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Guidance Concerning State and Local Responsibilities Under the Pro-Children Act of 2001

I. Introduction

This guidance is to provide information regarding State and local responsibilities under the Pro-Children Act (PCA), which was re-authorized by the No Child Left Behind (NCLB) Act of 2001 (the re-authorization of the Elementary and Secondary Education Act of 1965 (ESEA)), Public Law 107-110. This guidance addresses changes made as a result of the ESEA reauthorization.

II. Background

Originally enacted on March 31, 1994, as part of the Goals 2000: Educate America Act (Public Law 103-227), and re-authorized in January 2002 as Part C (21st Century Schools) of Title IV of ESEA, the PCA requires that States not permit smoking in any indoor facility, or in some cases a portion of a facility, used routinely or regularly for the provision of children's services to persons under the age of 18 if the services are funded by Federal programs either directly or indirectly. Preliminary information, including a copy of the Goals 2000 legislation, was mailed to Chief State School Officers in a letter dated January 4, 1995. Nonregulatory guidance on PCA provisions was provided to States on May 31, 1995.

III. Summary of the New Law

A. What stayed the same?

The PCA requires that smoking not be permitted in any indoor facility, or in some cases a portion of a facility, used routinely or regularly for the provision of certain types of "children's services" to persons under age 18, if the services are funded by specified Federal programs either directly or through State or local governments.

Applicable Federal funds for these types of children's services include grants, cooperative agreements, loans, loan guarantees, contracts, and funds for construction, maintenance, and operations awarded by the Departments of Health and Human Services, Education, or Agriculture [only through the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)].

B. What changed?

Civil Penalty

In the case of a violation under the PCA, the person who commits the violation may be liable for a civil penalty in an amount not to exceed \$1,000 for each violation. Each day a violation continues constitutes a separate violation. The total civil penalty assessed may not exceed 50 percent of the amount of applicable Federal funds received by such person for the fiscal year in which the continuing violation occurred. Previously, the PCA provided that the total penalty could not exceed the amount of applicable Federal funds received for the fiscal year in which the continuing violations occurred. (See Question/Answer 9)

There were no other changes.

IV. Questions and Answers

The following questions and answers have been prepared to assist States, State education agencies (SEAs), and local educational agencies (LEAs) in implementing the PCA requirements.

- Q1. Are all LEAs and SEAs affected by the PCA requirements?
- A1. All LEAs and SEAs that receive funding from the U.S. Departments of Education, Health and Human Services, or Agriculture (through the nutrition program WIC) either directly, or through State or local governments, to provide routine or regular kindergarten, elementary or secondary education; library services; health services; day care services; or early childhood development to children must comply with the PCA requirements.
- Q2. Must non-public schools implement the PCA requirements?
- A2. A non-public school must implement the PCA requirements if it receives funding directly from the U.S. Departments of Education, Health and Human Services, or Agriculture (only through the nutrition program WIC), or funds from these agencies that they receive through State or local governments, to provide routine or regular kindergarten, elementary or secondary education; library services; health services; day care services; or early childhood development to children.
- A non-public school is not required to implement the PCA if it does not receive Federal funding directly from the U.S. Department of Education, Health and Human Services, or Agriculture, or funds from these agencies that they receive through State or local governments. Equitable participation by students or teachers in Federal education programs (such as services under Title I) or participation in the National School Lunch and School Breakfast program does not make a non-public school subject to the requirements of the PCA.
- Q3. When must SEAs, LEAs, and affected non-public schools implement the PCA requirements?
- A3. The PCA requirements were effective as of December 26, 1994, and were reauthorized by the NCLB Act of 2001 on January 8, 2002.
- Q4. Who are considered "children" under the PCA?
- A4. The term "children" is defined as individuals who have not attained the age of 18.
- Q5. What types of services are included in the term "children's services"?
- A5. Types of services included under this term are education (kindergarten, elementary and secondary), health, day care, early childhood development (Head Start), and library services.
- Q6. What does the term "indoor facility" mean?
- A6. The term "indoor facility" means a building that is enclosed.
- Q7. Where must smoking be prohibited?
- A7. With respect to the provision of routine or regular kindergarten, elementary or secondary education, or library services to children, the PCA requires the prohibition of smoking within any indoor facility owned, or leased, or contracted for and utilized for the provision of those children's services. This means, therefore, that smoking lounges or other separate locations for smoking within the enclosed facility (even if separately ventilated) must be prohibited.
- Q8. Must smoking be prohibited if the facility is being used for a community or privately sponsored event such as Bingo?

A8. Generally, no; however, it depends on the circumstances. If the indoor facility is being used simultaneously for routine or regular children's services (i.e., school-sponsored events that involve children) and a privately sponsored event, smoking must be prohibited in the entire indoor facility. The provider of children's services may determine whether or not it wishes to prohibit smoking in the facility when no routine or regular children's services are being provided.

Q9. How will this requirement be enforced?

A9. If a report is made that smoking prohibitions are not being implemented, the awarding Department will contact the parties and attempt to resolve the matter informally. If the matter cannot be settled informally, the awarding Department will refer the matter to the Department of Health and Human Services for an administrative proceeding, which could result in issuance of an administrative compliance order or an assessment of a civil penalty of up to \$1,000 per violation. Each day a violation continues constitutes a separate violation. The total penalty may not exceed 50 percent of the amount of applicable Federal funds received for the fiscal year in which the continuing violations occur.

Q10. Is technical assistance available?

A10. For additional guidance concerning implementation of the PCA for providers of education or library services, contact the Office of Safe and Drug-Free Schools, 400 Maryland Ave. SW, Washington, DC 20202-6450, facsimile: (202) 260-7767, phone: (202) 260-3954.

For providers of health, day care, or early childhood development services, contact the Office on Smoking and Health, Centers for Disease Control and Prevention, 200 Independence Avenue, SW, Room 317-B, Washington, DC 20201, facsimile: (202) 205-8313, phone: (202) 205-8500.

For WIC-related questions, contact the Supplemental Food Programs Division, Food and Nutrition Services, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302, facsimile: (703) 305-2196, phone: (703) 305-2746.

Q11. To whom should violations be reported?

A11. For violations of the PCA by providers of education or library services, contact the Office of Safe and Drug-Free Schools, 400 Maryland Ave. SW, Washington, DC 20202-6450, facsimile: (202) 260-7767, phone (202) 260-3954.

For violations of the PCA by providers of health, day care or early childhood development services, contact the Office of the Assistant Secretary for Health, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201.

For violations of the PCA related to the WIC program, contact the Supplemental Food Programs Division, Food and Nutrition Services, 3101 Park Center Drive, Room 520, Alexandria, Virginia 22302, facsimile: (703) 305-2196, phone: (703) 305-2746.