



October 5, 2016

Charles McKenna, CEO
Schools Development Authority
32 E. Front Street
Trenton, NJ 08608

Kimberley Harrington, Acting Commissioner
New Jersey Department of Education
100 Riverview Plaza
Trenton, NJ 08625

Re: Reopening the 2016 Potential Emergent Projects Program to include plumbing and lead remediation

Dear Mr. McKenna and Acting Commissioner Harrington:

The Natural Resources Defense Council (NRDC) and Education Law Center (ELC) have been collaborating with a coalition of organizations in support of their efforts to protect Newark's school children from the elevated levels of lead found in water taps throughout the Newark Public Schools (NPS) district. This coalition includes the Ironbound Community Corporation, Clean Water Action, La Casa De Don Pedro, the Unified Vailsburg Services Organization, and the Urban League of Essex County. Additionally, ELC serves as counsel to all children attending State-operated NPS through the Abbott v. Burke litigation. On behalf of the coalition and all NPS students, we write to request that the New Jersey Department of Education (DOE) and Schools Development Authority (SDA) reopen the 2016 Potential Emergent Projects Program to include lead remediation and plumbing projects.

This request is necessitated by the well-publicized results of water quality testing throughout the NPS district. In brief review, the New Jersey Department of Environmental Protection released a statement in March 2016 indicating that after the NPS district's annual testing of water taps, 31 schools recorded levels of lead above the federal action level of 15 parts per billion. Since then, test results from the NPS district have been released dating back to 2010, indicating that more than 80 percent of the school facilities assessed had a sample in excess of the federal action level. As the State is aware, Newark is an environmental justice community with the greatest known burden of lead-poisoned children in the New Jersey.¹ According to the U.S. Environmental Protection Agency, there is no safe level of exposure to lead.²

¹ See N.J. Dep't of Health, Childhood Lead Poisoning in New Jersey Annual Report 27-30 (2014), available at <http://www.state.nj.us/health/fhs/documents/childhoodlead2014.pdf>.

² Drinking Water Requirements for Lead, U.S. EPA, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> ("The [maximum contaminant level goal] for lead is zero. EPA has set this level based on the best available science which shows there is no safe level of exposure to lead.").

The 2016 Potential Emergent Projects Program, the third statewide effort to identify projects for State-operated districts, was announced by your agencies in a July 26, 2016 letter to school administrators. While the announcement letter did not specifically identify the water quality crisis and necessary lead remediation work at the NPS district, there is no doubt that emergent projects include plumbing system work.³ So on August 9, 2016, after a meeting with Superintendent Cerf where the district laid out its plans to install filtration systems in each of the impacted school facilities, this coalition wrote a letter to NPS officials encouraging the district to apply for 2016 Potential Emergent Project Program funds for its proposed lead remediation work.

In his August 30, 2016 response, Superintendent Cerf explained that the NPS district would not be applying to the Potential Emergent Projects Program for its ongoing water quality assessments and proposed lead remediation because the “State and SDA clearly indicated to the district that any and all assessments or remediation efforts for lead would not be funded by the Emergent Project Process.”⁴ This information provided by the State to the NPS district constitutes an arbitrary and improper implementation of the legal mandates established in Abbott v. Burke and the Education Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 *et seq.*, and must be revised immediately.

The State is required to fully fund and ensure adequate school facilities for all students as a critical component of its responsibility to provide students in SDA districts with their constitutionally guaranteed education. Specifically, the Abbott v. Burke Court found that “adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education].” 149 N.J. 145, 186 (1997) (Abbott IV). The Court has reaffirmed that “[t]he State’s constitutional obligation under the thorough and efficient clause, N.J. Const. Art. VIII, §4, includes the provision of adequate school facilities.” Abbott v. Burke, 153 N.J. 480, 519-20 (1998) (Abbott V). Moreover, the Court has explicitly directed the State to fund “the complete cost” of “remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts.” *Id.* at 524. There is no legal basis to exclude the plumbing system work necessary to remediate the NPS district’s system-wide lead contamination from State funding. Indeed, the SDA funds are essential to correct and eliminate an existing, actual peril to the health and safety of the students and staff who occupy schools where the current plumbing systems leach enough lead to exceed the federal action level by as much as 100 times.

³ See Emergent Project Program, SDA, https://www.njsda.gov/njsda/Schools/Emergent_Project_Program.html (noting that emergent projects “include the repair or replacement of roofs; windows; exterior masonry; heating and cooling systems; and plumbing, electrical, mechanical and security systems, as well as addressing water infiltration issues”).

⁴ Attached for reference.

Therefore, as a first step in complying with your agencies' constitutional and statutory mandates, the SDA and DOE must reopen the 2016 Potential Emergent Projects Program to allow the NPS district to apply for its lead remediation and plumbing work. We look forward to working collaboratively with your agencies as they fully address the lead contamination in the NPS facilities and ensure the health and safety of all NPS students.

Sincerely,



David Sciarra
Executive Director

Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
973-624-1815
dsciarra@edlawcenter.org



Sara E. Imperiale
Attorney, Environmental Justice

Natural Resources Defense Council
40 W. 20th Street, 11th Floor
New York, NY 10011
212-727-4562
simperiale@nrdc.org

Cc: Christopher Cerf, State District Superintendent
Christopher S. Porrino, New Jersey Attorney General
Bob Martin, New Jersey Department of Environmental Protection Commissioner
Charlotte Hitchcock, Newark Public Schools General Counsel

Joseph Della Fave, Executive Director, Ironbound Community Corporation
Amy Goldsmith, NJ Director, Clean Water Action
Raymond Ocasio, Executive Director, La Casa De Don Pedro
Robert M. Farley, Executive Director, Unified Vailsburg Services Organization
Vivian Fraser, President, Urban League of Essex County



Office of the Superintendent
Christopher D. Cerf, Superintendent
2 Cedar Street · Newark, NJ 07102
Phone: 973-733-7333 · Fax: 973-733-6834



Christopher D. Cerf
Superintendent

August 30, 2016

Dear Mr. Della Fave,

I am in receipt of your letter expressing your interest in the current status of Newark Public Schools' effort to manage the water issues discovered earlier this year in several District schools. This has been a summer of learning for us and dare I say the entire State of New Jersey. The State has now issued its guidelines for testing protocols. A review of the newly crafted guidance suggests that steps taken by the District, as well as the lessons learned, have significantly influenced the State's direction.

Since we last met, the District has continued to test all outlets in all schools. These tests have been catalogued and shared with the Department of Environmental Protection. As part of the school opening process, each school will receive its test results and a back pack letter for parents during the first week of school. We will also update the District's website with all test results (by school), as has been our practice since testing began. We delayed this notification during the summer to ensure that all the affected school communities received the correct information.

Our test results demonstrate that several schools originally placed on bottled water could be put back on regular drinking water. Only schools with an adequate number of drinking water sources below the federal action level will be eligible for this change. All drinking water outlets that have tested above the action level remain turned off. All non-drinking sources in all schools that have tested above the action level have consistent signage indicating they are not to be used for drinking or food preparation.

Immediately following school opening, we will begin installing filters on all drinking fountains tested below action level as a precaution to continue to keep them at acceptable levels and to ensure consistency in practice.

For schools that have kitchen sinks that test above the federal action level, Reverse Osmosis Systems are being installed before the beginning of school. We have also changed the fixture/outlet in the kitchen where these levels have occurred. In other kitchens, any fixture that displays an actionable level on first draw but drops to below an actionable level on flush will be continuously treated using a flush protocol, which is being implemented using a rigorous monitoring process. This course of action is recommended and approved by the Department of Environmental Protection.

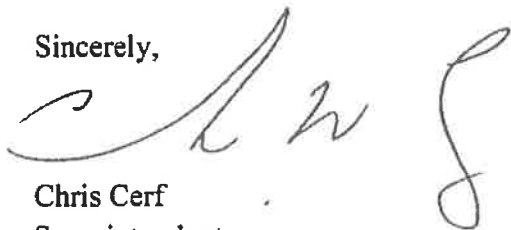
The district will continue to test and maintain compliance in conjunction with the new State law that went into effect on July 25, 2016.

We continue to research the potential resources for lead testing and remediation and will be pursuing a public bid process for evaluation and assessment of all buildings with the goal of developing a comprehensive plan. This plan is dependent upon the district securing funds to be used for capital work remediation. We are continuing to work with both the State and City to secure debt service aid and bond dollars to move forward. Our discussions seem to be yielding positive results.

In your letter you indicated that, "The District was not planning to apply for emergent project status for lead." That is incorrect. We have applied and always intended to apply. The State and SDA clearly indicated to the district that any and all assessments or remediation efforts for lead would not be funded by the Emergent Project Process. The recent release of the SDA's application process indicates specific categories the District can apply for. Unfortunately, neither plumbing nor lead is allowed. I have attached for your information a copy of the projects for which we are currently in phase 2 of the application.

We look forward to our continued partnership and will continue to provide additional updates as new information or strategies are employed. We appreciate your guidance on this ongoing issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Cerf". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Chris Cerf
Superintendent