

Office of School Board Attorney
Walter J. Harvey, Board Attorney

SUBJECT: E-CIGARETTE LITIGATION

COMMITTEE: FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE AND SUSTAINABLE BUSINESS PRACTICES

Use of tobacco products among teenagers has increased exponentially over the last ten years. This increase has been compounded by the increased use of electronic (e-cigarettes) and vaping devices by teenagers. Products such as JUUL, a vaping device that can be charged through a USB, has been successfully marketed by its manufacturer, particularly through social media, to teens (“Studies show how JUUL exploited social media to get teens to start vaping,” *Los Angeles Times*, Sept. 24, 2019). As a result of these efforts “juuling” has become “a high school craze” and a mounting “public health crisis” (“How Juul Got a Generation Hooked,” *The New York Times*, November 24, 2019).

This issue has been a serious concern of the Board and Superintendent for several years. In 2018, the Board approved two agenda items, all originally sponsored by Dr. Martin, Karp, Board member: H-3 (Drug Prevention) at the Board’s April 25, 2018 meeting and H-14 (Vaping Epidemic) at its November 20, 2018 meeting. These agenda items sought to increase District staff, parent, and student awareness of the JUUL e-cigarette product, the dangers of vaping, and detection of its use in schools. The Superintendent has also directed efforts throughout the District through the E(liminate)-cigs Awareness Campaign to raise awareness and encourage students to take a pledge to affirm their stance against vaping and tobacco products.

At the November 13, 2019, Personnel, Student, School, and Community Support School Board Committee meeting, the School Board Attorney obtained a consensus of the Board members present to authorize exploring the possibility of joining other school districts and government agencies in filing a lawsuit against e-cigarette and vaping device manufacturers, distributors, and vendors. The Board Attorney agreed to bring a recommendation to the Board on this matter. Accordingly, this item requests that the Board authorize the retention of legal counsel and the filing of any claims on behalf of the Board against JUUL Labs, Inc., and any other related entities and/or potential defendants.

Currently there are approximately fifteen lawsuits against e-cigarette and vaping device manufacturers across the country. After much research and multiple discussions with national and local counsel involved in the e-cigarette litigation, it is the School Board Attorney’s recommendation that the Board file a lawsuit in federal court seeking compensation for the financial impact on our District in responding to the harmful effects of the use of e-cigarettes and vaping devices by students in our schools.

A group of South Florida-based law firms, which includes the firms of Robbins Geller Rudman & Dowd LLP, Kopelowitz Ostrow Ferguson Weiselberg Gilbert, and Haliczzer Pettis & Schwamm P.A., are proposed to be contracted to head the litigation. The contract for these legal services, which will be a contingency fee agreement, will stipulate that the School Board will not be subject to any legal fees or litigation costs unless it recovers monetary compensation for its damages. Costs and expenses associated with this litigation will be paid by the law firms and reimbursed only if there is any recovery.

RECOMMENDED: That the School Board of Miami-Dade County, Florida, authorize the School Board Attorney to retain outside legal counsel to represent and file claim(s) on behalf of the School Board against JUUL Labs, Inc., any other related entities and/or potential defendants, and to execute any necessary contracts to effectuate such legal representation in the manner described in this item.