



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

Notice of Adoption of Amendments to Article 43 of the New York City Health Code

In accordance with Section 1043 of the New York City Charter (“Charter”) and pursuant to the authority granted to the Board of Health (“Board”) by Section 558 of the Charter, a notice of intention to amend Article 43 of the New York City Health Code (“Health Code”) was published in the City Record on October 15, 2019. Given the similarity and simultaneity of the proposed child safety amendments to Articles 43, 47, 48 and 49, a consolidated public hearing was held for these proposed amendments on November 15, 2019. The public was invited to testify and/or submit written comments on any or all of the proposed amendments to these Articles. Three individuals testified at the public hearing, and a total of 13 written comments were received for all Articles. Of the 13 written public comments received, five submissions contained comments specifically addressing Article 43.

In response to the public comments and on its own initiative, the Department has made the following changes:

- Definition of “school” - § 43.01(a):
The definition of a “school” has been changed to reflect and incorporate the use of the term “program” as used in these amendments to mean a “school”.
- Examples of imminent or public health hazards in the definition of “imminent or public health hazard” - § 43.01(g):
Except for one inapplicable instance relating to use of pillows for children under 2, all of the examples of public health hazards currently codified in §47.01(p) have now been added to §43.01(g).
- Inspector’s access to electronic records - §§ 43.11(c)(2), 43.17(a)(2)(A)(i) and 43.23(e)(2):
Inspection of records relating to child and staff immunizations and lead-paint surveys, respectively, are now being modified to require programs to allow for Department staff to be able to access these electronic records while the inspectors are on-site.
- Waivers from styrofoam ban - § 43.16(e):
Modified to recognize that the NYC Administrative Code prohibition (§16-329(e)) allows for a waiver from use of expanded polystyrene (foam) single serving food containers in certain instances. Accordingly, if a program has been granted or is in the process of applying for such a waiver, an inspector will not issue a violation under §43.16.
- Enforcement - § 43.29(a), (b):
Specific due process language has been added, including objecting to a closing order, and right to a hearing currently codified in Health Code Article 5. Language from §5.17(b) has been added to §43.29 (b) allowing for a hearing within 15 days of closure.

At its meeting on December 17, 2019, the Board adopted the following resolution.

Statement of Basis and Purpose

The Board of Health (“Board”) is adopting certain child health and safety amendments to Article 43 of the New York City Health Code (“Health Code”). Article 43 provides health and safety requirements for children ages 3 to 5 attending a kindergarten or pre-K program located within a school or that is part of a school. Article 43 requirements are intended to supplement regulations in the Health Code that currently apply to all schools.

Historically, Article 43 programs were previously regulated under Health Code Article 47 (“Child Care Programs and Family Shelter-Based Drop-Off Child Supervision Programs”) except that they were not required to obtain a permit. However, many of the provisions in Article 43 have not been updated since 2008, whereas Article 47 is and has been far more frequently updated. These amendments align Article 43 with some of the more current child health and safety requirements provided in Article 47 and supported by the larger childcare sector.

These amendments make changes to conform the Health Code with recent changes in state and local law, including updated immunization and lead-based paint hazards requirements. On June 13, 2019, NYS Public Health Law § 2164 was amended to remove the religious exemption from childhood immunization requirements. Article 43 (§43.17) of the Health Code is now amended to incorporate this state legislative change. On March 13, 2019, the NYC Council passed multiple amendments to the NYC Administrative Code concerning child care programs, which among other things, updated the requirements for conducting an annual survey for lead-based paint hazards for all day care services (See, for example, Local Laws 64, 66, 67 and 71 of 2019). As per Local Law 64 of 2019, “day care service” means “a program or service regulated by articles 43 and 47 of the New York city health code.” Accordingly, Article 43 (§43.23) of the Health Code is now amended to incorporate these updated annual survey requirements.

Legal Authority

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

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

New text is underlined; deleted text is in [brackets].

* * *

RESOLVED, that §§ 43.01, 43.07, 43.11, 43.15, 43.17, 43.19, 43.23 and 43.24 of Article 43 of the New York City Health Code, located in Title 24 of the Rules of the City of New York be amended, and that new §§ 43.14, 43.16, 43.20, 43.22, 43.29 and 43.31 be added, in order to provide additional child health and safety protections and to conform the Health Code with recent changes in state and local law involving immunization requirements and lead-based paint hazards, to be printed together with explanatory notes, to read as follows:

§43.01 Definitions.

When used in this [article] Article:

(a) *School* [shall mean] means 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. As used in this Article and unless the context clearly indicates otherwise, the term “program” may be used interchangeably to refer to and mean a “school” as defined above.

(g) Imminent or public health hazard means any violation, combination of violations, conditions or combination of conditions occurring in a school making it probable that illness, physical injury or death could occur, or the continued operation of the program could result in injury or be otherwise detrimental to the health and safety of a child. If the hazard cannot be immediately corrected, the Commissioner or designee may order the school to cease operations immediately and to institute such corrective action(s) as may be required by the Department. Imminent or public health hazards include, but are not limited to:

- (1) Failure to maintain constant and competent supervision of children;
- (2) Use of corporal punishments or of frightening or humiliating methods of behavior management;
- (3) Failure to immediately report instances of alleged child abuse, maltreatment, or neglect to the Department and the Statewide Central Register of Child Abuse and Maltreatment and to take appropriate corrective action to protect children when allegations of such abuse, maltreatment or neglect have been reported to or observed by the school;
- (4) Refusal or failure to provide access to the facility to an authorized employee or agent of the Department;
- (5) Uncontained sewage in any part of the facility;
- (6) Transporting children in the bed of a truck or trailer or in any other part of any motor vehicle that is not designed for passenger occupancy; or transporting children without adequate supervision; or failing to use appropriate child restraints in vehicles;
- (7) Failure to provide two approved means of egress or obstructing any means of egress or a required fire exit;
- (8) Failure to properly store flammable liquids or other toxic substances;
- (9) Failure to maintain firefighting or fire detection equipment in working order;
- (10) Contamination of the potable water supply by cross connection or other faults in the water distribution or plumbing systems;
- (11) Serving food to children from an unknown or unapproved source; serving food that is adulterated, contaminated or otherwise unfit for human consumption, or re-serving food that was previously served;
- (12) Failing to exclude from the school a person with a communicable disease who is required to be excluded, pursuant to Article 11 of this Code;
- (13) Failure to implement the school's written safety plan resulting in a child not being protected from any unreasonable risk to his or her safety;
- (14) Conducting construction, demolition, painting, scraping, or any repairs other than emergency repairs while children are present in the facility; failing to remove children from areas and rooms while such activities are in progress;
- (15) Failure to screen any person who has, or will have the potential for, unsupervised contact with children in accordance with Section 43.13 of this Code; or
- (16) Any other condition, violation, or combination of conditions or violations, deemed to be an imminent health hazard by the Commissioner or his or her designee.

§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] Every program subject to this Article [shall] must develop[, review] a written safety plan, which must be reviewed annually and [update,] updated in accordance with changed circumstances, conditions or activities[, a written safety plan]. The safety plan [shall] must be implemented by the person in charge of the program's associated school, used to train 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] available for review by Department inspectors.

(b) *Scope and content.* ***

(1) ***

(2) *Program operation and maintenance:* including, but not limited to:

- (A) schedules and designated staff for facility inspection,
- (B) cleaning and maintenance,
- (C) schedule for boiler/furnace and HVAC system maintenance,
- (D) maintenance of adequate water pressure,
- (E) protection of the potable water supply from submerged inlets and cross-connections in the plumbing system,
- (F) schedule for the annual lead paint survey,
- (G) inspection of window guards,
- (H) indoor and outdoor equipment inspection and replacement schedule,
- (I) evaluation of injury prevention procedures,
- (J) equipment and structures,
- (K) identification of procedures for transportation vehicle maintenance,
- (L) food protection procedures during receipt,
- (M) storage and preparation,
- (N) identity of individuals certified in food protection, and
- (O) schedule for sanitization procedures of food prep areas and identification of approved food sources.

(3) *Fire safety:*

- (A) evacuation of buildings and property, assembly, supervision, and accounting for children and staff;
- (B) fire prevention;
- (C) coordination with local fire officials;
- (D) fire alarm and detection systems and their operation, maintenance, and routine testing;
- (E) type, location and maintenance of fire extinguishers;
- (F) inspection and maintenance of exits;
- (G) required fire drills and log; and
- (H) electrical safety and
- (I) reporting to the Department within 24 hours any fire of which the Fire Department or other appropriate state or federal government entity is notified, or that damages any facilities, or is threatening to life or health.

(4) ***

(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, or where a failure to maintain adequate supervision results in a lost child incident.

(6) ***

(7) *Staff training:* new employee orientation; training curricula; procedures for child supervision and discipline; child abuse and neglect recognition and reporting; provision of pediatric first aid and pediatric cardiopulmonary resuscitation, and other emergency medical assistance; emergency preparedness and response planning for emergencies resulting from natural disasters or a human-caused events, including procedures for evacuation, relocation, shelter-in-place and lockdown,

staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants, toddlers, and children with disabilities or chronic medical conditions; prevention of and response to emergencies due to food and allergic reactions; prevention and control of infectious diseases (including immunization); reporting of child injury and illness; fire safety and fire drills; child and staff evacuation procedures; activity specific training for assigned activities; administration of medication, consistent with standards for parental consent; building and physical premises safety, including protection from hazards, bodies of water, and vehicular traffic; handling and storage of hazardous materials and appropriate disposal of biocontaminants; safe transportation of children if applicable; use of safe sleep practices and prevention of sudden infant death syndrome (“SIDS”); prevention of abusive head trauma (“shaken baby syndrome”) and child maltreatment; and process to document attendance at staff training. The written safety plan must minimally provide for staff trainings in child abuse, infection and hazard control and emergency procedures as required by § 43.14.

§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.]

(a) Isolation and exclusion pursuant to Article 11. The person in charge of a school must isolate and exclude any staff member who is suspected or confirmed with, or has been exposed to, a communicable disease requiring isolation or exclusion under Article 11 of this Code. A staff member who has been excluded must not be permitted to return to the school without a written statement from a health care provider indicating that the staff member 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.

(c) Staff immunizations.

(1) Each staff person and volunteer [shall] must 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] with two doses of measles-containing vaccine; two doses of mumps-containing vaccine; one dose of rubella-containing vaccine; two doses of varicella-containing vaccine (chicken pox); [and] one dose of tetanus, diphtheria and acellular pertussis (Tdap) in accordance with recommendations of the CDC Advisory Committee on Immunization Practices (ACIP) or other nationally recognized evidence-based guidelines. Persons born on or before December 31, 1956 are not required to have measles, mumps or rubella vaccines. A history of having health care provider documented varicella or herpes zoster disease [shall be accepted] is acceptable in [lieu] place of varicella 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] is also [be accepted] acceptable in [lieu] place of varicella, measles, mumps and rubella vaccine. [An employee] A staff person or volunteer may be exempted from this immunization requirement for recognized medical contraindications as provided by ACIP or other nationally recognized evidence-based guidelines, upon submission of appropriate documentation from a physician licensed [physician] in the State of New York.

(2) Each staff person and volunteer [shall] must 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] must 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] must be made available to the Department upon request. If such records are maintained electronically, Department staff must be allowed to access such records while on-site.

(3) No principal, teacher, owner, or person in charge of a school shall permit any staff member or volunteer to attend such school without appropriate documentation of the immunizations required by paragraph (1) of this subdivision.

§43.14 Staff trainings.

In addition to the trainings required by §43.07(b)(7), all teaching and supervisory staff must complete the following trainings. Certificates of completion of all training required pursuant to this section must be kept on-site and made available to the Department upon request.

(a) *Child abuse, maltreatment, and neglect.* All teaching and supervisory staff must receive at least 2 hours of training every 24 months in preventing, identifying and reporting child abuse, maltreatment and neglect, and as required under applicable state law. Such training must be provided by a New York State Office of Children and Family Services-certified trainer. New teaching and supervisory staff must receive such training within 3 months of hire or on the effective date of this rule, whichever is later. Training completed while employed at a different program holding a notice under this Article shall count for purposes of compliance with this paragraph.

(b) *Infection control, administration of medication, protection from hazards and additional safety topics.* Within 3 months of hire or on the effective date of this rule, whichever is later, all teaching and supervisory staff must receive training in infection control, reporting infectious diseases; administration of medication; handling and storage of hazardous materials; appropriate disposal of bio-contaminants; building and physical premises safety; including protection from hazards, bodies of water, and vehicular traffic; and, if applicable, safe transportation of children. Training completed while employed at a different program holding a notice under this Article shall count for purposes of compliance with this paragraph.

(c) *Emergency procedures.* Within 3 months of hire or on the effective date of this rule, whichever is later, all staff must receive training in the emergency procedures contained in the approved written safety plan, including:

- (1) Loss of a child;
- (2) Situation requiring lockdown;
- (3) Gas, electrical, sewer, or water main break; and
- (4) Extreme weather.

§43.15 Corrective action plan.

(a) ***

(1) ***

(2) ***

(3) When required by the Department, if the person in charge of a school has been cited for violations or conditions deemed imminent or public health hazards, or if there has been a history of failure to comply with applicable provisions of this Code, 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] must assess the risk to children in the school, and [shall] must clearly and convincingly demonstrate that such person or condition presents no danger to any child, or other persons. The plan [shall] must include, but need not be limited to, consideration of the following factors:

(c) *Available for Department inspection.* Corrective action plans [shall] must be maintained on-

site by the person in charge of a school and [made available] submitted to the Department [for inspection upon request] within 5 business days of discovery of the condition to be corrected.

§43.16 Food service.

- (a) School programs that prepare and/or process food for service to children in their care must maintain a food service establishment permit issued in accordance with § 81.05 of this Code.
- (b) All food must be stored, prepared and served to children in accordance with the requirements of Article 81 of this Code.
- (c) The school must designate as a supervisor of food service operations a person who has a certificate in food protection in accordance with § 81.15(a) of this Code. Such food protection certificate holder must be on-site to supervise all food storage, preparation, cooking, holding and cleaning activities, whenever such activities are in progress.
- (d) Food supplied to children must be wholesome, of good quality, properly prepared, age-appropriate in portion size and variety and served at regular hours at appropriate intervals.
- (e) Unless the program has a pending waiver application or has been issued a waiver, single-use expanded polystyrene (foam) food containers, such as cups and plates, are prohibited.

§43.17 Health; children's examinations and immunizations.

(a) ***

(1) ***

(2) *Immunizations.*

(A) (i) All children [shall] must be immunized against diphtheria, tetanus, pertussis, poliomyelitis, measles, mumps, rubella, varicella, hepatitis B, pneumococcal disease and haemophilus influenzae type b (Hib), in accordance with New York State Public Health Law § 2164, or successor law. Exemption from specific immunizations may be permitted if the immunization may be detrimental to the child's health [or on religious grounds], in accordance with New York State Public Health Law § 2164. [In addition, there shall be a 90-day grace period after admission for children who are either homeless, as defined by Section 11434a of Chapter 119 of Title 42 of the United States code, or in foster care, to obtain the required immunizations.] Documentation of immunizations and exemptions must be kept on-site and made available to the Department immediately upon request. If such records are maintained electronically, Department staff must be allowed to access such records while on-site.

(ii) No principal, teacher, owner, or person in charge of a school shall permit any child to attend such school without appropriate documentation of the immunizations required pursuant to clause (i) of this subparagraph, except as provided for in this subdivision or pursuant to New York State Public Health Law § 2164, or successor law.

(B) (i) Children aged from 6 months to 59 months [shall] must be immunized each year before December 31 against influenza with a vaccine approved by the U.S Food and Drug Administration as likely to prevent infection for the influenza season that begins following July 1 of that calendar year, unless the vaccine may be detrimental to the child's health, as certified by a physician licensed [to practice medicine in this state, or the parent, parents, or guardian of a child hold genuine and sincere religious beliefs which are contrary to the practices herein required] in the State of New York. The principal or person in charge of a school may require additional information supporting [either] the exemption request.

(ii) Except where prohibited by law, the principal or person in charge of a school may after December 31 refuse to allow any child to attend such school without acceptable evidence of the child meeting the requirements of clause (i) of this subparagraph. A parent, guardian, or other person in parental relationship to a child denied attendance by a principal or person in charge of a school may appeal by petition to the commissioner. A child who first enrolls in a school after

June 30 of any year is not required to meet the requirements of clause (i) of this paragraph for the flu season that ends before July 1 of that calendar year.

[(C) In addition, for children who are either homeless, as defined by section 11434a of Chapter 119 of Title 42 of the United States Code, or in foster care, there shall be a 90-day grace period to obtain the required immunizations after enrollment.

(D) A school that fails to maintain documentation showing that each child in attendance has either received each vaccination required by this subdivision, or is exempt from such a requirement, pursuant to paragraph A or B of this subdivision or eligible for the grace period specified in paragraph C of this subdivision, will be subject to fines for each child not meeting such requirements, as provided for under this Code.]

[(E)] (C) All children [shall] must have such additional immunizations as the Department may require.

(D) The principal, owner, or person in charge of a school must report to the Department all requests for exemption made pursuant to subparagraphs (A) or (B) of paragraph (2) of this subdivision in a manner and form prescribed by the Department. Upon submission of an exemption request and pending Department determination, the child may attend school. If upon review of the documents submitted and any additional documentation provided to the Department, the Department determines that the exemption request is not valid insofar as it is not in accordance with ACIP guidelines or other nationally-recognized evidence-based guidelines, the person in charge of a school must not allow the child to attend the school without documentation that such child has received the immunizations required pursuant to clause (i) of subparagraph (A) of paragraph (2) of this subdivision.

§43.19 Health; daily requirements; communicable diseases.

[(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.]

(f) *Isolation and exclusion pursuant to Article 11 of this Code.* The person in charge of a school must isolate or exclude any child who is suspected or confirmed with, or has been exposed to, a communicable disease requiring isolation or exclusion under Article 11 of this Code. A child who has been excluded must not be permitted to return to the school without a written statement from a health care provider indicating 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.

§43.20 Personal hygiene practices; staff and children.

(a) *Hand washing.* Staff and children must wash hands before and after toileting or diaper changes, after contact with a child in ill health, and prior to handling or preparing any food and after playing outdoors.

(b) *Signs.* Hand washing signs provided by or approved by the Department must be prominently posted in each lavatory and by each sink.

(c) *Individual personal care.* Hairbrushes or cloth towels must not be provided for use. If toothbrushes, combs, or washcloths are provided, each child must have items for his/her exclusive use and they must be stored in an individually-labeled container.

(d) Changes of clothing. At least one change of weather-appropriate clothing must be available so that any child who soils clothing may receive a change. Soiled clothing and cloth diapers must be handled in a manner that protects occupants from exposure to wastes and maintains an appropriately sanitary environment.

(e) Bathing. Children must not be bathed on premises except that they must be washed in case of accidents.

(f) Safety precautions relating to blood. Schools must implement the following safety precautions for all staff having any exposure to or contact with blood:

(1) Disposable gloves must be immediately available and worn whenever there is a possibility for contact with blood, including but not limited to:

(A) Changing diapers where there is blood in the stool;

(B) Touching blood or blood-contaminated body fluids;

(C) Treating cuts that bleed; and

(D) Wiping surfaces stained with blood.

(2) In an emergency, a child's safety and well-being must take priority. A bleeding child shall not be denied care because gloves are not immediately available.

(3) Disposable gloves must be discarded after each use.

(4) If blood is touched accidentally, exposed skin must be thoroughly washed with soap and running water.

(5) Clothes contaminated with blood must be placed in a securely tied plastic bag and returned to the parent at the end of the day.

(6) Surfaces that have been blood stained must be cleaned and disinfected with a germicidal solution.

(g) Smoking prohibited. There must be no smoking of tobacco or other substances, or use of e-cigarettes, in any indoor or outdoor area of any premises on which a program is located.

§43.22 Fire safety.

(a) All exits must have clear and legible illuminated exit signs. All exit signs and emergency lighting must be maintained in working condition.

(b) Programs must have approved fire extinguishers in good working order and have them inspected as required by the Fire Department.

(c) Fire drills must be conducted monthly and logged. Such logs must be kept on-site and made available to the Department and the Fire Department upon request.

(d) Heating apparatuses must be equipped with adequate protective guards. Space heaters are prohibited.

(e) Premises must be free of electrical, chemical, mechanical and all other types of hazards.

(f) Smoke and carbon monoxide detectors with audible alarms must be provided in accordance with applicable law or as required by the Department or the Fire Department and maintained in working condition.

§43.23 Lead-based paint restricted.

(a) Applicability. This section [shall apply] applies 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) ***

(2) ***

(3) When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the owner of the building in which the program is located must use only the methods specified in such order.

(A) After such order has been served by the Department, the owner or person in charge of a school must post the notices required by § 173.14 (e)(1)(A) of this Code at or near the

entrance of the facility.

(B) The owner or person in charge of a school must comply with the requirements of the order within 21 days after service of the order. Where compliance with the time period requirements of this subdivision would cause undue hardship and the owner or person in charge of a school demonstrates a good faith effort to timely comply, such as by showing that it has taken steps to remediate, including by retaining a contractor to conduct the remediation, and demonstrates to the satisfaction of the Department that it is maintaining adequate controls to protect children from a lead-based paint hazard, the Department may, at its discretion, extend the time period for compliance.

[(3)] (4) Children [shall] must not be [present] in [and shall not] nor 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)] (5) 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) ***

(d) ***

(e) Annual survey. [Each] At least once each year, the owner or person in charge of a school [shall] must 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] that are covered with lead-based paint or paint of unknown lead content. Survey results [shall] must be recorded on a form provided or approved by [or satisfactory to] the Department [, and copies of survey results shall be provided to the Department upon request]. The survey form must include, but need not be limited to, the following: the date of the survey; a description of, and the location of, each surface surveyed and remediation status, if applicable.

(1) Within 30 days of completion of such survey, the annual survey results must be submitted to the Department. Copies of such survey results may be submitted to the Department by mail, fax or electronically.

(2) Within 30 days of submitting to the Department, the school must notify the parent or guardian of each child attending the program of the results of the annual survey. Such notice may be provided electronically if the permittee routinely communicates with parents or guardians electronically and may refer to detailed results on a website if such results are maintained there. The school must maintain documentation indicating the date on which such notice was provided. A copy of the notice and proof of the date when such notification was made must be made available to the Department immediately upon request. If such records are maintained electronically, Department staff must be allowed to access such records while on-site.

§43.24 Physical facilities.

(c) All items of large furniture and all electronic appliances capable of being tipped over due to design, height, weight, stability or other features must be secured to the floors or walls of such facility, using angle-braces, anchors or other anchoring devices. Any item of furniture or electronic device which cannot be so anchored must be removed from the facility.

§43.29 Closing and enforcement.

(a) Imminent or public health hazards. (1) If the Department determines that a program is being operated in a manner that may give rise to an imminent or public health hazard as defined in § 43.01, or is maintaining one or more conditions that constitute an imminent or public health hazard, or that its

operation otherwise presents an unreasonable risk of endangering the health or safety of children or other persons, the Commissioner or the Commissioner's designee may order such program to close and to discontinue operations if the program is unable to correct the hazard, without further proceedings, by service of an order upon the school, or person(s) or entity managing or in control of such program. (2) An order issued pursuant to this subdivision will provide the school, or person(s) or entity in control, an opportunity to object or contest the order in order to determine whether the public health hazard does not exist or has been corrected and if the hearing provided by subdivision (b) of this section is required.

(b) When a program subject to this Article is ordered closed, the Department will schedule a hearing at the New York City Office of Administrative Trials and Hearings (OATH) Trials Division within 15 business days of closure. The purpose of the hearing is to allow the program to show cause why its continued operation is not a public health or imminent health hazard and why it should be allowed to reopen.

(c) The Commissioner or the Commissioner's designee may require any school that consistently fails to correct or repeats violations to prepare a corrective action plan in which factors contributing to violations are analyzed and a plan is created to address and correct violations to prevent their recurrence.

(d) *Additional operating terms and conditions authorized.* The Department may authorize the reopening of a program that has been ordered closed upon its determination that continuing operation will not present any unreasonable risk to any person and may impose such additional conditions upon reopening and continuing operation that it deems appropriate.

(e) *Service of orders.* Service of any order issued pursuant to this Article may be made upon any person to whom the order is addressed, to the person in charge of a school, to a person or entity that owns or operates the school, or upon any other person of suitable age and discretion who is asserting ownership, management or control of such program. Service of any order may be made in any manner provided in § 3.05(b) of this Code, or successor provision, and may be delivered to an owner or operator's home, or business address of the school listed in the notice submitted to the Department, or at the place where the program is being operated.

(f) *Posting orders to close; notifying parents.* Upon issuing an order to close a program for any reason, the Department will post a copy of the closing order at the entrance to the premises subject to such order and will notify and provide a copy of the closing order to the parents or other persons who arrive at the program to pick up children attending the program.

(g) *Operation in violation of order prohibited.* No person can remove an order posted pursuant to this section, or open to the public or operate a program in violation of an order issued pursuant to this section.

(h) *Department authority not limited by this section.* Nothing in this Article can be construed to limit the authority of the Department to take any authorized action it deems appropriate in the protection of children or staff participating in a program subject to this Article, including issuance of summonses seeking monetary penalties for violations cited by the Department, or commencing actions concerning the ongoing ability to operate such a program.

§43.31 Construction and severability.

This Article must be liberally construed for the protection of the health of children attending programs regulated by this Article. If any provision of this Article is adjudged invalid by any court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of this Article.

Notes: At its December 17, 2019 meeting, the Board of Health adopted amendments to Article 43 to provide additional child health and safety protections for children attending pre-kindergarten and

kindergarten programs located within a school or that is part of a school, including by aligning Article 43 with child health and safety requirements in Article 47 of the Health Code, as well as to conform Article 43 with recent legislative changes in state and city law, including changes to immunization and lead-based paint requirements and revising certain language to provide greater clarity and in order to remove inadvertent prior inclusions.

