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Jarod's Law Inspections Have Begun: Are You Ready?

What is now known as "Jarod's law" arose from an unfortunate event that took place in an Ohio school. On December 19, 2003, a mobile, folding cafeteria table fell on top of six-year-old Jarod Bennett, killing him. The Bennett family soon after began campaigning for stronger safety regulations in schools and on December 19, 2005, exactly two years after Jarod's death, Ohio Governor Bob Taft realized Jarod's law by signing it into Ohio law. After months of revisions and finalizations, Jarod's law was enacted and became effective on September 27, 2007.

Whereas the health department previously engaged in bi-annual sanitary inspections of school buildings, Jarod's law now requires a more comprehensive inspection that occurs annually (unless more frequent inspections are deemed necessary by the inspector). Jarod's law inspections apply to all public and nonpublic school buildings and their associated grounds, and Jarod's law also applies to all buildings operated by the school and located on the school grounds. The scope of the inspection also includes a review of documentation prepared by the school showing they have inspected for dangerous products and conditions, including recalled products.

The board of health will quarterly distribute to the schools information on conditions and products that are considered dangerous, including products that have been recalled by the manufacturer, which may be present in school buildings and on school grounds. The administrator of each school building must notify the board of health as to the method by which they prefer to receive this quarterly "transmittal form."

The administrator of each school building must then appoint a school representative to inspect the building on a quarterly basis for the presence of those dangerous conditions and products listed on the transmittal form from the board of health. During each inspection, the representative must document on the transmittal form any such conditions or products that are found present on the premises, and also the action(s) that have or will be taken to remove or remediate that hazard. All items listed must be abated immediately within a period not exceeding thirty days from the date on which the transmittal form was received from the board of health. If the hazard cannot be remedied immediately, then it must be sufficiently controlled in the meanwhile. Copies of all transmittal forms received and completed must be retained in the school records and presented at the next annual inspection by the board of health.

During each Jarod's law inspection, each school principal, chief administrator, or governing authority must cooperate in the conducting of school inspections by providing access to the school building and grounds at any time during regular school hours, and access to records from inter-school inspections for dangerous and recalled products and conditions as quarterly identified by the local board of health. The school representative should plan on accompanying the sanitarian during the course of the inspection.

The different inspections specifically outlined in §§ 3701-54-01 through 3701-54-09 include:

- * School grounds and building exterior inspections;
- * School indoor environments inspections;
- * Specialty classroom inspections; and
- * Administrative and non-classroom inspection areas.

The following serves to highlight some of those sections, but in no way is a complete listing of all requirements. In preparing for an inspection, §§ 3701-54-01 through 3701-54-09 should be read and reviewed in their entirety.

With respect to school grounds and building exterior:

- * Schools must abide by the engine idling time policies developed in accordance with § 3301.83.20(O) of the Administrative Code, and no vehicles or gas-powered equipment may idle near air intakes, exits, entrances, or where buses load and unload students.
- * There may not be any evidence of standing water or drainage problems, or any evidence on the buildings of water damage or water intrusion.
- * Contaminant sources must be properly protected and kept away from air intakes;
- * The roof of the school building(s) must be inspected by a qualified individual once in spring, again in the fall, and following any severe weather and when otherwise deemed necessary. If the heating, ventilating and air conditioning (HVAC) system is located on the roof, it must also undergo such inspection by a qualified individual. The school must have documentation for the sanitarian during the annual inspection which includes a current drawing of the roof that indicates the location of all roof top items including any HVAC unit, exhaust vents notated with type and height of stack, and roof drains. The school must also present to the sanitarian a copy of the Ohio Department of Health Roof Inspection Form for each inspection conducted since the last inspection by the board of health.

- * Playground equipment must be in good repair and should not be used during school hours without staff supervision.
- * With respect to all outdoor athletic facilities, all bleachers, folding, and telescopic seating and grandstands must be inspected annually by a qualified person (who is familiar with the design, installation, operation and maintenance of those items). Such inspection must be documented and available to the sanitarian at the time of the school inspection.

School Indoor Environments Inspections (§ 3701-54-07)

- * There must be a fifteen foot walk off mat at all entry points into the building.
- * Portable banquet tables, cafeteria tables and other portable furniture items, when not in the position intended for use, must be stored so that they are inaccessible to students or must be secured to the wall or floor so that they cannot be tipped over.
- * Heavy furniture items and equipment shall be moved by authorized personnel only.
- * Televisions and heavy equipment that poses a risk of tipping or falling must be securely anchored to a car, wall, or floor.
- * Freestanding or mobile shelving must not pose a risk of tipping over or falling.
- * Walls and ceilings may not have any evidence of water damage, stains, suspected mold or chipping or peeling paint.
- * Ferrets, reptiles, amphibians, chicks, ducklings, and hatching eggs are not permitted to be in classrooms with children less than five years of age.

Specialty Classroom Inspections (§§ 3701-54-08 and 3701-54-09)

These sections should be reviewed in their entirety and contain several provisions governing inspections of the following areas:

- * Science classrooms;
- * Visual arts classrooms;
- * Industrial arts classrooms;
- * Stage and set construction areas;
- * Music rooms;
- * Family and consumer science rooms, and
- * Administrative and Non-Classroom Inspections.

In addition, each school building administrator must now have available at all times, administrative rules or protocols regarding dangerous or recalled products as identified by the board of health. (See § 3701-54-09 for other requisite rules and protocols which must be readily available.)

For the purpose of receiving a copy of the inspection report generated from the annual inspection, the administrator of each school building must provide to the sanitarian, either at or before the annual inspection, contact names and addresses for the following persons.

- * The school principal, chief administrator or governing authority of the building;
- * The administrator responsible for facility operations and maintenance on behalf of the school district, educational service center, board of mental retardation and developmental disabilities, or community school controlling the inspected building and grounds;
- * Where in a school district, the superintendent and board of education of that district; and
- * Where in a school operated by an educational service center or board of mental retardation and developmental disabilities, the center or board.

Upon receipt of the board of health's inspection report, the school administration must submit to the board of health, a written plan for the abatement of all dangerous or recalled conditions identified in the report. That plan must be submitted within sixty days of receipt of the inspection report. The board of health may grant an extension not exceeding thirty additional days. The school administrator must then submit a written notification to the board of health when the abatement activities have been completed.

Jarod's law inspections have already begun in Ohio. While the purpose of ensuring school safety seems sensible enough, what remains unclear is how schools will fund abatement activities which could, in certain circumstances, require extensive construction. Should an outdoor stadium's bleachers be determined unsafe, for example, the stadium seating would most likely need to be closed off and shut down until new bleachers could be installed or remediation construction could be completed. Finding the funding for such a project could take time and most likely will require a request for more funds at levy time. A failed levy could leave an uncertain future for the stadium and any corresponding athletics.

It is also uncertain as to how the defense of sovereign immunity will apply to litigation involving Jarod's law and personal injuries sustained on school property. Sovereign immunity has traditionally made schools immune from liability or injuries which arise from "the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner." Ohio Revised Code § 2744.03. Unfortunately, there is no way to know how the courts will apply the sovereign immunity defense to such scenarios until a lawsuit is filed and put before the court for decision. However, it is possible that the court could find, since the requirements of Jarod's law are specified in the Administrative Code, that a school's failure to abide by those provisions constitutes an act of malicious purpose, bad faith, or wanton or reckless behavior. Such determination would override the sovereign immunity defense and leave the school vulnerable to liability for personal injuries. Only time will tell--in the meanwhile, inspections have begun, so schools should immediately begin taking measures, if they have not already, in becoming compliant with the provisions of Jarod's law.

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