

The Barbara McDowell and Gerald S. Hartman Foundation
Litigation to Protect the Health of Children in New York City Public Schools
Interim Report

New York Lawyers for the Public Interest (NYLPI) continues to prepare litigation against the School Construction Authority (SCA) and Department of Education (DOE) to insure that all new schools sited on leased industrial sites undergo a full and transparent environmental review process. During the first few months of the grant period NYLPI has been in substantive discussions with the SCA and has engaged in active monitoring of their announcement of new school siting and leasing decisions in order to identify a proposed leased school site where past uses raise clear evidence of environmental risks and will provide a strong case for litigation.

This monitoring has included reviewing the SCA's semi-annual amendments to its Five-Year Capital Plan, by which we are able to identify all of the sites being selected for new school leases in order to review and flag any sites that may pose a potential environmental hazard to students if not investigated and remediated thoroughly.

Thus far, all of the SCA's 2013-2014 publicly announced decisions have leased former parochial school sites for public school facilities. Because none of these schools are on sites that had previous industrial uses we have concluded that none of these sites are strong cases for litigation. However, we are continuing to monitor leasing decisions so that we can intervene quickly if the SCA decides to lease a former industrial or commercial site without conducting an appropriate, public environmental review.

During this phase of evaluation and monitoring we are taking advantage of non-litigation opportunities to advocate for improvements to the SCA's environmental review of leased school sites. Most notably, in December 2013 we helped organize and lead a meeting with senior SCA officials about the need to improve environmental safety practices in leased school buildings.

This meeting with SCA was held in the Bronx, and led by NYLPI, the Northwest Bronx Community & Clergy Coalition, and PS 51 Parents United (a group of parents whose children had been exposed to toxic contamination in a leased building). As mentioned in our proposal, PS 51 (also known as the Bronx New School) was housed in a former factory building first leased by the City in 1993. The City conducted no environmental testing of the building for almost two decades until 2011, when it discovered unsafe levels of trichloroethylene, a known carcinogen, and shut the school building down.

Alongside parents and community advocates, NYLPI asked the SCA to clarify its environmental testing practices for new leased school buildings, and to make these practices more rigorous and transparent. In direct response to our meeting request, the SCA for the first time published its protocols for "environmental due diligence for new leases" (available publicly on its website at <http://www.nycsca.org/Community/Programs/EnvironmentalDueDiligence/Pages/NewL>

[eases.aspx](#)). These protocols commit the SCA to conducting air quality testing before any newly leased building is opened to students and staff – a significant improvement from the agency’s earlier practices.

NYLPI is continuing to monitor these protocols, and to seek improvements. We are planning a follow-up meeting with the SCA’s president and general counsel in April 2014, where we will continue to ask the agency to make all of its environmental testing reports for leased school sites public. We also anticipate advocating for legislation to ensure that these improvements are codified into law; we plan to offer testimony in support of legislation introduced this session to require the SCA to publish all environmental testing results.

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