

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF INTENTION  
TO AMEND ARTICLE 45 OF THE NEW YORK CITY HEALTH CODE

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**NOTICE OF PUBLIC HEARING**

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In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed amendment of Article 45 (General Provisions Governing Schools and Children's Institutions) of the New York City Health Code.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M. TO 12:00 NOON ON TUESDAY, APRIL 28, 2009 IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M. MONDAY, APRIL 27, 2009. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL BUSINESS HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY APRIL 10, 2009.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 12:00 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO [RESOLUTIONCOMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTIONCOMMENTS@HEALTH.NYC.GOV) OR ONLINE (WITHOUT ATTACHMENTS) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., TUESDAY, APRIL 28, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT'S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

**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 Department’s authority extends. Section 1043 grants the Department rule-making authority.

**STATEMENT OF BASIS AND PURPOSE**

The Department requests 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 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 requests 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 reenacted, 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.

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*Notes:* Subdivision (c) was repealed and reenacted by resolution of the Board of Health on XXX 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 reenacted, 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.

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