

To: Board of Health, Keith Grellner, Chair; wsboh@sboh.wa.gov

FR: Rep. Gerry Pollet Gerry.Pollet@leg.wa.gov

Date: December 17, 2022

RE: Incompatibility of BoH Rule WAC 246-366A-130 with Chapter 154 Laws of 2021 concerning lead in school drinking water

It has recently come to my attention that the Board of Health adopted rules ([WAC 246-366A-130](#)) effective August 1, 2023 regarding testing, notice and remediation for lead in school water.

As Members of the Board are aware, I spent several years developing and shepherding HB 1123 into law as [Chapter 154, Laws of 2021](#). The legislation was based on very substantial evidence that exposure to levels of lead in drinking water at 15 or 20 ppb may result in serious health, learning and cognitive deficits. The Legislature recognized in Section 1(1) of the "Bruce Speight protect children from being exposed to lead in school drinking water act":

"there is no known safe level of lead in a child's blood. Even low levels of lead exposure can cause permanent cognitive, academic, and behavioral difficulties in children."

Therefore, with great deliberation, the legislature mandated that schools remediate any potable water faucet or fountain which tests show exceed 5 ppb.

For any fixture which tests reveal lead at levels above 15 ppb, HB 1123 mandates that the school district remove the fixture from service as soon as practicable. HB 1123 Sec. 2(3)(4). RCW 28A.210.410(4).

For all fixtures that test above **5 ppb** ("elevated lead level"), the school district must adopt an action plan to replace or remediate. Section 2(7)(d). RCW 28A.210.410(5).

The Board readopted WAC 246-366A-130 with far less protective action levels than mandated by the Legislature. The Board's new rule only references an action level of 20 ppb, which is four times less protective than the level of 5ppb mandated by the Legislature. Evidence shows that blood lead levels rise substantially when children ingest water with lead above 5 ppb.

Further, the Board's rule only requires communicating to parents and the school community when test samples exceed 20 ppb. WAC 246-366A-130 (6).

However, the law clearly requires all test results be available on a website if any of a school's faucets test above 5 ppb along with an annual communication of test results including a discussion that no level of lead in a child's drinking water is "safe." Section 2(3). RCW 28A.210.410(3) and RCW 28A.210.410(6).

The Legislature adopted the new standards and fully funded their implementation. This removes the school water lead rules from any restriction in the operating budget preventing the Board from adopting and implementing any school health rules that are not funded by the Legislature.

Thus, the Board should be adopting rules that reflect HB 1123, the Bruce Speight protect children from being exposed to lead in school drinking water act, codified in RCW 28A.210.

Adopting rules that are not compliant with current law and do not reflect the substantial evidence on lead in children's drinking water is likely to add significant confusion for implementation and for evaluation of our program by other states, the federal government or researchers.

Campbell, Kaitlyn N (SBOH)

From: DOH WSBOH
Sent: Tuesday, December 20, 2022 8:28 AM
To: Davis, Michelle (SBOH); Grellner, Keith (DOHi); Campbell, Kaitlyn N (SBOH)
Subject: FW: Board of Health's school drinking water and lead rule does not reflect legislative mandate
Attachments: BoH rules lead in school water do not reflect new legislation Pollet to BoH 12--19-22.pdf

From: Pollet, Rep. Gerry <Gerry.Pollet@leg.wa.gov>
Sent: Monday, December 19, 2022 7:53 AM
To: DOH WSBOH <WSBOH@SBOH.WA.GOV>
Cc: Grupp, Emily <Emily.Grupp@leg.wa.gov>; Clogston, Mary <Mary.Clogston@leg.wa.gov>; Tania M. Busch Isaksen <tania@uw.edu>; Palosaari, Alice <Alice.Palosaari@leg.wa.gov>; Riccelli, Marcus <marcus.riccelli@leg.wa.gov>; Steve Gilbert <sgilbert@innnd.org>
Subject: Board of Health's school drinking water and lead rule does not reflect legislative mandate

External Email

Chair Grellner and Board,

In reviewing the UW Department of Environmental and Occupational Health Sciences 'report on standards and programs addressing toxics in schools, including PCBs, I reviewed the Board of Health's recently readopted standards for lead in school drinking water. These now take effect August 1, 2023. However, as the attached memo details, these rules are far out of date and do not reflect the mandate of the Legislature for school districts to take action when lead is detected at 5 ppb, mandatory communications on testing and when faucets or fountains must be removed from service. This legislation was based on extensive evidence, including formal literature reviews, presented to the Legislature documenting that levels above 5 ppb have serious potential to cause harm to children's health and cognitive development. However, the Board's rules are based on action levels starting at 20 ppb.

The attached memo discusses the evidence and the sharp disparities between the Board's rule and the 2021 legislation. I understand that the Board has had to defer all school health rules repeatedly due to a budget proviso readopted every biennium since 2009 that bars evidence based protections for children's health from being adopted in new rules by the Board unless fully funded in advance by the Legislature. The lead in school water legislation is fully funded. In the memo, I request that the Board take action to revise the rule to reflect the legislative mandate based on far more protective health standards than the board was proposing prior to 2009.

I would be glad to discuss this with you.
Sincerely,

Gerry

Representative Gerry Pollet
46th District (Northeast and North Seattle)
Member: Appropriations, Education, College and Workforce Development, Rules Committees

Chair, Joint Legislative Audit and Review Committee

Please email me if you'd like to join one of my Saturday morning drop-in discussions "**Traveling Town Halls**." Notice is also posted on my website and FB page during the legislative session. I hold these most Saturdays from 9:30 -11am during Session since constituents shouldn't have to go to Olympia to see your Representative. I hold them monthly when out of Session.