

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

Over the past year, thanks to the support of the Barbara McDowell and Gerald S. Hartman Foundation and our other funders, New York Lawyers for the Public Interest (NYLPI) has made significant strides in our campaign to ensure the environmental safety of all of New York City's public schools - specifically to insure that all new schools sited on leased industrial sites undergo a full and transparent environmental review process. This review has always been mandated for schools owned by the City of New York, but a loophole in the law exempted schools that were leased for the City by the School Construction Authority (SCA).

During the first part of the grant period, NYLPI attorneys engaged in substantive discussions with the SCA and active monitoring of their announcements of new school siting and leasing decisions in order to identify a proposed leased school site where past uses raised clear evidence of environmental risks and would provide a strong case for litigation.

In January 2014, an unprecedented change in New York City government occurred with the installation of a reform-minded Mayor and progressive City Council. This new leadership necessitated a shift in NYLPI's litigation and campaign strategy. These changes have increased the possibility of achieving our goals through legislative advocacy and other policy efforts, with the threat of litigation as leverage rather than the primary tool. As a result, our attorneys have devoted much of their time to working with parents, environmental health advocates, and the City Council on legislation that would require the Department of Education (DOE) to engage in a robust, public review of environmental threats to children's health, including by publishing environmental tests prior to the creation of any new leased school. As part of our advocacy, we have continued to develop our litigation claims, and have emphasized to City Council lawyers that legal reform is needed to amend City practices that violate the State Environmental Quality Review Act (SEQRA).

This legislation has a strong possibility of becoming law, which has led NYLPI to embark more actively on this legislative strategy. This opportunity did not exist during the prior administration, which blocked any legislative efforts at school construction reform, and led us to originally pursue litigation as a way of ensuring school siting reform. If enacted, the new law would ensure that the DOE conducts adequate environmental tests of all new school sites, and would provide opportunities for public review of the environmental health and safety of any new leased school site.

NYLPI is also bringing its case directly to the new administration. In partnership parents and community advocates, NYLPI attorneys continue to ask the SCA to clarify its environmental testing practices for new leased school buildings, and to make these practices more rigorous and transparent. As we noted in our interim report, in direct

response to this pressure, 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/NewLeases.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 attorneys have reviewed these protocols and continue to seek improvements. For example, NYLPI attorneys organized and attended a meeting between parent representatives and SCA’s top staff, including the administration’s Director, General Counsel, and top environmental compliance directors, to discuss its leasing protocols and environmental safety. At this meeting, the SCA pledged that its current practice is to conduct environmental testing before any leasing decision – and that it will not lease any building that requires environmental remediation. This shift in policy on the part of the SCA results after years of advocacy by NYLPI and its community partners.

As we work on legislative and administrative solutions, we continue to develop litigation options as a leverage point for negotiations. In particular, we continue to monitor school leasing activity, and are prepared to file litigation if the DOE attempts to take any action which does not meet these standards and commitments.

This monitoring includes reviewing the SCA’s semi-annual amendments to its Five-Year Capital Plan, which enables us to review all of the sites being selected for new school leases and flag any sites that may pose a potential environmental hazard to students if not investigated and remediated thoroughly. As of August 28, 2014, all of the 11 leasing projects currently listed on SCA’s “Active Projects in Construction” site are former parochial schools and not on sites that had previous industrial uses, which appears consistent with the SCA’s pledge to avoid leasing buildings that could pose environmental health risks to students. [See <http://nycsca.org/Resources/OurWork/Pages/ActiveConstruction.aspx>.] NYLPI will continue to monitor leasing decisions so that our attorneys can intervene quickly if the SCA decides to lease a former industrial or commercial site without conducting an appropriate, public environmental review.

These reforms, along with the pledges that have been made to us by the SCA since the change in administration, are momentous. They will ensure the protection of school environmental health and promote public accountability and transparency, thereby protecting the health of thousands of children for years to come.

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