PEOPLE'S ACTION INSTITUTE
Center for Health, Environment & Justice
Mentoring a Movement, Empowering People, Preventing Harm
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Key Elements for Model Lead Testing in Schools Legislation

The Flint water crisis elevated the issue of lead in drinking water to a major public health concern. Lead can be present in water without any noticeable change in the odor, taste, or smell making it nearly impossible to detect without testing. No quantity of ingested lead is safe for the human body and for children, ingesting any amount of lead can cause serious damage to organs such as the brain and kidneys during the first 6 years of a child's life leading to learning difficulties, behavior problems, slowed growth, and a decreased IQ.[1]

It makes good common sense to do everything possible to minimize the amount of lead children are exposed to in their schools. Unfortunately, most states do not require schools to test for lead in drinking water, leaving children and parents in the dark about this potentially serious health risk. The very first statewide legislation requiring schools to test for lead in their drinking water wasn't enacted until 2016 in New York. Since then seven states (New Jersey, Illinois, Minnesota, Virginia, Maryland, California, and Tennessee) have passed similar bills to protect young and vulnerable students.

To address this oversight, the Center for Health, Environment & Justice (CHEJ) has identified key elements of model legislation for testing lead in drinking water at schools. These key elements are drawn from existing legislation passed in eight states nationwide that require testing for lead in drinking water at schools and can be used to develop model legislation in your state.

Key elements for model legislation that require testing for lead in drinking water at schools:

1. Immediately establish testing procedures for all public schools, charter schools, and state-funded childcare facilities requiring tests be done within 3-6 months, and that every at-the-tap outlet used for drinking or food preparation be included in the testing.
    a. Establish follow-up testing every 4-6 years, covering all water outlets used for drinking or cooking.
    b. Use sampling procedures outlined in the U.S. Environmental Protection Agency's (EPA) report 3T's for Reducing Lead:
        i. Collect a sample taken after the water has been left to sit in the pipes for 8-18 hours.
        ii. Use 250 ml vessels to collect samples, clearly labeled with the location, date and time, name of the sampler, name of the school, etc.
        iii. Samples must be sent to a state-certified laboratory for analysis.
        iv. Each outlet should be tested repeatedly multiple times, at different times of day.
    c. Allow exemption waivers for schools that have already completed requisite testing within 4-6 years of legislation being enacted
2. Require that parents and legal guardians always directly receive the results of testing and are aware of the levels of lead in their school's drinking water.
    a. Reports must include factsheets on the hazards of lead, as it pertains to children and adults
3. Establish an action level between 0-15 parts per billion (ppb), the USEPA drinking water standard for lead where immediate mitigation is required.
    a. If tests exceed the action level, prohibit use of outlet and provide other sources of water for drinking and cooking within 24 hours of receiving test results, either by:
        i. Installing at-the-tap water filters
        ii. Distributing bottled water
        iii. Replacing lead pipes within the school
    b. Report to State Department of Health, Department of Education, as well as local Health Department within 24 hours of receiving test results.
    c. Notify all staff, parents, legal guardians, and students of any lead exceedance within 48 hours of receiving test results.
4. Alleviate the financial burden of testing on schools, so that schools do not bear the cost either by:

[1] https://ehp.niehs.nih.gov/wp-content/uploads/2017/09/EHP1605.alt_.pdf

    a. Requiring that the water utility that services the school pay for the testing themselves.
    b. Establishing a system of state grants for school water testing.
    c. Reimbursing schools directly for any costs incurred during testing.
5. Set aside funds for remediation of lead contamination within impacted schools to use to improve the water quality for future students, through:
    a. Funding the removal and replacement of lead plumbing and lead fixtures with unleaded materials.
    b. Funding the installation of lead water filters for all cooking and drinking outlets, only as a temporary fix interim while leaded pipes are being replaced.
6. Develop a plumbing profile for the school, to understand where lead may be getting into the water supply:
    a. Identify the material make-up and presence of lead in all pipes bringing water into the school.
    b. Identify the material make-up and presence of lead in fixtures such as faucet heads, bubblers and aerators at all at-the-tap outlets bringing water into the school.
    c. Record findings in a coherent and organized way.

Many of the key features of these model policies appear in each state's own laws. Two states that have done an excellent job in mandating lead abatement in schools are California and New Jersey. Both tackle the issue in their own specific way, as noted below.

California requires any organization with a building built before January 1, 2010 to have its water tested for lead and that the community water system or municipality that serves the school do the testing. All tests need to be complete by 2019. Results of the tests must be reported within 10 days. If lead levels exceed 15 ppb, the school must report the results within 2 days, and explicitly notify all parents and guardians. It must also take immediate steps to shut down at-the-tap outlets with elevated lead, rendering them inoperable. The water company that did the initial testing is required to test the water at the point where the water enters into the school's plumbing. Educational agencies must then work to ensure access to some form of potable water for students and staff of the impacted school. They can do this either by replacing leaded pipes with safer alternatives, installing lead filters, or distributing bottled water.

Some benefits: Having the community water company develop a sampling plan and do the testing alleviates the burden and pressure on school staff who do not have experience with testing and mitigates the risk of faulty tests and inaccurate results. The bill also requires the state board to implement a grant program for local educational agencies to improve access to quality drinking water in public schools.

Some concerns: Public schools built after 2009 do not have to test for lead in drinking water even though students might still be exposed to lead in their water. Also, after 2019, the state hasn't required repeat testing which would protect students from lead showing up later in their water. Additionally, the bill only requires action if lead levels exceed 15 ppb. Chronic exposure to lead even at concentrations below that threshold may still damage children's health, cognitive ability, and academic performance. Get a copy of the California Bill (Assembly Bill 746) here: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB746

New Jersey's lead testing bill applies to any educational agency including public school districts, charter schools, renaissance schools, state-funded early childcare facilities, and select private schools for students with disabilities. These agencies must develop a sampling plan for testing their drinking water and test all at-the-tap outlets used for drinking or food preparation according to a procedure defined in the bill. The samples are submitted to a state certified laboratory for analysis. This must be done by July 13, 2017. The district board of education is required to review the results within 72 hours of receiving them and make the results available on their website within 24 hours of completing their review. Tests need to be repeated within 6 years. Schools must sample again after any drinking water outlet is replaced or the plumbing is altered in any way. If lead levels exceed 15 ppb, the school must notify parents, legal guardians, faculty and staff within 24 hours of analyzing the results and take relevant at-the-tap outlets out of operation. The school must also ensure an alternative source of safe drinking water is made available. This can be done by replacing lead plumbing fixtures with safer alternatives, installing water filters specifically designed to remove lead, or purchasing bottled water in sufficient amounts to meet the school's needs.

Some benefits: Costs incurred for testing are eligible for reimbursement by the state.

Some concerns: Developing and implementing a sampling plan is challenging and time-consuming and places the responsibility on teachers who may have no experience or knowledge in the field of lead testing. This creates room for error and takes faculty away from their primary teaching responsibilities. The application for reimbursement is also time consuming and can be delayed by bureaucracy. It is unclear whether schools that fail to test as required will be penalized. Additionally, the bill only requires action if lead levels exceed 15 ppb. Chronic exposure to lead even at concentrations below that threshold may still damage children's health, cognitive ability, and academic performance. Get a copy of the New Jersey Bill (Section 6A:26-12.4) here: https://www.nj.gov/education/code/current/title6a/chap26.pdf#page=161