

ARTICLE 43
SCHOOL BASED PROGRAMS FOR CHILDREN
AGES THREE THROUGH FIVE

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§43.01 Definitions.

When used in this Article:

- (a) *School* 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.
- (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 31st 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.
- (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.

§43.03 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.* Every program subject to this Article must develop a written safety plan, which must be reviewed annually and updated in accordance with changed circumstances, conditions or activities. The safety plan must 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 available for review 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,
 - (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,
 - (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) *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 or where a failure to maintain adequate supervision results in a lost child incident.
- (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 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.

- (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:

Age of Children	Staff/Child Ratio
3 years to under 5	1:20 for classroom academic activities
3 years to under 4	1:10 for all other activities
4 years to under 5	1:12 for all other activities
5 years to under 6	1:25 for all activities

- (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) *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.
- (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*.
 - (1) Each staff person and volunteer 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 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); 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 is acceptable in 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 is also acceptable in place of varicella, measles, mumps and rubella vaccine. 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 in the State of New York.
 - (2) Each staff person and volunteer 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 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 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.

- (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.

§43.14 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) *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 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 must assess the risk to children in the school, and must clearly and convincingly demonstrate that such person or condition presents no danger to any child, or other persons. The plan must include, but need 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 must be maintained on-site by the person in charge of a school and submitted to the Department 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) *Required examinations, screening and immunizations.*

(1) *Physical examinations and screening.* Prior to initial admission to a school, or within 90 days 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, 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.*

(A) (i) All children 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, in accordance with New York State Public Health Law § 2164. 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 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 in the State of New York. The principal or person in charge of a school may require additional information supporting 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) All children 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.
- (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) *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.

§43.21 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 school 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 emergency care is needed, the person in charge of a school or designee shall obtain such emergency medical care in accordance with the requirements of this section and immediately notify the child's parent or guardian.

(1) The person in charge of a school-based program or their designee must:

(A) At the time of the child's admission into the program, obtain written consent from a parent or guardian authorizing the program or other caregivers to obtain emergency medical care for the child; and

(B) Secure emergency medical care when needed, and notify a parent or guardian immediately; and

(C) Arrange for any needed transportation of any child in need of emergency health care and ensure that the supervision ratios required by §43.09 of this Article are maintained for the children remaining in the program; and

(D) Advise a parent or guardian, or the person authorized to pick up the child that day, of any developing symptoms of illness or minor injury sustained while the child is in the program.

(2) Where a parent has provided a written, individualized health care plan indicating the specific medications that can be administered and the schedule of such administration(s) for their child, including in cases of emergency, and there is a direct conflict between such plan and any provision of this section, the program shall follow the child's individualized health care plan.

- (c) *Epinephrine auto-injectors.*

(1) Each person in charge of a school-based program shall maintain on site at the schoolbased program facility at least two epinephrine auto-injectors with retractable needles in each dosage appropriate for children who may be in the program, stored in an area inaccessible to children and maintained in an unexpired, operable condition such that 6 they are available for immediate use in case of need for emergency administration to a child.

(2) Each person in charge of a school-based program shall designate a sufficient number of staff to be trained to administer an epinephrine auto-injector to a child in accordance with New York State Public Health Law §3000-c, or any successor statute or applicable regulation. At least one staff person trained to administer such epinephrine auto-injector shall be on-site in the school-based program at all times children are present. The epinephrine auto-injector training must include:

(A) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(B) Recommended dosage for adults and children;

(C) Standards and procedures for the storage and use of an epinephrine auto-injector; and

(D) Emergency follow-up procedures.

(3) Each person in charge of a school-based program shall designate at least one staff person to be responsible for the storage, maintenance, control, disposal, and general oversight of such epinephrine auto-injector to ensure such device remains available for use in an unexpired, operable condition, and that the storage location is in compliance with the requirements specified by the manufacturer.

- (4) Staff trained in accordance with the requirements of paragraph (2) of this subdivision may administer an epinephrine auto-injector to a child, whether or not there is a prior or known history of severe allergic reaction in such child.
- (5) Immediately following any emergency administration of an epinephrine auto-injector to a child, the person in charge of a school-based program or designee shall contact 911 for emergency medical care and notify the child's parent or guardian.
- (6) Within 24 hours following any emergency administration of an epinephrine auto-injector, the person in charge of a school-based program or designee shall contact the Department to report the incident.
- (7) Each epinephrine auto-injector shall be disposed of in accordance with applicable law.
- (d) *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.
- (e) *Incident log.* The school shall maintain an incident log of illnesses, accidents, epinephrine auto-injector administrations, and injuries sustained by children in the school, in a form provided or approved by the Department. The school shall provide a child's parent with information concerning such incident pertaining to the child on the date of such incident and shall report same to the Department within 24 hours. Logged entries shall include the name and date of birth of the child, the place, date and time of the incident, names and positions of staff and other adults present, a brief statement describing the incident, emergency treatment obtained, if any, and parental notification made or attempted. The incident log shall be made available to the Department upon request.

§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 applies to all rooms and areas in a school facility that are occupied by children, 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) 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.
- (4) Children must not be in 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.
- (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) *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.* At least once each year the owner or person in charge of a school must conduct a survey of the condition of surfaces in classrooms or other areas used by children that are covered with lead-based paint or paint of unknown lead content. Survey results must be recorded on a form provided or approved by the Department. 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.
- (f) *Definitions.* All terms used in this section shall have the same meanings as the terms defined in § 173.14 of this Code.

§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 60 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.
- (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.

§43.25 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this Article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner will be deemed a final agency determination.

§43.27 Inspections.

School-based programs will allow credentialed Department staff to visit the programs while in operation and inspect the documents that are required by this Article to be kept on the premises and provided upon request. Such inspections will occur at least once per year.

§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.