



TO: Directors of Schools
FROM: Christy Ballard, General Counsel
DATE: December 13, 2018
SUBJECT: **LEA Development of a Policy to Reduce Potential Sources of Lead in Drinking Water in Public Schools (T.C.A. § 49-2-133)**

Pursuant to Chapter 977 of the Public Acts of 2018 (PC 977), now codified at [T.C.A. § 49-2-133](#), local boards of education (Boards) are required to develop a policy to implement a program to reduce the potential sources of lead contamination in drinking water in public schools. The policy must require periodic testing of lead levels in drinking water sources at school facilities and specific actions depending upon the results of the tests. This memorandum provides guidance on the implementation of T.C.A. § 49-2-133 and supersedes all prior guidance issued by the Tennessee Department of Education (Department) or any division thereof.

The department has received many questions regarding the implementation of this new law. The new law and answers to some of the most frequently asked questions are provided below for your convenience:

T.C.A. § 49-2-133. Development of policy to implement program to reduce potential sources of lead contamination in drinking water in public schools -- Periodic testing. [Effective January 1, 2019.]

(a)

(1) Each local board of education shall develop a policy to implement a program to reduce the potential sources of lead contamination in drinking water in public schools that incorporates, at a minimum, periodic, not to exceed biennial, testing of lead levels in drinking water sources at school facilities that were constructed prior to January 1, 1998, utilizing samples consisting of the first two hundred fifty milliliters (250 mL) drawn of water that has been standing in plumbing overnight to identify lead levels. School facilities that were constructed on or after January 1, 1998, may conduct periodic testing under this section.

(2) If the result of a lead level test conducted under subdivision (a)(1) exceeds fifteen parts per billion (15 ppb) but is less than twenty parts per billion (20 ppb), the school shall conduct lead level tests on an annual basis until retesting confirms that the level is less than fifteen parts per billion (15 ppb).

(3) If the result of a lead level test conducted under subdivision (a) (1) is equal to or exceeds twenty parts per billion (20 ppb), the school shall:

(A) Immediately remove the drinking water source from service. The drinking water source shall remain unavailable for use until subsequent retesting under subdivision (a) (3) (C) confirms the lead level of water from the source does not exceed twenty parts per billion (20 ppb);

(B) Notify:

(i) The commissioner of environment and conservation, the commissioner of health, the local department of health, the local governing body, and the department of education within twenty-four (24) hours of the test result; and

(ii) The parents and guardians of students enrolled at the school, in accordance with a notification policy developed by the local board of education, within five (5) business days of the test result; and

(C) Retest the lead level of the drinking water source within ninety (90) days of any corrective action.

(b) Each LEA shall comply with the policy created by its local board of education under subsection (a).

By what date must Boards adopt a policy to implement a program to reduce the potential sources of lead contamination in drinking water in schools and by what date must LEAs begin testing drinking water sources?

There are not specific dates provided in the law by which Boards must have a policy in place or when testing must commence. PC977 states that the act “shall take effect January 1, 2019.” Many Boards are to be commended for already having adopted a policy to begin the testing of drinking water sources in schools, but the language of the law does not require any action, including policy development, to be taken until January 1.

Additionally, the law does not provide a specific timeline for testing drinking water sources at school facilities. The law states, that the testing must be, “at a minimum, periodic, not to exceed biennial”. Periodic is not defined in the law but biennial is generally defined as taking place every other year. Therefore, Boards have discretion as to how they define periodic but policies may not require testing more frequently than every other year.

How are LEAs to determine which school facilities to test and how to define drinking water sources?

In accordance with [T.C.A. § 49-2-133](#), LEAs are mandated to test drinking water sources at school facilities constructed prior to January 1, 1998 but may choose to test drinking water sources at school facilities that were constructed on or after January 1, 1998.

The law does not define “drinking water sources,” but the plain language of the law requires Boards and their LEAs to determine every water source at a facility used by an LEA that is or could be used for drinking, cooking, washing dishes or food items, etc. This would of course include all kitchen water sources and drinking fountains, but could also include bathroom faucets or other water sources that students use to fill water bottles, brush teeth or otherwise ingest water.

What action should be taken based on the results of testing?

If the result of a lead level test conducted exceeds fifteen parts per billion (15 ppb), but is less than twenty parts per billion (20 ppb), the school shall conduct lead level tests on an annual basis until retesting confirms that the level is less than fifteen parts per billion (15 ppb).

If the result of a lead level test conducted is equal to or exceeds twenty parts per billion (20 ppb), the school shall:

- Immediately remove the drinking water source from service. The drinking water source shall remain unavailable for use until subsequent retesting confirms the lead level of water from the source does not exceed twenty parts per billion (20 ppb.)
- Notify:
 - The commissioner of environment and conservation, the commissioner of health, the local department of health, the local governing body, and the department of education within twenty-four (24) hours of the test result; and
 - The parents and guardians of students enrolled at the school, in accordance with a notification policy developed by the local board of education, within five (5) business days of the test result;
- Retest the lead level of the drinking water source within ninety (90) days of any corrective action.
- The drinking water source must remain shut off until testing results in fewer than 20ppb.

How should LEAs satisfy the notification requirements listed in the question above when in receipt of a lead level test that equals or exceeds twenty parts per billion (20 ppb)?

If the result of a lead level test is equal to or exceeds twenty parts per billion (20 ppb), LEAs shall:

Within twenty-four (24) hours of the result, submit this [form](#) through Formstack. The form will be used by the Department to make the following notifications required under the law:

- Commissioner of environment and conservation
- Commissioner of health

LEAs must notify their own local governing bodies and local health departments in accordance with the law.

Additionally, parents and guardians of students enrolled at the school must be notified in accordance with a notification policy developed by the Board, within five (5) business days of the test result.

For further assistance in developing your program, policy, and procedures to reduce the potential sources of lead contamination in school drinking water, please find the Environmental Protection Agency (EPA) Reducing Lead in Drinking Water in Schools and Child Care Facilities Toolkit: <https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water-toolkit>

Please remember that school board policies required by law should be developed in consultation with your Board attorney.

You may also contact Lori Paisley, Executive Director of Healthy Schools, at Lori.Paisley@tn.gov , if you have general questions regarding the application of this law.