

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION  
OF A NEW ARTICLE 43 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, a notice of intention to add a new Article 43 (School–Based Programs for Children Ages Three through Five) to the New York City Health Code (the “Health Code”) was published in the City Record on April 2, 2008 and a public hearing was held on May 8, 2008. Six persons testified and nine written comments were received. In response to comments, some changes have been made to the resolution. At its meeting on June 18, 2008 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 Department’s authority extends. Section 1043 grants the Department rule-making authority.

**STATEMENT OF BASIS AND PURPOSE**

The New York City Department of Health and Mental Hygiene (the Department or DOHMH) is required by law to protect and promote the health of all New Yorkers. The Bureau of Child Care, in the Department’s Division of Environmental Health, enforces Article 47 (“Day Care Services”) of the Health Code, which regulates public and private group day care services operating within New York City. At its meeting in March, 2008, the Board of Health adopted a resolution to repeal and reenact Article 47 (“Child Care Services”). Reenacted Article 47 excludes from the definition of “child care service” any school based instructional programs for children ages three through five, regardless of the kind of school offering such programs.

Article 47 is scheduled to go into effect on September 1, 2008. In 1995, school-based kindergartens (for children who are or who will be age five by December 31 of the school year) operated by the Board of Education were specifically exempted from the definition of “day care service” and were at the same time included in the regulatory scope of Article 45 (“General Provisions Governing Schools and Children’s Institutions”) of the Health Code. With the exception of Board (now Department) of Education kindergartens, Article 47 has been applicable to all day care and instructional programs for children under six in all non public schools. Religious organizations’ day care services, which are not required to hold a permit under Article 47 have nevertheless been subject to almost all other Article 47 requirements except for staff criminal justice and child abuse screening.

In the next two years, both Article 45 and Article 49 (“Schools”) of the Health Code which together regulate schools operating in New York City are scheduled for substantive revision as part of a project to modernize the entire Health Code. However, on September 1, 2008, the effective date of the repealed and reenacted Article 47, and until Articles 45 and 49’s substantive revisions are adopted by the Board, a gap would exist in regulations covering the health and safety of school children ages three through five. Accordingly, the Department is

proposing that the Board approve for publication and public comment a resolution that incorporates in a new Article 43 supplementary provisions applicable to schools providing programs for this age group. Child care programs for children younger than three would continue to be considered “child care services” and will require Article 47 permits regardless of whether they are located within or are part of a school.

### **ARTICLE 43 PROVISIONS**

Article 43 contains many of the same provisions for health and safety that are applicable to child care services providing care to the same age groups regulated in accordance with repealed and reenacted Article 47, with some exceptions. The Department recognizes that all public and many non-public schools are subject to and regulated by the State and federal law, and we have no intention of duplicating and imposing a further layer of regulation where there are applicable similar laws and rules already in place. For example, some federal funding programs require school safety plans, particularly for evacuations in emergencies. If a school has a comprehensive safety plan, Article 43 will not require the person in charge of the school to duplicate or amend it. If school personnel are already required by any applicable law to be fingerprinted and undergo criminal justice record screening and review, as are all staff of public schools in this state, this Article will not require further fingerprinting or screening. The Article will not duplicate, but will supplement, requirements for child health in the regulations of the Chancellor of the City Department of Education. The specific sections proposed are as follows:

§43.01 Definitions. These definitions are intended to clarify terms used in the Article. In response to public comments received, changes were made to the definition of “school” to acknowledge that the local department or board of education may also determine whether the school provides an equivalent compulsory education. The definition of three-year old was amended to indicate that if a school year begins in a month other than September, all children attending classes for three-year olds must attain their third birthday within four months of the start of the school year.

§43.03 Scope and applicability. The Article is intended to supplement other provisions of the Health Code already applicable to schools, with particular reference to children ages three through five.

§43.05 Notice to the Department. The Department does not propose to issue permits to, license or register schools. However, to respond to complaints it is necessary to know of the existence of schools that provide classes for children in these age groups. Accordingly, we are requiring that a notice be filed with the Department on or before the effective date of the Article, and that notices thereafter be filed whenever new schools are established, or contact information for existing schools changes.

§43.07 Written safety plan. These provisions are essentially the same as those in Article 47, but exempt from this requirement schools that have already adopted the same or similar plans.

§43.09 Staff supervision. The Department is proposing that ratios of staff to children in Article 47 should also apply to school-based classes for the same age groups. To meet the ratios, the proposal would allow that staff providing supervision may include parents or other volunteers. This section also requires that staff maintain direct line of sight observation of each child. In response to comments that the ratios would be very difficult to achieve in some non-public schools, the ratio of staff to five year olds in subdivision (b) has been changed from 1:15 to 1:25, to be comparable to

current Department of Education staffing for kindergarten classes. Subdivision (c) has been amended to allow adults other than parents or volunteers to be counted as staff.

§43.11 Health; staff. This provision is essentially the same as in Article 47.

§43.13 Criminal justice and child abuse screening of current and prospective personnel and §43.15 Corrective action plan. These provisions are essentially the same as in Article 47 (see, §§47.19 and 47.21). However, any school that is already required to fingerprint staff under any law would be exempt from these requirements. Corrective action plans would be maintained at the school by the person in charge, and be made available for Department inspection upon request.

§43.17 Health; child admission criteria; §43.19 Health; daily requirements; communicable diseases, and §43.21 Health; emergencies. These provisions are essentially the same as requirements in Article 47 (see, §§ 47.25, 47.27, 47.29, 47.31, 47.33).

§43.23 Lead-based paint restricted. This requirement is the same as current §45.12, a provision that will remain in this Article, but will be repealed in the substantive revision and modernization of Health Code provisions applicable to schools generally. Lead surveys are required annually for schools with interior surfaces that have lead-based paint, or paint of unknown lead content.

§43.24 Modification of provisions. This is a standard provision of most articles of the Health Code and essentially the same as §47.75 in Article 47.

### **STATEMENT PURSUANT TO CHARTER §1043**

The proposal was not included in the Department’s Regulatory Agenda because the need for it was not known when the Regulatory Agenda was published.

The proposal is as follows:

Note-matter in brackets [ ] to be deleted

Matter underlined is new

RESOLVED, that the New York City Health Code, found in Title 24 of the Rules of the City of New York, be and the same hereby is, amended to add a new Article 43 (“School-Based Programs for Children Ages Three through Five”), to be printed, together with introductory notes as follows:

#### **Article 43**

#### **School-Based Programs for Children Ages Three through Five**

**§43.01 Definitions.**

**§43.03 Scope and applicability.**

**§43.05. Notice to the Department.**

**§43.07 Written safety plan.**

**§43.09 Staff supervision.**

**§43.11 Health; staff.**

**§43.13 Criminal justice and child abuse screening of current and prospective personnel.**

**§43.15 Corrective action plan.**

**§43.17 Health; child admission criteria.**

**§43.19 Health; daily requirements; communicable diseases.**

**§43.21 Health; emergencies.**

**§43.23 Lead-based paint restricted.**

**§43.25 Modification of provisions.**

*Introductory Notes.* Article 43 was adopted by the Board of Health on June 18, 2008, to be effective September 1, 2008, when the repealed and reenacted Article 47 (“Child Care Services”) of the Health Code goes into effect. Article 43 establishes regulatory standards for school-based instructional programs for children ages three through five that were previously regulated under Article 47 (“Day Care Services”) and that, with the exception of City Department of Education programs and programs in schools operated by religious organizations, were required to hold permits as day care services. Article 43 is intended to supplement regulations in the Health Code that currently apply to all schools.

**§ 43.01. Definitions.** When used in this article:

(a) *School* shall mean a public, non-public, chartered or other school or school facility recognized under the State Education Law and/or that has been determined by the State Education Department or the New York City Department of Education, or successor agency, as providing a compulsory education for children in grades one through twelve, and where more than six children ages three through five are provided instruction, but shall not include a child care service defined in Article 47 of this Code.

(b) *Elementary school* shall mean any school approved by the State Education Department to provide programs of instruction that meet State requirements for a compulsory education in the elementary grades, but does not include secondary school grades, as defined in this Article.

(c) *Kindergarten and pre-kindergarten* shall mean school-based programs of instruction for children ages five years and younger.

(d) *Secondary school* shall mean a school providing instruction in the sixth through twelfth grades, and shall include, but not be limited to, schools designated as junior high schools, intermediate schools, middle schools and high schools.

(e) Person in charge of a school shall mean a principal, headmaster, director or other person designated by the governing body of a school or school system to manage school operations, programs and implementation of the governing body's policies, and who is responsible for the health and safety of staff and children attending such school.

(f) Three years of age. A child attending an elementary school where the school year starts in September shall be deemed to be three years of age if the child's third birthday occurs or will occur on or before December 31<sup>st</sup> of the school year. In a school where the school year starts during any other month, all children in a class of three year olds shall have their third birthday within four months of the start of the school year.

**§ 43.03. Scope and applicability.** The provisions of this Article shall apply to pre-kindergarten and kindergarten programs of instruction provided for children ages three through five that are located within a school, or that are part of a school, and shall be in addition to requirements of other provisions of this Code applicable to schools. For the purposes of this Article, being "part of a school" shall mean that there is identical ownership, operation, management and control of kindergarten and pre-kindergarten classes for children ages three through five and all other classes provided by the school. All educational or other programs, regardless of whether they are located within, or are part of an elementary or other school, that are intended for and attended by children younger than three years of age shall be deemed child care services and the person in charge of a school shall not provide care for such children unless such programs have been issued a permit by the Commissioner pursuant to Article 47 of this Code.

**§43.05. Notice to the Department.**

On or before the effective date of this Article, the person in charge of a school that provides classes for children ages three through five shall file a notice with the Department, on a form provided or approved by the Department. The notice shall provide the names, addresses and contact information for the person or entity that owns and operates the school. Any person or entity that operates more than one school may submit one notice that lists the required contact information for each school. Notices shall be filed whenever there has been a change in the location of, or contact information for, a school providing classes for children ages three through five, and whenever a new school providing such classes is established.

**§43.07. Written safety plan.**

(a) Safety plan required. Except where a school has established a written safety plan in compliance with applicable State or federal law, every school subject to this Article shall develop,

review annually and update, in accordance with changed circumstances, conditions or activities, a written safety plan. The safety plan shall be implemented by the person in charge of a school, used in training staff and volunteers, provided to parents on request, and kept in an accessible location at the school where it may be used by staff for reference, and reviewed by Department inspectors.

(b) *Scope and content.* The written safety plan shall establish policies and procedures for safe operation, including teaching and other staff duties, facility operation and maintenance, fire safety, general and activity-specific safety, emergency management, staff and child health and medical requirements, staff training and parent/child orientation. The written safety plan shall consist of, at a minimum, a table of contents and the following components:

(1) *Staff:* organization chart, job descriptions, responsibilities and supervisory responsibilities.

(2) *Program operation and maintenance:* including, but not limited to, schedules and designated staff for facility inspection, cleaning and maintenance, schedule for boiler/furnace and HVAC system maintenance, maintenance of adequate water pressure, protection of the potable water supply from submerged inlets and cross-connections in the plumbing system, schedule for the annual lead paint survey, inspection of window guards, indoor and outdoor equipment inspection and replacement schedule, evaluation of injury prevention procedures, equipment and structures, identification of procedures for transportation vehicle maintenance, food protection procedures during receipt, storage and preparation, identity of individuals certified in food protection, schedule for sanitization procedures of food prep areas and identification of approved food sources.

(3) *Fire safety:* evacuation of buildings and property, assembly, supervision, and accounting for children and staff; fire prevention; coordination with local fire officials; fire alarm and detection systems and their operation, maintenance, and routine testing; type, location and maintenance of fire extinguishers; inspection and maintenance of exits; required fire drills and log; and electrical safety.

(4) *Health care plan:* statement of policies and procedures to show how the health and medical requirements of this Code shall be implemented for maintaining children's medical histories; addressing individual children's restrictions on activities, policies for medication administration and special needs, if any; initial health screening for children and staff; daily health surveillance of children; procedures for providing basic first aid, handling and reporting medical emergencies and outbreaks; procedures for response to allegations of child abuse; identification of and provisions for medical, nursing and emergency medical services addressing special individual needs; names, qualifications and duties of staff certified in first aid and CPR; description of

separation facilities, supervision and other procedures for ill children to be provided by the school until a parent arrives; storage of medications; location and use of first aid and CPR supplies; maintenance of a medical log; description of universal precautions for blood borne pathogens; reporting of child and staff illness and injuries; and sanitary practices.

(5) Corrective action plans: actions to be taken to protect children on receipt of reports of alleged and confirmed teaching and other staff criminal justice or child abuse histories.

(6) General and activity specific safety: description of child supervision, including arrangements for general supervision; supervision during and between on-site activities; recreational and trip supervision for specific outdoor and off-site activities; supervision during sleeping and rest hours; transportation; and in emergencies.

(7) Staff training: new employee orientation; training curricula; procedures for child supervision and discipline; child abuse recognition and reporting; provision of first aid and emergency medical assistance; reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; and process to document attendance at staff training.

(8) Emergency evacuation: age-specific plans for removal of children from the premises for each shift and program where care is provided. Primary emphasis shall be placed on the immediate evacuation of children in premises which are not fireproof. Emergency evacuation procedures, implementing Fire Department recommendations, shall be posted in conspicuous places throughout the facility. The emergency evacuation plan shall include the following:

(A) how children and staff will be made aware of the emergency;

(B) primary and secondary routes of egress;

(C) methods of evacuation, including where children and staff will meet after evacuating the building, and how attendance will be taken;

(D) roles of the staff and chain of command;

(E) notification of authorities and the children's parents.

(9) Parent/child orientation: orientation curriculum outline; tour of premises; reporting and management of illnesses, injuries and other incidents; evacuation plan; lost child plan; lightning plan; fire safety and fire drills; evacuation procedures; activity specific training for assigned activities; trips (if provided).

#### **§ 43.09. Staff supervision.**

(a) Direct supervision. Line of sight supervision by adult teaching staff shall be maintained for all children, and no child or group of children shall be left unsupervised at any time.

(b) Minimum staff to children ratios. The minimum ratios of staff to children shall be as follows:

<u>AGE OF CHILDREN</u>	<u>STAFF/CHILD RATIO</u>
<u>3 years to under 5</u>	<u>1:20 for classroom academic activities</u>
<u>3 years to under 4</u>	<u>1:10 for all other activities</u>
<u>4 years to under 5</u>	<u>1:12 for all other activities</u>
<u>5 years to under 6</u>	<u>1:25 for all activities</u>

(c) Staff. Parents, aides, other adult staff and volunteers may be counted as staff with respect to the above ratios.

**§43.11. Health; staff.**

(a) Staff to be excluded. The person in charge of a school shall exclude any staff person from work in accordance with Article 11 of this Code, if such staff person reports having an illness or symptoms of a communicable disease reportable pursuant to Article 11 of this Code. Such staff person shall not be permitted to return to the school without a written statement of recovery from a health care provider if the staff person was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the staff person was a case of any other communicable disease reportable pursuant to Article 11.

(b) Physical examination certificates. No educational director, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other staff member who regularly associates with children shall be permitted to work in a school unless such person is healthy and capable of carrying out the responsibilities of the job. Prior to commencing work, all such staff and volunteers shall present a certificate from a licensed health care provider certifying that, on the basis of medical history and physical examination, such staff member or volunteer is physically and mentally able to perform assigned duties. Such certificate shall be submitted every two (2) years thereafter as a condition of employment. Certificates of required physical examinations and other medical or personal health information about staff shall be kept on file at the place of employment, shall be confidential, and shall be kept separate from all other personnel or employment records.

(c) Staff immunizations. Health care providers shall certify that each staff member or volunteer has been immunized against measles; mumps; rubella; varicella (chicken pox); and tetanus and diphtheria (Td) or tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices. Persons born on

or before December 31, 1956 who have a history of measles or mumps disease shall not require such vaccines. A history of having health care provider documented varicella, measles or mumps disease shall be accepted in lieu of varicella, measles or mumps vaccines. A history of having rubella disease shall not be substituted for the rubella vaccine. A laboratory test demonstrating detectable varicella, measles, mumps, or rubella antibodies shall also be accepted in lieu of varicella, measles, mumps and rubella vaccine. An employee may be exempted from this immunization requirement for medical contraindications upon submission of appropriate documentation from a licensed physician.

(d) *Test for tuberculosis infection.* The Department may require testing for tuberculosis at any time of any persons in a school when such testing is deemed necessary for epidemiological investigation.

**§43.13. Criminal justice and child abuse screening of current and prospective personnel.**

(a) *Applicability.* These requirements for child abuse and criminal justice screening shall apply to any person who has, will have, or has the potential for unsupervised contact with children and shall include, but not be limited to: individual owners, persons in charge of a school, partners, members and shareholders of small or membership corporations who are the owners or operators of the school; educational, administrative and maintenance employees; school bus drivers; volunteers, including parent volunteers and student teachers, trainees or observers; and consultants and other persons employed by persons, corporations, partnerships, associations or other entities providing services to the school. Employees of independent contractors providing maintenance, construction, food or other services to a school shall be screened in accordance with this section, or shall be prohibited from working in any area or facility occupied by the school unless such person is working under the direct supervision and within the line of sight of a screened employee of the school. Schools that are currently required by State or federal law to screen employees for criminal justice and child abuse and maltreatment records shall not be required to comply with the provisions of this section and §43.15 of this Article.

(b) *Pre-employment verification.* A person in charge of a school shall obtain and verify credentials, including certificates and educational transcripts, as applicable, and references prior to employment of all persons listed in subdivision (a) of this section.

(c) *Screening.* A person in charge of a school shall arrange for (1) fingerprinting, (2) review of records of criminal convictions and pending criminal actions, and (3) inquiry of the Statewide Central Register of Child Abuse and Maltreatment (hereinafter “SCR”) for all prospective

employees, and other persons listed in subdivision (a), and for current employees shall repeat the inquiry to the SCR every two years.

(d) Individual consent. A person in charge of a school shall obtain written consent from each such person for fingerprinting and criminal record review, and shall provide written notice to such persons that there will be an inquiry submitted to the SCR, pursuant to Social Services Law §424-a (1), or successor law, and that copies of the reports received by the person in charge of a school as a result of such review and screening may be provided to the Department.

(e) Refusal to consent. A person in charge of a school shall not hire or retain as an employee, or otherwise allow on its premises any person who is required to have, but refuses to consent to, fingerprinting and criminal record review. The person in charge of a school shall not hire or retain any person who has a criminal conviction record, subject to and consistent with Article 23-A of the New York State Correction Law, except as provided in subdivision (g) of this section.

(f) Employee to notify person in charge of a school. Employees required to have criminal justice and child abuse screening shall notify the person in charge of a school within 24 hours when such employees are arrested, or when such employees receive a notice that an allegation of child abuse or maltreatment has been filed concerning such employees.

(g) Actions required. Consistent with Article 23-A of the New York State Correction Law, and except where the person in charge of a school has prepared and implemented a corrective action plan in accordance with §43.15 of this Code:

(1) A person in charge of a school shall not hire, retain, utilize or contract for the services of a person who:

(A) Has been convicted of a felony at any time, or who has been convicted of a misdemeanor within the preceding ten years; or

(B) Has been arrested and charged with any felony or misdemeanor, and where there has been no disposition of the criminal matter; or

(C) Is the subject of a reported incident of child abuse or maltreatment which has been indicated or which is under investigation.

(2) A person in charge of a school shall not dismiss or permanently deny employment to current and prospective staff solely because they are defendants in pending criminal actions, but may suspend current employees or defer employment decisions on prospective employees until disposition of the pending criminal action.

(3) A person in charge of a school shall prohibit unsupervised contact with children by any person who has not received screening clearance for criminal convictions or by the SCR, or is listed in paragraph (1) of this subdivision.

(i) References. For all prospective staff, the person in charge of a school shall make a written inquiry to an applicant's three most recent employers and shall obtain three references prior to hiring. If prospective staff have not had three prior employers, references may be accepted from persons who are not family members and who state, in writing, that the applicant is well-known to them as a student, volunteer, or other stated capacity, and that the applicant is suited by character, fitness, and ability to work with children.

**§ 43.15. Corrective action plan.**

(a) Corrective action plan required. A corrective action plan shall be prepared by the person in charge of a school that is subject to this Article in the following instances:

(1) Prior to the person in charge of a school hiring, retaining or utilizing the services of persons listed in subdivision (a) of §43.13 of this Article when such persons are reported as having:

(A) A criminal conviction, as specified in §43.13 (g); or

(B) Pending criminal charges, as specified in §43.13(g); or

(C) SCR reported incidents of child abuse or maltreatment which have been indicated or which are under investigation.

(2) When a death or serious injury of a child has occurred while in the care of a person in charge of a school, or in the care of any owner, director, employee, or volunteer of the person in charge of a school or while in the care of any agent of the person in charge of a school, or if a related criminal or civil action has already been adjudicated or adjudication is pending in any jurisdiction with respect to such death or serious injury.

(3) When required by the Department, if the person in charge of a school has been cited for violations or conditions deemed imminent health hazards, to demonstrate that the person in charge of a school is able and willing to correct such violations or conditions.

(b) Contents of corrective action plan. A corrective action plan shall assess the risk to children in the school, and shall clearly and convincingly demonstrate that such person presents no danger to any child, or other persons. The plan shall include, but not be limited to, consideration of the following factors:

(1) Seriousness of the incident(s) or crimes cited in the report(s);

(2) Seriousness and extent of injuries, if any, sustained by the child(ren) named or referred to in the indicated report(s) or disclosed upon investigation of the criminal charge;

(3) Any detrimental or harmful effect on child(ren) as a result of the person's actions or inactions and relevant events and circumstances surrounding these actions and inactions as these relate to any report(s);

(4) The age of the person and child at the time of the incident(s);

(5) Time elapsed since the most recent incident(s);

(6) Number of indicated incident(s) or crimes; where more than one incident or crime, an evaluation of each separately, and an assessment of the total effect of all indicated incidents on risks to children currently under care;

(7) Duties of the person under consideration; degree of supervision, interaction, opportunity to be with children on a regular, substantial basis and whether the position may involve being alone with children or will always involve the presence of other adults;

(8) Information provided by the person, re: rehabilitation, i.e., showing positive, successful efforts to correct the problems resulting in the indicated child abuse or criminal report so that children in care will not be in danger, demonstrated by no repeated incidents or showing that the person has undergone successful professional treatment;

(9) Employment or practice in a child care field without incident involving injuries to children;

(10) Extra weight and scrutiny shall be accorded child abuse and maltreatment reports involving fatality, sexual abuse, subdural hematoma, internal injuries, extensive lacerations, bruises, welts, burns, scalding, malnutrition or failure to thrive; and crimes involving homicides, sexual offenses (misconduct, rape, sodomy, abuse); kidnapping; felony possession or sale of a controlled substance; felony promotion of prostitution; obscenity offenses; disseminating indecent material involving, or to, minors; incest; abandonment of a child; endangering welfare of a child; promoting sexual performance by a child; felony weapon possession; assault; reckless endangerment; coercion; burglary; arson and robbery; driving while intoxicated or under the influence of alcohol if the person will have responsibilities for unsupervised contact or driving motor vehicles at the school.

(c) Available for Department inspection. Corrective action plans shall be maintained by the person in charge of a school and made available to the Department for inspection upon request.

#### **§43.17 Health; child admission criteria.**

(a) Admission requirements.

(1) Physical examinations and screening. Prior to initial admission to a school, all children shall receive a complete age appropriate medical examination, including but not limited to a history, physical examination, developmental assessment, nutritional evaluation, lead poisoning screening, and, if indicated, screening tests for dental health, tuberculosis, vision, and anemia.

(2) Immunizations. All children shall be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B and haemophilus influenzae type b (Hib), in accordance with New York Public Health Law §2164, or successor law, and shall have such additional immunizations as the Department may require. Exemption from specific immunizations may be permitted for medical contraindications or on religious grounds, in accordance with Public Health Law §2164.

(b) Form with results of examination. Health care providers examining children pursuant to this section shall furnish the person in charge of a school with a signed statement, in a form provided or approved by the Department, containing a summary of the results of the examination, past medical history, and, if a disease or condition which affects the child's ability to participate in program activities is found, a summary of the evaluation and findings associated with that condition. The examination form shall include the health care provider's recommendations for exclusion or treatment of the child, modifications of activities, and plans for any necessary health supervision.

(c) Periodic examinations. Each child shall have periodic medical examinations at 3, 4 and 5 years of age.

(d) Medical records to be maintained. A person in charge of a school shall maintain an individual medical record file for each child. This file shall include:

(1) A cumulative record consisting of a form provided or approved by the Department, including: child's name, address, date of admission and date of birth; parents' names, home and business addresses and telephone numbers; names and telephone contact information of person(s) to contact in case of emergency, including name, address and telephone number of the child's primary health care provider; pertinent family medical history, and child's history of allergies, medical illnesses, special health problems and medications; immunization records; and parental consent for emergency treatment.

(2) Copies of all individual health records required by this Code, including new admission and periodic medical examination forms, parents' and health care provider notes regarding episodic illnesses, and a history of all illnesses, accidents, and other health data.

(e) Records to be confidential. All records required by this section shall be maintained as confidential records and shall not be made available for inspection or copying by any persons other than parents, other persons who present a written authorization from a parent, or authorized staff of the Department. When a child transfers from one school to another, a copy of the child's student health record shall be forwarded to the person charged with maintaining student health records at the child's new school.

(f) Department property. If the Department assigns a health care provider to a school, all child health related records shall be deemed the property of the Department.

**§43.19. Health; daily requirements; communicable diseases.**

(a) Daily attendance record. A daily attendance record shall be kept in a form provided or approved by the Department.

(b) Daily health inspections. A health inspection of each child shall be made daily by teachers who are familiar with such child and trained to recognize signs or symptoms of illnesses in accordance with guidelines or training provided or approved by the Department.

(c) Management of ill children and reporting.

(1) An area shall be provided for separating ill children under direct adult supervision until parents remove children from the school.

(2) All health care provider diagnoses pursuant to Article 11 of this Code shall be reported to the Department by the person in charge of a school.

(3) The Department shall be notified by the person in charge of a school within 24 hours of the occurrence of a death or serious injury to a child while in the care of the school.

(4) When any child is unexpectedly absent from the school for three consecutive days, the person in charge of a school shall telephone the child's parent to determine the cause of absence and shall maintain a record of the telephone call and the information obtained in the log required by §43.21 (d) of this Code.

(d) Parent reports of absences. At the beginning of each school year, the person in charge of a school shall notify parents that they are required to report absences in accordance with this subdivision. Parents shall report to the person in charge of a school within 24 hours any absence for: chicken pox, conjunctivitis, diarrhea, diphtheria, food poisoning, hepatitis, haemophilus influenza type b infection, impetigo, measles, meningitis (all types), meningococcal disease, mumps, Methicillin resistant staphylococcus aureus (MRSA), pertussis (whooping cough), poliomyelitis, rubella (German measles), salmonella, scarlet fever, tuberculosis, or any other disease or condition which may be a danger to the health of other children. Such disease or condition shall not include acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

(e) Reports of vaccine preventable illnesses. The person in charge of a school shall report to the Department by telephone, within 24 hours, any child who has any vaccine preventable illness, or meningitis or tuberculosis, or if there is any outbreak or unusual occurrence of any disease or condition at the facility.

(f) Exclusions pursuant to Article 11 of this Code. The person in charge of a school shall exclude a child who is a case, contact, or carrier of a communicable disease if the child is required to be isolated or excluded by Article 11 of this Code. Such child shall not be permitted to return to the school without a written statement of recovery from a health care provider if the child was a case of measles, mumps, rubella, pertussis (whooping cough), scarlet fever, meningitis (all types), or poliomyelitis, or if the child was a case, carrier, or contact of any other communicable disease reportable pursuant to Article 11 of this Code. The statement shall indicate that the child is free from such disease in communicable form and that the period of isolation or exclusion required by Article 11 of this Code has ended.

**§43.21. Health; emergencies.**

(a) Emergency procedures and notices. Written policies and procedures for managing health and other emergencies shall be included in the written health and safety plan. Persons in charge of a schools shall provide notice of the location and contact telephone numbers of the school to local hospitals, police precincts, fire houses and emergency transport services and information about emergency policies and procedures shall be provided to parents. Emergency procedures and emergency telephone contact numbers (for Police, Fire Department, Poison Control Center, Child Abuse Hotline, and the Department of Health and Mental Hygiene) shall be conspicuously posted in each classroom or area used by children.

(b) Necessary emergency medical care. When a child is injured, or becomes ill under such circumstances that immediate care is needed, the person in charge of a school or designee shall obtain necessary medical care and immediately notify the child's parent.

(c) First aid supplies. A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided by the person in charge of a school and shall be easily accessible for use. The first aid kit shall be kept out of reach of children and inspected periodically.

(d) Log of children's illnesses and accidents. The person in charge of a school shall maintain a log of illnesses, accidents, and injuries sustained by children in the school, in a form provided or approved by the Department. The person in charge of a school shall provide a child's parent with information concerning such incidents pertaining to the child, and shall report serious injuries to the Department. Logged entries shall include the name and date of birth of the child, the place, date and time of the accident or injury, names and positions of staff and other adults present, a brief statement as to how the accident or injury occurred, emergency treatment obtained, if any, and parental notification made or attempted.

**§ 43.23. Lead-based paint restricted.**

(a) Applicability. This section shall apply to all rooms and areas in a school facility that are occupied by children under six years of age, or to which such children have access.

(b) Peeling lead-based paint prohibited.

(1) There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface.

(2) Peeling lead-based paint or peeling paint of unknown lead content shall be immediately abated or remediated upon discovery, in accordance with § 173.14 of this Code.

(3) Children shall not be present and shall not have access to any room or area undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(4) The work practices of §173.14 of this Code shall not apply to repair and maintenance work which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(c) Equipment and furnishings. Equipment and furnishings shall be painted with lead-free paint.

(d) Soil. Soil in exterior areas used by children under six years of age shall be tested for lead, shall be remediated if test results exceed clearance limits in §173.14 of this Code, and shall not be used until cleared in accordance with §173.14.

(e) Annual survey. Each year the owner or person in charge of a school shall conduct a survey of the condition of surfaces in classrooms, where the surfaces of such classrooms or other areas used by children under six years of age are covered with lead-based paint or paint of unknown lead content. Survey results shall be recorded on a form provided by or satisfactory to the Department, and copies of survey results shall be provided to the Department upon request.

(f) Definitions. All terms used in this section shall have the same meanings as the terms defined in § 173.14 of this Code.

**§ 43.25. Modification of provisions.** When the strict application of any provision of this article presents practical difficulties, or unusual or unreasonable hardships, the Commissioner in a specific instance may modify the application of such provision consistent with the general purpose and intent of these articles and upon such conditions as in his opinion are necessary to protect the health of the children. The denial by the Commissioner of a request for modification may be appealed to the Board in the manner provided by § 5.21.