

NJ.Com

Parsippany mom: Suspension over e-cigarette unfairly punished my daughter

By [Justin Zaremba | NJ Advance Media for NJ.com](#)

on November 22, 2014 at 6:51 AM, updated March 02, 2015 at 10:01 AM

A township mother is fuming because her 16-year-old daughter was suspended for four days after she was found to be in possession of an electronic nicotine vaporizer.

It's the same penalty the district applies for a student who fails a drug test. Kathleen Leone refused to allow the school to test her daughter because, she said, the drug test isn't justified by any written policy.

And it's a harsher penalty than would be applied for a student caught smoking a regular cigarette for the first time. School officials didn't comment specifically on Leone's case, but said the district is justified in requiring drug testing for students caught with e-cigarettes because it is responsible for ensuring students' safety.

In New Jersey, it's illegal to sell cigarettes or electronic cigarettes to individuals below the age of 19. In cases where the state Department of Education has no policy in place, issues such as penalties for e-cigarettes are largely left to the purview of local districts, education officials said. The incident involving Leone's daughter triggered a four-day suspension; **[a student at North Hunterdon-Voorhees High School who had an electronic vaporizer in his backpack got 10 days.](#)**

Leone told NJ Advance Media her daughter was sent to the nurse's office in September after she was found to have an electronic nicotine vaporizer — an e-cigarette — in her

pocketbook.

Leone said the school notified her that school policy required her daughter receive an automatic drug screening because e-cigarettes are considered "drug paraphernalia." The nurse and school officials didn't have any evidence or indication her daughter was under the influence of any drug, or that the e-cigarette was for anything other than nicotine vapor, Leone said.

Leone said she refused to have her daughter drug tested "on principle" because the current written policy only identifies possession of e-cigarettes as a smoking infraction — and doesn't describe them as drug paraphernalia. Typically, the penalty for a first-time smoking offender would be a Saturday suspension, but because Leone refused to allow the school to drug test her daughter, she was issued a four-day suspension.

While not providing comment on Leone's case, school officials said a refusal is treated the same as a positive drug test.

"It's the principle," Leone said. "You can't just arbitrarily make up a rule and start enforcing it and suspending kids." Under the smoking section of the current written policy, a e-cigarette is defined as "an electronic device that can be used to deliver nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo, or pipe."

There's no indication in that section of the policy that mandatory drug testing is a requirement for students found in possession of an e-cigarette, but the substance abuse policy — and state law — require school officials to report

students who may be under the influence of alcohol or other drugs. A student believed to be under the influence of drugs or alcohol on school grounds or at a school function is required to take a medical examination, which includes a physician-administered drug test.

According to **the student handbook**, which differs from the district's written policy, a student "may be subject to a drug screen/medical evaluation" if he or she is found in possession of an e-cigarette.

Parsippany High School Principal Dennis Mulroony told NJ Advance Media that it's actually stronger than "may" — students caught with e-cigarettes "will be subject to drug testing."

Mulroony said one of the challenges administrators face is that "drug paraphernalia as a whole is constantly changing," which prompts administrators to find ways to respond to potential threats to the school.

"As the building principal, I feel we have to err on the side of caution," he said. "To assume it's just an e-cigarette — that's a dangerous thing because that's putting a child at risk."

Under the New Jersey Smoke-Free Air Act of 2010, the use of any tobacco products, including electronic smoking devices, is prohibited in or on the grounds of any elementary or secondary school building. Outside of this state law, the Department of Education doesn't provide any further guidance to districts regarding e-cigarettes.

The New Jersey School Boards Association, an organization that advises schools districts on policy issues, modified its own substance abuse policy this past May to include e-

cigarettes with other tobacco products. That policy only serves as a suggestion for districts so local school boards are left to determine the classification and penalties for e-cigarette infractions.

Parsippany superintendent Scott Rixford said he believed the district was supported in its decision to treat e-cigarettes the same as drug paraphernalia because these devices can be modified for the consumption of marijuana or other drugs. THC oil — a refined form of the active ingredient in marijuana — could be inhaled through an electronic nicotine-delivery system, he said.

The same oil, though, could also be used on a cigarette. Rixford said the district could never be "100 percent" in finding every way students might use or modify illegal substances.

Both he and Mulroony conceded that the scrutiny of a drug test wasn't applied to students found to be in possession of conventional cigarettes unless there was some suspicion they'd been modified for the consumption of illegal substances. They also said that even though e-cigarette possession requires a mandatory drug screening, confiscated e-cigarettes weren't typically sent to the local police for testing, but just inspected by the school resource officer.

"We could have never have such an exhaustive list of what constitutes drug paraphernalia," Rixford said. "It keeps expanding and expanding because kids find ways around the system. That's the nature of kids."

The **district's written substance abuse policy** doesn't define or list examples of what constitutes "drug paraphernalia." The same section, however, provides

definitions for the words "substance," "substance abuse," "evaluation," "intervention," "referral for treatment" and "school grounds."

It's because of the lack of clarity in the policy, Leone said, that she hired an attorney — Laura Siclari, an associate at McCusker, Anselmi, Rosen, & Carvelli — to appeal the suspension to the school board.

Siclari said the crux of the issue was whether Leone had the right to question whether the school's written policy actually supported officials' attempts to impose the drug test. More importantly, the aim of the appeal was to mitigate "the taint" placed on Leone's daughter's record, Siclari said.

"It's added some stress onto her life and it's put a taint of drug use onto a child who's never had a history of even suspected drug use." Siclari said. "No one's disputing that she should have had a consequence for her actions."

But, Siclari said, since e-cigarettes are identified as smoking products under the written policy, Leone's daughter should have received the same punishment as a first-time smoking offender — a Saturday detention.

"With the understanding that it's an e-cigarette, a tobacco-based product, if there isn't any additional information that would make them believe it was being used for anything other than tobacco, then it should be treated as a tobacco product," Siclari said.

Despite their shared belief that it's a strong case, Siclari said, "financial constraints" prevented her client from appealing the board's decision to the commissioner of the Department of Education.

Rixford said "at the end of the day" administrators "are responsible to protect students at all times" but teachers and administrators aren't clinicians who can identify if a student is under the influence, which is what makes testing so important.

"It is very easy, therefore, to solve the problem, that is to go through and be tested if you have a concern or suspicion," Rixford said. "Ultimately, we must protect the safety of the children — the child there and as well as the other children in a building with a thousand kids. I think it is important to parse out this can all be ended by having the test. The student comes back and we at least know we did what we could to ensure the child was safe and can go back to school."

Justin Zaremba may be reached at jzaremba@njadvancemedia.com. Follow him on Twitter @JustinZarembaNJ. Find NJ.com on Facebook.

http://www.nj.com/morris/index.ssf/2014/11/parsippany_mom_says_unwritten_e-cigarette_policy_unfairly_punished_her_daughter.html