

## WASHINGTON STATE SCHOOL VAPING LITIGATION FAQ (JANUARY 2022)

1. What is vaping?
  - a. Vaping is the use of heat to vaporize a liquid to inhale.
2. What is Juul?
  - a. “Juul” is the company that vastly improved vaping devices between 2012 and 2018 to create an experience superior to cigarette smoking. Juul owns over 60% of the vaping market.
  - b. Juul devices can look like flash cartridges. Many people don’t recognize them, allowing many students to vape throughout the day at school. The vaping liquid typically contains nicotine, or marijuana, allowing someone to get a high. It’s also typically very addictive.
  - c. Juul was the fastest company to a \$10 billion valuation in the history of the USA in 2018. Phillip Morris purchased one-third of Juul shortly after for \$12 billion, valuing it at over \$35 billion in December 2018.
3. Is vaping bad for you?<sup>1</sup>
  - a. Nicotine rewires the brain between 11 and 25, creating a potential addict/customer for life.
  - b. Nicotine is a gateway to other addictive substances.
  - c. Limited long-term data on the use of vaping says it may not be safer than smoking.
4. Is vaping an issue of concern in your School?<sup>2</sup>
  - a. According to the Washington State Healthy Youth Survey, about 30% of 12<sup>th</sup> graders in Washington self-reported vaping in the last 30 days in 2018, which was a 50% increase from a 20% vaping rate in 2016. (Note that the Healthy Youth Survey was not administered in 2020 due to the Covid pandemic.)
  - b. In contrast, cigarette use is much lower and declining. ***A 12<sup>th</sup> grader in Washington is approximately four times more likely to have vaped than smoked in the last 30 days.***
  - c. One way to interpret this data is that educating students about cigarettes has been successful. An equal effort is needed to educate students and their guardians about vaping.
5. What can be done?
  - a. Prevention: It is very difficult for teachers and administrators to prevent vaping. Vaping devices can be hidden in long sleeve hoodies, and some create very little smoke or smell.
  - b. Education: Many children and adults know the consequences of smoking, and the use of cigarettes by both has declined substantially in the last 30 years. We need to do the same with vaping since many children and adults do not understand the consequences.
  - c. Resources: Both prevention and education require resources. To date, additional resources to fund vaping education have been limited, with most education still aimed at educating students on traditional forms of tobacco and nicotine consumption. In addition, the vaping lobby is strong at both the federal and state levels and has effectively diluted or eliminated many proposed restrictions and resources to educate and prevent vaping.
6. What is the mass action Lawsuit by Schools against Juul and Altria?
  - a. Over 800 school districts have joined nationwide, including Seattle and La Conner in Washington.<sup>3</sup>
  - b. The legal theory is that Juul created a “public nuisance” (similar to the opioid litigation).
  - c. Seeks damages for illegally targeting underage children; each district can choose how to use the funds.
  - d. There is no upfront cost for joining beyond approximately 2-5 hours of staff time.
  - e. Juul tried to dismiss the lawsuit and prevent RICO claim; both efforts failed.
  - f. Scheduled to go to trial in approximately November 2022, if no settlement.
7. Is there already a (separate) lawsuit filed by the State of Washington
  - a. Washington’s Attorney General, Bob Ferguson, filed a consumer protection lawsuit against Juul in 2020, asserting Juul “...violated the state Consumer Protection Act by designing and marketing its products to appeal to underage consumers and deceiving consumers about the addictiveness of its product. JUUL’s unlawful conduct fueled a pervasive and staggering rise in e-cigarette use and nicotine addiction among youth.”

<sup>1</sup> <https://seethroughthevape.org/dangers-of-vaping/>

<sup>2</sup> <https://www.doh.wa.gov/DataandStatisticalReports/DataSystems/HealthyYouthSurvey>

<sup>3</sup> <https://www.seattletimes.com/education-lab/how-washington-schools-are-addressing-the-vaping-epidemic-a-sometimes-invisible-problem/>

- b. A lawsuit similar to the one filed by Washington’s Attorney General against Juul recently settled for \$40 million in North Carolina.
8. What concerns should be addressed before joining?
- a. What will be the requirements for any award or settlement? Most likely, very few, if any. Juul has no incentive to ensure such funds are used to fight underage vaping. The Judge has no resources to administer the use of any funds. As your attorneys, we will push for as few restrictions as possible. In addition, your school board will get a chance to review any settlement or award and can decline it if the terms are not acceptable.
  - b. How much staff time will it take to join the lawsuit? After joining, it should take no more than 5 hours to complete the attached Plaintiff Fact Sheet on vaping in your district. We have attached a copy of this. No answers are required if you do not have the information readily available.
  - c. How much does it cost? It costs nothing out of pocket beyond the five hours.
  - d. How do the lawyers get paid? If you get an award or settlement, the attorneys trying the case receive a 20% fee of any award or settlement - far less than the typical contingency fee of 35% to 40%. The Washington State education law firm, Stevens Clay, P.S., has offered to represent your school district pro bono, meaning they will receive no portion of the fees nor any additional fees.
  - e. What if we don’t like it at any point and want out? The engagement letters allow your school to simply quit the lawsuit at any point and owe us nothing, so long as you don’t rejoin the lawsuit in the future.
  - f. Is formal board approval required to join? Because there are no out-of-pocket costs, many schools have joined based solely on administrative authority. However, we would encourage you to talk to your board, follow your own internal process, and make sure your board is comfortable with the approach you take. Some boards have felt that vaping needs more attention and have thus made it an agenda item to bring more awareness.
  - g. If we use Board action, do we need a resolution: For Board action, you only need to have the Board pass a motion. Something like this would work: “I move that the Board authorize the Superintendent to work with the Stevens Clay law firm to have the School District join the pending vaping lawsuit against Juul and Altria, the successor to Philip Morris.”

### Sources for further research and study on vaping in Washington’s schools

#### Documentary:

1. Big Vape, from the “Broken” series (released in 2019), 61 minutes, available on Netflix here: <https://www.netflix.com/title/81002391>

#### News:

1. How Juul Got Vaporized; Time Magazine; May 17, 2021; <https://time.com/6048234/juul-downfall/>
2. Education Week; February 27, 2020; School Districts Are Suing JUUL Over Youth Vaping. Do They Stand a Chance? <https://www.edweek.org/policy-politics/school-districts-are-suing-juul-over-youth-vaping-do-they-stand-a-chance/2020/02>
3. The school districts recently brought a RICO claim for treble damages against Juul, and the Judge upheld that additional claim as well. See: <https://www.courthousenews.com/juul-cannot-duck-racketeering-claims-in-sprawling-e-cig-suit/> and the Judge’s most recent order can be found here: <https://www.courthousenews.com/wp-content/uploads/2021/04/Juul-mtdRULING.pdf>

#### Juul’s official statement on youth vaping:

1. Take 30 seconds and read Juul’s official statement on underage vaping here. It really is a stunning confession: <https://www.juullabs.com/combating-underage-use/overview/>

#### Books:

1. Big Vape: The Incendiary Rise of Juul (2021)
2. The Devil’s Playbook: Big Tobacco, Juul, and the Addiction of a New Generation (2021)