

CSBA Sample Board Policy

Business and Noninstructional Operations

BP 3513.3(a)

TOBACCO-FREE SCHOOLS

Note: Health and Safety Code 104420 **mandates** districts receiving Tobacco-Use Prevention Education (TUPE) funds to adopt a tobacco-free schools policy that prohibits the use of tobacco **and nicotine products** anytime, anywhere in district-owned or leased buildings, on **school or** district property, and in district vehicles. **The same prohibition is applicable to districts that do not receive TUPE funds pursuant to Health and Safety Code 104559, as added by ABX2 9 (Ch. 5, Statutes of 2016).**

~~Such~~ Districts **receiving TUPE funds** must certify compliance with this requirement by submitting a California Department of Education (CDE) certification form and supporting documentation to the county office of education's TUPE coordinator by July 1 in order to apply for TUPE funding for that fiscal year. The certification process also requires submission of the district's written policy and enforcement procedures; see the accompanying administrative regulation for enforcement procedures.

~~At their discretion, districts that do not receive TUPE funds may modify this policy to limit the prohibition against smoking to only enclosed spaces, pursuant to Labor Code 6404.5 and 20 USC 6083.~~

The Governing Board recognizes that smoking and other uses of tobacco and nicotine products constitute a serious public health hazard and are inconsistent with district goals to provide a healthy environment for students and staff.

(cf. 3514 - Environmental Safety)
(cf. 4159/4259/4359 - Employee Assistance Programs)
(cf. 5030 - Student Wellness)
(cf. 5131.62 - Tobacco)
(cf. 5141.23 - Asthma Management)
(cf. 6142.8 - Comprehensive Health Education)
(cf. 6143 - Courses of Study)

The Board prohibits **smoking and/or** the use of tobacco products at any time in district-owned or leased buildings, on district property, and in district vehicles. (Health and Safety Code 104420, **104559; Labor Code 6404.5; 20 USC 6083**)

~~This~~ **These** prohibitions ~~applies~~ **apply** to all employees, students, and visitors at any school-sponsored instructional program, activity, or athletic event held on or off district property. Any written joint use agreement governing community use of district facilities or grounds shall include notice of the district's tobacco-free schools policy and consequences for violations of the policy.

(cf. 1330 - Use of School Facilities)
(cf. 1330.1 - Joint Use Agreements)

TOBACCO-FREE SCHOOLS (continued)

Note: State law does not define "tobacco products" for purposes of the district's tobacco-free schools policy. The CDE's web site recommends that a district's policy define "tobacco products" to include products containing tobacco or nicotine, including nicotine delivery devices such as electronic cigarettes, electronic hookah, and other vapor emitting devices. Health and Safety Code 104420 and 104559, as added by ABX2 9 (Ch. 5, Statutes of 2016), define products containing tobacco and nicotine as including smokeless tobacco, snuff, chew, clove cigarettes, and electronic cigarettes that can deliver nicotine and non-nicotine vaporized solutions. Education Code 48901, which prohibits smoking or tobacco use by students on campus, applies the definition of smoking and tobacco products specified in Business and Professions Code 22950.5, as amended by SBX2 5 (Ch. 7, Statutes of 2016). The following paragraphs reflect the more comprehensive definitions in Business and Professions Code 22950.5.

The products prohibited include any product containing tobacco or nicotine, including, but not limited to, cigarettes, cigars, miniature cigars, smokeless tobacco, snuff, chew, clove cigarettes, betel, electronic cigarettes, electronic hookahs, and other vapor emitting devices, with or without nicotine content, that mimic the use of tobacco products.

Smoking means inhaling, exhaling, burning, or carrying of any lighted or heated cigar, cigarette, pipe, tobacco, or plant product intended for inhalation, whether natural or synthetic, in any manner or form, and includes the use of an electronic smoking device that creates aerosol or vapor or of any oral smoking device for the purpose of circumventing the prohibition of smoking. (Business and Professions Code 22950.5; Education Code 48901)

Tobacco products include: (Business and Professions Code 22950.5; Education Code 48901)

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, 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, or snuff
2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah
3. Any component, part, or accessory of a tobacco product, whether or not sold separately

This policy does not prohibit the use or possession of prescription products and other cessation aids that have been approved by the U.S. Department of Health and Human Services, Food and Drug Administration, such as nicotine patch or gum.

TOBACCO-FREE SCHOOLS (continued)

Smoking or use of any tobacco-related product or disposal of any tobacco-related waste is prohibited within 25 feet of any playground, except on a public sidewalk located within 25 feet of the playground. In addition, any form of intimidation, threat, or retaliation against a person for attempting to enforce this policy is prohibited. (Health and Safety Code 104495)

Legal Reference:

EDUCATION CODE

48900 Grounds for suspension/expulsion

48901 Prohibition against tobacco use by students

BUSINESS AND PROFESSIONS CODE

22950.5 Stop Tobacco Access to Kids Enforcement Act; definitions

HEALTH AND SAFETY CODE

39002 Control of air pollution from nonvehicular sources

104350-104495 Tobacco use prevention, especially:

104495 Prohibition of smoking and tobacco waste on playgrounds

104559 Tobacco use prohibition

119405 Unlawful to sell or furnish electronic cigarettes to minors

LABOR CODE

3300 Employer, definition

6304 Safe and healthful workplace

6404.5 Occupational safety and health; use of tobacco products

UNITED STATES CODE, TITLE 20

6083 Nonsmoking policy for children's services

7100-7117 Safe and Drug-Free Schools and Communities Act

7111-7122 Student Support and Academic Enrichment Grants

CODE OF FEDERAL REGULATIONS, TITLE 21

1140.1-1140.34 Unlawful sale of cigarettes and smokeless tobacco to minors

PERB PUBLIC EMPLOYMENT AND RELATIONS BOARD RULINGS

Eureka Teachers Assn. v. Eureka City School District (1992) PERB Order #955 (16 PERC 23168)

CSEA #506 and Associated Teachers of Metropolitan Riverside v. Riverside Unified School District (1989)

PERB Order #750 (13 PERC 20147)

Management Resources:

WEB SITES

California Department of Education, Alcohol, Tobacco and Other Drug Prevention:
<http://www.cde.ca.gov/ls/he/at>

California Department of Education, Tobacco-Free School District Certification:
<http://www.cde.ca.gov/ls/he/at/tobaccofreecert.asp>

California Department of Public Health, Tobacco Control: <http://www.cdph.ca.gov/programs/tobacco>

Occupational Safety and Health Standards Board: <http://www.dir.ca.gov/OSHSB/oshsb.html>

U.S. Environmental Protection Agency: <http://www.epa.gov>