



## Department of Health and Mental Hygiene

### Board of Health

#### Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to Article 43 of the New York City Health Code

**What are we proposing?** The Department of Health and Mental Hygiene (the Department) is proposing that the Board of Health (the Board) amend Article 43 (School-Based Programs for Children Ages Three through Five) of the New York City Health Code to enhance certain safety requirements in such services.

**When and where is the hearing?** The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10AM to 12PM on July 25, 2016. The hearing will be at:

New York City Department of Health and Mental Hygiene  
Gotham Center  
42-09 28<sup>th</sup> Street, 3<sup>rd</sup> Floor, Room 3-32  
Long Island City, NY 11101-4132

**How do I comment on the proposed amendments to the Health Code?** Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to [resolutioncomments@health.nyc.gov](mailto:resolutioncomments@health.nyc.gov)
- **Mail.** You can mail written comments to  
New York City Department of Health and Mental Hygiene  
Gotham Center, 42-09 28th Street, CN 31  
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to New York City Department of Health and Mental Hygiene at 347-396-6087
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on July 25, 2016. You can speak for up to five minutes.

**Is there a deadline to submit written comments?** Written comments must be received on or before 5:00 p.m. on July 25, 2016.

**Do you need assistance to participate in the hearing?** You must tell us if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by July 11, 2016.

**Can I review the comments made on the proposed amendments?** You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

**What authorizes the Board of Health to make these amendments?** Section 558 of the City Charter authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. This proposed amendment was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

**Where can I find the Health Code and the Department's rules?** The Health Code and the rules of the Department of Health and Mental Hygiene are in title 24 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Board of Health must meet the requirements of §1043 of the City Charter when creating or changing the Health Code. This notice is made according to the requirements of City Charter §1043.

### **Statement of Basis and Purpose**

The Department's Bureau of Child Care enforces Article 47 of the Health Code which regulates non-residential-based child care centers (for children under six years of age) in accordance with Article 47 of the Health Code, and Article 43 (School-Based Programs for Children Ages Three through Five) which regulates health and safety aspects of school-based programs for children ages three through five.

The Department is proposing that the Board amend Article 43 of the Health Code as follows to enhance the health, safety and supervision of children under six years of age attending school-based programs.

#### ***Physical facilities: testing drinking water supplies for lead; installing window guards***

Health Code §47.43, applicable to non-school based freestanding child care centers, currently requires that "Drinking water from faucets and fountains shall be tested for lead content and the permittee shall investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected."<sup>1</sup> There is no similar requirement in Article 43 or in Article 45 (General Provisions Governing Schools and Children's Institutions). Although schools may be testing lead levels in water voluntarily, there is no general requirement that schools test potable water supplies for lead. While no water supplies should have lead levels above 15 ppb, the youngest children are most at risk for lead poisoning resulting from any environmental lead source. The Department is requesting the Board to amend Article 43 to require testing by school-based programs for children ages three through five of potable water supplies for lead.

In addition, the Department is requesting the Board to amend this article to require that window guards or other Department approved limiting devices be installed in windows in all areas of a school accessible to children under six years of age. Since 1976, Chapter 12 of the Department's rules has required window guards to be installed in all multiple dwelling units in which children 10 years of age and younger reside. Section 47.41 (e) of Article 47 similarly requires window guards to be installed in

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<sup>1</sup> This is the federal action level for lead in public drinking water supplies. See, US Environmental Protection Agency, "Lead and Copper Rule," 40 CFR Part 141 Subpart I.

child care services that are not located in school buildings. The Department believes that the same protections should be afforded the children of the same age attending schools.

***Teacher immunizations***

A new Recommended Adult Immunization Schedule was approved by the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices and published in February, 2016. The Department is requesting that the Board amend the immunization requirements for child care teachers and volunteers in Article 47 and for staff teaching early childhood education programs who are covered by Article 43 to be consistent with these recommendations. The major change is that having a history of measles and mumps will not be allowed to substitute for the vaccines for measles and mumps – the vaccines must still be administered even if a health care provider indicates that an individual has a history of these diseases. Vaccinations are not needed if there is laboratory proof of immunity.

***Statutory Authority***

The authority for these proposed amendments is found in §§ 556 and 558 of the New York City Charter (the “Charter”). Sections 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the New York City Health Code (the “Health Code”) and to include all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority.

Section 556 of the Charter provides the New York City Department of Health and Mental Hygiene (the “Department”) with jurisdiction to protect and promote the health of all persons in the City of New York.

***Statement pursuant to Charter §1043***

This proposal was not included in the Department’s Regulatory Agenda for FY ’16 since the need for the proposal was not known at the time the Regulatory Agenda was promulgated.

The proposal is as follows:

Note-matter in brackets [ ] to be deleted  
Matter underlined is new

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivision (c ) of §43.11 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, to be printed together with explanatory notes to read as follows:

**§43.11 Health; staff.**

\* \* \*

(c) *Staff immunizations.* [Health care providers shall certify that each staff or volunteer] Each staff person and volunteer shall obtain a report from a health care provider who is a licensed physician, nurse practitioner, physician's assistant, or doctor of osteopathy certifying that such person 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 (ACIP). Persons born on or before December 31, 1956 [who have a history of measles or mumps disease shall not require such] are not required to have measles, mumps or rubella vaccines. A history of having health care provider documented varicella [, measles or mumps] or herpes zoster disease shall be accepted in lieu of varicella[, measles or mumps vaccines] vaccine. A history of having measles, mumps or rubella disease shall not be substituted for the measles, mumps, or 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 ACIP-recognized medical contraindications upon submission of appropriate documentation from a licensed physician Each staff person and volunteer shall submit such report of immunization to the person in charge of a school where he or she is employed or volunteers. Reports of immunizations shall be confidential and shall be kept by the person in charge of a school in a paper or electronic file with other staff and volunteer health information, except that such reports shall be made available to the Department upon request.

\* \* \*

*Notes:* Subdivision (c) was amended by resolution adopted XXX to incorporate recommendations of the CDC Advisory Committee on Immunization Practices issued in February, 2016.

RESOLVED, that Article 43 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, adding a new §43.24, to be printed together with explanatory notes to read as follows:

**§43.24 Physical facilities.**

(a) *Drinking water.* Drinking water from faucets and fountains must be tested for lead content by persons in charge of a school upon the effective date of this provision or by persons in charge of a new school program within 30 days of filing the notice required by §43.05 of this article and every five years thereafter using a method approved by the Department. Copies of test results must be sent to the Department by mail, email or fax on receipt and the persons in charge of a school must investigate and take remedial action if lead levels at or above 15 parts per billion (ppb) are detected. Remedial action must be described in a corrective action plan to be submitted to the Department with reports of elevated

test results. Until remedial action is completed, the persons in charge of a school must provide and use bottled potable water from a source approved by the Department or the State Department of Health.

(b)Window guards. Department approved window guards or other window opening limiting devices must be installed on all windows in all rooms, hallways, and stairwells, except windows giving access to fire escapes used as a secondary means of egress, if children under six years of age have access to such areas.

*Notes:* Section 43.24 was added by resolution adopted XXX to require drinking water to be tested for lead, and that approved window guards or other limiting devices be installed in windows in all areas accessible to children under six years of age, mirroring similar requirements for children attending child care services regulated by Article 47 of the Health Code.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Amendment of Rules Governing School-Based Programs for Children Ages Three through Five (Health Code Article 43)

**REFERENCE NUMBER:** DOHMH-70

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

June 2, 2016  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Amendment of Rules Governing School-Based Programs for Children Ages Three through Five (Health Code Article 43)

**REFERENCE NUMBER:** 2016 RG 052

**RULEMAKING AGENCY:** Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: June 2, 2016