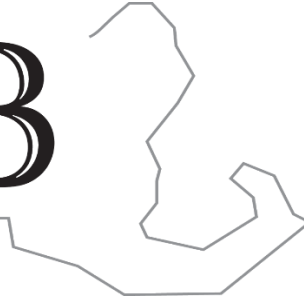


MAHIB

Assisting Massachusetts Boards of Health through
training, technical assistance and legal education



SCHOOL TOBACCO POLICIES: Applicable Laws and Sample Policy

Acknowledgements

This document was drafted by Cheryl Sbarra, J. D., Director of Policy and Law for the Massachusetts Association of Health Boards with assistance from Chris Banthin, J.D., Senior Staff Attorney, Public Health Advocacy Institute, Northeastern University School of Law; D.J. Wilson, J.D., Public Health Liaison, Massachusetts Municipal Association; and Sarah McColgan, Tobacco Control Program Director, Massachusetts Health Officers Association.

2.15.2018

INTRODUCTION

It is incontrovertible that the use of tobacco products in schools and on school grounds is a hazard for the health, safety and welfare of students, employees and visitors. It is also destructive to school facilities and school grounds.

Tobacco is the leading cause of preventable death in the United States. Most daily smokers began smoking before age 18. In fact, 2500 youth in Massachusetts become daily smokers each year.¹ In addition, the current use of electronic cigarettes, vape pens and “JUULS” (e-cigarettes)² by youth has been called a “tsunami” by Stanford Medicine.³ In Massachusetts in 2015, high school students reported a much higher use of e-cigarettes than adults, with nearly 50% of high school youth reporting ever using e-cigarettes compared with 14% of adults. More youth have tried an e-cigarette than have tried smoking a cigarette. (44.8% of youth tried e-cigarettes compared with 27.8% of youth who tried smoking a cigarette). Additionally, more youth than adults use both e-cigarettes and cigarettes. (5.2% of youth compared with 1.8% of adults). This practice is commonly referred to as “dual-use”.

High school youth use e-cigarettes at a higher rate than all other tobacco products, including cigarettes, cigars and smokeless tobacco. In fact, youth use of all other tobacco products decreased in 2009, while use of e-cigarettes increased.⁴

To address this alarming trend, schools can amend their current policies prohibiting tobacco use in schools, on school grounds and at school- sponsored activities to include e-cigarette use by updating the definition of tobacco products to include e-cigarettes as described herein. A sample school policy is also included herein.

¹ Campaign for Tobacco Free Kids: <https://www.tobaccofreekids.org/problem/toll-us/massachusetts>

² JUULs are currently the most popular e-cigarettes used by youth. E-cigarettes are constantly being “recreated” by the industry.

³ <http://med.stanford.edu/tobaccopreventiontoolkit/parents-and-school-policy.html>

⁴ http://www.mass.gov/eohhs/searchresults.html?output=xml_no_dtd&client=mg_eohhs&proxystylesheet=massgov&getfields=*&ie=UTF8&oe=UTF8&tlen=215&sitefolder=eohhs&filter=0&requiredfields=&startsite=EOHHSx&q=electronic+cigarettes&site=EOHHSx&x=0&y=0

LAWS AND POLICIES RELATED TO SCHOOL TOBACCO POLICIES

Many Massachusetts and federal laws and policies regarding tobacco use apply to schools. Some of these laws are local board of health regulations, town bylaws and city ordinances.

A. Federal Laws

The *Pro Children Act of 1994*⁵ states “No person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.” Thus, no building used as a school may permit smoking within its indoor facilities.

The primary enforcers of this law are the U.S. Department of Health and Human Services (HHS), the Department of Education, and the Department of Agriculture. The law provides for civil monetary penalties for violations of this law. “*The civil money penalties may not exceed \$1000 for each day of violations or exceed the amount of applicable Federal funds the recipient receives for the fiscal year.*”

This law does not apply to e-cigarettes because e-cigarettes are not “smoked.”

B. State Laws

1. *The Smoke Free Workplace Law*

The Smoke Free Workplace Law⁶ prohibits smoking in all enclosed workplaces, including public and private schools. The law specifically refers to schools, stating that “*smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hall ways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants . . . or in a school . . . or in any public transportation conveyance.*”

Since schools are workplaces, this means that smoking is prohibited in all school buildings including classrooms and restrooms at all times, including but not limited to town meetings and any other activities. The law applies to all persons: students, teachers, personnel and visitors. Furthermore, the law also prohibits smoking in “public

⁵ 20 U.S.C. 6083.

⁶ <https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter270/Section22>

transportation conveyances” including all school buses and transportation vehicles.

This law defines smoking as “the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco of **non-tobacco product designed to be combusted and inhaled.**” (G.L. c. 270, §22(a)). This means that this law prohibits the smoking of marijuana as well. However, it does not apply to e-cigarettes because e-cigarettes are not “designed to be combusted.”

The Smoke Free Workplace Law provides for fines for violating the law: *“An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation.”*

Local boards of health and their agents enforce this law and can write civil tickets to violators. Some boards have designated school administrators as agents of the board of health for purposes of enforcing the law in schools. Schools should check with the local board of health to find out who enforces the Smoke Free Workplace Law in the municipality and whether the board has designated someone from the school to enforce the law.

The person in control of the school or “workplace” where smoking is taking place is subject to a civil penalty of \$100 for the first offense; \$200 for a second offense; and \$300 for a third offense. Individual smokers may also be assessed a civil fine of \$100 for each offense. Like parking tickets, these are not criminal offenses; however, school administrators should be aware that failure to pay a civil ticket has the potential to result in a criminal case.

2. *The Education Reform Act*

The Education Reform Act⁷ states *“it shall be unlawful for any student, enrolled in either primary or secondary public schools in the commonwealth, to use tobacco products of any type on school grounds during normal school hours.”*

This law requires that prohibited tobacco behaviors be outlined in school handbooks. *“The superintendent of every school district shall publish the district’s policies pertaining to the conduct of teachers and students. Said policies shall prohibit the use of any tobacco products within the school building, the school facilities or on the school*

⁷ G.L. c. 71, §§2A, 37H.

grounds or on school buses by any individual, including school personnel.”

This law does not stipulate any required penalties, so school policy makers are free to enforce individual school district penalties if they are consistent with the above-described Smoke Free Workplace Law, the school’s disciplinary guidelines, and are outlined in advance in the school handbook. This law does not apply to private schools.

The Education Reform Act does not define “tobacco product;” however it prohibits the use of tobacco “of any type.” Therefore, if the definition in a school’s tobacco policy utilizes the comprehensive definition of tobacco included herein, this law **may** include e-cigarettes.

3. *Motor Vehicles and Aircraft Laws*

Massachusetts’s Motor Vehicles and Aircraft Law⁸ provides that “*No person shall operate any school bus, and the owner or custodian of a school bus shall not permit the same to be operated upon or to remain upon any way, unless the following requirements are complied with:*

(10) No person shall smoke or consume alcoholic beverages on a school bus while such bus is being used to transport school pupils”

Smoking is thus prohibited on buses or other vehicles when they are used to transport public or private school pupils.

Like the Education Reform Act, this law does not stipulate any required penalties. However, since school buses are covered under the Smoke Free Workplace Law, penalties regarding smoking on buses must be consistent with those requirements. Penalties should be consistent with disciplinary guidelines and outlined in advance in school handbooks.

This law does not address e-cigarettes because e-cigarettes are not “smoked.”

4. *Massachusetts Interscholastic Athletic Association (MIAA) policies*

If a school is a member of the Massachusetts Interscholastic Athletic Association (MIAA), there are MIAA-required mandatory eligibility requirements pertaining to tobacco use by both athletes and coaches. The MIAA rules are minimum standards; and schools may develop more stringent standards and eligibility requirements.

⁸ Massachusetts General Laws, Chapter 90, section 7B.

RULE 62: Student (and Coach) Eligibility: Chemical Health/Alcohol/Drugs/ Tobacco

62.1 *“From the earliest fall practice date, to the conclusion of the academic year or final athletic event . . . a student shall not, regardless of the quantity, use, consume, posses, buy/sell, or give away any beverage containing alcohol; and tobacco products (including e-cigarettes, VAP[E] pens and all similar devices); marijuana (including synthetic); or any controlled substance.”*

Violation results in the student’s ineligibility for the next consecutive interscholastic contest totaling 25% for all interscholastic contests in that sport. (See, MIAA Handbook July 1, 2017 – June 2019).

62.2 Coaches – *“During practice or competition, a coach shall not use any tobacco product.”*

The MIAA also has minimum penalties for violations of the policy, for both first offenses, and subsequent offenses. The complete text of their policies is at <http://www.miaa.net/miaa/home?sid=38>.

Local Laws: regulations, ordinances and bylaws

Most local boards of health have regulations that address tobacco product use; and most of these regulations define “tobacco product” to include e-cigarettes. Schools must comply with these local regulations; however, as described above, enforcement of these local regulations in schools can be challenging unless school staff is designated as enforcing agents. Some local tobacco product laws are in the form of ordinances (cities) and bylaws (towns); however, most are in the form of board of health regulations.

The enforcing authority for these local laws is the board of health or its designated agent.

COMPONENTS OF A SCHOOL TOBACCO POLICY

A school tobacco policy can be included in a school’s handbook to inform students, staff, teachers, visitors, parents and guardians and all others about the school’s policy relative to tobacco products. A school tobacco policy should contain the following elements:

- a. Rationale
- b. Policy text
- c. Penalties

A. Rationale

This section should include an explanation of why the school environment should be tobacco-free. Typically, policies begin with an explanation of the need for the policy. It can be very brief, or quite extensive. An example might read as follows:

*“Tobacco use is the leading cause of preventable death in the United States. Most daily smokers began smoking before the age of 18. The use of tobacco **products on school grounds, in school buildings and facilities, on school property or at school-related activities or school-sponsored events, including but not limited to athletic events** is detrimental to the health and safety of students, staff and visitors.”*

B. Policy Text

The policy text outlines the school’s rules and regulations regarding tobacco use. The policy should spell out specifically what is prohibited, when, where, and by whom. The following components should be included:

1. To whom does the policy apply?

- a. It should apply to all students, school staff, parents and visitors at all times (24/7). It should apply to all outside persons or groups using school facilities and/or outside grounds, even when school is not in session.

2. Types of products included:

- a. It should include ALL tobacco products. The definition of “tobacco products” should be comprehensive. The following definition is comprehensive:
 - i. ***Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, niffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic pens, electronic hookah, liquid nicotine, “e-liquids” or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation***

product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

- ii. The above definition includes cigarettes, cigars, and all tobacco that can be combusted, as well as smokeless, blunt wraps, loose tobacco and e-cigarettes and vape pens and any other iteration of an e-cigarette.
- iii. Other important definitions are included in the template policy contained herein.

3. Places or areas of school covered:

School buildings: all buildings and enclosed hallways connecting buildings.

Effect of the Smoke-Free Workplace Law

This law applies to smoking only (not to vaping or chewing).

Effect of the Education Reform Act

This law prohibits the use of tobacco on school grounds, school building, school facilities and school buses during normal school hours. The superintendent of the district shall publish the policy in the handbook.

Outside school buildings: outdoor areas, such as walkways connecting school buildings, courtyards, quadrangles.

Effect of the Smoke-Free Workplace Law

Outside areas are not covered by this law.

Effect of the Education Reform Act

This law prohibits the use of tobacco on school grounds, school building, school facilities and school buses during normal school hours. The superintendent of the district shall publish the policy in the handbook.

On school grounds: parking lots, athletic fields and other outside school facilities and premises owned, leased or used by the school for school purposes.

Effect of the Smoke-Free Workplace Law

Outside school grounds are not subject to this law.

Effect of Education Reform Act

This law prohibits the use of tobacco on school grounds, school buildings, school facilities and school buses during normal school hours. The superintendent of the district shall publish the policy in the handbook.

At school-related or school-sponsored events: athletic events, field trips, dances, meetings and other events not on school property.

Effect of the Smoke-Free Workplace Policy

If the event is inside a school gymnasium, pool or other indoor facility then this law applies.

Effect of Education Reform Act

If the event is school-related or school-sponsored the Education Reform Act applies.

On school buses or on other school vehicles: school buses, charter buses, vans and other vehicles used for school purposes

Effect of Smoke-Free Workplace Law

This law applies to school buses and other vehicles, including municipal vehicles.

Effect of Massachusetts Motor Vehicle and Aircraft Law

School buses are subject to this law. Other school vehicles are not subject to this law.

4. Other considerations for policy:

Most school districts add “possession of tobacco products” to the list of prohibited activities in their policy. This would allow school personnel to confiscate tobacco products from students.

C. Penalties:

Penalties for violating a school tobacco policy should be consistent with penalties for other infractions of the school handbook.

Sample School Tobacco Policy

SECTION I. RATIONALE

Tobacco use is the leading cause of preventable death in the United States. Most daily smokers began smoking before the age of 18. The use of tobacco products on school grounds, in school buildings and facilities, on school property or at school-related activities or school-sponsored events, including but not limited to athletic events is detrimental to the health and safety of students, staff and visitors.

SECTION II. DEFINITIONS

<u>Administrator</u>	Person(s) including but not limited to principals, vice-principals, office personnel, and others who have disciplinary and managerial authority to enforce school policies and penalties.
<u>Staff</u>	Person(s) employed by [insert school name] as some full-time, part-time or independent contractors, as well as volunteers.
<u>Parent/Guardian</u>	Person(s) that have legal guardian status and responsibility over a student enrolled in [insert school name] for educational purposes.
<u>School building</u>	Any building or enclosed walkway that is used or leased for educational purposes.
<u>School grounds</u>	All school buildings, parking lots, athletic fields, loading docks, and /or other school outdoor facilities, and other premises owned or leased by the school for educational purposes.
<u>Student</u>	Person(s) legally enrolled in [insert school name] for educational purposes.
<u>Tobacco paraphernalia</u>	Any device used to aid, ingest, light, burn, or consume any tobacco product as defined herein, including but not limited to pipes, rolling papers, matches or any component or part of a tobacco product.
<u>Tobacco product</u>	Any product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any

other means including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, vape pens, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purposes.

Visitors

Person(s) physically present on school property who are not administrators, students, faculty or staff as defined above.

SECTION III. TEXT

Use of tobacco product

No person(s) shall, at any time, use a tobacco product in any school building, on any school grounds, at any athletic event or any school-sponsored event or in any school bus or other vehicle used for school purposes.

Possession of tobacco product

No student shall at any time possess any tobacco product or tobacco paraphernalia in any school building, on any school grounds, at any athletic event or any school-sponsored event or in any school bus or other vehicle used for school purposes.

Confiscation

When there is evidence that a student is in possession of tobacco products or tobacco paraphernalia, administrators or other designated staff may confiscate such items.

SECTION IV. PENALTIES

Penalties should reflect penalties for other infractions of the handbook. Penalties are usually based on school resources, likely student response, past successes and disappointments, and any other applicable factors. Every school is different and tobacco policy penalties should be tailored to the specific school.

SECTION V. ENFORCEMENT

Enforcement should be in line with enforcement of any other infraction of the handbook.

SECTION VI. EFFECTIVE DATE

This policy shall take effect in full on [insert date] upon its passage.