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The NJ Smokefree Air Act bans the smoking of any matter or substance, including the use of electronic smoking devices, on K-12 School Property

Dear NJ School Boards Association:

Our New Jersey-based nonprofit tracks tobacco control laws in New Jersey. We have received queries about whether electronic smoking devices such as e-cigarettes or hookah pens can be used on K-12 school property.

We would like to share with you that New Jersey state law bans smoking, including the use of all electronic smoking devices, on K-12 public and private school property, and bans smoking off of school property during school-sponsored events or activities.

The 2006 NJ Smokefree Air Act as amended in 2010 ("Act") defines "smoking" to include "electronic smoking devices" (NJSA 26:3D-57). The Act bans "smoking" (which includes electronic smoking devices) on all K-12 public and private school property (NJSA 26:3D-58). NJSA 26:3D-62 lists the fines, ranging from \$250-\$1000 (the Act is at http://njgasp.org/sfaa_2010_w-ecigs.pdf).

In 2007, the NJ Department of Health created Regulations to help implement the 2006 Act. NJAC 8:6-7.2 defines school property, and prohibits smoking not only on K-12 public and private school property, but also bans smoking on "playgrounds and recreational places owned by local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion

of such land” (The 2007 Regulations are at http://njgasp.org/nj_admin_code.pdf).

In August 2013, The NJ Department of Health's Office of Tobacco Control, and Office of Local Public Health issued an Administrative Advisory to local and county health departments in New Jersey, reiterating that the use of electronic smoking devices is prohibited in public places and workplaces covered by the Act (Advisory at http://njgasp.org/NJ_State_E-cigs_Advisory_2013.pdf). The Administrative Advisory included two flyers that can serve as handouts (handouts at http://njgasp.org/NJ_Smokefree_Air_Act_and_Breathe_Easy_flyer.pdf). The text from the Act and Regulations are attached, if you are need of referencing exact language from the laws, to raise awareness and to help with compliance.

Regarding the sale or giving of tobacco to persons under age 19: NJ state law NJSA 2A:170-51.4 bans the sale, furnishing or giving of tobacco, including electronic smoking devices, to persons under the age of 19. NJ does not ban the purchase by persons under age 19, but some NJ communities have local ordinances or policies that do ban minors from purchasing tobacco. NJSA 54:40A-2 bans the sale or giving away of single cigarettes, or in sealed packs of less than 20 cigarettes.

Please note that the NJ Act and the 2007 Regulations do not ban the use of smokeless tobacco on school property. Your district may have its own 100% tobacco-free school policy. NJSBSA has a model 100% tobacco free school policy to share, if your district is interested in having a 100% tobacco-free school policy.

Best regards,

Karen Blumenfeld, Esq.

Executive Director

LEGAL DISCLAIMER: This information is created by the Tobacco Control Policy and Legal Resource Center of New Jersey GASP, which provides expert information, guidance, and technical assistance about policy, legislation, and litigation, especially regarding smokefree air. The information presented is not intended as, nor to be construed, or used, as legal advice, and should not be used to replace the advice of your legal counsel.

State Laws that Ban Smoking on K-12 School Property:

The 2006 NJ Smokefree Air Act, amended in 2010. Below are the key provisions re: definition of smoking which includes electronic smoking devices, no smoking on all K-12 public and private school property. Source: http://njgasp.org/sfaa_2010_w-ecigs.pdf

26:3D-55 Short title. This act shall be known and may be cited as the "New Jersey Smoke-Free Air Act."

26:3D-57 Definitions relative to smoking, use of electronic smoking devices in indoor public places, workplaces.

3. As used in this act: **"Electronic smoking device"** means 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.

"Smoking" means the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

26:3D-58 Smoking prohibited in indoor public place, workplace.

4. b. Smoking is prohibited in any area of any building of, or on the grounds of, any public or nonpublic elementary or secondary school, regardless of whether the area is an indoor public place or is outdoors.

26:3D-62 Violations; fines, penalties; enforcement.

8. a. The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply with the provisions of this act. A person, after being so ordered, who smokes in violation of this act is subject to a fine of not less than \$250 for the first offense, \$500 for the second offense and \$1,000 for each subsequent offense. A penalty shall be recovered in accordance with the provisions of subsections c. and d. of this section.

2007 NJ Department of Health Regulations, to help implement the Act. Below are the key provisions re: definition of school property which requires no smoking during school-sponsored activities that take place off of school property. Source: http://njgasp.org/nj_admin_code.pdf

NEW JERSEY ADMINISTRATIVE CODE, TITLE 8. DEPARTMENT OF HEALTH AND SENIOR SERVICES CHAPTER 6. SMOKE-FREE AIR SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 8:6-1.1 The purpose of this chapter is to implement P.L. 2005, c. 383, the New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55 et seq. Adopted by R.2007 d.170, effective May 21, 2007.

SUBCHAPTER 7. SCHOOL BUILDINGS AND GROUNDS

The purpose of this subchapter is to implement the prohibition against smoking in school buildings and on school grounds pursuant to N.J.S.A. 26:3D-58.

N.J.A.C. 8:6-7.2 Smoking prohibited in school buildings and on school grounds

(a) Pursuant to N.J.S.A. 26:3D-58b, smoking is prohibited in school buildings and on school grounds.

(b) As used in (a) above, "school buildings" and "school grounds," means and includes, with respect to public and nonpublic elementary and secondary schools:

1. Land, portions of land, structures, buildings, and vehicles, owned, operated or used for the provision of academic or extracurricular programs sponsored by a school or a community provider and structures that support these buildings, such as school wastewater treatment facilities, generating facilities, and other central service facilities including, but not limited to, kitchens and maintenance shops;
2. Athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non- instructional or non-educational purposes, and any structure, building or facility used solely for school administration;
- 3. Playgrounds, and recreational places owned by local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of such land; and**
4. Certain faculty or administrator residences on school grounds as provided in N.J.A.C. 8:6-8.1(b).