

ARTICLE 45
GENERAL PROVISIONS GOVERNING SCHOOLS AND
CHILDREN'S INSTITUTIONS

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§45.01 Definitions.

When used in this article and in Articles 49 and 51:

- (a) *School* means a public or private elementary or junior high school where more than six children are received for instruction, but does not include a day care service attached to an elementary or junior high school. The term school shall include a kindergarten conducted as part of an elementary school by the Board of Education.
- (b) *Children's institution* means a congregate institution, group residence, group home or other place where, for compensation or otherwise, seven or more children under 21 years of age are received for day and night care apart from their parents or guardians. The term children's institution shall not, however, include a children's overnight camp as defined by §48.03(b), a boarding school as governed by §49.11, or a children's hospital.

§45.03 Statement of policy; scope of Article 45.

- (a) It is hereby recognized that other State and City agencies, including among others, the Board of Education, the State Department of Social Welfare, and the State Department of Health, have important functions in areas relating to the health and welfare of children. The Department shall, therefore, as far as possible, administer the provisions of Articles 45 through 51 of this Code with due regard to the duties and responsibilities of such other agencies, and shall, as far as possible, coordinate its activities with theirs. The provisions of these articles are not intended and shall not be construed to interfere with the teaching of religion. It is further recognized that experimentation and the testing of new ideas are of great importance in raising standards relating to schools and children's institutions. The provisions of Articles 45 through 51 of this Code shall not be interpreted to favor any specific doctrine of child care or early childhood education, but shall be applied so as to

permit experimental programs of all kinds consistent with the health, safety and welfare of children.

- (b) The provisions of Article 45 of this Code shall apply to schools and children's institutions and the provisions of §45.09(b), (c) and (d) shall also apply to public and private high schools.

§45.05 Copy of Code to be kept and made available.

The person in charge of a school or children's institution shall keep a copy of this Code and shall make it available to all personnel.

§45.09 Staff.

- (a) Constant and competent supervision by an adequate staff shall be maintained for all children in a school or children's institution. No child or group of children shall be unsupervised at any time.
- (b) The owner or person in charge of a school or children's institution or public or private high school shall not permit an employee to work when he is required to be excluded pursuant to §11.63. After having a communicable disease, a person in charge, teacher or any other person who associates with children shall not return to work until:
 - (1) He presents a certificate of recovery issued by the Department, if he was a case of tuberculosis, a case or carrier of typhoid, or a case, carrier or household contact of diphtheria ; or,
 - (2) After the period of isolation, if he was a case of measles, mumps, German measles, chicken pox, whooping cough, scarlet fever, meningitis or poliomyelitis; or,
 - (3) He presents a certificate of recovery issued by the Department or a physician's written statement, if he was a case or carrier of any other disease reportable pursuant to §11.03. The statement shall indicate that he is free from disease in communicable form and that the period of isolation or exclusion required by Article 11 has ended.
- (c) *Testing for tuberculosis.* The Department may require testing for tuberculosis at any time of any persons in a school, children's institution, or other program providing services for children when such testing is deemed necessary for epidemiological investigation.
- (d) No person in charge, teacher, substitute, volunteer worker, office worker, kitchen worker, maintenance worker or other member of the staff who regularly associates with or comes in contact with children shall be permitted to work in a school, children's institution, or public or private high school unless he is healthy and capable of carrying out the responsibilities of his job and unless he presents, prior to commencing work, a certificate from a licensed physician certifying that, based on medical history and examination, he is physically qualified to perform his assigned duties. Such staff member of a children's institution shall present such physician's certificate annually thereafter as a condition of his continued employment. Records of required medical examination of such staff members shall be kept on file at their place of employment and shall be returned to them upon their request when their employment is terminated. Such records shall also be made available to representatives of the Department for examination.
- (e) All employees, whether or not they are directly concerned with the care of children, shall be regularly instructed in the protection of children during emergencies such as accidents, fires or air raids.

§45.11 Physical facilities.

- (a) School or children's institution shall not be conducted in a factory, mercantile or business building, unless the premises are approved by the Department. Such approval shall not be granted unless the premises and the area surrounding the premises are free from fire, traffic or other safety hazards.
- (b) A child shall not be kept for any period of time in a cellar as defined in chapter 26, title C, part 11, article 2, sub-article 201.0 of the Administrative Code. A child shall not be permitted to remain for any period of time in a basement as defined in such sub-article of the Administrative Code when one side of the basement is more than three feet below the surface of the ground surrounding the building, without the prior approval of the Department. Such approval shall not be granted to a school or children's institution which receives a permit for the first time after the effective date of this Code, or which is in a building erected or renovated after the effective date of this Code. This subsection shall not apply to cellar or basement space used for a lunchroom, dining room, cafeteria, or other eating place, for a lavatory, as defined in §1.03(n), or a washroom.
- (c) All parts of a building used for the care of children shall be adequately lighted by natural or artificial means. All lighting shall be evenly distributed and diffused, free from glare, flickering or shadows. Background surfaces shall be of a dull finish in colors providing low brightness differences and low contrasts. In a school or children's institution located in premises constructed after the effective date of this Code, the amounts of light required by subdivisions (1) through (5) of this subsection shall be provided and maintained at the children's activity level. In a school or children's institution located in premises constructed on or prior to the effective date of this Code, the requirements of subdivisions (1) through (5) of this subsection shall be complied with as far as practicable when the premises are renovated or altered. The lighting standard is as follows:
 - (1) Fifty footcandles of light in drafting, typing or sewing rooms and in all classrooms used for partially sighted children;
 - (2) Thirty footcandles of light in all other classrooms, study halls or libraries;
 - (3) Twenty footcandles of light in recreation rooms;
 - (4) Ten footcandles of light in auditoriums, cafeterias, locker rooms, washrooms, corridors containing lockers; and,
 - (5) Five footcandles of light in open corridors and store rooms.
- (d) When the outside temperature is less than 55 degrees Fahrenheit, and the children are on the premises, a temperature of between 68 degrees and 72 degrees Fahrenheit shall be maintained in all parts of the building used by the children, except when the children are sleeping. Heating apparatus shall be equipped with adequate protective guards. Gas space heaters shall not be installed or used without the approval of the Department. Kerosene heaters are prohibited.
- (e) A lighted and ventilated room or compartment shall be provided, sufficient in size and arranged so that each child's garments may be hung separately and within his reach.
- (f) Drinking water shall be available near classrooms and playrooms and easily accessible to the children. Except when bubbler fountains are used, individual drinking cups shall be provided within reach of the children. If bubbler fountains are used, they shall be of the angle jet type with suitable guards and shall have water pressure which is sufficient to raise the water high enough above the spout to avoid contamination.

- (g) Walls, ceilings and floors shall be finished so that they may be cleaned readily. The premises, furnishings and equipment shall be kept clean. While occupied by children, rooms other than workshops shall not be swept or dusted. No room used for children shall be cleaned by dry sweeping. When quarters are provided for the staff or attendants, they shall be kept clean at all times.
- (h) Indoor and outdoor play areas shall be available for the use of the children. Such play areas shall be safe, clean, easily accessible, adequate in size and suitable for the needs of the children. A shady area shall be available in outdoor play areas used during the summer months.
- (i) Toilets shall be provided convenient to playrooms, class rooms and dormitories and the number of such toilets shall be as prescribed by §§49.07 for a school or 51.09 for a children's institution. In a lavatory for boys six years of age and over, urinals may be substituted for not more than one-third of the number of toilets required. When such substitution is made, one urinal shall replace one toilet so that the total number of toilets and urinals shall in no case be less than the number of required toilets. Toilets and urinals shall be of such height and size as to be usable by the children without assistance.
- (j) Separate lavatories shall be provided for boys and girls six years of age and over, and a partition no less than five feet six inches high shall separate the toilets in such lavatories. In a school or children's institution located in premises constructed after the effective date of this Code, separate lavatories shall be provided for the persons in charge, staff and other employees.
- (k) Wash basins with an adequate supply of hot and cold running water shall be provided in or adjacent to lavatories, and the number of such wash basins shall be as prescribed by §§49.07 for a school and 51.09 for a children's institution. When an extended wash basin with several faucets supplying tempered water is used, each faucet shall be considered as meeting the requirement for one wash basin.
- (l) Plumbing shall be installed only by a licensed master plumber and shall be free of cross-connections and other hazards to health.
- (m) Proper and sufficient ventilation, by natural or artificial means, shall be provided in each room used by the children pursuant to §C26-266.0* of the Administrative Code. The windows, inlets and outlets shall be located and the rate of air flow shall be controlled so as not to subject the children to drafts.
- (n) Windows in rooms above the ground floor shall be safely guarded when the window sills are so low as to present a safety hazard to the children.

§45.12 Lead-based paint restricted: kindergartens.

- (a) This section shall apply to a kindergarten conducted as part of an elementary school by the Department of Education.
- (b) *Peeling lead-based paint prohibited.*
 - (i) There shall be no peeling lead-based paint or peeling paint of unknown lead content on any surface in a kindergarten.
 - (ii) 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.
 - (iii) Children shall not be present and shall not have access to any room or area undergoing abatement, remediation or other work which disturbs lead-based paint

or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

- (iv) 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) Painted equipment must have lead-free paint.
- (d) *Annual survey.* Each year the Department of Education shall conduct a survey of the condition of surfaces in kindergarten classrooms, where the surfaces of such classrooms or other areas used by children under six years of age are covered with lead-based paint or paint of unknown lead content. Survey results shall be recorded on a form provided by or satisfactory to the Department, and copies of survey results shall be provided to the Department upon request.
- (e) *Definitions.* All terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

§45.13 Equipment and furnishings.

- (a) All equipment and furnishings used shall be readily washable or otherwise easily cleaned. Furnishings which are likely to collect excessive amounts of dust, such as heavy draperies, upholstery or carpets, shall not be used in rooms occupied by children, but such furnishings may be used for educational purposes if they are kept clean.
- (b) Tables and chairs and other equipment shall be appropriate for the size and needs of the children who use them and shall be readily washable.
- (c) In the indoor and outdoor play areas, sufficient play equipment shall be provided which is appropriate to the stage of development of the children and which is designed to foster physical and motor development. The equipment shall be easily accessible to the children, readily washable, clean, in good repair and free from hazards such as sharp or pointed parts, or toxic or poisonous finishes or materials.
- (d) A first aid kit, completely stocked for emergency treatment of cuts and burns, shall be provided and shall be easily accessible for use. The first aid kit shall be kept out of the reach of young children.
- (e) Soap and individual paper or cloth towels or sanitary driers shall be provided adjacent to wash basins and within easy reach of the children. If combs or washcloths are provided, each child shall have such articles for his exclusive use.

§45.15 Care and preparation of food.

- (a) When food is stored or served to children in a school or children's institution, the provisions of Article 81 of this Code shall be complied with.
- (b) The food supplied to children shall be wholesome, of good quality, properly prepared, sufficient in amount, varied and served at regular hours.
- (c) Milk shall be kept at a temperature below 50 degrees Fahrenheit.
- (d) A child under 12 years of age shall not be permitted to remove the caps from bottles or containers of milk intended for other persons or permitted to assist in the dispensing of milk except under adequate supervision.

§45.17 Health and medical care.

- (a) A health inspection of all children shall be made daily by a responsible person who is familiar with the children and who is able to recognize signs of ill health.
- (b) The person in charge of a school or children's institution shall isolate cases and carriers of communicable disease and provide facilities for their isolation pursuant to §11.57.

§45.19 Records.

Schools and children's institutions shall keep a current record containing the name, home address, date and place of birth, the date of admission and the date of and reason for the discharge of each child, and the names and home and emergency addresses of parents, guardians, or agency which placed the child.

§45.21 Modification of provisions.

When the Department determines that the strict application of any provision of this Article or Articles 49 or 51 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 shall be deemed a final agency determination.