing, using, consuming, displaying, promoting, or selling:
  - Any tobacco products, tobacco-related devices, imitation tobacco products, or lighters
  - At any time
  - On school property or at any off-campus, school-sponsored event.

- **Staff/Administrators/Visitors**—Prohibited from using, consuming, displaying, activating, promoting, or selling:
  - Any tobacco products, tobacco-related devices, imitation tobacco products, or lighters
  - At any time
  - On school property or at any off-campus, school-sponsored events.

KEY COMPONENTS OF THE MODEL
POLICY PROVISIONS

- Prohibits schools/districts from accepting **tobacco-industry** sponsorship, donations, money, curricula.

- Prohibits any person from **promoting** tobacco products, tobacco-related devices, or imitation tobacco products. This includes promotions on signs, gear, clothing, etc.

KEY COMPONENTS: SPONSORSHIP, PROMOTION AND FUNDING
MISINFORMATION; TARGETED MARKETING

Book Cover, part of the " Think. Don't Smoke" antismoking campaign by Philip Morris (2000)

subluminal advertising

the campaign was widely criticized for delivering an underlying subluminal message about cigarettes:

"the snowboard looks like a lit match. The clouds look like smoke, the mountains look like mounds of tobacco at an auction."

Philip Morris, reported that even though the company had changed they would "think long and hard because maybe people are not yet ready for us to supply something like a book cover."

the implication: the problem rested with the community, who had not accepted the new, responsible company policies.

Rep. Krishnamoorthi Examines Juul's Marketing Strategy

https://www.youtube.com/watch?v=gnwBL7ycWEY

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KEY COMPONENTS OF THE MODEL
EXCEPTIONS

- Use of tobacco products and devices as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

- If included in instructional or work-related activity, but not smoked, chewed or otherwise ingested.

- Non-students age 18 and over may have products that have been approved by the U.S. Food and Drug Administration for sale as tobacco cessation product, as a tobacco dependence product, or for other medical purposes for use.
  - E-cigarettes are not approved cessation products.

KEY COMPONENTS OF THE MODEL: ENFORCEMENT
SUSPENSION AND EXPULSION ARE NOT INCLUDED

VII. Enforcement

The success of this policy depends upon the thoughtfulness, consideration, and cooperation of the whole [district/school name] community. All individuals on school premises, including students, staff, administrators, and visitors are responsible for adhering to and enforcing this policy. Members of the [district/school name] community are encouraged to communicate this policy with courtesy and diplomacy. Any person acting in violation of this policy will be informed or reminded of the policy and asked to comply.

(A) Students

(1) The first violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; and at least one of the following:

(i) A student meeting and individual student assessment with a chemical health educator or designated staff to discuss commercial tobacco use and the school policy.

(ii) Student participation in a tobacco education program.

(iii) Provision of information to student about available cessation programs and resources.

(2) The second violation shall result in confiscation of tobacco products, tobacco-

ENFORCEMENT: ALTERNATIVE MEASURES

KEY COMPONENTS OF THE MODEL
ENFORCEMENT

- Industry targeting of youth:
  - Industry spends $9.5 billion a year on marketing, vast majority in the retail environment
  - 90% of youth report exposure to cigarette, 80% to e-cigarette ads

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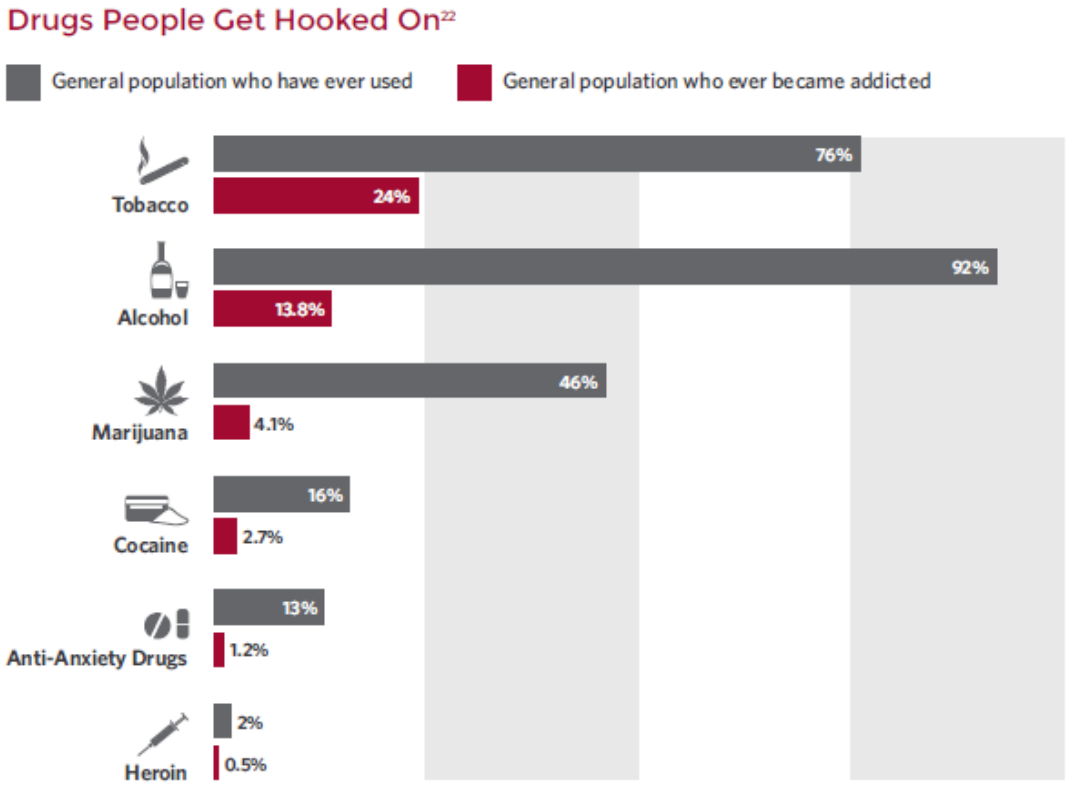
SO WHY ARE SUSPENSION AND EXPULSION
INEFFECTIVE PENALTIES?

- Nicotine and the adolescent brain
- Holistic, addiction-based approach



Source: Adapted from Business Insider https://www.businessinsider.com/most-addictive-substances-2016-5

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KEY COMPONENTS OF THE MODEL
ENFORCEMENT

Rescinded: This document has been formally rescinded by the Department and remains available on the web for historical purposes only.

U.S. Department of Justice
Civil Rights Division

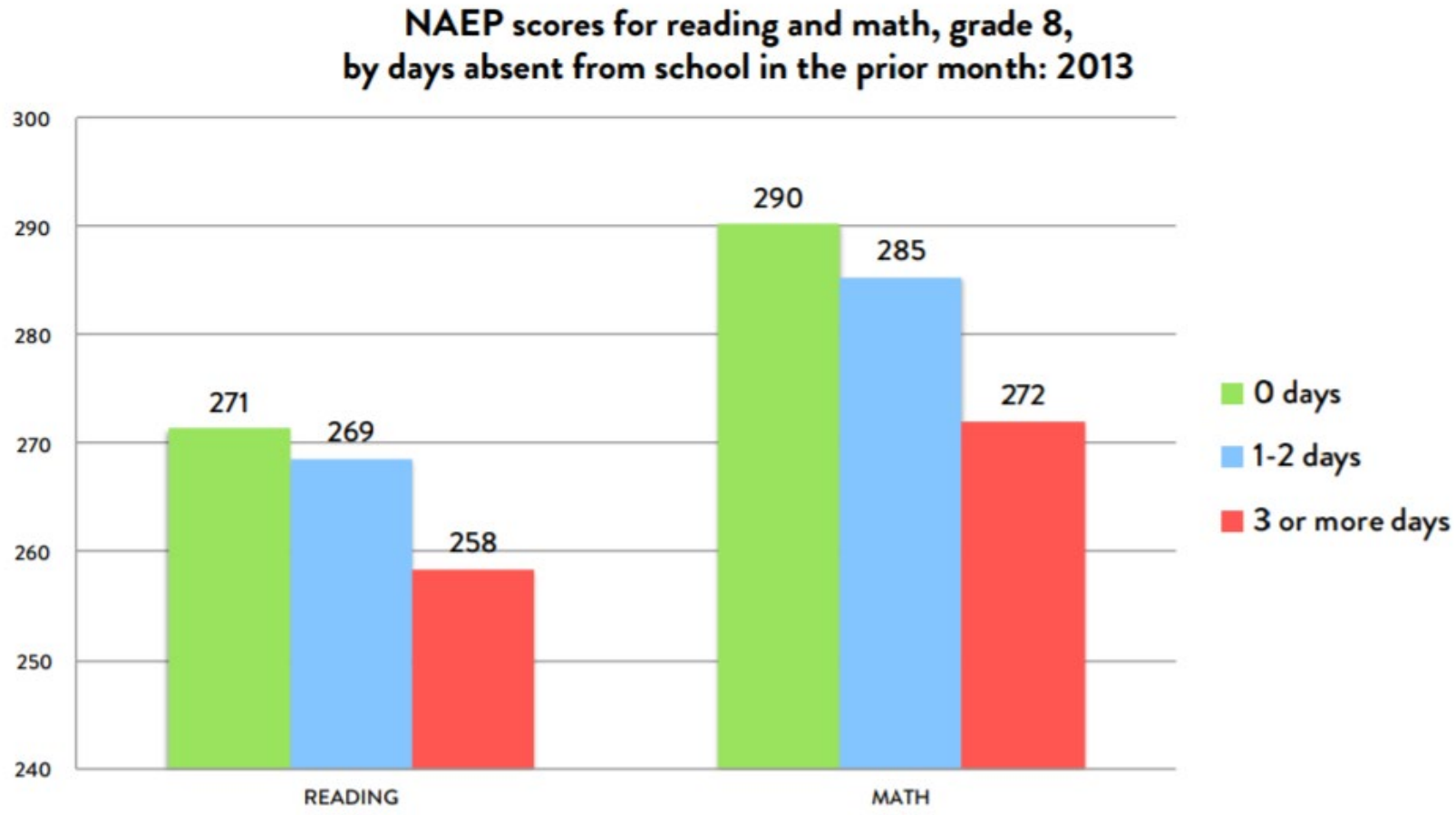
U.S. Department of Education
Office for Civil Rights

January 8, 2014

Dear Colleague:

The U.S. Department of Education and the U.S. Department of Justice (Departments) are issuing this guidance to assist public elementary and secondary schools in meeting their obligations under Federal law to administer student discipline without discriminating on the basis of race, color, or national origin. The Departments recognize the commitment and effort of educators across the United States to provide their students with an excellent education. The Departments believe that guidance on how to identify, avoid, and remedy discriminatory discipline will assist schools in providing all students with equal educational opportunities.[1]

KEY COMPONENTS OF THE MODEL
ENFORCEMENT



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Source: Attendance Works https://www.attendanceworks.org/wp-content/uploads/2017/05/Absenses-Add-Up_September-3rd-2014.pdf

KEY COMPONENTS OF THE MODEL
ENFORCEMENT

What we know:

- Punitive penalties do not work
  - Suspension and Expulsion
  - Disparities in enforcement
  - School Resource Officers
  - Unintended consequences
- Addiction is a product of a multitude of factors:
  - Industry targeting
  - Social Determinants of Health
  - Nicotine impact on the brain
- Holistic approach, evidence-based approach:

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Image: https://healthproconsulting.com/how-a-community-affects-social-determinants-of-health/

KEY COMPONENTS OF THE MODEL
ENFORCEMENT

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TOBACCO-FREE SCHOOLS

November 2019

STUDENT COMMERCIAL TOBACCO USE IN SCHOOLS

Alternative Measures

School policies regulating the use and possession of commercial tobacco products,[1] including electronic delivery devices (e.g., e-cigarettes, vaping devices, JUUL, Suorin), often contain punitive measures for student violations.

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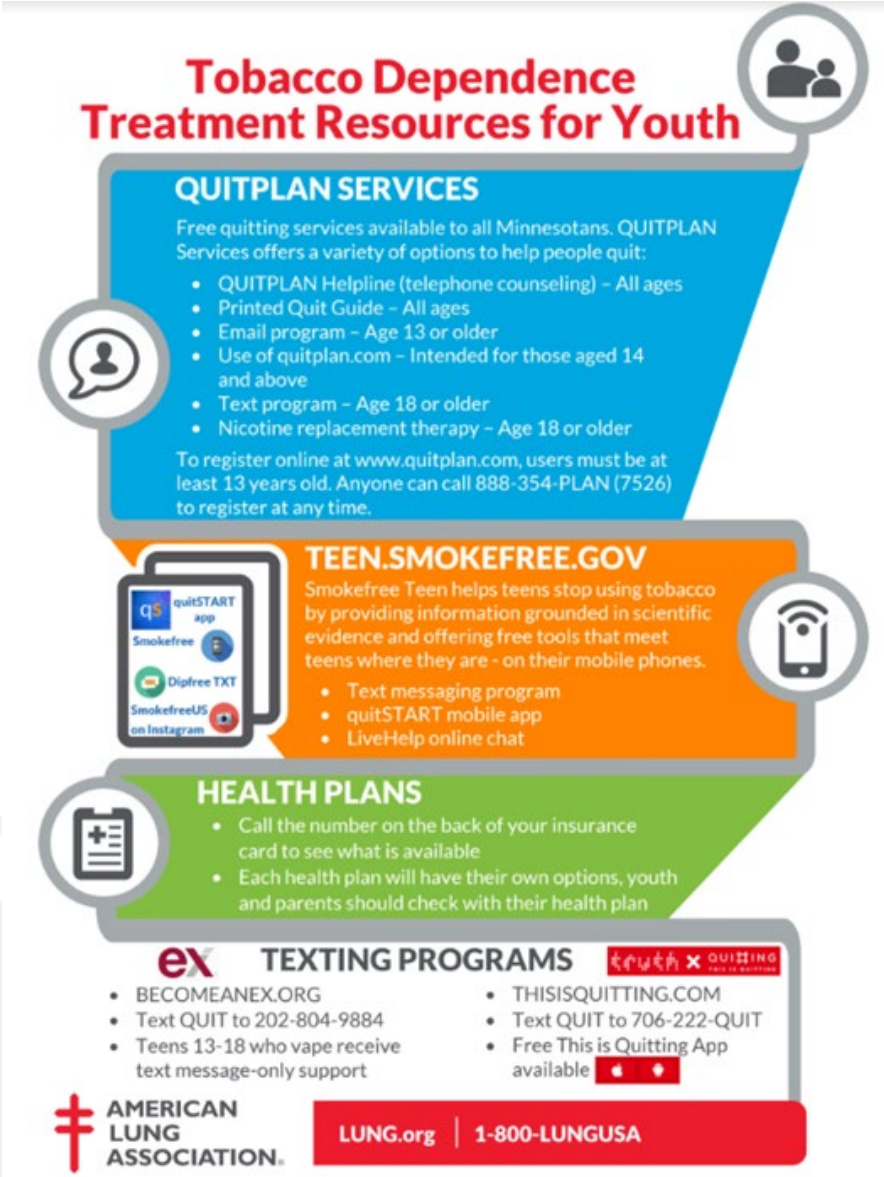
https://www.publichealthlawcenter.org/sites/default/files/resources/Student-Commercial-Tobacco-Use-in-Schools-Alternative-Measures-2019.pdf

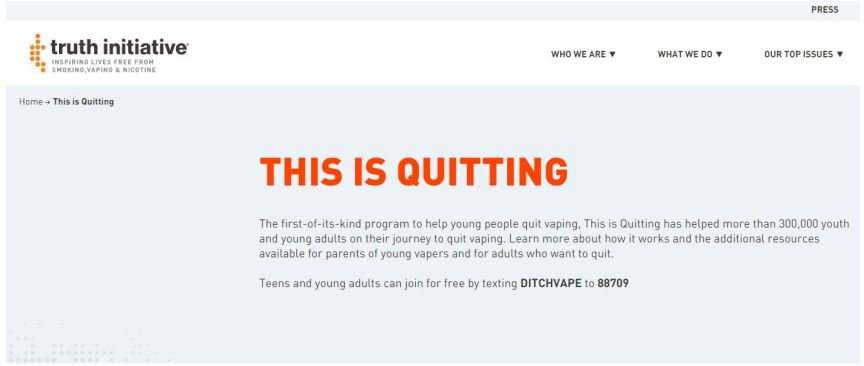
KEY COMPONENTS OF THE MODEL
ENFORCEMENT

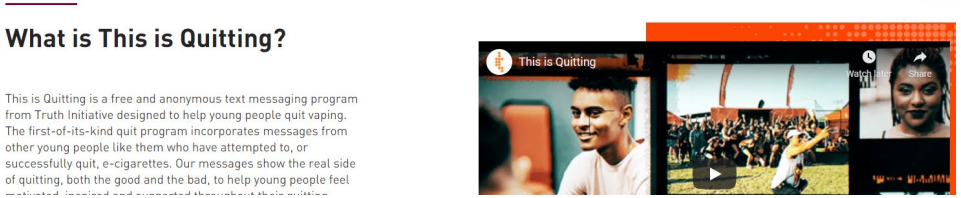
- Confiscation
- Notification to parents/guardians
- Student chemical health assessment
- Tobacco education program
- Cessation and counseling
- Educational community service

KEY COMPONENTS OF THE MODEL
CESSATION & SUPPORT

- Local partnerships
- Evidence-based programs
- Cessation, peer, community support as a part of enforcement







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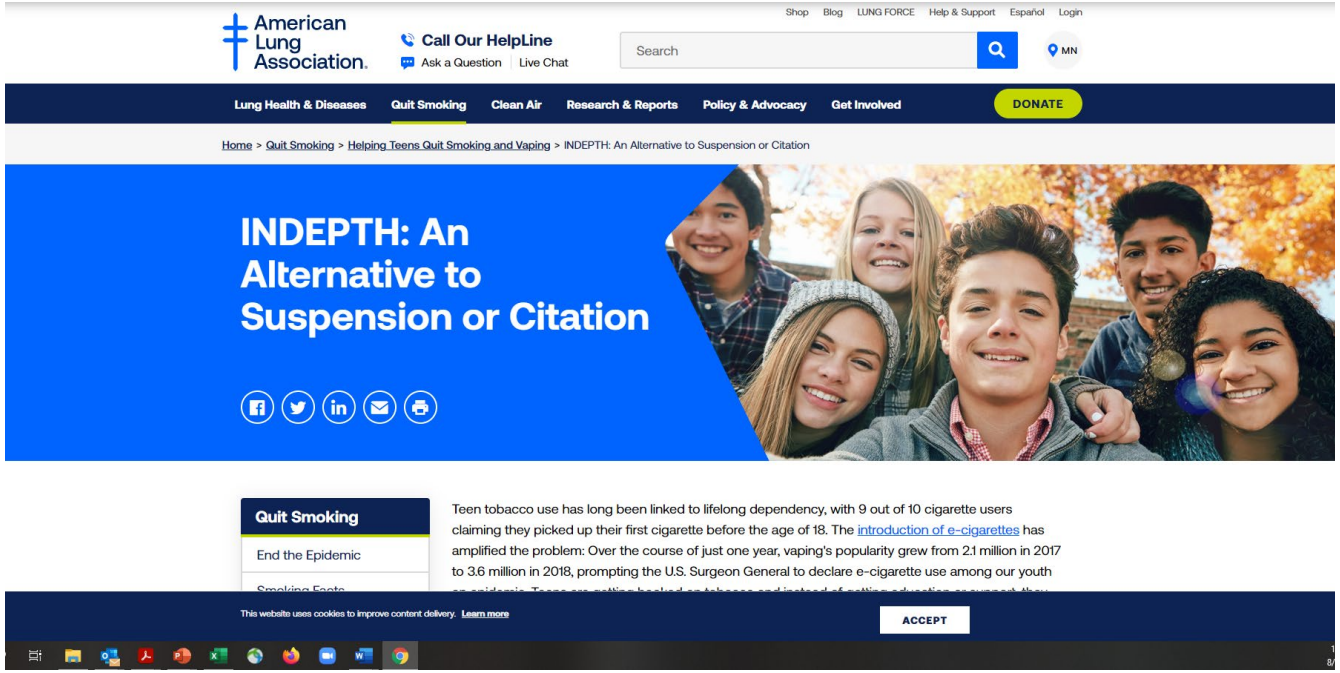
KEY COMPONENTS OF THE MODEL
CESSATION & SUPPORT



https://www.lung.org/quit-smoking/helping-teens-quit/indepth

TOBACCO PREVENTION TOOLKIT

Stanford MEDICINE

https://med.stanford.edu/tobaccopreventiontoolkit.html

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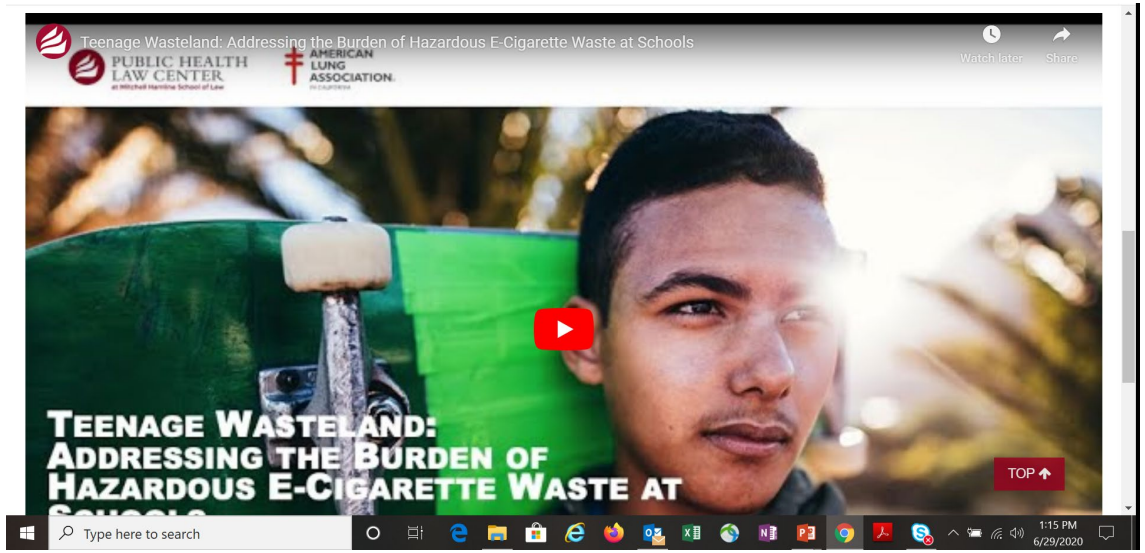
KEY COMPONENTS OF THE MODEL
ENFORCEMENT



https://www.publichealthlawcenter.org/webinar/teenage-wasteland-addressing-burden-hazardous-e-cigarette-waste-schools

https://www.publichealthlawcenter.org/sites/default/files/resources/Disposing-of-E-Cigarette-Waste-Publication.pdf

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ALTERNATIVE MEASURES: EXAMPLES

SAN FRANCISCO UNITED SCHOOL DISTRICT
ALTERNATIVES TO SUSPENSION AND EXPULSION

- The districts approach is on education and rehabilitation
- ". . . Successful disciplinary practices should ensure that students have the opportunity to continue to be engaged in their school community and to reflect upon and learn from their mistakes."

SFUSD

SAN FRANCISCO UNITED SCHOOL DISTRICT
ALTERNATIVES TO SUSPENSION AND EXPULSION

- **Treatment Approach for Tobacco Related Infractions**
  - Behavior Intervention Services Counseling: Brief Intervention is a tobacco and substance-use counseling intervention delivered by community health outreach workers, school counselors school district nurses, deans or school social workers. It supports students to set goals and make better informed choices.
- **Positive Behavior Intervention and Support Discipline Matrix**
  - Suspension is not allowed for a first tobacco-related infraction
  - There is no mandatory suspension or expulsion for tobacco-related infractions
  - Suspension may be allowed for tobacco related infractions after all other required interventions have been tried and suspension is deemed appropriate
- **Minimize Interactions with Law Enforcement**
  - Avoid unnecessary criminalization of students

JUVENILE TRIBAL CODE
COMMUNITY CENTERED APPROACH

- Tribe utilizes various entities to approach tobacco education and cessation
- Upon an infraction:
  - Community Health Education Course
  - Traditional Medicine Education
  - Cessation Referral and Counseling
  - Tribal Youth Court & Diversion
  - Tribal Youth Council

RESTORATIVE PRACTICES
LESSONS FROM BALTIMORE CITY

- Before implementation: 29% of student body had been suspended
- Steps toward Restorative Practices
  - Formation of a coalition for advocacy and policy reform (School Board)
  - Focus groups conducted with greater school community (including parents)
  - Partnership with school police (offered culturally appropriate training)
  - Ongoing training for school staff
  - Key element: Increased connection to wrap-around services
- 88% drop in suspensions after one year of restorative practices

BOULDER COUNTY, COLORADO

- School Enforcement Strategies
  - Second Chance
    - Free online Program for middle and high school aged students who have been caught with tobacco or nicotine products. Focuses on community, school, and the home environments.
  - INDEPTH
    - ALA program
  - Restorative Process & Justice
    - Has students examine their relationship and experience with tobacco and how it has the potential to impact themselves, their family, and school community.
    - Conversation and/or an agreement in lieu of suspension and punitive action

PUBLIC HEALTH LAW CENTER RESOURCES:

- Commercial Tobacco-Free K-12 School Model Policy: Questions & Answers
- Commercial Tobacco-Free K-12 School Model Policy
- Student Commercial Tobacco Use in Schools Alternative Measures (2019)
- Disposing of E-Cigarette Waste: FAQ for Schools and Others (2019)
- Focusing on Equity and Inclusion When We Work on Public Health Laws (2018)

CONTACT US

651.290.7513

publichealthlawcenter@mitchellhamline.edu

www.publichealthlawcenter.org

@phealthlawctr

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