

TOXIC SCHOOLS: WHAT PARENTS NEED TO KNOW

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Many children across the country¹ and in Pennsylvania suffer the adverse health effects of attending underfunded schools in old school buildings.² Deteriorating buildings and lack of staff have led to unmet repairs, deferred maintenance, and in some cases dangerous conditions in many school buildings. For example, in spring 2023 the School District of Philadelphia estimated that it would cost \$7 billion to \$9 billion to address needed repairs and upgrades.³

The cost to children is even higher. A Philadelphia Inquirer series entitled “[Toxic City – Sick Schools](#)” highlighted health threats identified in Philadelphia’s public school facilities. These threats included environmental hazards such as asbestos, lead in paint or water, and mold and other asthma triggers. On Aug. 2, 2023, the City of Philadelphia and the School District of Philadelphia announced a settlement to accelerate the district’s progress on abating and reporting asbestos issues.⁴ This guide aims to assist parents in understanding their rights regarding these environmental conditions.

WHAT IS AT STAKE?

In a landmark decision declaring Pennsylvania’s school funding system to be unconstitutional because it fails to provide every child with access to a comprehensive, effective, and contemporary system of public education, the Commonwealth Court of Pennsylvania stated that schools “must be safe and adequate” buildings for learning.⁵ It is well documented that health hazards caused by the disrepair of school facilities can have a profound impact on student and staff health, academic achievement, and teacher recruitment and retention. Poor quality of school facilities also negatively affects student behavior, engagement, learning, and academic progress.⁶ Researchers note that schools without proper facilities and resources often have large numbers of children with complex needs who are placed at greater risk.⁷

Dangerous and unsafe school conditions are also tied to class- and race-based inequities, rooted in the history of schools and inequities in school funding policies and practices. Due to entrenched systemic racism, which limits opportunities for housing, employment, and community wealth, almost one of every two Black students attends a school in the poorest 20% of districts in Pennsylvania; similarly, 40% of Hispanic students attend schools in the poorest quintile of districts.⁸ School districts that serve majority low-income, Black, and Brown students are more likely to have poor building conditions and fewer resources.⁹

WHERE CAN I FIND INFORMATION ON MY CHILD’S SCHOOL?

In some cases, this information will be provided on your school district’s website. For example, the School District of Philadelphia conducted a full “Facility Condition Assessment” of all its buildings in

2015-16. Reports on facility issues in every Philadelphia public school building are [here](#), including district buildings operated by charter schools. Public schools are also required to share information about asbestos monitoring and water testing under the [Right-to-Know Law](#).¹⁰ Philadelphia provides information about [asbestos](#) and [water](#) safety in schools at the websites linked here, but information may not be current.

WHAT IF MY CHILD ATTENDS A CHARTER SCHOOL?

Many charter schools are located in old facilities too, meaning they potentially contain similar health risks for students. You should ask your charter school about these issues. As public schools, charter schools are required to share information under the [Right-to-Know Law](#).¹¹

WHAT IF I HAVE LEARNED OF A POTENTIAL HEALTH HAZARD OR CONDITION IN NEED OF REPAIR AT MY SCHOOL?

You should raise your concerns with your school principal and/or superintendent. In Philadelphia, you may contact your school's [Facilities Area Coordinator](#) by email.

WHAT DO I NEED TO KNOW ABOUT ASBESTOS IN SCHOOLS?

Asbestos is the term for certain natural fibers that were used in many types of building materials, including wrapping for pipes and some floor and ceiling tiles.¹² **Asbestos is dangerous and can cause a wide variety of diseases depending on the level of exposure.**¹³ Harmful exposure can occur when materials containing asbestos are disturbed or damaged in a way that releases fibers into the air and those fibers are inhaled or swallowed.¹⁴

While asbestos is not completely banned in the United States, it largely stopped being used in buildings in the 1980s; however, buildings built before 1980 are likely to have asbestos.¹⁵ Asbestos is a known carcinogen. Exposure to asbestos increases the risk of developing lung disease, including lung cancer, mesothelioma (a rare form of cancer that is found in the thin lining of the lung, chest, abdomen, and heart), and asbestosis, a serious progressive, long-term, noncancer disease of the lungs.¹⁶

Public schools have distinct regulatory requirements to protect school children and school employees from asbestos exposure. [The Asbestos Hazard Emergency Response Act \(AHERA\)](#) and its regulations require public school districts and charter schools to (1) inspect their schools for asbestos-containing building material, (2) prepare management plans, and (3) take action to prevent or reduce asbestos hazards.¹⁷

WHAT IF I HAVE A COMPLAINT ABOUT ASBESTOS?

The [Asbestos Hazard Emergency Response Act \(AHERA\)](#) is a federal law that sets requirements for all local educational agencies.¹⁸ Schools must report on the status of asbestos in every school on a three-year cycle.¹⁹ Asbestos inspection reports and the asbestos inspection schedule for the School District of Philadelphia are available [here](#) (information may not be current).

For asbestos concerns at any school, contact your school principal, superintendent, school board, or the [Pennsylvania Department of Environmental Protection complaint line](#) at 866-255-5158. If you

have concerns about asbestos in any school (including charters or private schools) in Philadelphia, contact the [Philadelphia Department of Public Health asbestos hotline](#) at 215-685-7576 or the school district's [Office of Environmental Management & Services](#) at 215-400-4730.

WHAT DO I NEED TO KNOW ABOUT LEAD IN SCHOOLS?

Lead-based paint was banned as of 1978.²⁰ Schools built after 1978-1980 should not have hazardous paint chips or dust. However, many schools are decades older; therefore, like asbestos, lead continues to be a concern.

Exposure to lead remains a significant health concern, especially for young children, whose growing bodies absorb more lead than adults.²¹ Consuming paint chips or drinking lead-contaminated water can cause lead poisoning. Your pediatrician can test your child for exposure to lead. Importantly, children who receive Medicaid health insurance are required to be tested before their second birthday.²² Despite this clear requirement, one in three Pennsylvania children with Medicaid health insurance is not tested for lead poisoning by that time.²³ In 2021, more than 6,000 children in Pennsylvania had elevated blood lead levels.²⁴

There is no safe level of lead exposure for children, according to the Centers for Disease Control and Prevention.²⁵ A blood lead level of 3.5 micrograms per deciliter ($\mu\text{g}/\text{dl}$) is considered the threshold to identify children requiring case management by a physician.²⁶ Data from the [2021 Childhood Lead Surveillance report from the Pennsylvania Department of Health](#) showed the rate of children with elevated blood lead levels to be about 4.65%. The blood lead level standard was updated from 5 $\mu\text{g}/\text{dl}$ to 3.5 $\mu\text{g}/\text{dl}$ in 2022 in Pennsylvania after the data for this report was collected. That means that the rate of children with elevated blood levels is likely even higher now under this more inclusive standard. Even under the old limit, the rate of children with elevated blood level levels is two times higher than the rate of children poisoned in Flint, Michigan, at the peak of the city's crisis, according to a recent statement from the Lead-Free Promise Project, a nonprofit in Pennsylvania.²⁷ Even low levels of lead exposure have been associated with attention deficit hyperactivity disorder (ADHD). A blood lead level of 1.7 or higher should also be considered for potential evaluation for special education services or accommodations in school. See ELC's 2016 ["Lead and Its Impact on Learning"](#) report.

WHAT MUST SCHOOLS DO TO PREVENT LEAD EXPOSURE IN DRINKING WATER?

While many states require schools to test for lead, Pennsylvania does not. However, in order to prevent exposure to lead contamination in the drinking water of Pennsylvania's schools, the General Assembly amended [Act 39 in 2018](#)²⁸ to:

- encourage schools to test for lead in their drinking water;²⁹
- require schools that do not test to discuss lead issues at a public meeting;³⁰ and
- implement a plan if results exceed the U.S. Environmental Protection Agency (EPA) national primary drinking water standard of 15 parts per billion (ppb).³¹

Under the act, schools may, but are not required to, test for lead levels annually in the drinking water of any facility where children attend school. **If a school chooses not to test for lead levels, then the school must discuss lead issues in school facilities at a public meeting once a year.**³²

If a school tests for lead levels in its drinking water and finds lead levels in excess of the EPA's current action level of 15 ppb, the school must immediately implement a plan to ensure that no child or adult is exposed to lead-contaminated drinking water and provide alternate sources of drinking water.³³ Elevated lead levels must also be reported to the Pennsylvania Department of Education (PDE) and posted on its [website](#). The [Lead in Drinking Water Report Form](#) should be used to report any elevated levels in schools. The completed form and/or any questions can be emailed to PDE's Office for Safe Schools at RA-EDLeadTesting@pa.gov. [Download the list of Pennsylvania schools reporting elevated lead levels from recent school years.](#)

Notably, some schools use their own water source, such as a well, and are regulated as a public water system under the federal Safe Drinking Water Act. These schools are required to comply with the federal Lead and Copper Rule (LCR). For more information about the LCR, visit the [Pennsylvania Department of Environmental Protection website](#). On Aug. 4, 2022, the EPA released its "[Guidance for Developing and Maintaining a Service Line Inventory](#)," to provide best practices and information to help water systems comply with the LCR.³⁴

For the School District of Philadelphia, the results of lead tests are available [here](#) (information may not be current). The district has set a safety limit for lead in water at 10 ppb, which is stricter than the city's standard. Water outlets in the district that had lead levels above 10 ppb were removed from service.³⁵ Even though all water outlets were subjected to testing, the presence of lead in water service lines can cause spikes in lead levels. **Therefore, the safest practice is to encourage students to drink from the filtered hydration stations** that some districts, including Philadelphia, have installed in every school.

WHAT ABOUT ASTHMA?

Children with asthma are at a greater risk for developing health issues related to triggers like mold, asbestos, or vermin. Thorough cleaning of schools lessens some of these asthma triggers, but not all schools are cleaned thoroughly. Cleaning issues should be raised with the school principal or the school board. For schools in Philadelphia, concerns may be [reported](#) to the district's [Office of Facilities Management & Services](#).

WHAT ARE MY RIGHTS IF MY CHILD HAS HEALTH ISSUES IN SCHOOL?

Federal law provides special protections if your child has health issues such as asthma that impact their ability to learn and/or require accommodations in school to ensure equal access to educational opportunities. If your child has a disability or condition such as asthma, talk to your school about whether your child qualifies for a "504 plan," which is an individualized plan to accommodate the needs of students with medical conditions or physical disabilities. To learn more about the process for obtaining a 504 plan for your child, please view ELC's [504 plan fact sheet](#).

In addition, if your child’s health impairment interferes with learning and your child needs specially designed instruction or modifications to instruction, you should talk to your child’s school about whether your child may need to be evaluated for special education services. If eligible, your child will be entitled to an individualized education program (IEP) to ensure your child can make progress in school. To learn more about special education services, please view ELC’s [The Right to Special Education in Pennsylvania](#) guide.

If your child has a 504 plan or an IEP, you can request a meeting with the school to discuss accommodations that are necessary for your child to safely attend school. These accommodations should be clearly written into your child’s 504 plan or IEP. If the school is unwilling to make the changes that you believe are needed for your child to attend school, you have several options of ways to challenge those decisions, which are described more in ELC’s [Resolving Special Education Disagreements](#) fact sheet.

WHAT ARE MY RIGHTS IF MY CHILD’S SCHOOL IS CLOSED DUE TO ASBESTOS OR OTHER HEALTH HAZARDS OR BUILDING REPAIRS?

In Pennsylvania, all public schools must be open each school year for at least 180 days of instruction for pupils.³⁶ The number of instructional hours in a school year is to be at least 450 for half-time preK and kindergarten, 900 for full-time preK and kindergarten and elementary, and 990 for secondary school.³⁷ Instruction time is defined as time in the school day devoted to instruction and instructional activities provided as an integral part of the school program under the direction of certified school employees.³⁸ **Accordingly, if your school is closed for repairs or due to health hazards, etc., your district must ensure that students still receive the required number of instruction hours and days.**

In addition, if your child is a student with a disability and receives special education services, they are entitled to a “free, appropriate, public education” (FAPE). If your school was closed, students with disabilities are entitled to compensatory education services (makeup services) for any day your child was deprived of a FAPE. Ask your IEP team to meet to address your child’s eligibility for compensatory education services for any day your school was closed. In Pennsylvania, these “comp ed hours” are awarded to students on an hourly basis for the duration of the time your child was denied a FAPE. For more information, see ELC’s [Your Student’s Right to Compensatory Education](#) fact sheet.

WHAT ELSE DO I NEED TO KNOW?

Underfunded districts, including the School District of Philadelphia, spend millions of dollars annually on major facility improvements through their capital budgets. But that is not enough to address the problem. The normal life-cycle replacement costs for facilities in Philadelphia are estimated to be \$329 million annually.³⁹ More funding for our schools is critically needed to keep our children safe and healthy. You may talk to your school board about the needs in your school and learn more about how these issues are being addressed through your district’s capital improvement program. The current list of capital improvement projects scheduled and recently completed in the School District of Philadelphia is detailed [here](#).

WHAT ELSE CAN I DO?

ELC encourages parents to raise any concerns with their school administrators and the school board. In addition, parents should contact [state legislators](#) about the need for additional school funding to address these concerns. ELC also recommends participating in the [PA Schools Work](#) coalition.

The Philly Healthy Schools Initiative also has a list of [resources, data, reports, and tools](#) to address the detrimental effects of health threats on students in Philadelphia school buildings. Learn more about this advocacy by visiting the initiative's [website](#).

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh) – or contact another attorney of your choice.

¹ See U.S. Gov't Accountability Office, *K-12 Education: School Districts Frequently Identified Multiple Building Systems Needing Updates or Replacement* (2020), <https://www.gao.gov/assets/gao-20-494.pdf>.

² More than 65 percent of schools in Pennsylvania were built before 1970, according to a 2014 study commissioned by the Pennsylvania Department of Education. Susquehanna Polling & Research, *2014 School Facilities Survey*, Pa. Dep't of Educ. See https://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2018_0039_0001_TSTMNY.pdf.

³ Tom MacDonald, *Philly Schools Need Billions in Repairs and Upgrades, District Leaders Tell City Council*, WHYY (Apr. 2, 2023), <https://whyy.org/articles/philadelphia-schools-billions-repairs-city-council/>. For more information about the Facilities Conditions Assessments of buildings in the School District of Philadelphia in 2017 and 2022, see Office of Capital Programs, *Facility Condition Assessment (FCA)*, School District of Philadelphia, <https://www.philasd.org/capitalprograms/facilities-conditions-assessments-fca/> (last modified July 6, 2022).

⁴ School District of Philadelphia, *School District and City of Philadelphia Reach Agreement Regarding School Openings and Management of Environmental Conditions* (Aug. 2, 2023),

<https://www.philasd.org/blog/2023/08/02/districtcityagreement/>. Under the terms of the agreement, the district agrees to conduct Asbestos Hazard Emergency Response Act (“AHERA”) inspections every six months by August 26, 2024; to post all AHERA reports as expeditiously as possible, with all reports will be posted within two months of an inspection; and to provide AHERA reports online and physically in the school building. *Id.*

⁵ *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, No. 587 M.D. 2014, 2023 WL 1990723, at *320 (Feb. 7, 2023, Pa. Commw. Ct.). See more about the Pennsylvania school funding case at <https://www.fundourschoolspa.org/>.

⁶ See, e.g., Penn State Center for Evaluation and Education Policy Analysis, *The Importance of School Facilities in Improving Student Outcomes*, Pennsylvania State University (June 2015), <https://sites.psu.edu/ceepa/2015/06/07/the-importance-of-school-facilities-in-improving-student-outcomes/>.

⁷ See Mary Filardo, Jeffrey M. Vincent & Kevin J. Sullivan, *How Crumbling School Facilities Perpetuate Inequality*, KAPPAN (Apr. 29, 2019), <https://kappanonline.org/how-crumbling-school-facilities-perpetuate-inequality-filardo-vincent-sullivan/>.

⁸ *William Penn Sch. Dist. v. Pa. Dep't of Educ.*, No. 587 M.D. 2014, 2023 WL 1990723, at *435.

⁹ See e.g., Erika M. Kitzmiller & Akira Drake Rodriguez, *The Racialized History of Philadelphia's Toxic Public Schools*, The Metropole (Jan. 2022), <https://themetropole.blog/2022/01/13/the-racialized-history-of-philadelphias-toxic-public-schools/>.

- ¹⁰ Pa. Office of Open Records, *Citizens' Guide to the Right-to-Know Law and the Sunshine Act* (2021), <https://www.openrecords.pa.gov/Documents/RTKL/CitizensGuide.pdf>.
- ¹¹ *Id.*
- ¹² CDC Agency for Toxic Substances and Disease Registry, *Public Health Statement for Asbestos*, Toxic Substances Portal, <https://www.cdc.gov/TSP/PHS/PHS.aspx?phsid=28&toxoid=4> (last reviewed Mar. 29, 2016).
- ¹³ *Id.*
- ¹⁴ To read more, see *Public Health Statement for Asbestos*, *supra* note 16.
- ¹⁵ Environmental Protection Agency, *Actions to Protect the Public from Exposure to Asbestos*, June 12, 2023, available at <https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos>.
- ¹⁶ Environmental Protection Agency *Learn About Asbestos*, March 27, 2023, available at <https://www.epa.gov/asbestos/learn-about-asbestos#effects>.
- ¹⁷ Asbestos Hazard Emergency Response Act, 15 U.S.C. §§ 2641-2654 (1988); 40 C.F.R. § 763.
- ¹⁸ EPA, *Asbestos and School Buildings*, <https://www.epa.gov/asbestos/asbestos-and-school-buildings> (last updated Apr. 5, 2023).
- ¹⁹ To learn more, see EPA, *Asbestos and School Buildings*, <https://www.epa.gov/asbestos/asbestos-and-school-buildings> (last updated Apr. 5, 2023).
- ²⁰ Maura McInerney & Alissa S. Werzen, Education Law Center, *Lead and Its Impact on Learning 3* (2016), <https://www.elc-pa.org/wp-content/uploads/2016/02/ELC-Impact-of-Lead-on-Learning-Report-February-2016Rev-PDF.pdf>.
- ²¹ *Id.* at 7.
- ²² Centers for Medicare & Medicaid Services, *Lead Screening*, Medicaid, <https://www.medicare.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/lead-screening/index.html> (last visited July 6, 2023).
- ²³ Pa. Dep't of Health, *Childhood Lead Testing and Poisoning Report: 2017 and 2018 Pennsylvania Birth Cohort Analysis 20* (2022), <https://www.health.pa.gov/topics/Documents/Environmental%20Health/Childhood%20Lead%20Testing%20and%20Poisoning%20Report%202017%20and%202018%20Pennsylvania%20Birth%20Cohort%20Analysis.pdf>.
- ²⁴ Pa. Dep't of Health, *2021 Childhood Lead Surveillance Annual Report 17* (2023), <https://www.health.pa.gov/topics/Documents/Environmental%20Health/2021%20Childhood%20Lead%20Surveillance%20Annual%20Report.pdf>.
- ²⁵ Centers for Disease Control and Prevention (CDC), *Lead Poisoning Prevention*, Childhood Lead Poisoning Prevention, https://www.cdc.gov/lead-prevention/prevention/?CDC_AAref_Val=https://www.cdc.gov/nceh/lead/prevention/default.htm.
- ²⁶ CDC, *CDC Updates Blood Lead Reference Value to 3.5 µg/dL*, <https://www.cdc.gov/nceh/lead/news/cdc-updates-blood-lead-reference-value.html> (last reviewed Dec. 16, 2022).
- ²⁷ To read more, see PALeafree.org.
- ²⁸ 39 Pa. Stat. § 742.
- ²⁹ Pa. Dep't of Educ., *Information for Schools: Lead in Drinking Water*, <https://www.education.pa.gov/Schools/safeschools/resources/Pages/Lead-in-Drinking-Water.aspx> (last viewed July 6, 2023).
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² 39 Pa. Stat. § 742(b).
- ³³ 39 Pa. Stat. § 742(c).
- ³⁴ EPA, *Revised Lead and Copper Rule*, <https://www.epa.gov/ground-water-and-drinking-water/revised-lead-and-copper-rule> (last updated June 28, 2023).
- ³⁵ Office of Capital Programs, *Safe Water Testing Program*, School District of Philadelphia, <https://www.philasd.org/capitalprograms/environmental/water-testing/#leadwaterreports> (last modified May 13, 2020).
- ³⁶ Pa. Dep't of Educ., *Basic Education Circular: Instructional Time and Act 80 Exceptions (24 P.S. § 15-1504)* [hereinafter *Instructional Time BEC*], <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/InstructionalTime.aspx>.
- ³⁷ *Id.*
- ³⁸ 22 Pa. Code 11.1; 22 Pa. Code 11.2. See also *Instructional Time BEC*, *supra* note 18.
- ³⁹ School District of Philadelphia, *FY2022-23 Consolidated Budget 29* (2022), https://cdn.philasd.org/offices/budget/FY23_Consolidated_Budget_Book.pdf (“With an average building age of 69.3 years, the Capital Program Office has estimated the District’s optimal annual life-cycle replacement costs to be \$329 million.”).