



**Comments on Proposed Regulations and Preliminary Guidance:
Securing Our Children's Future
Submitted to New Jersey Department of Education
February 11, 2020**

Contact: Gary Brune, Policy Manager 609-393-0008 (x119)

New Jersey Future submits the following comments on the New Jersey Department of Education's (NJDOE) proposed regulations to the Securing Our Children's Future program, as published on December 16, 2019, with specific reference to the portion concerning water infrastructure improvements.

Founded in 1987, New Jersey Future is a nonprofit, nonpartisan organization that promotes sensible growth, redevelopment and infrastructure investments to foster vibrant cities and towns, protect natural lands and waterways, enhance transportation choices, provide access to safe, affordable and aging-friendly neighborhoods and fuel a strong economy. Prerequisite to these broad goals is the availability of clean, safe drinking water.

While there is much to like about the proposed regulations, several areas should be reconsidered and embellished to ensure environmental justice and protect children's health.

New Jersey Future supports the following proposed provisions:

- Regarding the criteria for the distribution of funds, prioritizing elementary schools and the type and level of contamination as important factors;
- Installation of building-wide, automated flushing systems as a cost efficient response;
- Prohibiting major renovations to remove indoor lead plumbing, which is very expensive, as well as work on drinking water outlets not cited in the most recent water quality testing reports and installation of new water outlets at new locations;
- Avoiding the broad application of water filters as an expedient solution.

New Jersey Future recommends that the proposed regulations be altered or clarified.

Funding Distribution - Environmental Justice

Fiscally-distressed communities with a high percentage of children with elevated blood lead levels should receive top priority for funding. NJDOE should clarify the relative weight that will be given to Executive Order 23 (environmental justice) as one of the funding criteria.

The school buildings in many of NJ's urban school districts are very old (the average in Newark is 90 years), and they often contain extensive lead plumbing. These districts typically have severe budget constraints and are likely to rely principally, if not completely, on the state to adequately fund the work required to address lead in drinking water. If this change is not enacted, it is difficult to see how the proposed funding distribution will consistently ensure:

1. A significant, permanent, and timely reduction in the percentage of children facing the greatest exposure.
2. That the needs of fiscally-distressed communities are completely addressed, so that when state funds are exhausted there are no children who continue to be significantly exposed to lead in drinking water simply due to the lack of resources.

Cost Reimbursement

School districts that spent local funds after January 1, 2016, to remediate lead/water contamination should not be eligible for reimbursement until NJDOE verifies that the existing needs of school districts (and particularly those that are fiscally distressed) are adequately addressed. As presently constructed, these reimbursements would be eligible regardless of the school district's financial condition or whether they serve high numbers of children suffering from lead poisoning.

Spending Caps - Individual School Buildings

In fiscally-distressed school districts, spending on high-cost, individual school buildings should not be capped unless an alternative plan is established between the school district and NJDOE for those buildings or the Department clarifies how the balance of costs will be addressed. The current proposal does not specify the size of the cap or how it would be applied. Conceivably, a relatively small cap could mean that a large, old school building with significant lead plumbing could receive the same amount as a small school with just a few lead fixtures.

Ineligible Costs

The regulation considers "upgrades to water system piping" to be an ineligible cost. NJDOE should clarify whether that phrase confirms that capital spending to upgrade internal plumbing will not be eligible. If so, New Jersey Future supports this provision, as the cost of remediating all indoor lead plumbing in New Jersey schools is clearly cost prohibitive.

Water testing that is not related to post-remediation testing is also considered ineligible. It is not presently clear, however, whether the cost of diagnostic "sequential" testing, which has been successfully used in other states to locate the source of lead within school plumbing systems, is ineligible. New Jersey Future contends that sequential testing should be an eligible cost, as it is a key element in identifying cost-effective solutions.

New Jersey Future thanks NJDOE for facilitating an effective and inclusive regulatory process. We look forward to working with the NJDOE, NJDEP, and fellow stakeholders to continue to improve this proposal through future amendments.

Please contact Gary Brune, Policy Manager (gbrune@njfuture.org), with follow-up questions or for further information.