



# COMMERCIAL TOBACCO-FREE K-12 SCHOOL MODEL POLICY

## Minnesota: Questions & Answers



The use or promotion of commercial tobacco products<sup>1</sup> 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.<sup>2</sup> Minnesota state law also prohibits smoking, vaping, chewing, or otherwise ingesting tobacco or tobacco products in public K-12 schools, including all school facilities, whether owned, rented or leased, and in all vehicles that a school district owns, leases, rents, contracts for or controls.<sup>3</sup> However, neither state nor federal law covers outdoor school grounds.

To promote an environment free of commercial tobacco in primary and secondary schools throughout Minnesota, the Public Health Law



Center has prepared a comprehensive model policy that school districts and schools may adopt. The policy:

- Provides a definition of commercial tobacco products to include current and future tobacco products;
- Prohibits the following items on campus (inside and outside buildings) and at off-campus, school-sponsored events:
  - Tobacco products and tobacco-related devices, including electronic cigarettes,
  - Imitation tobacco products (such as candy cigarettes), and
  - Lighters;
- Prohibits accepting any donations or curriculum from any tobacco-related industry;
- Prohibits any promotion of tobacco products, including electronic cigarette products; and
- Includes effective and holistic enforcement options for student violations beyond suspension and expulsion.

Both this publication and *Commercial Tobacco-Free K-12 School Model Policy: Minnesota-Specific* reflect this policy. In addition to the model policy language summarized above, this model policy Q & A document includes context boxes throughout the model policy that provide the reasoning behind key provisions.

## Free Legal Technical Assistance

As with all policy drafting, this K-12 Model Policy is only to be used as a guide. Each school district or school may consider modifications that reflect local needs, resources, and situations. You should review your policy with a legal technical assistance provider to ensure internal consistency, especially if you change terms or delete provisions.

The Public Health Law Center may be able to review the draft of your school or school district's commercial tobacco-free policy. The Center also offers trainings on drafting effective policies. Please check our website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) for more information about policy drafting and other model policies and resources. To request assistance, e-mail [publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu).

## Minnesota K-12 Schools, Commercial Tobacco-Free: Model Policy Questions & Answers

### I. Findings

**Q:** *Why include Findings in a comprehensive commercial tobacco-free policy?*

**A:** Findings in a commercial tobacco-free policy should be included to clearly identify the problems addressed with the policy. Findings can provide guidance and understanding for the policy drafters, enforcers, and readers. Common findings associated with a comprehensive commercial tobacco-free policy include those that clearly identify tobacco-related health concerns and problems with commercial tobacco that are related to school environments. Consider including findings that relate to your purposes, such as local statistics demonstrating the problem of youth commercial tobacco use.

- (A) Commercial<sup>4</sup> tobacco use is the single most preventable cause of death in the United States.<sup>5</sup>
- (B) In Minnesota, smoking causes 6,300 deaths annually and is responsible for nearly \$3.2 billion in excess medical care costs.<sup>6</sup>
- (C) Nicotine is found in all commercial tobacco products, including electronic delivery devices.<sup>7</sup> Exposure to nicotine during adolescence and young adulthood can cause addiction and harm the developing brain.<sup>8</sup>
- (D) The use of commercial tobacco products by children in the United States is a pediatric disease of considerable proportions that results in new generations of nicotine-dependent children and adults.<sup>9</sup>
- (E) For the first time in nearly two decades, overall youth commercial tobacco use increased in Minnesota — rising to 26.4 percent in 2017. This increase was driven by the use of electronic delivery devices (also known as e-cigarettes, vapes, Juul), which rose nearly 50 percent over the last 5 years.<sup>10</sup>
- (F) Children are exposed to tailored, targeted, substantial, and unavoidable tobacco industry marketing and advertising that leads young people to (1) hold favorable beliefs about, (2) overestimate the prevalence and undermine the health harms of, and (3) become more likely to begin to use commercial tobacco.<sup>11</sup>

**Q:** *Why does a comprehensive tobacco-free policy need a finding about tobacco advertising?*

**A:** This model policy prohibits the advertising or promotion of tobacco products, including electronic delivery devices. This finding gives support for that provision in the policy.

- (G) Electronic delivery devices create and increase nicotine addiction among young people. In 2018, the U.S. Surgeon General declared use of electronic delivery devices as an epidemic among young people.<sup>12</sup> Using these products may also encourage youth to try other combustible tobacco products that are known to cause disease and lead to premature death.

**Q:** *Why does a comprehensive tobacco-free policy need a finding about electronic delivery devices?*

**A:** This model policy includes electronic delivery devices in the definition of prohibited products. This finding gives support for the incorporation of those products into the policy.

- (H) Imitation tobacco products, such as candy cigarettes and smokeless chew, may lead youth to use commercial tobacco by desensitizing them to the dangers of tobacco and by advancing the idea that commercial tobacco use is socially acceptable.<sup>13</sup>

**Q:** *Why does a comprehensive tobacco-free policy need a finding about imitation products?*

**A:** This model policy recommends adding imitation tobacco products to the definition of prohibited products. This finding gives support for that addition to the policy.

- (I) Evidence has shown anti-tobacco use campaigns sponsored by the tobacco industry (including electronic delivery device manufacturers and retailers) do not prevent youth from using commercial tobacco products and may encourage youth to smoke and create positive associations with the tobacco industry.<sup>14</sup>

**Q:** *Why does a comprehensive tobacco-free policy need a finding about tobacco industry-sponsored materials?*

**A:** This model policy recommends prohibiting the use of materials provided by the tobacco industry, as well as the electronic delivery device industry. This finding gives support for that addition to the policy.

## II. Purpose

**Q:** *Why is it important to include a purpose section in a comprehensive tobacco-free policy?*

**A:** By detailing the purpose of a comprehensive tobacco-free policy, the drafters are laying out the goals they had in mind for the policy. A purpose section explains why the policy is being created, what the policy goals are, and why it is important to follow through with the policy.

**A comprehensive policy designed to ensure a safe learning and work environment free of commercial tobacco.**

- (A) [ The [ district name ] Board of Education ] / [ school name ] recognizes that the use of commercial tobacco products, including electronic delivery devices, is a health, safety, and environmental hazard for students, staff, visitors, and school facilities. The board is acutely aware of the serious health risks associated with the use of commercial tobacco products, including electronic delivery devices, to users and non-users. The [ board/school ] believes that the use or promotion of commercial tobacco products, including electronic delivery devices, on school grounds and at off-campus school-sponsored events is detrimental to the health and safety of students, staff, and visitors.
- (B) The [ board/school ] also believes accepting gifts or materials from the tobacco industry will send an inconsistent message to students, staff, and visitors.

**Q:** *Why include a purpose statement about industry gifts and materials?*

**A:** This purpose section supports the provision that prohibits the acceptance of tobacco industry gifts or materials below.

- (C) The [ board/school ] acknowledges that adult staff and visitors serve as role models for students. The board embraces its obligation to promote positive role models in schools and to provide an environment for learning and working that is safe, healthy, and free from unwanted smoke or aerosol and other commercial tobacco use for the students, staff, and visitors.

**Q:** *Why include a purpose statement about staff and visitor role modeling?*

**A:** This purpose section supports the provision that compliance with this comprehensive policy is important for everyone. It also supports the provision that prohibits promotion of tobacco products.

THEREFORE, the [ board/school ] adopts the following commercial tobacco-free policy:

### III. Definitions

**Q:** *Should a comprehensive commercial tobacco-free policy contain a definition section?*

**A:** Yes. A thorough definition section explains the language and wording used in a policy and helps ensure the language is consistent throughout the document. For example, if the word “staff” is defined, readers will know that it refers to all people employed by the district either full- or part-time, as well as volunteer and contract workers. A well-thought-out definition section can also help reduce ambiguity and confusion. For example, clarifying the meaning of “tobacco products” helps those responsible for enforcing the policy know what products are included. This is especially important because the tobacco industry constantly develops new ways to hook new users and to deliver nicotine to users.

- (A) **“Administrator”** means any person who has disciplinary and managerial authority to enforce school policies in [ district/school name ], including but not limited to principals, vice-principals, and office personnel.

**Q:** *Why is there a separate definition for “administrator”?*

**A:** “Administrator” is defined separately from “staff” because some provisions contain language pertaining to administrators only.

(B) **“Any time”** means 24 hours a day, seven days a week, 365 days a year.

**Q:** *Why is the definition for “any time” necessary?*

**A:** It is important to include language in the policy to clarify that provisions apply both during and outside normal school hours.

(C) **“Electronic delivery device”** means any product containing or delivering nicotine, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. “Electronic delivery device” includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, Juul, Suorin, or under any other product name or descriptor. “Electronic delivery device” includes any component part of a product, whether or not marketed or sold separately, including but not limited to e-liquids, e-juice, cartridges, or pods.

**Q:** *Why include a definition for “electronic delivery device”?*

**A:** Electronic delivery devices should be defined specifically and also included in the definition of tobacco products below. The devices represent an evolving category of products that may or may not look like cigarettes or other tobacco products, which can create confusion when interpreting a policy that does not include a specific definition. The state law on youth access to tobacco was changed in 2014 to include electronic delivery devices in the tobacco products definition. MINN. STAT. § 609.685

(D) **“Imitation tobacco product”** means any edible non-tobacco product designed to resemble a tobacco product, or any non-edible non-tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. “Imitation tobacco product” includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, pouches containing flavored substances packaged similar to snus, and shredded beef jerky in containers resembling snuff tins.

**Q:** Why include a definition of “imitation tobacco product”?

**A:** Imitation tobacco products normalize and encourage commercial tobacco use. Allowing these products on campus sends a mixed message to students and can pose enforcement challenges.

- (E) **“Lighter”** means a mechanical or electrical device typically used for lighting tobacco products.
- (F) **“Off-campus, school-sponsored event”** means any event sponsored by the school or school district that is not on school property, including but not limited to, sporting events, day camps, field trips, dances, or theatrical productions.

**Q:** Why define “off-campus, school-sponsored event”?

**A:** A policy that bans commercial tobacco products and tobacco product use at off-campus events should define off-campus events to clarify the types of events the policy covers.

- (G) **“Parent/Guardian”** means any person that has legal guardian status over a student enrolled in [ district/school name ].
- (H) **“School”** means [ name of school/any public nursery, day care center, child care facility, Head Start program, kindergarten, elementary, secondary school, alternative learning center or adult education center ] operated under the control of [ district name ].
- (I) **“School property”** means all facilities and property, including land, whether owned, rented, or leased by [ district/school name ], and all vehicles owned, leased, rented, contracted for, or controlled by [ district/school name ] used for transporting students, staff, or visitors.



**Q:** *Why include a definition for “school property”?*

**A:** An expansive school property definition can ensure that a policy is most likely enforceable on all school property and not just within the four walls of the school building(s). This definition of property allows for the policy to cover both inside and outside the school buildings. This definition includes all facilities, whether owned, rented or leased, and all vehicles that a school district owns, leases, rents, contracts for, or controls. Current Minnesota law does not cover outdoor school property. MINN. STAT. § 144.4165

- (J) **“Signage”** means signs declaring that all [ district/school name ] school property is tobacco-free.
- (K) **“Smoking”** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. “Smoking” also includes carrying or using an activated electronic delivery device.
- (L) **“Staff”** means any person employed by [ district/school name ] as full or part-time, or any position contracted for or otherwise employed, with direct or indirect monetary wages or compensation paid by [ district/school name ], or anyone working on a volunteer basis. This term includes, but is not limited to, faculty, service personnel, volunteers, chaperones, student teachers, adult classroom or student aides, and other adults working for [ district/school name ].

**Q:** *Why include a definition for “staff”?*

**A:** A definition of “staff” may be more inclusive than other provisions of the school policy. This definition is important, particularly when the policy includes a provision for “off-campus, school-sponsored events,” because the term “staff” covers “volunteers” and “chaperones.” Without this definition, a volunteer or chaperone at off-campus events would be considered a “visitor,” and therefore not covered in the model policy. That could result in a situation in which a parent or chaperone would be able to use tobacco products.

- (M) **“Student”** means any person enrolled in [ district/school name ]’s educational system.
- (N) **“Tobacco industry”** means manufacturers, distributors or wholesalers of tobacco products or tobacco-related devices (e.g., Juul, Altria). This includes parent companies and subsidiaries.

**Q:** *Why include a definition for “tobacco industry”?*

**A:** This term is used in the provision below that limits acceptance or solicitations of gifts or materials. If the school district does not include the references to “manufacturers, distributors or wholesalers,” it could inadvertently prohibit donations from retail businesses that simply sell tobacco products to consumers. A distributor is a business that sells products to a retailer.

Note that the term “tobacco industry” also includes the “manufacturers, distributors, or wholesalers” of electronic delivery devices since those products are included within the definition of “tobacco products” below.

- (O) **“Tobacco industry brand”** means any corporate name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indication of product identification identical or similar to those used for any brand of tobacco product, company, or manufacturer of tobacco products.
- (P) **“Tobacco product”** means any product containing, made, or derived from tobacco or that contains nicotine, whether synthetic or natural, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to: cigarettes; electronic delivery devices; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco.

**Q:** *Why is a definition of “tobacco product” important?*

**A:** Although this definition seems long, it is important to include the full description and list of products so readers of the policy understand which products are included in the policy. Commercial tobacco products and commercial tobacco use can take many forms. The definition above reflects the products covered by relevant state law and is also broad enough to include new products, like Juul, and not-yet-developed but foreseeable products. The tobacco industry has hundreds of products that come in every shape and size. For these reasons, a comprehensive commercial tobacco-free policy must contain a thorough definition of “tobacco products.” Note that the definition of tobacco products includes electronic delivery devices, also defined above.

(Q) **“Tobacco products shop”** means a retail establishment that derives more than 90 percent of its gross revenue from the sale of tobacco products, as defined in this policy.

**Q:** *Why include a definition for “tobacco products shop”?*

**A:** This definition is important when you are limiting donations or sponsorship so that businesses with a lesser portion of sales are not prohibited from providing support (e.g. grocery stores).

(R) **“Tobacco-related devices”** means ashtrays, rolling papers, wraps, or pipes for smoking and any components, parts, or accessories of electronic delivery devices.

(S) **“Visitor”** means any person subject to this policy that is not a student, staff, or administrator as defined above.

#### IV. General Statement of Policy

(A) [ district/school name ] students are 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.

**Q:** *Why is there a separate section that just applies to students?*

**A:** Students are separated out from other persons because of the word “possess.” It is important to have a separate section to allow administrators, staff, and visitors of legal age to possess these products, such as having a pack of cigarettes in a staff vehicle or a lighter in a purse or after staff or administrators confiscate them from students. See below for more discussion on this topic.

**Q:** *Why prohibit imitation tobacco products?*

**A:** Peer-reviewed studies published in medical literature demonstrate that imitation tobacco products predispose children to use commercial tobacco by desensitizing them to the dangers of commercial tobacco and advancing the idea that commercial tobacco use is socially acceptable. One such study concluded that 22 percent of adults who had regularly consumed candy cigarettes in their lives were regular or former smokers, compared with only 12 percent of adults who had never consumed candy cigarettes. The City of St. Paul was one of the first U.S. jurisdictions to ban the sale of imitation tobacco products. [City of St. Paul, Chapter 295.01](#).

**Q:** *Why prohibit lighters?*

**A:** Lighters are used to ignite combustible tobacco products and have been found to be the source of half (52 percent) of U.S. home fires each year. Between 2007 and 2011, approximately 7,100 home structure fires annually were caused by children playing with fire and lighters, resulting in an average of 77 civilian deaths, 750 civilian injuries, and \$172 million in property damage each year. Fire setting by juveniles continues to pose a significant fire threat in the United States. Most deaths, injuries, and damage from children playing with fire occur in home structure fires.

Novelty lighters, in particular, have features that are attractive to children, including visual effects, flashing lights, musical sounds, and toy-like designs. The federal Consumer Product Safety Commission has recalled thousands of novelty lighters since 1996 due to their danger to public safety. In 2008, the U.S. Fire Administration made banning novelty lighters the goal of Arson Awareness Week. In 2009, the City of St. Paul was one of the first jurisdictions in the U.S. to ban the sale of novelty lighters. [City of St. Paul, Chapter 295.01](#)

- (B) Administrators, staff, or visitors of [ district/school name ] are 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. This includes products or paraphernalia displaying tobacco industry brands.

**Q:** *Would this prohibit staff, administrators and visitors from possessing these items?*

**A:** No. These people would be able to carry tobacco products, tobacco-related devices, imitation tobacco products, lighters, or electronic delivery devices in a concealed fashion, but they cannot use, consume, activate, display, promote, or sell the listed items while on school property. For example, a teacher would not be able to carry a pack of cigarettes in a noticeable fashion, as that could be considered “displaying” the product.

- (C) It shall be a violation of this policy for [ district/school name ] to solicit or accept any contributions, gifts, money, curricula, or materials from the tobacco industry or from any tobacco products shop. This includes, but is not limited to, donations, monies for sponsorship, advertising, alleged educational materials, promotions, loans, scholarships, or support for equipment, uniforms, and sports and/or training facilities. It shall also be a violation of this policy to participate in any type of service funded by the tobacco industry while in the scope of employment for [ district/school name ].

**Q:** *What does this provision cover?*

**A:** Accepting funding or materials from the tobacco industry sends a mixed message to youth. This provision is meant to cover a variety of things, such as accepting tobacco industry prevention materials, preventing electronic delivery device companies from sponsoring youth events, or soliciting specific funding from companies that produce rolling papers. Federal law already limits sponsorship of youth-oriented events by certain tobacco companies. This goes beyond the federal law by including other tobacco product industries and subsidiaries.

**Q:** *What is the law about tobacco industry sponsorship?*

**A:** Federal law has limited application as it relates to tobacco industry sponsorship. The Family Smoking Prevention and Tobacco Control Act mandates restrictions on marketing and advertising cigarettes and smokeless tobacco. The law prohibits certain brand sponsorships of sports and entertainment events but does not cover parent company sponsorship or sponsorship by electronic delivery device manufacturers and retailers. Additionally, the Minnesota Settlement Agreement with leading cigarette manufacturers places restrictions on the ways in which the tobacco industry can advertise its products, and specifically prohibits manufactures from targeting children.

**Q:** *Why prohibit the acceptance of tobacco industry dollars?*

**A:** The tobacco industry has been targeting youth for decades. This has come in many forms, from marketing campaigns like the Joe Camel cartoon to the development of tobacco products, like electronic smoking products, that resemble and taste like candy. In 2006, a federal judge ruled that the tobacco industry spends billions of dollars annually on marketing activities to encourage youth to try and then continue to use tobacco products. Judge Gladys Kessler found that the industry's youth smoking prevention programs are not designed to effectively prevent youth smoking. Instead, internal tobacco industry documents show that these prevention programs were designed for a public relations purpose, not to keep kids from smoking. Several studies have found that industry-sponsored prevention programs are ineffective at best and may work to encourage kids to smoke. Researchers found that youth exposed to Phillip Morris's "Think. Don't Smoke" program had more positive associations with cigarette companies compared to youth who were not exposed to that campaign.

A review of campaigns on youth smoking prevention found that tobacco-funded materials avoid the most powerful anti-tobacco themes of health effects and industry manipulation. For more information on the federal decision, see the "Marketing to Youth" section of our publication, *The Verdict Is In: Findings from United States v. Philip Morris*.

**Q:** *Will having this section prohibit donations from convenience stores or box stores that sell tobacco products?*

**A:** No, not if the policy uses the definitions listed above for tobacco industry and tobacco products shop. Please note the definition for “tobacco products shop” will not prohibit donations from any store that sells tobacco, like pharmacies — just stores that derive more than 90 percent of their profits from tobacco sales. Minnesota state law defines tobacco products shop in the same way.

(D) It shall be a violation of this policy for any person to promote, or for [ district/school name ] to promote or allow promotion of tobacco products, tobacco-related devices, or imitation tobacco products on the school property or at off-campus, school-sponsored events. This includes promotion of these products via gear, technology accessories, bags, clothing, any personal articles, signs, structures, vehicles, flyers or any other materials.

**Q:** *Why is this provision necessary?*

**A:** Many schools have provisions that limit what messages can be displayed on clothing, but this does not extend to other items like bags or cell phone protective covers.

(E) [ district/school name ] shall act to enforce this policy and to take appropriate action against any student, staff, administrator, or visitor who is found to have violated this policy.

(F) Instruction to discourage the use of tobacco products shall be included in the education provided for all students. Staff responsible for teaching tobacco use prevention shall have adequate training and participate in ongoing professional development activities to effectively deliver the education program as planned. The curriculum for this instruction will not be paid for or developed by the tobacco industry or its subsidiaries.

**Comment:** Tobacco use prevention education and teacher training policies should be consistent with the programs and services offered throughout the district.

## V. Exceptions

**Q:** *Should a comprehensive tobacco-free policy contain any exceptions?*

**A:** Some exceptions are important for equity and educational purposes. For instance, an exemption for Indigenous People to use tobacco as part of a traditional, spiritual, or cultural ceremony supports the physical, spiritual, and emotional wellbeing of some Indigenous People. For more information, visit [keepitsacred.itcmi.org](http://keepitsacred.itcmi.org). This kind of exemption is reflected in state law. MINN. STAT. § 144.4165. Other exceptions allow for approved visitors or staff to use tobacco products for school-approved educational or instructional activities.

- (A) It shall not be a violation of this policy for a person to possess or provide tobacco, tobacco-related devices, imitation tobacco products, or lighters to any other person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice. It shall not be a violation of this policy to use tobacco or tobacco-related devices as part of an educational experience related to indigenous tobacco practices that has been approved by administrators.
- (B) It shall not be a violation of this policy for tobacco products, tobacco-related devices, imitation tobacco products, or lighters to be included in an instructional or work-related activity in [ district/school name ] school buildings if the activity is conducted by a staff member or an approved visitor and the activity does not include smoking, chewing, or otherwise ingesting the product.

**Q:** *Why should a school district include an exemption for staff use for educational purposes?*

**A:** Some exceptions can allow staff or approved visitors to use tobacco products, tobacco-related devices, imitation tobacco products, and lighters for educational, instructional, or research activities. For example, a local public health department would be allowed to bring new tobacco products to school property to educate teachers on developing products. As another example under this exemption, a teacher would be able to use a lighter to light a Bunsen burner in a science classroom exercise.



**Q:** *Are there other exceptions to consider?*

**A:** A district may choose to allow students to research and study tobacco products under the supervision of a staff member.

“It shall not be a violation of this policy for tobacco products, tobacco-related devices, imitation tobacco products, lighters, or electronic cigarettes to be included in instructional or research activities in [ district/school name ] school buildings or on school property if the activity is conducted or supervised by a staff member overseeing the instruction or research, the items remain on [ district/school name ] property through the time of disposal, and the activity does not include smoking, chewing, or otherwise ingesting the product.”

- (C) It shall not be a violation of this policy for non-students 18 years and older to use or possess a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

**Q:** *Why should a school district include this exception?*

**A:** This exception would allow faculty and staff to use or possess FDA-approved cessation products, like nicotine patches and gum, on school property or at school-sponsored events. At this time, no nicotine cessation products are approved for use by persons under the age of 18 years. If and when such products become available, they should be administered to students in accordance with existing policies for other medications.

## VI. Opportunities for Cessation Programs

- (A) Administrators shall consult with the local public health department or other appropriate health and allied community-based organizations to provide students, staff, and administrators with information and access to support systems, programs, and services to encourage them to abstain from the use of tobacco products.
- (B) Administrators shall identify and offer evidence-based programs and services for staff that use tobacco products to support them in complying with this policy.

**Q:** *What should a school district consider when adding information to this cessation program provision?*

**A:** Districts and schools should write a cessation policy to reflect evidence-based programs and resources available to students and staff. They may be interested in including specific cessation resources and information in the policy itself:

- The Minnesota Department of Health prepared a toolkit titled *School E-cigarette Toolkit: Addressing Student Use of E-cigarettes and Vapes*. The toolkit provides tools and resources for Minnesota school staff, including administrators, educators, teachers, and health services staff, who are working to address the use of electronic delivery devices, and other products in schools. It outlines opportunities for action that can be taken by various school staff, along with resources and tools to help.
- Schools can refer students to the Truth Initiative's quit programs by instructing them to text "QUIT" to 202-804-9884, and/or visit [This is Quitting](#) and [BecomeAnEX](#).<sup>®</sup>
- The QUITPLAN<sup>®</sup> is a free service for all Minnesotans, regardless of age. It offers e-mail programs and phone coaching. Anyone can call 888-354-PLAN (7526) to register at any time. To register online at [quitplan.com](http://quitplan.com), users must be at least 13 years old. Also, adults (e.g., staff, parents) may be able to obtain nicotine replacement products for their own use at no cost through the QUITPLAN<sup>®</sup> program.

## VII. Enforcement

**Q:** *Is an enforcement section necessary to a tobacco-free policy?*

**A:** Absolutely. Without an enforcement section, violating a commercial tobacco-free policy would likely have no effective solutions. The enforcement section provides an opportunity for schools to holistically address the challenging tobacco addiction that their students and staff may be facing. Districts must create an enforcement section to include in student and staff handbooks. Districts are encouraged to design specific enforcement policies to represent standards unique to each district. School districts should cross reference these sections with other student and/or employee handbooks.

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-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:
  - (i) 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.
  - (ii) 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:
  - (i) 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.
  - (ii) Educational community service.

**Comment:** Whenever possible, the penalties should focus on education and counseling as opposed to school suspension or police intervention. According to the Centers for Disease Control and Prevention, the most effective ways to help youth quit tobacco use are through counseling and education. (CDC, *PHS Guideline Recommendations: How to Help Adolescents Quit Smoking*)

Penalties that are purely punitive and do not attempt to address the commercial tobacco use will be limited in their effectiveness to deter future use. It is well known that the tobacco industry targets youth and young adults in its marketing. Once addicted, it is difficult for many users to quit. Using punitive measures (e.g., suspension or expulsion) to address the prohibited use that feeds youth addiction may be exponentially detrimental to these users. Additionally, non-criminal justice approaches to enforcement help to avoid disparate treatment and enforcement. Criminal penalties open the door to selective enforcement against youth by certain racial, ethnic, and socioeconomic groups. Evidence suggests that youth of color are disproportionately overrepresented in status-level offenses, which increases their interactions with law enforcement and introduces them into the criminal justice system.

For more information about alternative penalties in school policies, see our publication *Addressing Student Commercial Tobacco Use in Schools: Alternative Measures*.

## (B) Staff

- (1) The first violation of this policy shall result in a verbal warning to the staff member and an offer of a referral to cessation services.
- (2) The second violation shall result in a written warning to the staff member with a copy placed in the staff member's district personnel file, and an offer of referral to cessation services.
- (3) The third violation shall be considered insubordination and shall be dealt with accordingly based on established policies and procedures for suspension and/or dismissal of staff.

**Comment:** School districts are strongly encouraged to consult their collective bargaining agreement. Staff violations should be handled according to the policies and procedures outlined in the staff handbook provided by the district.

### (C) Visitors

- (1) Visitors observed violating this policy shall be asked to comply with [ district/school name ]'s tobacco-free policy.
- (2) If a visitor fails to comply with the request, this policy violation may be referred to the building principal or other available school district supervisory personnel. The supervisor shall decide on further action that may include a directive that the visitor leave school property and forfeit any fee charged for admission to a school-sponsored event.
- (3) Repeated violations may result in a recommendation that the superintendent prohibit the individual from entering [ district/school name ]'s property for a specified period of time.

**Comment:** Under MINN. STAT. § 609.681, a person is guilty of a petty misdemeanor (citation) if the person smokes in an area designated and identified with signage as a “non-smoking area.” According to MINN. STAT. § 144.416, a proprietor may ask “any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave. If the person refuses to leave, the proprietor, person, or entity in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.”

## VIII. Dissemination of Policy

**Q:** *Why is a dissemination provision important?*

**A:** Clearly laying out a dissemination provision ensures that the district and schools are taking steps to get the word out about the new policy. Dissemination provisions can detail who is responsible for distributing the information, how the information will be disseminated, and when. A key to implementing a comprehensive tobacco-free policy is clearly communicating the goals and objectives of the policy to all affected parties. A clear dissemination provision can help achieve that goal.

- (A) Appropriate signage shall be posted throughout the district at building entrances and other highly visible locations on all school buildings, building entrances, vehicles, vehicular entrances to school grounds, and all indoor and outdoor athletic facilities indicating that [ district/school name ] requires an environment free of commercial tobacco.

**Comment:** It is important to delegate and outline in the policy how signs will be posted and who will post them.

- (B) The school shall notify students and parents/guardians of this policy through student handbooks and orientations.
- (C) The district shall provide notice of this policy in staff handbooks, through orientations and employee or staff trainings, and when offering employment.
- (D) The school or district shall make reminder announcements of its commercial tobacco-free policy at school events at appropriate intervals throughout the events, when possible.

**Sample Standard Event Announcement:** “To protect the health of our students, staff, and visitors, we would like to remind you that our school is 100% free of commercial tobacco. Please refrain from using or displaying tobacco products anywhere on campus. If you have questions, please contact school administration. Thank you for your cooperation.”

### Dissemination Tips

- Place an ad in the local paper thanking the school board for its decision to make the school district 100 percent free of commercial tobacco. If the decision was for a private or charter entity, consider officially thanking the governing body.
- Ask other community agencies, such as local public health units, tobacco-free coalitions, parent teacher associations, or asthma coalitions, to include an article about the new tobacco-free school policy in their newsletters.
- Include written reminders of the policy in event programs.

## IX. Program Evaluation

**Q:** *Why should an evaluation provision be included in a policy?*

**A:** An evaluation provision recognizes that the needs of a comprehensive tobacco-free policy can change. Implementing and detailing an evaluation plan can ensure that policies are routinely examined and updated as needed.

(A) The tobacco-free policy shall be assessed by the school district or its designee evaluator at regular intervals, but at least once a year, to determine whether policies, policy enforcement, communication, education, staff training, and cessation programs are effective. Policies and programs shall be updated and revised accordingly.

## X. Effective Date

(A) This policy shall take effect in full on [ insert date ].

**Comment:** This policy may have implications related to the collective bargaining process. Therefore, before the policy is adopted or implemented, districts and schools should consider seeking the consultation and support of the unions.

## Statutes on Tobacco Use in Schools

20 U.S.C. § 6083(a)

MINN. STAT. § 144.4165.

MINN. STAT. § 120A.05, subs. 9, 11, 13.

See our publication [Minnesota Laws on Tobacco Product Use in Public and Charter Schools](#).

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The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.KeepItSacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 20 U.S.C. § 6083(a).
- 3 MINN. STAT. § 144.4165.
- 4 Traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.KeepItSacred.itcml.org>. When the word “tobacco” is used throughout this document, except for the indigenous practice provision, a commercial context is implied and intended.
- 5 U.S. DEP’T OF HEALTH AND HUMAN SERVICES. THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm).
- 6 Minn. Dep’t of Health, *Minnesota Tobacco Profile* (2018), <https://www.health.state.mn.us/communities/tobacco/data/docs/profiles/minnesota.pdf>; Minn. Dep’t of Health, *Statistical and Technical Notes for State and County Tobacco Profiles* (2018).
- 7 U.S. DEP’T HEALTH & HUMAN SERVICES, E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf).
- 8 U.S. DEP’T HEALTH & HUMAN SERVICES, E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL — EXECUTIVE SUMMARY (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Exec\\_Summ\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf).
- 9 U.S. DEP’T OF HEALTH AND HUMAN SERVICES, THE HEALTH CONSEQUENCES OF SMOKING — 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/50th-anniversary/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm); U.S. DEP’T OF HEALTH AND HUMAN SERVICES, PREVENTING TOBACCO USE AMONG YOUTH AND YOUNG ADULTS: A REPORT OF THE SURGEON GENERAL (2012), [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2012/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm).
- 10 Minn. Dep’t of Health, *Teens and Tobacco in Minnesota: Highlights from the 2017 Minnesota Youth Tobacco Survey* (2018), [https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen\\_tobacco17.pdf](https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen_tobacco17.pdf).
- 11 Joseph R. DiFranza et al., *Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality*, 117 PEDIATRICS e1237 (2006), <http://pediatrics.aappublications.org/cgi/reprint/117/6/e1237>.
- 12 U.S. DEP’T OF HEALTH AND HUMAN SERVICES. SURGEON GENERAL’S ADVISORY ON E-CIGARETTE USE AMONG YOUTH (2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.
- 13 Jonathan D. Klein & Steve St. Clair, *Do Candy Cigarettes Encourage Young People to Smoke?*, 321 BRIT. MED. J. 362 (2000), <http://www.bmj.com/cgi/content/full/321/7257/362>.
- 14 National Cancer Institute, Tobacco Control Monograph No. 19: *The Role of the Media in Promoting and Reducing Tobacco Use* (2008), [https://cancercontrol.cancer.gov/brp/tcrb/monographs/19/m19\\_complete.pdf](https://cancercontrol.cancer.gov/brp/tcrb/monographs/19/m19_complete.pdf); Matthew C. Farrelly et al., *Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns*, AM. J. PUBLIC HEALTH 92 (2002), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447480/pdf/0920901.pdf>.