



To: School District Superintendents and State Aid Designees
BOCES District Superintendents and State Aid Designees

From: NYSED Office of Facilities Planning
NYSED Office of State Aid

RE: State Aid for the testing of water for potential lead contamination and the installation of effective measures for immediate remediation, if required

Date: October 11th, 2016

Legislation and Regulation

Chapter 296 of the Laws of 2016 enacted amendments to NYS Public Health Law requiring all school districts and Boards of Cooperative Educational Services (BOCES) to test all potable water outlets for lead contamination, to remediate contamination where found, and to notify parents of children and the public of test results.

Chapter 296 added a new subdivision 6-h to NYS Education Law Section 3602. This subdivision provides building aid to school districts for the testing and filtering of potable water systems for lead contamination, and other effective remedial measures. In addition, subdivision 5 of section 1950 of the Education Law was amended to make approved expenses for testing eligible for BOCES Aid. BOCES expenses for remediation are not eligible for BOCES Aid or for aid under NYSEL 3602 (6-h).

On September 6, 2016, the New York State Department of Health issued regulations on water testing and remediation: [NYS DOH Regulation 67-4: Lead Testing in School Drinking Water](#)

Claiming Aid for Water Testing and Remediation

The approved cost of testing in all occupied buildings owned or leased by a school district or BOCES is eligible for aid (not just instructional buildings). The approved cost of testing of water taps located on the site of a school district or BOCES building, such as water taps in a concession building, or an exterior drinking fountain, is an approved expense for aid by association with the school building. School districts are eligible for the aid on the approved costs of necessary remediation in the buildings mentioned above; BOCES are not.

Districts and BOCES should consult section 67-4 of the NYS Department of Health Regulations (see link above) for the testing and remediation dates and deadlines applicable to their schools.

School districts:

School districts are eligible to receive aid pursuant to NYS Education Law 3602 6-h on the testing activities, and on certain effective, immediate remedial measures, such as the installation of filters, that are performed in order to comply with the requirements of the "School potable water testing and standards" in the Public Health Law. Aid will be paid in the year following the year in which costs are incurred. Aid will equal base year

approved expenditures multiplied by the building aid ratio defined pursuant to NYSEL 3602 (6)(c) (the same ratio as that used for Building Condition Survey Aid).

Districts must report testing and remediation costs and related information on the new SAMS Form FB Schedule W: Water Testing and Remediation. This schedule will be made available during the first week of October, 2016. **All districts will be asked to complete this schedule by Tuesday October 25th, even if the rest of the 2016-17 State Aid claim has been submitted and cleaned.** It is important that districts provide their best projection of 2016-17 expenses by this date, and accurate 2015-16 school year data (if any) for payment of 2016-17 aid.

[Water Testing & Remediation Reporting Requirements](#)

Districts are required to submit SAMS revisions to update their 2016-17 projected testing and remediation data during this school year if and when additional information is available.

BOCES:

The cost of testing in BOCES facilities should be considered an (001) administrative expense and allocated among the Board's component school districts in the same manner as other administrative expenses. The testing portion of the expense will generate BOCES Administration Aid in the year following the year in which costs are incurred; however, BOCES Aid is *not* available for remediation costs. BOCES should include 2015-16 and projected 2016-17 expense for testing *and* remediation in their 2016-17 SAMS submission of Schedule 4 Administrative Expense, but remediation costs must be deducted from the aidable administrative expense allocated to components reported in SAMS, and such costs should not be included in any other SAMS data area that generates BOCES Aid.

Both BOCES and school districts must retain detailed documentation substantiating the testing and/or remediation information claimed for aid, and must be able to provide such documentation upon request of the SED Office of Facilities Planning and/or the State Aid Office. Pursuant to Section 67-4.7 of the NYS Dept. of Health regulations, districts and BOCES must also “retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department (of Health), local health department, or State Education Department, upon request.

Approved expenses for aid on effective remedial measures

Expense for effective remedial measures shall meet the following criteria to be eligible for aid pursuant to NYSEL 3602 (6-h):

Installation of filters and/or other effective remedial measures for immediate remediation is aidable in cases where a finding of lead contamination is initially made and verified by confirmatory sampling.

The installation of filters and/or other effective remedial measure must be reviewed or approved by a professional with expertise in the field of water quality and remediation. The following groups of professionals who have expertise in the field of water quality and remediation must review or approve the remedial measure(s): NYS Registered Architects, Licensed Professional Engineers, Certified Industrial Hygienists and local Department of Health officials.

The cost of filters and other effective remedial measures must be incurred prior to July 1st, 2019.

Immediate remediation shall not require a long lead time to implement. For example, changing out water taps, including drinking fountains may not take a long lead time. Changing out entire piping systems within a building

would take a long lead time. 'Long lead time' work may be eligible for building aid under different provisions of the Education Law, but it would not be eligible under subdivision 6-h of Section 3602 of the Education Law.

Remedial measures shall be permanently installed devices. For example, an effective short term remedial measure may include cleaning debris from aerators or flushing systems prior to use each day; however, costs associated with these measures are not aidable under 3602 (6-h).

Costs associated with remedial measures must not be eligible for regular Building Aid

Remedial measures involving installation of devices shall use materials that are listed and labeled in accordance with the lead content requirements of the 2016 Uniform Code, and the most recent Environmental Protection Agency (EPA) requirements

Aidable effective remedial measures to reduce the concentration of lead in drinking water down to, or below the action level of 15 parts per billion (15 ppb):

1. Installation of filters.
2. Changing out water taps, including faucets, drinking fountains and bubblers.
3. Replacement or reconfiguration of piping in the vicinity of the water outlets in those situations where the lead contamination is a result of piping materials in the vicinity of the outlets, and not in (or not just in) the outlets themselves.
4. Automatic flushing systems, where the problem resides in the main water pipes and not the terminal water outlets.

Non-aidable effective remedial measures to reduce the concentration of lead in drinking water down to, or below the action level of 15 parts per billion (15 ppb):

1. Cleaning debris from aerators.
2. Flushing systems prior to use each day.

Non-aidable response control measures:

1. Use of bottled water. School districts must ensure water meets FDA standards and is certified by NYS.
2. Shut off of problem outlets. (This measure might be tied to use of bottled water.) Sufficient drinking and cooking water must be available for the building occupants, as well as sufficient facilities for hand washing.
3. Costs associated with signage indicating water must not be consumed.

Non-aidable remedial measures pursuant to NYSEL 3602 (6-h) that may be eligible for Building Aid under other provisions of the Education Law as a capital project for Office of Facilities Planning review:

1. Effective remedial measures that require a longer lead time.
Example: Changing out extensive sections of piping systems within a building may be effective, but would not be considered an immediate remedial measure.
2. Effective remedial measures that include removal of grounding wires from water piping to reduce the potential for corrosion in the piping.

School districts are encouraged to contact the SED Office of Facilities Planning with any questions about planned remedial measures and/or whether planned measures are aidable under NYSEL 3602 (6-h). (518-474-3906)