

Environmental Health & Safety
Primary and Secondary Schools—Chapter 246-366A WAC
School Rule Revision Team

Summary Meeting Notes – May 7, 2008

Facilitator: Craig McLaughlin

Team members present:

Eric Dickson	Linda Hanson	John Mannix	Robert Van Slyke
Dave DeLong	Patricia Jatzcak	Marilee Scarbrough	Bob Wolpert
Ed Foster	Rod Leland	Mark Soltman	
James Green	Mary Sue Linville	Jill Van Glubt	

General discussion:

Craig McLaughlin reviewed the School Rule Revision Team’s ground rules. He introduced Derrick Dennis of the Department of Health’s (DOH) Drinking Water Program in the audience and said he was there to be able to address questions about the proposed drinking water sampling provisions.

Craig mentioned two things that he has heard comment on since the last meeting that need to be revisited. One is the lighting requirements for existing facilities in cooking class areas, which the group updated at last meeting to use the term family and consumer science laboratories. The second was the issue of venting office equipment in existing facilities.

170: Variances

A concern was expressed by a school official that the draft rule requirements might not allow a non-traditional school such as Aviation High School – being built in Renton – issues with noise and pollution from the site. If the draft rule causes significant cost increases it will impact the viability of the project. There will be other unusual schools that will have difficulty meeting the “perfection” of these rules. A request was made to provide variance options that could accommodate such situations. The teacher representative said they cannot support a blanket opportunity for variances. A parent representative cautioned about exceptions. Discussion included: In planning stage they can design the building to meet the code – or at least as close to the 45 dBA requirement as possible; there are means of achieving these standards. variances need to be a line-by-line issue; many of these things can be dealt with in planning. Lewis & Clark High School was mentioned as an example of a very old school where development has encroached – construction of Interstate within 200 feet – needing flexibility. Teacher and parent representatives want all variance requests to go before the school board so that there is a public process and people know what is happening and allow informed decisions. Mark – DOH likes the idea of the rule setting minimum protections, but providing flexibility for individual situations. Craig – not hearing agreement on a broad variance option. **Parking Lot.**

Ask #1: If rule provision is unattainable or requires extraordinary measures in an existing or unique/non-traditional/specific site, require all reasonable effort to achieve or mitigate non-compliance so that health and safety not at risk. Process should include public notice and provision for comment, with approval being required by the school board. Require exceptional effort, reasonable effort is too low a standard. **Parking Lot.**

Ask #2: Specify requirement that the variance put students at **no greater risk** than rule provision. This could include action at the school board level and notice to the public with a provision for comment on all variances. **Parking Lot.**

There was discussion that if the rule required the school board to take action, rule would be beyond the authority of the State Board of Health (SBOH) to direct a school board. This authority issue is yet to be resolved. Teachers would prefer action by the school board, but if it turns out that is not possible, variance request should at least be presented at a school board meeting.

010: Definitions related to Water Quality

“Flush sample:” The draft appears to require shutting down the whole water system for 8 hours prior to collecting a flush sample. Derrick – that would be optimal. However this seems to need clarification because what is going on in the rest of the system is irrelevant – you’re testing the water that has been sitting in a specific fixture for 8 hours. Clarification of intent – 8 hours sitting in the fixture. Craig – will do some technical work with Eric, Ed, & Derrick.

130: Water Quality Monitoring—Lead

130(1)(a): The team discussed whether to clearly articulate exclusions – mop sinks, hot water taps, sinks in restrooms. The discussion included: the rule should be clear when the inspector comes out; kids will fill up water bottles in restrooms; many elementary classroom sinks have bubblers, use the bubbler for bottles; current draft wording that includes regularly used is adequate without specific exclusions; kids will drink out of any accessible sink; tooth brushing can also occur at restroom sinks; require signage or not because might attract kids to use; train kids to not get their drinking water from a handwashing sink – contamination issue; this rule is about environmental health, rather than training kids to do what’s right; intent should be to put meaning into the rule, not guidance; water might be taken from hot water tap for cooking. If school facilities develop a sampling plan, it should address these issues. Craig – the K-12 Manual will be updated as a follow-up to the rule. Some team members continued to advocate for specifically excluding some fixtures – handwashing facilities in restrooms, hot water outlets, custodial sinks. **Parking Lot.**

The intent is to sample cold water. Mark – it would be different for the “instant hot water” fixture for consumption. Derrick – this is addressed later in the rule. We want to sample the cold water, and do not want the hot water sitting in the system. It will give abnormally high results. If it is a tap that serves both hot and cold water, run the cold before sitting over night – don’t want hot water sitting in the pipe overnight. Limiting the wording to cold water plumbing fixture may exclude fixtures that use both.

130(1)(c): Proposal to add a 1c – consulting with the water utility while developing the sampling plan, which could save problems if the water purveyor is doing things the school does not know about. Should this be in rule or guidance? General agreement reached that this is a good idea, but should be in guidance rather than rule.

130(2)(a): A concern was raised that the working draft does not require all drinking and cooking water fixtures to be sampled. This is a change from earlier drafts of the rule. The request for 100% fixture testing is because only one or a few fixtures could be a problem. This draft is based on the results from sampling already done by several school districts, which determined that sampling all fixtures is not necessary and that representational sampling is adequate. Other team members proposed sampling different fixtures on subsequent required sampling. Other team members proposed a third concept – testing a percentage and then doing more sampling if find high lead. Derrick – category by type and age, if any positives in a category – shut off all in the category or go back and test all in that category. Some members said it made sense to use representative sampling of 25% of similar fixtures in a category, then if you get a hit – all. That would help limit the sampling. Craig – perhaps we need to say that first you inventory your fixtures, group, then chose 25% of each for sampling – clarify language. Piping systems may be an issue – flushing length addresses issue of determining where in the system there may be a problem. There still was concern with the randomness that may allow for problem fixtures to be overlooked. Over time, might be fine – if every fixture sampled. A member proposed testing all fixtures once, and then random for future sampling. Another member commented that districts are facing serious budget cuts right now, need some relief. Possible friendly amendment – rotate so that all fixtures used for drinking and cooking water will be tested over 4 years – but if any exceed limit, all will be tested quicker. The first repeat representative testing would not be due until 7 years after the first samples were collected, and future repeat representative sampling every 5 years after that. This would still include the concept of grouping by type and age. If any samples are high in lead, every fixture in that grouping gets taken out of service or tested. Craig – it seems this concept is beyond what the rule should specify and gets into guidance. Craig asked if there was general agreement on a concept of 25% each year to 100% in 4 years. Some members expressed disagreement. **Parking Lot.**

130(2)(a)(ii): The wording about pre-1999 and post-1999 was thought to be confusing. Derrick – the EPA Lead and Copper rule banned fixtures with >8% lead in 1999 and after – so both types need to be addressed. That explanation made it more understandable why the rule requires this separation into two different groups by age. Some clarifying language was added.

130(2)(b)(ii): Request for clarification – let the water run 30 seconds, or 30 seconds minimum? Derrick – depends on the fixture. The intent is to test fresh water – not standing water. Craig – will review language for clarity.

Discussion – EPA’s 3T’s protocol – some would like to allow it as an alternative. The working draft language precludes collecting samples on Monday unless fixtures are flushed Sunday – so labor schedule more difficult. EPA’s protocol is not as restrictive, but could more likely result in high lead levels in samples. The intent was is to sample normal use patterns. Monday water is normal for Monday, but not the other days. It is possible that you will have elevated levels when the water has stood longer than 18 hours. Derrick – EPA’s 3T’s is much more detailed than draft rule language. Earlier rule drafts referenced 3T’s, but could be confusing, a need was heard to spell out exactly what schools must do. Craig – if you went through the 3T’s protocol – how would that not conform to what is here? Derrick – 2 differences - letting the water run for 30 seconds the night before and not having a maximum standing time. Should the schools be allowed to choose between 3T’s and this? Craig – 2 options, eliminate conflict, or specify 3T’s as an alternative. Derrick – if you specify 3T’s it might be confusing to people. It would be better to just clarify language, eliminate difference. Running water night before – optional, take off 18 hour limit, 30 second flush optional would bring the draft in line with 3T’s. School people generally

like this. Comment – might need to keep 3T’s flush as optional, if not there, some may think you can’t do it. Craig – informal workgroup on this issue: John, Eric, Derrick, Jill, Ed, James. Staff will e-mail draft follow-up proposal to workgroup and ask for comments by e-mail.

130(3)(a): Craig – research after the rule revision started – information on lead exposure indicates all ages need to reduce/eliminate exposure to lead, but highest risk in younger students. There was group discussion on variation in school buildings and student ages in buildings. It is more cost effective to sample a building at a time, even with in-house labor. The science says that elementary children have more susceptibility, which indicates schools with youngest students should be sampled first. Craig – How do you get to 100% in 4 years with this schedule? Language in draft was not clear to some. Craig – we can work on the language to allow a staggered program. Intent is also that a whole building be sampled, even if have students in multiple age categories.

130(4)(a): A team member suggested changing they to the schools. There was general agreement on this change.

130(4)(b): Question – is it possible to determine whether a fixture is very low lead by labeling or other method? Craig – Derrick will do more research and follow-up.

130(5)(b): This subsection requires immediately shutting off fixtures that test high for lead. It requires additional corrective actions. A team member requested clarification on the 10 days for sampling similar fixtures to those that test high and when they would need to be shut off. Derrick – you’ve already grouped them – must either immediately shut down all in the same category upon getting first sample results or sample the rest in the category within 10 business days. The member assumed that if one is high they will all be high. So why wouldn’t you shut them off immediately? Another member commented that the provision gives districts the option of assuming the worst or the best. This could depend on the nature of the fixture. Drinking fountains – yes, hand washing sinks, no. Derrick – suggestion – if it is decided that the handwashing fixtures are not being tested, this issue could be addressed in text so that (5)(b) states that you shut off all of same age and type if there is a high sample, then turn back on as individually tested and cleared. A team member expressed concern in possibly having to shut down everything in the building before all fixtures had been tested.

130(5)(c)(ii): A concern was expressed by a team member with allowing a flushing program – comment that SRDC discredited flushing procedure – would rather require point of use filter, or bottled water. Staff in schools might forget to flush. Asked to not permit flushing. Other team members favored allowing flushing on a short term basis – possibly add a time limit. Do not want to shut down handwashing. General agreement to allow flushing for handwashing faucets. Comment – supplying bottled water quickly is not easy. Schools want reasonable leeway to remediate. Teacher representative suggested allowing 2 days maximum. School representatives replied that 2 days to get bottled water for drinking might be possible in some areas, but not others. It would take significantly longer to change handwashing fixtures – may have to bid out to replace fixtures. **Parking Lot.**

130(6)(a): A team member requested that immediate notification be required – 5 days seems long if there is a health issue. Another member commented that imminent health hazards already generally require prompt notification. Suggestion – require immediate notification under certain circumstances. Other comments: fixture must be shut off immediately if get high results; not sure if lead is ever an imminent health issue; less lead is better. Craig – lead is cumulative over time and there is no safe level. **Parking Lot** – notify in less than 5 days.

Should this read notify staff, students, and parents? Craig – existing PL issue of who all should be notified – will add this to that.

LUNCH

135: Water Quality—Copper

130(1): One member requested that all fixtures be required to be tested for copper. Craig – testing all or a representative number of fixtures for copper will be addressed with PL issue on lead. A member asked about the nature of scientific research on harmful effects of copper and established standards. Craig – the SBOH has received testimony, including from a UW doctor about health effects. The standard in drinking water is set by EPA. Several team members expressed concern with requiring copper testing. **Parking Lot.**

130(4): A team member requested that immediate notification be required when a water sample exceeds the copper limit and that notification extend to all persons who use the school building – by posting. **Parking Lot.**

140: Other Contaminants

140(2): School representatives asked that the decision for requiring sampling for other water contaminants be made by the highest local health agency authority, not the local health officer (or designee). There was general agreement on this issue, but would be a policy change. **Parking Lot.**

180: Appeals

Craig mentioned that Julie sent the Spokane Regional Health District appeals process for those who would like to look at it. A team member expressed concern that the draft does not provide a method for appeal by parents when the school is not resolving an issue. Another said that anyone has a right to appeal an LHO decision to the local board of health. Craig said he understands that there are two issues of interest for appeals – for the school official who wants to appeal an LHO decision, and for the citizen. A member suggested the second part could be solved in 190 (1) by adding a way that a complaint can be filed outside the circle of the school officials and LHO. **Parking Lot.**

190: Complaints

190(1): A majority of team representatives want the rule to state that a complaint should first be filed with school officials and then the LHO. A school maintenance representative said that it would be most efficient if he had the chance to solve the problem from the start before a complaint goes to the school board or the LHO. A representative commented that people commonly go over school officials' heads to address issues without giving the local school the opportunity to respond. Complaints need to be in writing to the school officials first, so they have an opportunity to deal with it first. There was general agreement to add written as a requirement when submitting a complaint. Craig – concurrent authorities do exist, and have to be considered. Craig – if the LHO gets a complaint, they have the responsibility and authority to act if it is a significant risk. If it's not an imminent health hazard, the LHO may not need to be involved. A person might file complaints with both school officials and the LHO at the same time. Ned – the intent of these rules does not seem to include regulating the general public. Craig – there will be follow-up on the issue of a person may file a complaint and about the request for a specified order for filing a complaint. **Parking Lot.**

There was general agreement that a complaint should start at the local level. But if it is not resolved at the local level, where does someone go? Parent representative would like a state

ombudsman specifically for school EH issues or have the ability to appeal to a state agency – maybe DOH establish a complaints and appeals committee. Craig – both would probably take legislative action. Teacher representative said this shouldn't preclude complaining through the teacher bargaining unit. A parent representative commented on the SBOH authority statute and the need to be able to deal with situations when the rules are not enforced.

The teacher representative asked that the reference to students be deleted – wants to allow issues that affect staff be included. **Parking Lot.**

190(2)(a), (b) and (d): Also here, the teacher representative asked that the reference to students be deleted – wants to include issues that affect staff. **Parking Lot.**

190(2)(b) and (d): A team member requested that promptly be added regarding notification. There was a discussion about what promptly means and whether it should be more specific. A school official said that requiring an investigation within 24 hours would be a problem.

Parking Lot Follow-up Discussion

Definitions:

010(2): “Air contaminants of Public Health Importance. School officials proposed referencing EPA’s “Tools for Schools.” Parent representative proposed referencing that and other EPA standards. Craig – doesn’t want specific maximum concentration standards because that would set up a requirement for monitoring by school districts and LHO. Craig – most concerns seem to center around office equipment, not the general definition. He will follow-up with wording to address office equipment. School maintenance representative said he supports concept of source control – not worry about testing for levels. If there is a question about the control working there can be testing. Most members agreed with that approach. A risk manager recommended adding wording to address the importance of dose and circumstances.

010(6): “Construction” – add “construction project” to definition. General agreement.

010(18): “Hazardous materials” – add concept of dose. General agreement. Craig – also proposal from Department of Ecology to change term to hazardous substances.

010 (6): “Contaminant.” A team member withdrew his proposal from an earlier meeting to modify the language – wants to use the original definition of contaminant from the working draft handed out April 4. Another member withdrew request to include the word irritant in the definition, as long as irritants are recognized as important asthma triggers.

010 (20): “Imminent Health Hazard” – a concern was expressed by parent representative that this seems to exclude potential health hazard – wants to be proactive – recommended looking at L&I’s definitions. Craig – imminent, serious, or potential. L&I definitions were read. Craig – we use terms differently than L&I. Other members commented that draft definition seems to capture potential hazards. Issue remains in **Parking Lot.**

010(29): “School Board” – OK.

010(30): “School facility” – when the school district contracts with the local parks dept to use their facilities, do these rules apply? Eliminate the term “contracted for.” Facilities are not bought or leased. There was general agreement to accept this change to the definition.

010(31): “School Officials” - should not include school board. General agreement.

005(1): Applicability to non-traditional facilities. School official representatives asked that stand alone and non-traditional alternative schools be exempted from rule provisions. Examples given included an online academy in a leased storefront and Aviation High School being planned in Renton. There was general agreement that (b) is broad enough to exempt store-front non-traditional schools.

005(4): Follow-up language proposed for applicability section regarding grandfathering related to alterations and additions. There was general agreement with concept. See Parking Lot Report Back document.

030(6): Follow-up language proposed to address grandfathering site approvals. General agreement. See Parking Lot Report Back document.

040(5): Follow-up language proposed to address grandfathering of building plan approvals. General agreement. See Parking Lot Report Back document. *Note: moved by staff to section 005(5).*

015(1)(a): Follow-up recommendation to update K-12 Manual at least every 4 years. General agreement.

020(1)(a)(vi): There was concern about the rule requiring a school board to adopt policies. Follow-up proposed language would require school officials to provide a report to the school board and provide a method for receiving public comment. Teacher representative still has concerns – wants checklist for inspection findings, training received by in-house inspectors, prefers some of the requirements in the 2nd draft. This remains in the **Parking Lot**.

020(2)(a)(iii) and (iv): Follow-up proposed wording about LHO inspection process. General agreement.

020(2)(a)(vi): Recommendation to follow general records retention requirement of 6 years. General agreement.

020(3): Add requirement that DOH form a standing advisory committee on school environmental health and safety – it would be advisory. General agreement.

030(2)(b): Threshold for site review of proposed addition. Parent representative questioned scope of exemption, especially for soil evaluation. Teacher representative expressed concern with the wide spread contamination of land with lead and arsenic in some areas – wants some provision for testing other than just leaving it up to the LHO. The \$250,000 represents the addition of one classroom. Craig – the proposal means you go to your LHO to discuss what you need to do. No agreement. This remains in the **Parking Lot**.

030(6): Craig – the follow-up proposal specifies that if you file a complete land use application, the rules at the time of the application apply. School officials commented that land use permits generally give 2 years to start building. There was general agreement on the proposed language. Will return to the effective date issue later.

040(1)(c): A minimum threshold for construction review was discussed, including the concept of a “building” system. School officials suggested using a percentage of total project, either cost tied to replacement cost or square footage. One school official proposed 20% - half of what the OSPI uses for projects funded by the state. It would be easier to use a percentage of square footage than

replacement cost. Local health representative commented that a threshold is really hard to determine – want to get to issues that need public health plan review. A new roof isn't one of those. Repair items may be very expensive, but don't need public health review. Local health wants to be involved when there is going to be a change that can impact student health. That might not be a large cost item. Keep in **Parking Lot**.

050 (2)(c): Follow-up proposal includes requirement that LHO complete the pre-occupancy inspection within 5 days of requested date, but must receive request for inspection at least 5 days before requested inspection date (total of 10 days). General agreement.

065: Follow-up on request to put guidelines from the K-12 Manual about pets, plants, furniture, etc. into rule – IAQ issues. Still working on language for the pet issue. Direction from SBOH members is to not address plants and plant mold issues at this time. Language proposed regarding stuffed furniture. Plant issues would go into guidance. General agreement. There will be no grandfathering. Animals will be addressed in separate section (080).

080: There was a request from a member to look at the L&I General Duty language. There was discussion that this issue is already captured in these rules in section 020. Delete language in 080 to eliminate redundancy. Expand animal provisions. Teacher representative asked if the mention of the word environmental disappeared? Craig – perhaps inadvertently. Are buildings still going to have to be maintained? Craig – intent is yes.

080(2)(b): School board representative objected to apparent conclusion that SBOH can direct local school board to do anything. She said not even OSPI directs school boards to make policy – OSPI recommends. Craig – consult with SBOH's legal counsel. A school official suggested that the rule direct school officials to develop procedures, which don't need approval by school boards. Craig – that concept is OK in this section but the school board needs to be included in the complaint section. School official's comment – that is already built into school board processes – boards have an open complaint period at meetings for anyone.

120(1): Follow-up confirmed that chapter 51-56 WAC specifies number of restrooms. General agreement.

150(2)(b)(iii): Proposal to change 60 days to 30 days – still researching. Craig – planning to go to 30 days if nothing else turns up as an issue.

160(3): Research on multiple shut-offs in laboratories and shops is not complete.

095(5) and (6): Office equipment ventilation – still in the **Parking Lot**. Craig – will send out an e-mail with proposed language.

Effective date of the rule – still an issue. Discussion: minimum of 18 months; allow at least one legislative session; January 2010; March 2010; 12-18 months; 2 years too long; biggest risk is to new construction – 24 months is not excessive on bigger projects; need to get LHJs geared up before start doing inspections, but they need to be able to charge fees to be able to gear up; need to work with the legislature on funding issues.

Wrap-up

Craig thanked everyone for all their hard work. He said that it was a rewarding process. Other members commented: process put together a really good group who could work together; lengthy and grueling, but group accomplished a lot; not everyone got what they wanted, but the consensus has been good; language is much more understandable; we have come a long way in developing a rule that can be implemented; much of this is already being practiced by schools. Craig said he hasn't heard anything in this discussion that this rule is in conflict with WSSP – one of the early issues. There was general agreement on this point. Craig thanked OSPI for providing the facilitator for the first four meetings.

Next meeting: June 9 (9 a.m. – 4 p.m.) to review costing estimates. Location to be determined.

New Parking Lot Items

170 – Provide variance option for situations in existing school facilities or unique/nontraditional/special facilities where equivalent provisions to rule requirements are unattainable or would require extraordinary measures and all reasonable effort is made to mitigate any environmental health and safety risk. This could require public notice and comment.

Comments:

1. Exceptional effort or necessity (WEA)
2. No greater risk
3. Opportunity to comment to school board – prefer requirement for action by school board

170 – Require public notice and provision for comment for all variances

130 – Do not require drinking water quality testing for lead at mop sinks, hot water outlets, and hand wash facilities in restrooms.

130 – Sample 100% of appropriate drinking and cooking water fixtures in each school within four years at a rate of at least 25% per year. Then resample first time 25% representative sample within 7 years of starting sampling. Resample second time 25% representative sample within 5 years of first time resampling.

130 – Do not allow flushing option for correcting high lead levels in a drinking water fixture as more than a temporary remedy for a few days. However, if hot water taps are sampled, then allow flushing as an option.

130(6)(a) – Change notification requirement from 5 business days to immediately.

135 – Delete entire section requiring sampling drinking water for copper – not cost effective.

135(4) – Change notification requirement from 5 business days to immediately and require posting of building to notify all users.

140 – Specify that the decision to require sampling for other drinking water contaminants must be made by the highest level administrator of the local health agency and not the local health officer or delegee.

180 – Establish a state-level appeals system for resolving public concerns about environmental health and safety concerns in schools that are not resolved at the local level. Suggested provisions were to establish a state ombudsperson specifically for environmental health and safety; DOH establish a complaint appeals committee; and set a timeframe for actions.

190 – Require persons who are filing a complaint about a school environment health and safety issue do so with school officials before filing with a local health officer.

190 – Remove limitation of complaint applicability to issues that affect the health of students. Expand applicability to staff.