

February 18, 2020
Regular Meeting
Hopkins County Board of Education

Resolution Authorizing Litigation Against JUUL and other
Manufacturers, Distributors and Sellers
of Electronic Cigarettes and Vaping Products

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Whereas, there has been a significant increase in the number of Hopkins County Public School (HCPS) students who use electronic cigarettes or vaping products;

Whereas, youth vaping is at epidemic levels locally and nationally;

Whereas, the Centers for Disease Control and the U.S. Department of Health and Human Services, Office of Surgeon General has found that vaping products are unsafe for kids and teens;

Whereas, nicotine use by school-aged people likely increases the risk of nicotine addiction when they become adults;

Whereas, the marketing practices of JUUL and similar companies have targeted kids and teens;

Whereas, on September 9, 2019, the U.S. Food and Drug Administration sent JUUL a warning letter alleging improper marketing practices;

Whereas, HCPS and its employees spend a significant amount of time and resources disciplining students for possession and use of vaping products;

Whereas, HCPS and its employees spend a significant amount of time and resources providing counseling and educational services to students related to the use of vaping products;

Whereas, the use and possession of vaping products by students causes a significant interruption of the educational process;

Whereas, HCPS believes it is entitled to compensation for its efforts and resources expended to combat vaping by its students;

Whereas, HCPS believes it is entitled to compensation for the interruption of the educational process caused by vaping manufactures and distributors;

Whereas, HCPS desires to reduce the number of its students who use vaping products;

Whereas, HCPS desires to stop JUUL and similar companies from marketing vaping products to its students;

Whereas, the Hopkins County Board of Education (HCBE) has determined that HCPS has the responsibility to protect its students and take legal action against manufactures, distributors and sellers of electronic cigarettes and vaping products.

NOW, therefore, be it resolved by the HCBE that it authorizes Hendy Johnson Vaughn Emery, PSC of Louisville, Kentucky, and Rhoads & Rhoads, PSC of Owensboro, Kentucky to file a civil action against any appropriate parties to compensate HCPS for damages suffered by HCPS, and its students, as a result of the manufacture, marketing, sale and use of electronic cigarettes-and/or vaping products, and to seek any other appropriate relief; including injunctive relief, to protect HCPS students from vaping manufacturers and distributors. The HCBE further authorizes the superintendent to sign all necessary contracts and other related documents on behalf of HCPS in the pursuit of any civil action.

Adopted on February 18, 2020 by the Hopkins County Board of Education.

Susanne Wolford
Board Chairman

Deanna Ashby
Superintendent

CONTINGENCY FEE CONTRACT
HENDY JOHNSON VAUGHN EMERY, PSC; RHOADS & RHOADS, PSC
& HOPKINS COUNTY PUBLIC SCHOOLS

I, _____, on behalf of Hopkins County Public Schools (HCPS), the undersigned, hereby employ and engage Hendy Johnson Vaughn Emery, P.S.C., (HJVE) of Louisville, Kentucky, to represent HCPS in connection with any and all claims HCPS may have with reference to a claim for public nuisance, fraud, violations of Kentucky Consumer Protection Act, and products liability claims against the manufacturers, distributors, and retailers of vaping and e-cigarette products that have caused and/or contributed to the costs associated with the epidemic of nicotine addiction among students in Kentucky. HJVE, in its discretion, may associate with co-counsel as needed in representation of HCPS for claims set forth above. In this matter HJVE has associated with Rhoads & Rhoads PSC.

ATTORNEY FEE

For such professional services, HCPS hereby agree to pay HJVE a 33.3% fee (1/2 to HJVE and 1/2 to Rhoads firm) based upon the gross amount of money which HJVE recovers for HCPS (which term shall include the fair market value of any property which may be recovered). It is understood that any payment to HJVE for such services is entirely contingent upon HJVE making recovery for HCPS or on its behalf of money or property. It is further understood and agreed that should any part of the case be resolved by settlement whereby a portion of the settlement is structured as future payments, then all of the attorney's fees and expenses provided for herein shall be paid from the up-front cash portion of the settlement. To the extent that the Court awards any attorneys' fees for common benefit work performed, that percentage awarded by the Court shall be deducted from the 33.3% payable to HJVE.

COSTS AND EXPENSES

HCPS understands that HJVE will advance all court costs and case expenses in the prosecution of the case. HCPS will remain responsible for all court costs and other out-of-pocket expenses for prosecution of the claim only to the extent that any recovery is made. HCPS understands that such costs and out-of-pocket expenses shall be deducted from the net amount of any recovery after attorney fees are deducted. HCPS has been advised that the costs and expenses for the case may be incurred for items such as investigation, ordering business records, travel expenses, photocopies, faxes, postage, expert witnesses, court costs, depositions and other necessary case expenses. Because this case will be coordinated as part of a multi-district litigation pending in the Northern District of California, there will be expenses incurred for the common benefit of all claimants. Those expenses will be held by the firms financing the litigation and will be deducted as a percentage set by the Court at the conclusion of the litigation.

INVESTIGATION AND WITHDRAWAL

HJVE is fully authorized to fully investigate any claims for which HJVE represent me or should you file suit or other legal proceedings on HCPS behalf, to fully prepare for and prosecute same. If, after reasonable investigation of such claim or claims, HJVE determines that it is not feasible to prosecute the same, upon notification to HCPS of such fact, HJVE may withdraw from representation under this agreement. It is further understood that HJVE and HCPS may withdraw from representation under this agreement if a dispute arises between them as to how best to handle the case.

SETTLEMENT AND DISBURSEMENT

It is agreed and understood that neither party shall settle any claims related to this case without first having obtained the consent of the other. At the conclusion of the case, it is agreed that HJVE shall deposit any and all settlement checks in the firm's escrow account or a Qualified Settlement Fund, if one is established by the Court, and not disburse any funds until the settlement checks clear escrow or the QSF. Once the settlement funds are available for disbursement, HCPS agrees that HJVE may deduct the attorney's fees to which it is entitled, together with all costs and expenses incurred, including common benefits assessments, and HCPS further agree that HJVE may deduct the amount of all third party claims making disbursement of such funds directly to them. HCPS understands that HJVE will prepare and have HCPS sign a settlement statement detailing all disbursements made from the settlement, including the net amount to HCPS after all deductions.

Accepted and approved this _____ day of _____, 2020.

Signature

Date

HENDY JOHNSON VAUGHN EMERY, P.S.C.

RHOADS & RHOADS, PSC