

# Center for Public Health and Tobacco Policy

## TOBACCO USE & SCHOOLS:



### *Summary of Current Laws Applicable to New York Schools*

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This factsheet summarizes the state and federal laws that address tobacco use in New York schools and on school grounds.

This factsheet is designed to make it easier to find the most current laws and related information. The summaries provide key provisions and notable information. They detail where the law can be found, provide useful links, and state when the law was last updated. Answers to common questions follow the summaries of the law.



This factsheet addresses tobacco *use* on school grounds. Separate laws and regulations require tobacco-related *education* in schools. See, e.g., N.Y. EDUC. LAW § 804 (“Health education regarding alcohol, drugs, tobacco abuse and the prevention and detection of certain cancers”).

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<b>Federal Law: <a href="#">20 U.S.C. § 7181 et seq.</a></b>	
<b>Pro-Children Act of 2001</b>	
<b><i>Prohibits Indoor Smoking in School Buildings</i></b>	
<b>Key Provision:</b>	<ul style="list-style-type: none"> <li>▪ “[N]o person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.”</li> </ul>
<b>Notes:</b>	<p>The Pro-Children Act prohibits smoking only in the <i>indoor</i> areas of school buildings. In addition, it regulates <i>smoking</i>, not all tobacco use.</p> <p>The law applies only to schools that receive federal funding (directly or indirectly). Because state law is more comprehensive, school districts must comply with state law <i>in addition to</i> the federal law.</p>
<b>Penalties:</b>	<p>The law is enforced by the U.S. Department of Health and Human Services. A school “may be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary [of Health and Human Services].” Each day smoking occurs counts as a separate violation. The penalty may not exceed 50 percent of the school’s federal funding.</p>
<b>Where to Find this Law:</b>	<p>The Pro-Children Act is located in the United States Code under Title 20 <i>Education</i>, Chapter 70 <i>Strengthening and Improvement of Elementary and Secondary Schools</i>, Subchapter IV <i>21st Century Schools</i>, Part C <i>Environmental Tobacco Smoke</i>.</p> <p>It is part of the No Child Left Behind Act of 2001 and became effective January 8, 2002.</p>

<b>State Law: <a href="#">New York Public Health Law §§ 1399-n et seq.</a></b>	
<b>New York Clean Indoor Air Act</b>	
<b><i>Prohibits Smoking on School Grounds and in School Vehicles</i></b>	
<b>Key Provisions:</b>	<ul style="list-style-type: none"> <li>▪ Prohibits smoking in all indoor “places of employment” including “school grounds[.]”</li> <li>▪ “School grounds” are defined as “any building, structure, and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office, and any vehicles used to transport children or school personnel.”</li> <li>▪ Prohibits smoking at “all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions[.]”</li> <li>▪ Requires posting of “No Smoking” signs where smoking is prohibited.</li> </ul>
<b>Notes:</b>	Unlike most other provisions of New York’s Clean Indoor Air Act that prohibits <i>smoking</i> in indoor work areas, the definition relating to pre-schools, nursery schools, and K-12 schools includes any <i>indoor or outdoor</i> area on school grounds. The law also includes vehicles used for carrying school children and personnel.
<b>Enforcement &amp; Penalties:</b>	The entity responsible for enforcement varies. Depending on the location, the law may be enforced by the county board of health, the city board of health, or district offices of the state Department of Health. A city or county health department can assess a penalty of up to \$1,000 for each violation. In areas where the Department of Health is responsible for enforcement, it may assess penalty of up to \$2,000 for each violation. These amounts are periodically reviewed and updated.
<b>Where to Find this Law:</b>	<p>This law is part of New York Public Health Law, Chapter 45, Article 13-E <i>Regulation of Smoking in Certain Public Areas</i>.</p> <p>Section 1399-n is “Definitions,” and the last amended version of this section became effective July 24, 2003.</p> <p>Section 1399-o is “Smoking Restrictions,” and the last amended version of this section became effective August 15, 2008.</p> <p>Section 1399-p is “Posting of Signs,” and the last amended version of this section became effective July 24, 2003.</p>

<b>State Law: <a href="#">New York Education Law § 409</a></b>	
<b><i>Prohibits Tobacco Use on School Grounds</i></b>	
<b>Key Provisions:</b>	<ul style="list-style-type: none"> <li>▪ “[T]obacco use shall not be permitted and no person shall use tobacco on school grounds.”</li> <li>▪ “Schools grounds” are defined as “any building, structure and surrounding outdoor grounds contained within a public or private pre-school, nursery school, elementary or secondary school’s legally defined property boundaries as registered in a county clerk’s office.”</li> </ul>
<b>Notes:</b>	This law largely overlaps with the Clean Indoor Air Act. However, unlike the Clean Indoor Air Act, it prohibits <i>all tobacco use</i> —cigarettes, smokeless tobacco, and other forms of tobacco—in any <i>indoor or outdoor</i> area on the school grounds of pre-schools, nursery schools, and K-12 schools.
<b>Enforcement &amp; Penalties:</b>	This law does not contain a provision explaining how it will be enforced.
<b>Where to Find this Law:</b>	<p>This section is part of New York Education Law, Chapter 16, Title I <i>General Provisions</i>, Article 9 <i>School Buildings and Sites</i>, Section 409 <i>School Building Regulations in Relation to Health and Safety</i>.</p> <p>The last amended version of this section became effective July 24, 2003.</p>
<b>Local Laws:</b>	
<b>Local Laws:</b>	There may be additional local laws applicable to tobacco use on or near school property. For example, a local ordinance may make youth possession of tobacco products illegal, or a local law may prohibit smoking in outdoor areas near (but not on) school property.
<b>School Policies:</b>	
<b>School Policies:</b>	Schools may develop codes of conduct and other rules that apply to students, staff, and school events. Such policies may be more expansive than the state law. For example, a school policy could prohibit smoking at off-campus, school-sponsored events. The school can establish its own punishments for violations of its policies. <sup>1</sup>

<sup>1</sup> School policies applicable to faculty or staff that impose tobacco use restrictions more stringent than those required by law may require notification of faculty and staff unions before they can be implemented. If the unions object to the new policies, collective bargaining may be required.

## **Frequently Asked Questions**

### **Q: Does current law prohibit adults from using tobacco at school events?**

Adults may not use tobacco at any school events occurring on school grounds. This includes any parents or other adults visiting the school for a school event.

### **Q: Does current law prohibit students, staff, and visitors from using tobacco at school events occurring off campus?**

The current laws only pertain to tobacco use on school grounds and smoking in vehicles used to transport children or school personnel. However, school districts may develop their own policies prohibiting tobacco use by students, staff, and visitors at off-campus school events.

### **Q: Is smoking permitted on sidewalks or areas located near a school?**

Current state law only prohibits tobacco use within the school's legally defined property boundaries. School policies, however, may prohibit students from using tobacco products during school hours or while participating in school activities. Likewise, school policies may prohibit staff and faculty from tobacco use while on duty or in the presence of students.

### **Q: Is smoking permitted in private vehicles located on school property?**

State law prohibits smoking on school property and does not contain an exception for smoking inside of vehicles. Vehicles that enter the school's campus are subject to the state law and the school's policies.

The New York Clean Indoor Air Act was specifically changed to include in its definition of school grounds "any vehicles used to transport children or school personnel." Therefore such school vehicles are considered places of employment where smoking is prohibited even if the vehicle is not on school property.

### **Q: Where can I find a tobacco-free school sample policy and more information?**

For a tobacco-free school sample policy and more information on tobacco-free school policies, go to <http://www.tobaccofreepolicy.org/>.

### **Q: What are some examples of related federal and local laws?**

On the federal level, under the Child Nutrition and WIC Reauthorization Act of 2004, schools receiving applicable meal reimbursement aid are required to have a wellness policy in place that addresses nutritional guidelines and sets "goals for nutrition education, physical activity and other school-based activities that are

designed to promote student wellness[.]” Tobacco use and education guidelines could be made part of these wellness policies.

Local government requirements, such as the New York City laws and regulations discussed below, can be more stringent than federal and state laws.

### ***LOCAL REQUIREMENTS: NEW YORK CITY EXAMPLE***

#### ***As part of its Smoke-Free Air Act, New York City Administrative Code:***

- Section 17-503(d) prohibits smoking in “all indoor and outdoor areas of . . . [a]ll public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, and any vehicles owned, operated or leased by such schools which are used to transport such students or the personnel of such schools.”
- Section 17-504 requires employers to “adopt, implement, make known, maintain and update to reflect any changes, a written smoking policy” which must contain certain information at a minimum.
- Section 17-504 also requires employers to “prominently post the smoking policy in the workplace,” distribute the policy to all employees when implemented and whenever amended, give it to new employees, and provide the policy upon request to employees and certain city departments.
- The city board of health’s administrative tribunal can impose penalties ranging from \$200 to \$2,000 for employer-type violations, and \$100 to a person smoking in prohibited areas.
- New York City’s Smoke-Free Air Act can be found in the New York City Administrative Code, Title 17 *Health*, Chapter 5 *Smoke-Free Air Act*.

#### ***Also, in further support:***

- The **Rules and Regulations of the City of New York section 10-13** enforces that “every employer shall establish and/or update a written smoking policy that conforms with the [Smoke-Free Air] Act and these rules.”
- The **Smoke-Free Environment Policy for the New York City Department of Education** applies to all its locations (Regulation of the Chancellor, Number C-810, update issued May 3, 2005).
- **New York City Administrative Code section 17-708**, like the state education law, makes it “unlawful for any person to use a tobacco product, including chewing tobacco, on school premises at any time” as part of its Tobacco Product Regulation Act (\$50/violation penalty).