



Addressing Student Commercial Tobacco Use in Schools: Alternative Measures

School policies regulating the use and possession of commercial tobacco products, including electronic delivery devices (e.g., e-cigarettes, vaping devices, Juul, Suorin), often contain punitive measures for student violations. This publication provides sample language and ideas for evidence-based solutions and information as to why these alternative measures may be more effective than suspension and expulsion at addressing student tobacco use and nicotine addiction as part of a school's Commercial Tobacco-Free Policy.

I. The tobacco industry has historically and continues to target youth to maintain profits, especially in and around schools.ⁱ Schools should consider these predatory tactics when creating or modifying a policy to address youth possession and use of commercial tobacco in schools.

When considering how to effectively address youth use and possession of commercial tobacco products in schools, *it is important to understand how pervasive the industry's targeting of youth and young adults with these highly addictive products has been for several decades.* Overwhelming evidence, including the tobacco industry's own documents, shows that from the 1950s to the present the tobacco industry intentionally and strategically studied and marketed commercial tobacco products to youth in order to recruit "replacement smokers" to stay in business.ⁱⁱ In 1981, a Philip Morris representative said, "[t]oday's teenager is tomorrow's potential regular customer."ⁱⁱⁱ The tobacco industry knows that "the overwhelming majority of smokers first begin to smoke while still in their teens."^{iv}

Well-documented examples of the tobacco industry's unethical efforts to capture the youth market are school "education programs," which were promoted and distributed to schools in the 1980s and 1990s. These programs were ineffective at best and harmful at worst.^v They were more likely to increase youth commercial tobacco use because they focused on decision-making skills and portrayed smoking as an "adult-only" activity. In so doing, they implicitly labeled commercial tobacco use a "forbidden fruit and badge of maturity" without honestly presenting the addictive and lethal nature of the products.^{vi}

The tobacco industry continues to target youth in schools. R.J. Reynolds currently funds a program called "Right Decisions Right Now" that it defines on its website as a "free education tobacco prevention program in grades 5-9." In the face of the youth e-cigarette epidemic, Juul – the most popular brand of e-cigarette among youth – promoted an "education program" and offered schools money to test it.^{vii} Although Juul later abandoned the program, these examples show that youth are still being targeted, even in schools. Some manufacturers have even offered college scholarships.^{viii} The U.S. Centers for Disease Control and Prevention warns that, "because the presence of the tobacco industry in school settings may increase the likelihood of youth tobacco product initiation, it is critical that public health and school-based efforts to prevent youth tobacco product use remain independent of tobacco industry influences."^{ix}

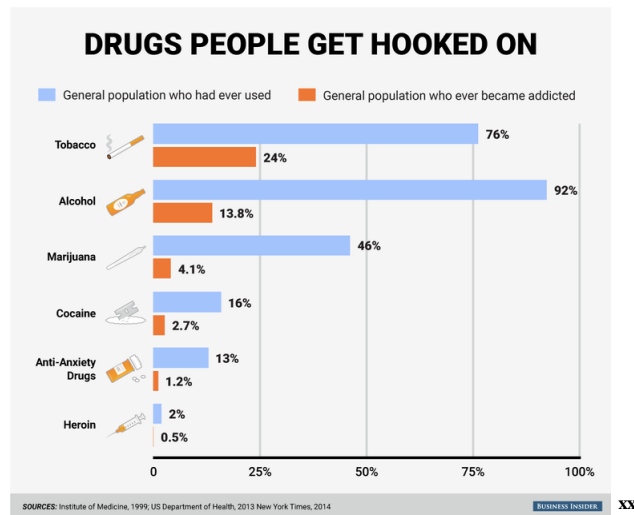
Youth are also bombarded with commercial tobacco advertising and marketing in their day-to-day physical environments outside school. Most youth report entering convenience stores weekly and two-thirds of youth report seeing tobacco advertising all or most of the time they visit a

convenience store.^x A study in California demonstrated that 32.6 percent of stores placed at least one tobacco advertisement at or below three feet—a clear effort to advertise to young children.^{xi} Several studies confirm that stores closer to schools have more tobacco advertising than stores that are located farther away from schools.^{xii} The tobacco industry spends nearly \$26 million *every single day* in advertising and 96 percent of that budget goes to marketing in retail stores, where youth frequently enter.^{xiii} Youth are targeted by price promotions and discounts in the stores, and by an increased number of tobacco retailers in and around schools.^{xiv} This is especially true in low socioeconomic neighborhoods and areas with a high percentage of Black and Indigenous youth and youth of color. The U.S. Surgeon General has concluded that, “there is strong, consistent evidence that advertising and promotion influence the factors that lead directly to tobacco use by adolescents” and this includes both initiation and long-term use.^{xv}

More recent studies provide specific evidence that e-cigarette marketing exposure is associated with ever and current e-cigarette use among middle and high school students.^{xvi} E-cigarette products that are popular among youth, like Juul and Suorin, only entered the marketplace in the past few years, prior to an in-depth scientific understanding of all the health harms they pose, especially for youth. E-cigarette companies have capitalized on this window of opportunity—before widespread scientific understanding and agreement—to market their products in ways that have contributed to widespread use and misperceptions by youth about these products. By 2018, an estimated 3.05 million (20.8 percent) high school and 570,000 (5.7 percent) middle school students were current users of e-cigarettes, the majority (67.8 percent) of whom use flavored e-cigarettes.^{xvii}

Heavy targeted advertising of youth-appealing flavored cigarettes, cigars, and e-cigarettes is another key contributor to youth commercial tobacco use. Cigarette, cigar, and e-cigarette manufacturers and sellers, including R.J. Reynolds and Juul, make and advertise youth-appealing flavors like menthol, mint, sweet, and fruity flavors – often even labeling their products to mimic well-known candy, cereal, and snack brands.^{xviii} These companies have advertised on social media under the radar of parents, schools, and other concerned adults. Unlike adult users, adolescent e-cigarette users report the availability of flavors as their top reason for e-cigarette use.^{xix} In multiple recent studies, national samples of youth e-cigarette users demonstrate that the majority were not aware that the products contain nicotine and believed them to be “not at all addictive.”^{xx}

II. Nicotine exposure in adolescence can permanently change brain development and make the addiction to nicotine extremely difficult to break.



Exposure to nicotine in adolescence creates measurable changes in brain chemistry and biology. These changes lead to heavier daily use, stronger addiction, and more difficulty quitting tobacco use later in life.^{xxii} Nicotine addiction is complex and differs between adults and adolescents. In fact, the Minnesota Department of Health warns that no amount of nicotine is safe for the adolescent brain.^{xxiii}

In general, nicotine addiction functions similar to other addictions—the nicotine activates dopamine and other positive chemicals in the brain, effectively hijacking the body’s natural reward system. A youth’s exposure to nicotine can alter brain development resulting in long-term consequences such as decreased cognitive ability, increased mental health issues, and behavioral and personality changes.^{xxiv} Additionally, brain changes induced by nicotine exposure can make youth more susceptible to addiction to other substances.^{xxv}

Student use or possession of commercial tobacco products, even if in violation of school policies, indicates an addiction to nicotine that should compel school administrators to use supportive and effective methods to assist the student in achieving recovery. Student use or possession of commercial tobacco in violation of school policies despite their knowledge of the potential negative consequences of violating the policy demonstrates the strong addictive nature of nicotine.

III. Effective Solutions to School Policy Violations Focus on Helping Youth Succeed

School years are critical for the physical, social, and educational development needed for success both in school and in life. Research shows penalties like expulsion and suspension contribute to negative educational and life outcomes, undermining schools’ goals for supporting healthy student development.^{xxvi}

The U.S. Department of Education (DOE) and U.S. Department of Justice recognize the connection “between exclusionary discipline policies and practices and an array of serious

educational, economic, and social problems.”^{xxvii} In 2014, the DOE issued a report titled “Guiding Principles: A Resource Guide for Improving School Climate and Discipline.” That report finds that some of the harms from suspension and expulsion include a decreased likelihood to graduate on time, increases in grade repetition and dropout, and an increased likelihood of involvement with the criminal court system.^{xxviii}

The negative consequences of using expulsions and suspensions are not limited to the expelled or suspended student. High rates of school suspensions are associated with lower scores on standardized tests and overall academic achievement of the entire student body.^{xxix} The DOE recommends that “schools should... explicitly reserve the use of out-of-school [punishments] for the most egregious disciplinary infractions that threaten school safety,” such as bringing a firearm to school.^{xxx}

Recent addiction treatment research supports a shift towards the decriminalization of addiction in general. In a school setting, suspension, expulsion, and other punitive measures are parallel to and can lead to actual criminalization of addiction in society. While commercial tobacco and nicotine use are not criminalized in the same way as other substances, at its core, nicotine addiction operates in the brain similar to other addictions.^{xxxi} *Because of that reality, nicotine addiction should be treated in a similar way—by moving away from punitive measures and moving towards therapeutic interventions that address the underlying disease causing the behavior (addiction) and helping to treat it.* The World Health Organization and the United Nations support this holistic approach, noting that there is “little apparent relationship between the severity of sanctions prescribed for drug use and the prevalence or frequency of use.”^{xxxii}

Research also demonstrates that the stress, isolation, and separation that occurs when a student is expelled or suspended can increase commercial tobacco and other drug use and prolong addiction. In contrast, an approach that provides a supportive and fulfilling environment can serve to reduce addiction and promote recovery.^{xxxiii} Focusing on punishment rather than rehabilitation is likely to drive youth into a deeper, more secretive addiction – rather than seeking help from trusted teachers, coaches, or other school staff in order to achieve recovery.

IV. Tobacco use disparities and implicit bias in the administration of penalties may result in unequal treatment of students that is prohibited by law.

The industry has targeted young women and Black, Indigenous, LGTQIA+, and low socioeconomic youth with marketing of highly addictive and poisonous tobacco products for decades. This has resulted in use and addiction disparities among youth. *For this reason, assessing punitive measures against students for violating the commercial tobacco policy may result in unequal treatment of students based on race, gender, sexual orientation and identity, or socioeconomic status, even if there was no implicit or explicit bias informing the decision-making process.*

The process for handling violations of school policies often includes some level of administrative discretion. This discretion can lead to disparities caused by implicit or unconscious biases. A plethora of evidence exists regarding racial disparities in school discipline, including suspension and expulsion practices.^{xxxiv} Even regarding preschool age children, Black children and children of color experience discipline with greater severity and frequency than their white peers.^{xxxv} These disparities are consistent in Minnesota. Minnesota Department of Education student

discipline incident data show significant disparities in suspensions and expulsions in schools across the state for Indigenous and Black students, students of color, and students with disabilities.^{xxxvi} Department of Education Office of Civil Rights data also reveal that “although African-American students represent 15 percent of students in the [sample], they make up 35 percent of students suspended once, 44% of those suspended more than once, and 36 percent of students expelled.”^{xxxvii} These concerning disparities only increase when considering a student’s multiple identities—male students and students with disabilities that are also Black are suspended and expelled more than any other group.^{xxxviii}

The DOE OCR has made it clear that schools are responsible for any biased disciplinary actions—whether it is administered by principals, teachers, or school resource officers. The DOE OCR data demonstrates that Black students are significantly more likely to be referred to school resource officers, outside law enforcement, and subject to arrest than their white counterparts. In the most recent DOE OCR report, Black students made up 15 percent of the total student body but represented 31 percent of students referred to law enforcement or subjected to school-related arrests.^{xxxix} Because of these concerns, the DOE advises that school administrators should limit the use of school resource officers (SROs) when dealing with students. This is supported by research demonstrating that schools that increased the presence of SROs in response to the threat of school shootings experienced a significant increase in criminalization of student behavior, especially for non-violent crimes.^{xl} The research recommends that schools ensure that SROs “do not become involved in routine school disciplinary matters” and make certain that the role of SROs is “focused on protecting the physical safety of the school or preventing the criminal conduct of persons other than students.”^{xli}

In conclusion, using punitive measures like suspension and expulsion to penalize student violations of a school commercial tobacco policy is not reasonable, considering the targeted marketing, science of addiction, and long-term consequences associated with expulsion and suspension. Effective school policies attempt to address the underlying addiction to commercial tobacco instead of purely punitive measures, which do not deter continued use and may exacerbate the problem. While schools have an interest in prohibiting behavior that is disruptive and harmful to health, schools may consider weighing the severity of the infraction with the consequences and effectiveness of the punishment. According to the Centers for Disease Control and Prevention, **the most effective approaches to helping youth quit tobacco use are through counseling and education.**^{xliii} As such, schools seeking to avoid excessive punitive measures in their Commercial Tobacco-Free Policy may consider the following alternative penalty language:

Any student violations of this Policy shall result in the following measures:

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:
 - a. A student meeting and individual student assessment with a chemical health educator or designated staff to discuss commercial tobacco use and the school policy.
 - b. Student participation in a tobacco education program.
 - c. Provision of information to student about available cessation programs and resources.

2. The second violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; the provision of information to the student about available cessation programs; and at least one of the following:
 - a. A student meeting and individual student assessment with a chemical health educator or designated staff with parents and/or guardians to discuss commercial tobacco use and school policy.
 - b. Student participation in a tobacco education program.
3. The third and any subsequent violation shall result in confiscation of tobacco products, tobacco-related devices, imitation tobacco products, or lighters; notification of parents and/or guardians; the provision of information to the student about available cessation programs; student participation in a tobacco education program; and at least one of the following:
 - a. A student meeting and individual student assessment with a chemical health educator or designated staff with parents and/or guardians to discuss commercial tobacco use and school policy.
 - b. Educational community service.

For more information and resources:

- **More E-cigarette Resources for Schools and Parents**
www.health.mn.gov/ecigarettes
- **Quitting Resources for Youth and Adults**
www.health.mn.gov/quit
<https://truthinitiative.org/research-resources/topic/quitting-smoking-vaping>
- **Stanford Medicine: Tobacco Prevention Toolkit:**
www.med.stanford.edu/tobaccopreventiontoolkit.html
- **CATCH My Breath: E-cigarette and JUUL Prevention Program**
www.catchinfo.org/cvshealth

ⁱ Public Health Law Center, *Location, Location, Location: Tobacco & E-Cig Point of Sale / Regulating Retailers for Public Health* (2019), <https://publichealthlawcenter.org/sites/default/files/resources/Location-Tobacco-Ecig-Point-Of-Sale-2019.pdf>.

ⁱⁱ Public Health Law Center, *The Verdict Is In* (2006), <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-verdict-youth.pdf>.

ⁱⁱⁱ Philip Morris, *Young Smokers: Prevalence, Trends, Implications, and Related Demographic Trends*, 1981, Bates No. 1000390803.

^{iv} Campaign for Tobacco-Free Kids, *Tobacco Company Quotes on Marketing to Kids* (2001), <https://www.tobaccofreekids.org/assets/factsheets/0114.pdf>; see also U.S. DEP'T. OF HEALTH & HUMAN SERVS., *THE HEALTH CONSEQUENCES OF SMOKING—50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GEN.* (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

^v *Id.*

^{vi} Joseph R. DiFranza & Tim McAfee, *The Tobacco Institute: Helping Youth Say 'Yes' to Tobacco*, 34 J. FAMILY PRACTICE 694-96 (1992).

^{vii} *Id.*

^{viii} Truth Initiative, *E-Cigarettes: Facts, Stats, and Regulations* (2018), <https://truthinitiative.org/news/e-cigarettes-facts-stats-and-regulations>.

- ^{ix} CDC OFFICE ON SMOKING AND HEALTH, TOBACCO INDUSTRY-SPONSORED YOUTH PREVENTION PROGRAMS IN SCHOOLS (2018).
- ^x U.S. DEP'T. OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING—E-CIGARETTE USE AMONG YOUTH & YOUNG ADULTS: A REPORT OF THE SURGEON GEN. (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf.
- ^{xi} Nina C. Schleicher et al., *Tobacco Marketing in California's Retail Environment (2011–14)*, FINAL REP. TOBACCO ADVERT. SURVEY (2014), <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/TobaccoMarketinginCaliforniasRetailEnvironmentNotationsFinal2916.pdf>.
- ^{xii} U.S. DEP'T. OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING—PREVENTING TOBACCO USE AMONG YOUTH & YOUNG ADULTS: A REPORT OF THE SURGEON GEN. (2012), https://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm.
- ^{xiii} Campaign for Tobacco-Free Kids *supra* note 4; *See also* Truth Initiative, Latest Data: Tobacco Cos. Quadruple In-Store Ad Spending (2016), <https://truthinitiative.org/news/latest-data-tobacco-companies-quadruple-store-ad-spending>.
- ^{xiv} PREVENTING TOBACCO USE AMONG YOUTH & YOUNG ADULTS, *supra* note 12.
- ^{xv} *Id.*
- ^{xvi} Daniel P. Giovenco et al., *Ass'n Between Electronic Cigarette Marketing Near Schools and E-cigarette Use Among Youth*, 59 J. ADOLESCENT HEALTH 627-634 (2016); Dale S. Mantey et al., *E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among U.S. Youth*, 58 J. ADOLESCENT HEALTH 686-90 (2016).
- ^{xvii} Andrea S. Gentzke et al., *Vital Signs: Tobacco Product Use Among Middle and High School Students – U.S., 2011–2018*, 68 MORBIDITY & MORTALITY WKLY. REP. 157-64 (2019).
- ^{xviii} FOOD & DRUG ADMIN., E-LIQUIDS MISLEADINGLY LABELED OR ADVERTISED AS FOOD PRODS. (2018), <https://www.fda.gov/tobacco-products/ctp-newsroom/e-liquids-misleadingly-labeled-or-advertised-food-products>.
- ^{xix} Samir S. Soneji et al., *Use of Flavored E-Cigarettes Among Adolescents, Young Adults, and Older Adults: Findings from the Population Assessment for Tobacco & Health Stud.*, 134 PUB. HEALTH REP. 282-92 (2019).
- ^{xx} Maria Cooper et al., *Flavorings & Perceived Harm and Addictiveness of E-Cigarettes Among Youth*, 2 TOBACCO REG. SCI. 278-89 (2016); Jeffrey G. Willett et al., *Recognition, Use and Perceptions of JUUL Among Youth and Young Adults*, 28 TOBACCO CONTROL 115-16 (2019).
- ^{xxi} Erin Brodwin & Dragan Radovanovic, *The Most "Addictive" Drugs Probably Aren't the Ones you Think*, BUSINESS INSIDER (May 16, 2016), <https://www.businessinsider.com/most-addictive-substances-2016-5>.
- ^{xxii} E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS, *supra* note 12.
- ^{xxiii} Minnesota Dep't of Health, *Nicotine Health Advisory: Nicotine and the Escalating Risk of Addiction For Youth* (2018), <https://www.health.state.mn.us/communities/tobacco/nicotine/docs/2018addictionadvisory.pdf>.
- ^{xxiv} Natalia A. Goriounova & Huibert D. Mansvelders, *Short- and Long-Term Consequences of Nicotine Exposure During Adolescence for Prefrontal Cortex Neuronal Network Function*, 2 COLD SPRING HARB. PERSP. MED. 1-14 (2012).
- ^{xxv} The Truth Initiative, *The Youth E-Cigarette Epidemic: 5 Important Things to Know* (2018), <https://truthinitiative.org/news/youth-e-cigarette-epidemic-5-important-things-to-know>.
- ^{xxvi} Jeffrey Lamont et al., *Out-of-School Suspension and Expulsion* 131 PEDIATRICS, e1000 (2013).
- ^{xxvii} U.S. DEP'T. OF EDUC., GUIDING PRINCIPLES: A RESOURCE FOR IMPROVING SCH. CLIMATE & DISCIPLINE (2014).
- ^{xxviii} *Id.*
- ^{xxix} *Id.*
- ^{xxx} *Id.*
- ^{xxxi} U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF SMOKING—NICOTINE ADDICTION: A REPORT OF THE SURGEON GEN. (1988), <https://profiles.nlm.nih.gov/ps/access/nbbzd.pdf>.

^{xxxii} THE NAT'L ACADS. OF SCI., ENGINEERING, AND MED., *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us* (2001), <https://www.nap.edu/read/10021/chapter/8>.

^{xxxiii} Bruce K. Alexander, Prof. Emeritus, Simon Fraser U., Presentation to Leeds and York Partnership, NHS Foundation Trust: Treatment for Addiction: Why Aren't We Doing Better? (last revised May 28, 2018) (transcript available at <http://www.brucekalexander.com/articles-speeches/treatmentarecovery/295-treatment-for-addiction>).

^{xxxiv} GUIDING PRINCIPLES *supra* note 27.

^{xxxv} Walter S. Gilliam, *Early Childhood Expulsions and Suspensions Undermine Our Nation's Most Promising Agent of Opportunity and Social Justice* (2016), https://vahsa.memberclicks.net/assets/Annual-Conference/2019-Annual-Conference/Handouts/Tuesday_Handouts/10-15/fb2077_477fd22230a048aa90bed576fa051501.pdf.

^{xxxvi} MINN. DEP'T OF HUM. RTS., EDUC. DISCRIMINATION: SUSPENSION & EXPULSION (2019).

^{xxxvii} U.S. DEP'T OF JUST. & U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER ON THE NONDISCRIMINATORY ADMIN. OF SCH. DISCIPLINE (2014).

^{xxxviii} U.S. DEP'T OF EDUC. OFF. FOR C.R., SCH. CLIMATE & SAFETY: 2015–2016 C.R. DATA COLLECTION (2018).

^{xxxix} *Id.*

^{xl} Chongmin Na & Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, 30 JUST. Q., 619-650 (2013); Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280-287 (2009).

^{xli} GUIDING PRINCIPLES *supra* note 27.

^{xlii} NAT'L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION, PHS GUIDELINE RECOMMENDATIONS: HOW TO HELP ADOLESCENTS QUIT SMOKING (2008), https://www.cdc.gov/tobacco/quit_smoking/cessation/pdfs/phs_adolescents_508.pdf.