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Opinion

Why our board is suing JUUL

**By the Three Village
Board of Education**

Despite information being distributed almost daily about the negative effects that vaping has on one's physical and mental health, the youth of today still seem to have the misconception that vaping is "safe." That is why our board is suing one of the top manufacturers of e-cigarette products, JUUL.

As school board leaders, we all have a duty to be proactive stewards of our students' health and safety. Your school district, like ours, probably has a robust K-12 health curriculum, holds assemblies that encourage students to make wise choices, and devotes significant resources to supporting students' social, emotional and mental needs. But vaping is a trend that negates all of our best efforts.

This harmful product has been marketed in a fashion appealing to teens, and nearly 40% of the nation's high school seniors are reported to be using e-cigarettes.

Our lawsuit seeks to demonstrate that teen vaping not only impacts students' health but also affects their school learning



An aerial photograph of Ward Melville High School in the Three Village Central School District, which is suing JUUL Labs alleging that improper marketing of youth has had educational costs and impacts. Inset: vape packaging. ◀ Photo courtesy of Long Island Real Estate Photography

environment. Our suit, *Three Village CSD v. JUUL Labs, Inc.*, was filed Oct. 7 in the U.S. District Court for the Eastern District of New York, and has been noted in publications including *The Washington Post* and the

San Francisco Chronicle.

The legal action is being handled by a personal injury attorney who is a district resident, not our general counsel. He is working with attorneys representing other

school districts from across the country in a parallel lawsuit filed in Kansas City.

Our participation in the legal action does not require the investment of tax dollars or resources. Our board's goals include reinforcing the message that we are opposed to vaping by students and stopping JUUL from targeting students.

Our other efforts to discourage use of vaping devices have included adding a zero-tolerance policy to our Code of Conduct. Any student found to be vaping or possessing vape-related materials faces an automatic five-day suspension. We added this disciplinary penalty because informing students about the dangers of vaping in a variety of ways was not making enough impact.

Over the past two years, there have been more than 100 suspensions in our 5,800-student district. A vaping-related suspension has occurred about every three and a half days.

Through the lawsuit, our district may be entitled to recover the estimated \$250,000 our district has spent in our efforts to prevent vaping from interfering with educa-

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Train-the-trainer workshops target suicide prevention

By George Basler
SPECIAL CORRESPONDENT

The issue of young people and suicide isn't an academic one for Melissa Butler.

The assistant principal at South Seneca Middle/Senior High School lived through trauma last year when a 14-year-old freshman at the school took his own life. The event stunned administrators and staff and left them with a lingering question: What can we do to avoid another tragedy?

The desire to find the answer to that question brought Butler to a recent state-sponsored Suicide Safety for School/Train the Trainer Event in Ithaca. She was joined by 20 other educators, counselors and social workers seeking the same information.

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Monica Bacote, a school-based initiatives trainer with the Onondaga County Department of Children and Family Services, describes how she would open a conversation with an apparently troubled student during a train-the-trainer suicide prevention seminar in Ithaca. She plans to offer similar training to the Syracuse City School District and other districts in Onondaga County. ◀ Photo courtesy of CITIBOCES

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tion. These costs have included:

- Creating a student assistance counselor position to proactively focus on prevention and treatment.
- Hiring guest speakers and staging interactive programs.
- Home tutoring costs and other costs associated with increased student suspensions.

- Installation of vape detectors costing \$1,000 each at our high school to discourage vaping as well as detect when the activity is occurring.
 - Staff time related to educating students about the dangers of vaping, disciplining students, maintaining vape detectors and other items.
- Our district could recover money to

compensate us for such costs in several ways. The court could find JUUL has created a “public nuisance” by unreasonably interfering with a right that we, the general public, share in common. In addition, the court could decide that the district is entitled to punitive damages, compensatory damages or other forms of court awards. Also, JUUL could offer our district an out-

of-court settlement.

As a school board, we are committed to protect our children’s health and safety. By using every tool at our disposal, including legal action, we believe we are on the path to win the fight against this epidemic of vaping.

Attorneys see parallels with opioid claims

By Eric D. Randall
EDITOR-IN-CHIEF

Think the litigation against manufacturers of opioids is a big deal? Attorneys suing JUUL Labs on behalf of school districts say litigation against JUUL Labs promises to be equally significant.

“I’ve never gotten a more receptive response than the one I’ve gotten from school officials,” Jon Kieffer, a Kansas City attorney whose firm, Wagstaff & Cartmell, has been filing suits on behalf of districts in multiple states.

“They all see this as a threat to education as well as health, and they are very protective of the kids in their district,” he said.

One legal theory involved is that JUUL’s actions represent a “public nuisance.” In the case of opioids, the claims

involved pharmaceutical companies persuading doctors to prescribe drugs the manufacturers knew to be highly addictive, resulting in a crisis that became and remains very costly for local governments.

Kieffer said JUUL, which has about three quarters of the vaping market, has engaged in similar tactics, requiring a remedy. He said JUUL has targeted young people in marketing a very potent set of nicotine products, and the resulting level of addiction has been a public nuisance in that it costly for schools and a major distraction from the mission of education.

When lawsuits against the same defendant arise in multiple jurisdictions, the federal court system has the option of designating one federal judge to handle all the litigation. That has occurred with multiple suits filed against JUUL. All relevant claims will be heard by the federal district court in San Francisco.

Steve Gacovino, a Long Island attorney who filed a claim against JUUL on behalf of the Three Village Central School District, said it is not too late for more school districts in New York State to join the litigation.

He said districts in New York State that believe that their educational mission has been compromised by students’ use of JUUL products and can document costs associated with efforts to minimize the damage should contact his firm, Gacovino, Lake & Associates.

“If someone says, ‘Vaping is a problem in my school district,’ they are a potential plaintiff,” added Kieffer.

The two attorneys spoke to *On Board* in a joint telephone interview. They have a long history of working together on so-called “mass tort” litigation, including a gynecological mesh that has been shown to lead to numerous vaginal, urinary, and

gastro-intestinal complications.

Gacovino, the parent of two boys attending high school in the Three Village district, said the idea of suing JUUL began to appeal to him when a school administrator told his wife, who is active in the PTA, that “40 percent of my day is dealing with vape issues.”

And the issue became personal when it became evident that one of his sons became addicted to nicotine as a result of vaping. (The boy has been nicotine free for several months, but Gacovino said it took a lot of pain and effort.)

“I come to this with a lot of passion,” Gacovino said.

Delegates to NYSSBA’s Annual Business Meeting recently called for more regulation of vaping. The Arizona Association of School Boards, meanwhile, has passed a resolution to endorse litigation against JUUL.

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The Ithaca workshop was developed by the Suicide Prevention Center of New York, which is operated by the research unit of the state Department of Mental Hygiene. It was one of 23 similar sessions that have taken place to date over the last three school years, with money to support them coming from the Suicide Prevention Office in the state Office of Mental Health. The purpose is to train school staff on how to spot “at risk” students and intervene to provide help.

“It equips them with valuable tools,” said Ken Houseknecht, executive director of Mental Health Advocates of Western New York. “You’re not going to make teachers, administrators and school staff into mental health professionals. But you might make them comfortable to recognize signs, make referrals and know where to go for help.”

The training is part of a state initiative to deal more effectively with depression, anxiety and suicide among pre-teens, teens and young adults. Another component is a new law, which went into effect in July 2018, that requires schools to incorporate mental health into K-12 health education.

Suicide is now the second leading cause of death for persons 10-24 years old, according to statistics from the Centers for Disease Control and Prevention (CDC). Equally concerning, 17.4 percent of high school students in New York seriously considered suicide over a 12-month period while 10.1 percent attempted it, according to the CDC’s 2017 Youth Risk Behavior Surveillance System.

One hurdle involves teachers being nervous about having responsibilities involving student mental health issues. A

survey of more than 100 secondary teachers, published in a 2017 study in *School Mental Health*, found that “limited training, fears of making the situation worse, and fears of legal repercussions were barriers that kept teachers from intervening with potentially suicidal students.”

The train-the-trainer workshops, facilitated by licensed master social workers, are intended to ease stress on school staff by clearly defining their roles in dealing with students undergoing mental health crises, said Patricia Breux, director of youth initiatives for the Suicide Prevention Center.

“If you don’t have clearly defined roles, you risk people taking on too much responsibility, or creating a lot of anxiety so people miss, dismiss or avoid,” she said.

A warm hand-off

As of mid-October, 209 individuals had attended one of the train-the-trainer workshops. They are responsible for training 16,342 teachers and school staff members, state figures indicate.

The Ithaca workshop was facilitated by Jeanne Elmer, a counselor and mental health consultant who coordinated the City County Trauma Response Network in Onondaga County.

Elmer emphasized that while teachers and staff have a crucial role to play in suicide prevention, it’s a limited one. Their role is to recognize warning signs, provide an initial response and then made a caring referral – “a warm handoff” – to a designated counselor or social worker. The mental health professional can use a screening instrument to determine if a student needs

professional help.

Elmer reviewed a 38-page trainer manual that provided guidelines on how to make this “handoff,” and supplied information on a range of topics including risk factors for youth suicide, warning signs and protective factors for students.

“The key piece I want to get across is that anybody can be a good connector. It’s not just about social workers and counselors,” Elmer said.

Following Elmer’s presentation, attendees broke into small groups to review information in the manual and share ideas on how to use it in presenting their own training sessions.

Butler of South Seneca gave the training a high mark. “It closes the gap between knowing you have a problem and knowing how to deal with kids who are struggling,” she said. Her district will follow up on the workshop by scheduling suicide prevention training for the entire district staff.

Another workshop participant, Monica Bacote, also found the session valuable. She plans to offer the training to the Syracuse City School District and other districts in Onondaga County where she works as a school-based initiative trainer.

“It’s an important topic that I wanted to learn about not just professionally, but personally,” Bacote said, adding she’s glad the issue of student mental health is now out in the open.

But gaps remain. More than one-third of the state’s school districts don’t have explicit suicide prevention policies, according to a recent report by the Trevor Project. They need to put these policies in place,

Breux said.

Training also needs to be done on a continuous basis, Breux emphasized. For this reason, the Suicide Prevention Center is now developing “refresher programs” for participants in the workshops. Likewise, schools need to schedule training sessions for school staff at least every other year, she said.

“Schools can be highly protective places. We want to build on what they’re doing now to help students,” Breux concluded.

Resources

Resources available from the Suicide Prevention Center of New York include:

- A *Guide for Suicide Prevention in New York Schools* that is available on-line at bit.ly/32qSSPQ.
- A six-hour workshop for school leaders.
- Lifelines Postvention training, which presents key principles of response and recovery in the aftermath of a suicide among a member of the school community.
- Media Guidelines for School Administrators Who May Interact with Reporters about Youth Suicide and other resources are available at www.preventsuicideny.org/safe-and-effective-messaging/.
- Visit www.preventsuicideny.org/resource-library/ for a variety of materials including articles and PowerPoint presentations.