

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS
TO ARTICLE 45 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice of intention to amend Article 45 (General Provisions Governing Schools and Children’s Institutions) of the New York City Health Code (the “Health Code”) was published in the City Record on March 27, 2009 and a public hearing was held on the proposal on April 28, 2009. No written comments or testimony were received. At its meeting on June 24, 2009, the Board of Health adopted the following resolution.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the authority of the Department of Health and Mental Hygiene (the “Department”) authority extends. Section 1043 grants the Department rule-making authority.

STATEMENT OF BASIS AND PURPOSE

The Department has requested that the Board of Health amend Article 45 of the New York City Health Code (General Provisions Governing Schools and Children’s Institutions) to eliminate requirements in subdivision (c) of §45.09 (Staff) that every adult who regularly associates with children at a school, and that a person employed by the Department of Parks and Recreation (“DOPR”) who regularly associates with children under the age of 16 in a DOPR recreational program be tested for tuberculosis prior to commencing work, and at Department established intervals after commencing work. In 2008, the Board repealed and reenacted Article 47 (Child Care Services), updating provisions related to the health of children and staff, and eliminated a similar requirement. The Statement of Basis and Purpose accompanying that resolution indicated that “the requirement that new staff hires be tested for tuberculosis infection has been eliminated since this group is at relatively low risk for tuberculosis.” The Department believes that the same justification applies to elimination of the requirement for school and DOPR staff and volunteers.

Accordingly, the Department has requested that the Board repeal subdivision (c) in its entirety, and substitute a provision authorizing the Department to require tuberculosis testing whenever necessary for epidemiological investigation.

Statement Pursuant to Charter § 1043

This proposal was not included in the Department’s regulatory agenda because the need for the amendment became known after publication of the regulatory agenda.

The amendment is as follows:

Matter underlined is new

Matter to be deleted is indicated by [brackets]

RESOLVED, that subdivision (c) of §45.09 of Article 45 (General Provisions Governing Schools and Children's Institutions) of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, as last amended by resolution adopted on the fifth of December, two thousand six, be, and the same hereby is, repealed and readopted, to be printed together with explanatory notes, to read as follows:

§45.09 Staff.

* * *

(c) Testing for tuberculosis. The Department may require testing for tuberculosis at any time of any persons in a school, children's institution, or other program providing services for children when such testing is deemed necessary for epidemiological investigation.

* * *

Notes: Subdivision (c) of §45.09 was repealed and readopted by resolution of the Board of Health on June 24, 2009 to delete a requirement that staff of schools and persons employed by the City's Department of Parks and Recreation have tuberculin testing as part of a pre-employment physical examination, since such persons are considered at low risk for tuberculosis. As readopted, subdivision (c) authorizes the Department to require testing for tuberculosis at any time when the Department finds it necessary in the course of epidemiological investigation.