

**September 18, 2014**

**LETTER of APPEAL  
Educare of Tulsa-Kendall Whittier**

**Schools and Libraries Division – Correspondence Unit  
30 Lanidex Plaza West  
PO Box 685  
Parsippany, NJ 07054-0685**

**To whom it may concern;**

**Appellant Name: Richard Senturia, consultant for applicant.  
Applicant: Educare of Tulsa-Kendall Whittier  
Applicant BEN #: 16062198  
Applicant FCC RN: 0020552774  
Applicant Form 471:**

**I. Issue: Compliance with Child Internet Protection Act (CIPA)**

**We dispute the allegation contained in the “Notification of Improperly Disbursed Funds Recovery Letter” dated September 15, 2014 regarding FRN 2255858, CoxCom, Inc. dba Cox Communications Oklahoma City (SPIN: 143018999).**

**USAC is alleging that funds totaling \$12,603.60 were “improperly disbursed” because the entity receiving the service was “not in noncompliance with the guidelines set forth by CIPA when the services began.” USAC is requesting reimbursement.**

**We appeal the judgment that there was a failure to comply. There are no grounds for requesting that the funding be reimbursed.**

**Judgments bring together facts and law. We believe that the facts in this case are not at issue. The entity does not have a filter on the internet connection. No children have access to computers in the entity.**

**However, the judgment is based upon an egregious misinterpretation of the Child Internet Protection Act, a misinterpretation that yields perverse and costly distortions. The plain meaning of the text limits the scope of the law to elementary and secondary schools. This does not include school district or board offices; it does not include pre-school entities.**

## **II. Educare of Tulsa– Kendall-Whittier**

**As a consequence of USAC’s categorization of the educational universe, applicants are forced to file as either a school, a school district, or a consortium. We have filed for this entity as a school.**

**While the FCC/USAC began to allow entities that were not elementary or secondary schools to be eligible for E-rate funding, no changes were made to the system of classification to reflect this expansion of eligibility.**

**Tulsa Educare, Inc. was formed in 2004 as a consequence of collaboration between public entities and private donors, including George Kaiser. The program targets at risk children in areas with high performing schools, but focuses on early learning opportunities. The following, from the web page, indicates the vision behind these efforts:**

By combining best practices in early childhood education and collaborative partnerships with Tulsa Public Schools, George Kaiser Family Foundation, Early Head Start, University of Oklahoma-Tulsa, State Department of Education, Department of Human Services, and Community Action Project State Pilot Program, Tulsa Educare is able to enhance the early learning curriculum with wrap-around family engagement services such as parental education classes, health promotions, crisis intervention and counseling, medical care, and asset building programs.

**Tulsa Educare administers three entities, one of which is Kendall-Whittier. This was the first to open (2006).**

## **III. CIPA and “Authorities Responsible for Administration of the School”**

**A. Section 1721 (5)(A) of The Children’s Internet Protection Act (Pub. L. 106-554), Title XVII – Children’s Internet Protection, establishes the “Requirements” for the Schools and Libraries program.**

**This reads as follows:**

**(5) REQUIREMENTS FOR CERTAIN SCHOOLS WITH COMPUTERS HAVING INTERNET ACCESS.—**

**“(A) INTERNET SAFETY.—**

**“(i) IN GENERAL.--Except as provided in clause (ii), an *elementary or secondary school* (italics added) having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school—**

**“(I) submits to the Commission the certifications described in subparagraphs (B) and (C);**

**“(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (1); and**

**“(III) ensures the use of such computers in accordance with the certifications.**

“(ii) APPLICABILITY.--The prohibition in clause (i) shall not apply with respect to a school that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

“(iii) PUBLIC NOTICE; HEARING.--An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary or secondary school as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

**Comment:** The title of this section clearly evidences that these requirements are for “Certain Schools.” Specifically, the requirements are for schools with internet access, and that these are elementary and secondary schools.

Further, it should be noted that the subsequent language clearly identifies “*elementary or secondary*” schools having internet access as the subject of the compliance. There is nothing in this language (or anywhere else) that indicates or even suggests that the subject is compliance by school district offices (or diocese offices) or non-traditional educational institutions such as early childhood centers, or to staff located at those entities.

The exclusive focus upon elementary and secondary schools is also evidenced in (iii). In (iii), the act allows that if the school does not hold the public meeting, the “school board, local educational agency, or other authority with responsibility for the administration of the school” may hold the public hearing as agent for the school.

Again, the target of compliance is the school (elementary or secondary), not the responsible agency. There is nothing in this language to indicate or to suggest in any way that the school board (or other administrative entity responsible for the school) is required to have a public hearing for itself, or that the responsible agencies are required to have policies. The policies are for the schools; these policies need to be discussed publicly. The act allows that this could happen at a board meeting.

It is evident that the focus is upon elementary and secondary schools, and staff working in those schools. This section does not claim that school district offices, or offices of the diocese, cannot receive discounts unless they are in compliance. There is nothing to suggest that pre-school entities are required to be in compliance.

## **B. Section 1721 (5)(C) Certification With Respect to Adults**

This section reflects the same exclusive attention to schools and reads as follows:

“(C) CERTIFICATION WITH RESPECT TO ADULTS.--A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

“(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

“(I) obscene; or

“(II) child pornography; and

“(ii) is enforcing the operation of such technology protection measure during any use of such computers.

**Comment:** Just as a previous section addressed the issue of the public hearing, and allowed public hearings by agents or entities responsible for the school, the issue here regards the agent or entity authorized to certify compliance with respect to adults. Again, this section provides a list of entities that may certify compliance by the school. Either the school can certify this, or another agency/entity is allowed to certify that the school is in compliance.

But, to iterate, Kendall-Whittier is not an elementary or secondary school, and it is not a school district office.

#### **IV. SUMMARY.**

As indicated, we believe that the facts of this case are not contested. In dispute is the interpretation of the Child Internet Protection Act. The plain meaning of the text of the statute makes it clear that the act addresses compliance issues in elementary and second schools; there is nothing to support a judgment that entities such as the school board, or pre-school entities must be in compliance with the provisions.

The attempt to include such entities is to attempt to expand the scope of CIPA beyond the plain meaning of the language of the act.

Respectfully,

John R. Danley for

Richard Senturia