LEAD POISONING: AN ENDURING TOXIC LEGACY AND ONGOING EDUCATIONAL CRISIS

A SPECIAL REPORT FROM THE ENVIRONMENTAL JUSTICE IN EDUCATION PROJECT
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Learning Rights Law Center is a legal services nonprofit that fights for a child’s right to education. Learning Rights assists low-income families by providing free legal counsel and advice, advocacy, direct representation, education, training and policy work. For more information, don’t hesitate to contact us at:

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Introduction

Learning Rights Law Center ("LRLC") is a legal services non-profit that fights for a child’s right to education. LRLC assists low-income families by providing free legal counsel, advice, advocacy, direct representation, education, training and policy work. With funding from the State Bar of California, LRLC established the Environmental Justice in Education project in 2017 – a groundbreaking effort to address the impact of children’s exposure to environmental toxins on their ability to succeed in school. The initial goal of the project was to identify toxic “hot spots” in Southern California, reduce children's exposure to toxins, and help affected children obtain special education and related services through both litigation and legislative advocacy. More than a year of research and outreach yielded some unexpected and alarming results.

Contrary to expectations, lead poisoning from deteriorating paint in older housing and exposure to lead-contaminated dust and soil is by far the most significant environmental justice issue impacting school-age children in Los Angeles and Ventura Counties today—not exposure as a result of living near a known “hot spot.” Unfortunately, most “hot spots” also are located in areas with a high percentage of older (often substandard) housing, so children living near hot spots are at even greater risk for developing a learning disability than originally anticipated, because they are also exposed to lead dust at home.

Sadly, our schools are not doing anything to identify, assess or provide special education services for children who are at risk for learning disabilities as a result of any type of toxic exposure—including the thousands of children living in high risk areas such as East Los Angeles and Oxnard. In East Los Angeles, thousands of children who reside within a 1.7-mile radius of the former Exide battery plant have been exposed to lead, arsenic and other industrial toxins, yet none appear to be receiving special education as a result. In Oxnard, thousands of children have been exposed to pesticides, yet the school district has no policies or procedures to identify, assess or provide special education for these children. Many of these children face a “triple whammy” of toxic exposure: 1) exposure from living or going to school near an industrial or agricultural site; 2) exposure from living or going to school in close proximity to a freeway; and 3) exposure from living in housing or going to school in buildings constructed prior to 1978. Although these children are known to be at a very high risk for lead poisoning, our schools are not prepared to address their needs.

In light of what we have learned, the actions we have taken to date, and recent legal developments relating to lead poisoning, LRLC adjusted the Environmental Justice in Education Project to focus primarily on lead-related issues. As discussed below, our suggested strategy for engaging schools in the process of lead exposure prevention and intervention includes incorporating information about educational rights into existing community-based Healthy Homes programs, using targeted advocacy to promote lead-safe work practices, and increasing funding to remediate lead contamination in all homes and schools.

Although there is no safe level of lead exposure, and no cure for lead poisoning, substantial research indicates that early educational interventions are very effective in mitigating the brain damage caused by lead. Thus, it is imperative that we enlist schools in the efforts to address lead poisoning before another generation of children is consigned to a life of low expectations.

Lead Poisoning Is the Most Common Environmental Disease Among California Children

Lead is a heavy metal that is a common environmental contaminant nationwide. Until 1978, lead was a common ingredient in household paint. Gasoline also contained lead, until its use began to be phased out in the 1970’s. Many common consumer items still contain lead, such as jewelry, toys,
pottery and spices, especially items that are imported. According to the California Department of Health (CDH), lead exposure “is one of the most common and preventable environmental diseases among California children.”

Lead is a well-known neurotoxin that interferes with learning and behavior in children, resulting in decreased cognitive abilities, aggression, inattention, hyperactivity and other problem behaviors. Although the current “reference level” for lead poisoning is a blood lead level (“BLL”) of 5 µg/dL, the Centers for Disease Control and Prevention (“CDC”) has determined that there is no safe level for lead. The Childhood Lead Poisoning Prevention Branch (CLPPB) of CDH defines the reference level at which a child is at risk of neurodevelopmental problems to include all BLLs equal to or greater than 4.5 µg/dL.

The “level of concern” for lead has been adjusted steadily downward over the years, as detection methods have improved, and more research becomes available demonstrating the harmful effects of lead on children’s brains, even at very low levels. Thus, it is difficult to determine precisely how many children in the United States suffer from lead poisoning. The CDC estimates “tens of millions of U.S. children have been adversely impacted by lead over the last 20 years...” and a recent recall of the most commonly used lead tests because they provide inaccurate results.

In addition to the difficulties associated with blood lead testing, the symptoms of low-level lead poisoning are silent and subtle: nausea, diarrhea, lethargy, headaches and abdominal pain. It is only at extremely high levels of exposure (≥ 70 µg/dL) that children exhibit dramatic symptoms such as vomiting, seizures and coma. Thus, parents and teachers often do not recognize the symptoms; a BLL is one of the few ways to confirm the diagnosis. Moreover, lead dissipates in the blood over time, but continues to impact a child’s brain long after it is no longer detectable by a BLL. Thus, children may not begin to exhibit learning difficulties in school until years after their initial exposure to lead.

Without adequate screening procedures in schools to track children’s exposure to lead, millions of children are never identified as having lead poisoning and do not receive the specific help that they need. Left untreated, a child with lead poisoning faces a grim future—“seven times more likely to drop out of school and six times more likely to end up in the juvenile justice system.” A number of studies show a strong link between lead poisoning and violent behavior.

All of these factors together make lead poisoning one of the most serious educational issues we face today, yet few outside the public health or housing arenas are paying any attention. Most people assume that lead poisoning is a thing of the past or solely an “inner city” problem. Nothing could be farther from the truth. Fortunately, there are a number of existing laws in place to make sure that children who have been poisoned by lead are identified and provided with the special education services and support that they need. Nevertheless, the only way to eliminate lead poisoning is to ensure no child is ever exposed to lead. Thus, parents and educators must be engaged in the effort to remove lead from the environment, including the enforcement of housing codes and laws governing lead-safe work practices—in addition to supporting mandatory BLL testing and funding for early educational interventions.

Numerous studies provide compelling evidence that the societal costs of on-going lead poisoning are staggering, but that investing in early intervention programs can have a dramatic impact. It is estimated that for every $1 spent on intervention, society yields a return of nearly $1.80 as a result of “substantially less antisocial behavior, including fewer suspensions, absences, school crimes, and violent crime arrests.”
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IDEA: Federal Special Education Law Requires Schools to Identify, Assess and Provide Special Education Services for Children Affected by Lead

In April 2015, the Centers for Disease Control published “Educational Interventions for Children Affected by Lead,” a comprehensive paper developed by an expert panel of CDC and non-CDC authors (“CDC Report”). The CDC Report reviewed all of the research to date on lead exposure and responses to intervention. Based on this review, the CDC panel concluded that early educational intervention is both necessary and effective in ameliorating the pernicious effects of lead on the brains of young children.

Despite the comprehensive nature of the CDC report, neither public health officials nor educators appear to be aware of its existence or to take its recommendations seriously. To date, the only state that has implemented an early education intervention program for lead poisoning is Connecticut15. As discussed below, the Connecticut Department of Education’s program for educational intervention provides an excellent model for school districts nationwide.

Although the toxic effects of lead on children’s brains is undisputed, lead poisoning prevention efforts have been led by public health, housing and medical officials, with schools playing little, if any, role in addressing the needs of children with lead poisoning16. This is of particular concern because lead poisoning is a specific category of eligibility for special education services pursuant to the Individuals with Disabilities Education Act (“IDEA”)17. Children with lead poisoning also are protected from discrimination under the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”)18. These laws require schools to provide reasonable accommodations necessary for a child with a disability to access his or her education, such as seating in the front of the class for a child with attention issues.

IDEA Provides the Legal Framework for Special Education

IDEA provides federal funds and oversight for early intervention and special education and related services to children with disabilities. IDEA ensures that all children with disabilities ages 3 – 21 receive a free appropriate public education. All states currently participate in IDEA, but each state implements the law differently. At the federal level, the U.S. Department of Education is responsible for implementing IDEA. In California, the law is implemented by the California Department of Education, through local education authorities including school districts and charter schools.

Child Find: The Gateway to Services

The Child Find provisions of IDEA are the gateway through which children with disabilities receive early intervention or special education services19. Child Find is a program that identifies children and young people from ages 0 to 21 who are suspected of having disabilities, including those with a history of exposure to lead or a BLL >5µg/dL.”20 Under IDEA, all states must have a comprehensive, continuous Child Find system with the purpose of identifying, locating, and evaluating all infants, toddlers and children with disabilities in the state who are eligible for early intervention or special education services. Child Find systems vary by state but generally include screening, referral, evaluation and public awareness activities. Services must be provided at no cost to families. IDEA Part B is the federal education law for children ages 3-21. IDEA Part C applies to preschool children ages 3 – 5 (or younger at the state’s discretion).

The primary goals of Child Find are: 1) to ensure that no child with a disability is denied a free and appropriate public education because they could not be located; 2) to promote cooperation between educational agencies and other agencies serving children with disabilities including health providers, mental health agencies, social services and developmental disability agencies; and 3) to
enable state and local agencies to fund, plan and deliver programs to children with disabilities\textsuperscript{21}. Parents concerned about their child’s development may request an evaluation at no cost through Child Find, including an evaluation for lead poisoning.

To date, Child Find efforts for lead poisoning have focused almost exclusively on families with pre-school children, because in most states the only children required to be tested for lead exposure are those younger than 3 who are eligible for Medicaid. The only other children who routinely receive a BLL test are those known to live in a home that is contaminated with lead, which depends upon whether any public agency has taken action to identify lead hazards in the child’s home.

- **Eligibility Under Part B**
  
  In order to qualify for special education services under Part B, a student must meet the following two requirements:

  1. The student must have one (or more) of the 13 disabilities listed in the IDEA; and
  2. The student must, as a result of that disability, need special education to make progress in school and to receive benefit from the general educational program.

  Children affected by lead may be eligible for special education services based on the disability category of “other health impairment”; a specific learning disability; or, if 3 – 9 years old, they are experiencing developmental delay as defined by the state\textsuperscript{22}. California explicitly includes lead poisoning within the definition of “other health impairment.”\textsuperscript{23}

- **Eligibility Under Part C; Preschool**

  IDEA Part C provides funding for services for infants and toddlers who qualify for services under their state’s eligibility definition of developmental delay or have a diagnosed physical or medical condition (such as an elevated BLL) that carries a high probability of causing developmental delays\textsuperscript{24}. States also have discretion to provide services to infants and toddlers who are at risk for substantial developmental delays if they do not receive appropriate early intervention services\textsuperscript{25}. These services may include speech and language services, occupational therapy, physical therapy and special instruction.

**Obstacles to Providing Educational Interventions**

LRLC’s research indicates that the biggest obstacles to providing special education for children with lead poisoning include lack of awareness, under-identification, lack of money, privacy concerns and lack of political willpower.

- **Lack of Awareness**

  Very few people recognize that lead poisoning remains a serious problem in Los Angeles. Even fewer people are aware that public schools are required by law to identify, assess and provide services to children with lead poisoning pursuant to the requirements of the IDEA—including most educators themselves.

  Because lead poisoning can result in a number of behaviors that independently qualify a child for special education—including speech and language problems, specific learning disabilities, or ADHD—schools rarely identify a child as having lead poisoning. Moreover, even if a child had an elevated BLL in pre-school, the harms associated with lead poisoning may not appear until that child is older. Without mandatory BLL testing, screening and monitoring, schools have no way to determine if a child’s learning difficulties are a result of lead poisoning, and the number of children requiring special education services is grossly underestimated.
• Under-Identification

Until January 2018, the only state to require mandatory BLL testing for all school-age children was Connecticut. As of January 2018, California enacted Assembly Bill 1316 to require mandatory BLL testing, but it is up to the discretion of physicians to determine if a child should be tested. Thus, it remains to be seen whether the new law will result in thousands of additional children in California being tested for lead poisoning as intended.

Prior to the enactment of AB 1316, the only children in California for whom BLL testing was mandatory were those receiving public health insurance benefits. Physicians were required to take a BLL of all children enrolled in Medi-Cal as part of a well-baby exam at ages 1 and 2. Nevertheless, an alarming new report reveals that only one in three eligible children in California are tested, resulting in the failure to identify thousands of children potentially in need of special education services. Moreover, because only children deemed to be at “high-risk” are tested—such as those living in poverty—thousands of additional children are not identified as lead-poisoned. Lead poisoning is not confined to low-income neighborhoods, particularly in Los Angeles where gentrification is resulting in increased lead dust levels from construction, as older buildings are remodeled or replaced.

• Lack of Funding

It is well-known that our schools struggle to pay for textbooks and teachers. Districts have little if any room in their budgets to address environmental issues—whether to clean up their own campuses to reduce children’s exposure to toxins or to reach out to the families of children who are at high risk of toxic exposures in their communities. Moreover, as discussed in more detail below, the politics surrounding lead poisoning make it very difficult to obtain funding for any reason, whether to eliminate exposure to lead hazards or to identify, assess and properly educate children who have been exposed to lead.

Currently, neither the state nor the federal government funds programs to provide educational interventions for children with lead poisoning. In addition, funds are being cut for existing programs designed to eliminate lead exposure. Because the estimated costs associated with lead poisoning exceed $50 billion per year as a result of reduced cognitive potential and lost productivity, we cannot afford to ignore the impact of lead poisoning on children’s academic performance.

• Privacy Laws

To the extent children are being tested for lead exposure, current privacy laws inhibit public health officials and schools from sharing information. A child’s BLL information is protected by the Health Insurance Portability and Accountability Act, commonly known as HIPAA. A child’s educational information is protected from disclosure by FERPA—the Family Education Records Privacy Act. Information regarding a child’s BLL that is in a child’s school records is protected by both. Thus, there is built-in institutional resistance to sharing this information.

The problem of confidentiality is easily solved by the use of proper release forms, but this is a bureaucratic hurdle that discourages that sharing of information. For example, in the communities impacted by Exide, the California Department of Toxic Substances Control (“DTSC”) refuses to publish the addresses or parcel numbers for the thousands of properties where it has found actionable levels of lead contamination in the soil. DTSC argues that disclosing the addresses potentially violates HIPAA, because of the correlation between residing in a contaminated home and having an elevated BLL (which is private medical information). If schools cannot identify which students are at risk for lead exposure, it makes it very difficult for them to reach out to affected families pursuant to their Child Find obligations.
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- Lack of Political Willpower

The lead-paint manufacturers have vigorously defended any claims of liability for lead poisoning or obligation to remediate the property damage that has resulted from the use of their products. The burden of reducing exposure to lead, particularly in housing, has fallen to state and local governments that lack the resources to do an effective job of code enforcement. Landlords have little incentive to remediate rental properties, particularly in areas subject to rent-control. Due to the severe shortage of affordable housing in California, tenants are reluctant to request repairs or report housing code violations for fear of eviction.

The communities most affected by lead poisoning lack both economic and political power. For example, the communities contaminated by lead from the Exide plant are predominantly Latino, with about 30% living in poverty—almost double the countywide poverty rate. Thus, more than 40 years after the United States required manufacturers to remove lead from most consumer products—in particular, lead-based paint and gasoline—millions of children in America continue to suffer from lead poisoning. Worse, schools are not integrated into the existing efforts to address lead poisoning, so few if any children suffering from lead poisoning are receiving the special education services they need.

Recent legal developments, as well as some solid investigative reporting, have altered the landscape with respect to lead poisoning, and inform suggested strategies moving forward. For example, Reuters published a series of articles regarding lead poisoning in Los Angeles County in 2017 illustrating how widespread the problem of lead contamination is throughout the area—including in affluent communities such as San Marino. Armed with better laws and more reliable data, it should be easier for the families of children who have been exposed to lead to receive the special education services to which they are entitled.

The ACLU Filed a Class Action on Behalf of Lead-Poisoned Children in Flint for the Failure to Meet Child Find Obligations

In 2016, the American Civil Liberties Union (“ACLU”) filed a class action on behalf of children in Flint, MI for the failure of state and local educational agencies to follow Child Find requirements after the city-wide water crisis. Although it was well publicized that numerous children in Flint had elevated BLL’s for an extended period of time, the ACLU alleged that the school districts failed to identify, evaluate, assess and provide special education services to the children who had been exposed to lead, as required by Child Find.

In D.R. v. Michigan Department of Education, the plaintiffs seek immediate injunctive relief to insure all students who require special education due to lead poisoning are identified and provided with the supports and programs they need. The parties have fully briefed plaintiffs’ motion for preliminary injunction, but there has been no hearing because the parties are engaged in settlement discussions. The Flint case provides a model for impact litigation against school districts in any community where children are known to be at very high risk for exposure to lead, pesticides or other neurotoxins, and underscores the power of IDEA’s Child Find requirements.

Reuters Highlighted the Continuing Problem of Lead Poisoning in America

In April 2017, in the wake of the Flint disaster, Reuters began publishing a series of reports regarding the prevalence of lead poisoning in America. The results were shocking. The authors identified almost 3000 neighborhoods in America with recently recorded lead poisoning rates at least double those in Flint at the peak of the water crisis. In Los Angeles County, more than 15,000 children under the age of 6 tested high for lead between 2011 and 2015. Reuters identified 323 areas in LA (by zip code or census...
tract) where the rate of elevated tests was at least as high as Flint. In 26 areas, the rate was at least double that of Flint.

Although there have been questions raised about the underlying data relied upon by Reuters, it is undisputed that lead poisoning remains a significant problem in Los Angeles, particularly in lower-income neighborhoods where older, substandard housing is more prevalent, including the areas of Mid-City, South LA and East LA.

**A Recent California Court Decision Imposed Liability on Paint Manufacturers for Creating a Public Nuisance**

For decades, lead-paint manufacturers effectively shielded themselves from liability for removing lead paint from housing through aggressive and—in some cases—deceptive tactics. In November 2017, the California Court of Appeals issued a seminal ruling against lead paint manufacturers that put an end to more than 17 years of litigation—finding them liable for remediating lead-paint contamination on the basis that it constitutes a “public nuisance.”

In 2000, 10 cities and counties in California sued lead paint manufacturers on the theory that lead-contaminated paint constitutes a public nuisance requiring the manufacturers to pay for remediation. The manufacturers vigorously defended the case on the grounds that the problem was one of the municipalities’ own making for failing to enforce housing codes and to require landlords to remediate all lead hazards. In 2016, the case went to trial. The jury found the paint manufacturers liable to the municipalities, and imposed damages of more than $1.5 billion. On appeal, the court upheld the jury’s finding of liability, but reduced the damages to an estimated $600 million. The paint manufacturers sought review in the California Supreme Court, which was denied.

In light of their unexpected loss, major lead paint manufacturers (namely, NL Industries, Inc., Sherwin Williams Co., and Conagra Grocery Products Co.) immediately changed tactics—introducing the Healthy Homes and Schools Act of 2018—a proposed ballot initiative that sought $2 billion in taxpayer funding to remediate lead paint in homes and schools, and to absolve the manufacturers from any legal liability on the public nuisance theory. California’s Attorney General proclaimed the proposed ballot initiative to be deceptive based on the title, which suggested that the initiative was designed to clean up the environment, rather than to nullify a court decision and push the remediation costs onto taxpayers.

In late May 2018, NL Industries, Inc. (“NL”) announced that it had reached a settlement with the People of California for $60.18 million, subject to court approval. As part of the settlement, NL agreed to withdraw its support from the ballot initiative. Still, Sherwin Williams and Conagra persevered, eventually gathering enough signatures to put the measure on the November ballot.

On June 26, 2018, Santa Clara County and the city of San Francisco filed an emergency lawsuit asking the California Supreme Court to block the $2 billion initiative from appearing on the November ballot. A few days later, Sherwin Williams and Conagra withdrew the ballot measure.

In retrospect, it is clear that the threat of the deceptive ballot initiative was nothing more than a hard-ball negotiating tactic intended to reduce or eliminate the lead paint manufacturers’ liability—and it worked. The California litigation underscores the difficulty in finding a permanent, workable solution to the problem of lead paint remediation nationwide.
In December 2017, the Ninth Circuit Ruled that the EPA Must Update Its Outdated and Unsafe Rules for Safe Lead Levels in Homes

The strength of the political opposition to cleaning up homes with lead is perhaps best illustrated by the recent case A Community Voice, et. al v. U.S. Environmental Protection Agency. In Community Voice, the Ninth Circuit granted a petition for writ of mandamus brought by environmental groups seeking to compel the United States Environmental Protection Agency (“EPA”) to update its dust-lead hazard and lead-paint standards.

In 1992, Congress delegated rulemaking authority to the EPA to develop standards for acceptable levels of lead dust on floors and window sills in housing (the Department of Housing and Urban Development [“HUD”] was tasked with developing rules for public housing). The EPA published those rules in 2001 based on preventing BLL’s above 10µg/dL in children. In 2007, the EPA was advised that its standards were outdated and no longer protected children. In August 2009, concerned environmental groups filed an administrative petition with the EPA, requesting that the EPA lower the dust-lead hazard standards. EPA granted the request for rulemaking in October 2009, but did not commit to a date by which it would promulgate new rules.

By 2012, the CDC had determined that there is no known safe blood level of lead in children, and lowered the “standard of concern” for lead from 10µg/dL to 5µg/dL. The American Academy of Pediatrics advised the EPA that the current dust-lead hazard standards would allow fifty percent of all children to have a BLL above the standard of concern. By 2015, HUD had advised the EPA that lower lead clearance levels were feasible, based on extensive survey results, yet the EPA still did not revise the rules which it knew to be obsolete and putting children in danger.

In Community Voice, the EPA argued that its only duty was to begin “an appropriate proceeding”—not to reach a final decision. The EPA further argued that mandamus was not necessary because it had “been working diligently,” estimating that a final rule could come in 2023.

The Ninth Circuit forcefully rejected the EPA’s arguments, stating that “Congress did not want EPA to set initial standards and then walk away, but to engage in an ongoing process, accounting for new information, and to modify initial standards when necessary to further Congress’s intent: to prevent childhood lead poisoning and eliminate lead-based paint hazards.” In finding that the EPA’s delay was “unreasonable,” the Ninth Circuit noted that “[c]ritically, EPA fails to identify a single case where a court has upheld an eight year delay as reasonable, let alone a fourteen year delay, if we take into account the six more years EPA asserts it needs to take action.” The court ordered the EPA to promulgate proposed updated lead dust standards within ninety days of its decision becoming final, with a final rule to be issued one year later.

Both the lead paint manufacturers’ withdrawn ballot initiative and A Community Voice illustrate the extraordinary political forces currently opposing sensible research-based standards for remediating lead in order to protect children from the undeniable and irreversible brain damage caused by lead exposure, even at very low levels. Although the cost of remediation and intervention may be substantial, the long-term consequences of failing to clean up our communities or to provide educational support for children already exposed to lead will be catastrophic. Our schools are not equipped to meet this challenge alone; they need support from both the public and the private sectors—which will require strong and decisive leadership from all of our elected officials, and a knowledgeable and motivated electorate.
The Existing Healthy Homes Collaborative Model Is Effective and Can Be Expanded to Include Information About Education Rights

A number of “Healthy Homes” programs exist in the United States. Some are specifically funded through HUD and others by the CDC\(^46\). The goal of all these programs is to eliminate substandard housing conditions which are known to impact health, such as mold, lead and vermin infestations.

In Los Angeles, one of the most effective Healthy Homes collaborations began in 1998 as the Healthy Homes, Healthy Neighborhoods initiative. This collaboration includes St. John’s Well Child and Family Center (a community-based health clinic) and three community-based housing organizations—Esperanza Community Housing Corporation (“Esperanza”); Los Angeles Community Action Network (“LA CAN”); and Strategic Actions for a Just Economy (“SAJE”)\(^47\). The initial goal of the Healthy Homes, Healthy Neighborhoods strategy was to eliminate sources of lead poisoning and to provide medical care for families who had been exposed to lead. Over time, the collaboration grew, undertaking research and devising intervention strategies to improve housing conditions and reduce the number of housing-related illnesses in Los Angeles. The innovative work of this collaborative demonstrates the effectiveness of holistic, community-based strategies to improve housing conditions and reduce slum-housing related diseases such as lead poisoning.

One key strategy used by the Healthy Homes, Healthy Neighborhoods collaboration is the use of community health promoters, also known in Spanish-speaking communities as promotoras. For example, St. John’s refers families who exhibit certain health conditions associated with slum housing, such as lead poisoning and asthma, to Esperanza health promoters. The Esperanza health promoters go into the family’s home to conduct interviews, assess housing conditions and take lead dust samples. At the same time, tenant organizers from LA CAN and SAJE work closely with the health promoters to provide education about tenants’ rights, help tenants file building complaints, and to engage housing authorities and the City Attorney in the effort to eliminate slum housing conditions. Based on empirical data, families who participated in this program saw a measurable increase in their health and productivity\(^48\).

Although Los Angeles already has a number of organizations that are collaborating to improve housing conditions for low-income children in order to create healthier families and communities, none of the lead poisoning prevention efforts includes a strategy to involve schools or educators in order to help children with elevated BLLs qualify for special education or otherwise access their education. As underscored by the CDC, lead poisoning prevention efforts to date have focused on eliminating lead in the environment and eradicating sources of lead contamination and exposure—not on obtaining educational services for children who have already been exposed to lead.

The Healthy Homes, Healthy Neighborhoods strategy is based on a human rights model, similar to the strategy often employed by disability rights advocates. Because the Healthy Homes strategy has been so effective in Los Angeles, it makes sense to build upon this model so that participating families also receive information about their children’s educational rights. In addition to providing information about how to eliminate health hazards at home, and connecting community members with medical providers, health promoters can counsel families on potential learning disabilities and how to obtain the proper assessments and services for their children from the local school. Alternatively, a health promoter can be paired with an education advocate to expand the services to tenants to include information about education rights.

For example, one of LRLC’s cornerstone projects is its TIGER program for parents—Training Individuals for Grassroots Education Reform. TIGER is a hands-on self-advocacy program designed to equip low-income parents with the tools they need to advocate successfully in the special education
system. LRLC has trained hundreds of parents about education rights; this year LRLC incorporated information about lead poisoning into the TIGER curriculum. TIGER parents could serve as “educational promoters” and partner with health promoters to connect children identified with lead poisoning with special education services.

The Promise Zone Provides a Unique Opportunity to Include Education Rights as Part of the Healthy Homes Model

In January 2014, the Obama Administration chose Los Angeles as one of the first five Promise Zones in the nation. The Promise Zone includes five diverse neighborhoods in Central Los Angeles—Hollywood, East Hollywood, Pico-Union, Westlake and Wilshire Center—which are home to a large number of families living in poverty. The Promise Zone is a collaborative effort of more than 60 local organizations working together to “target resources to create jobs, boost public safety, improve public education, and stimulate better housing opportunities for neighborhood residents.” The City of Los Angeles is the lead agency that oversees the LA Promise Zone; the Youth Policy Institute is the lead implementation partner. The LA Promise Zone includes four working groups, including Economic Activity, Public Safety, Neighborhoods and Education.

Many of the neighborhoods included in the Promise Zone also are identified as “hot spots” for lead contamination in the Reuters report. There are current plans in place to collect data about housing conditions and to reduce lead exposure in these neighborhoods. Thus, the Promise Zone presents a unique opportunity to implement a Healthy Homes collaborative intervention model that includes information about education rights. Not only can this model be used for direct services, it also provides a research platform to determine the effectiveness of early educational intervention. To date, none of the education initiatives in the Promise Zone focus on lead poisoning or early educational intervention for children with elevated BLLs. The current focus is on increasing college readiness and early preschool. Nevertheless, both the funding and the infrastructure is in place to expand the housing and education programs to include educational interventions for lead poisoning.

A Number of Proposed Laws Demand Action in 2018

In California, there are several positive efforts to pass new laws regarding lead removal and remediation, including SB 377—the Safe Work Practices Act. SB 377 seeks to reduce exposure to lead dust by requiring training and certification in lead-safe removal practices for residential contractors. Because the elimination of all lead exposure is the first step in eradicating lead poisoning, it is important for parents and educators to understand these legislative efforts so that they may advocate effectively.

A BLL History Should Be Required to Enroll in School

The only way to ensure schools can meet their Child Find obligations for lead poisoning is for all states to require that every child provide a BLL history at the time of enrollment in school, similar to an immunization card. This provides schools with critical information that will enable them to monitor children who are at a very high risk for learning disabilities. In Connecticut, a child must present the state-mandated Early Childhood Health Assessment form at the time of enrollment in preschool. This form includes information on the child’s BLL screening results at one and two years. In addition, the health care provider must indicate if the child had a BLL equal to or greater than 5µg/dL.

Although a bill recently passed in California to promote mandatory BLL testing for all children—not just those receiving public benefits—the decision to test is left to the discretion of each child’s physician. Few, if any pediatricians actively encourage BLL testing or understand its importance; those
that do tend to serve low-income communities, where there is increased awareness regarding the problems associated with substandard housing and poverty\textsuperscript{53}. Unfortunately, with gentrification, more and more children at all income levels are being exposed to lead as a result of the failure to enforce lead-safe work practices when aging properties are rehabilitated. AB 1316 was a start, but by leaving testing to the discretion of doctors, it does not go far enough to guarantee universal BLL testing for all children entering school in California. Thus, on-going legislative advocacy in this area is needed.

Recommendations

LRLC recommends the following actions to address the educational crisis created by lead poisoning:

- LRLC should advocate for passage of SB 377
- LRLC should monitor the EPA’s rulemaking for dust lead level standards, and participate in the public comment process
- LRLC should apply to be a partner in the LA Promise Zone in order to implement a Healthy Homes collaborative model that incorporates information about educational rights
- LRLC should partner with public health agencies, including the CDC and its contractors, to undertake research to measure the effectiveness of the new Healthy Homes collaboration in the Promise Zone
- LRLC should design a long-term education and advocacy plan to promote both state and federal legislation to require that all children provide BLL information when enrolling in school, similar to the Connecticut Health Assessment Form
- LRLC should support efforts to require school districts to update their Child Find procedures to address lead poisoning and learning disabilities resulting from toxic exposures, including impact litigation

Conclusion

Although lead poisoning is a critical public health crisis, it is not viewed as an educational crisis, even though it is undisputed that lead causes irreversible brain damage that interferes with a child’s ability to learn. Schools are not meeting their Child Find obligations for children who are poisoned by lead, so millions of children nationwide are not receiving critical educational interventions. We must do a better job educating parents, teachers, physicians, public health professionals, housing advocates and government officials about the dangers of lead, and the importance of early educational intervention.

Because lead was removed from all consumer products more than 40 years ago, fewer and fewer children are exposed to lead each year. Nevertheless, it is estimated that millions of children nationwide still suffer from the effects of lead poisoning. Lead contamination remains both a public health and an educational crisis. We need to reinforce existing programs to eliminate all exposure to lead, while simultaneously developing meaningful educational interventions based on solid research. There is no safe level of exposure to lead and no cure for lead poisoning. But, early educational intervention can make a big difference and must be given priority if we want all of the children in our community to lead healthy, productive lives.


6 Id.

7 Id.


10 Id. at p.15.


Poisoning & Juvenile Delinquency, Wis. Council Child. & Fam. (2009),
http://www.kidsforward.net/assets/lead_delinquency_brief.pdf.


14 Doleac, supra note 12, at 4-5; CDC Report, supra note 5, at 13.


16 CDC Report, supra note 5.


19 20 U.S.C.S. § 1412(a)(3); 34 C.F.R. § 300.111.

20 CDC Report, supra note 5, at 21.

21 Id.

22 Id. at 26.

23 5 C.C.R. § 3030(b)(9).


27 Recent warnings from the Food and Drug Administration that common blood tests for lead can give falsely low results in certain cases, raise further concerns about adequacy of testing. Blood Lead Test Safety Alert, Ctr. For Disease Control & Prevention (May 17, 2017), https://www.cdc.gov/nceh/lead/about/blood_lead_test_safety_alert.html; GreenfieldBoyce, supra note 8.

28 Second Reuters Report, supra note 1.

29 12 Schools Near Exide Plant to be Tested for Lead, CBSLA.com (June 12, 2015, 8:00 PM), http://losangeles.cbslocal.com/2015/06/12/testing-of-soil-for-lead-contamination-to-soon-begin-at-lausd-schools-near-exide-plant/ (quoting Robert Laughton, Los Angeles Unified School District’s director of Environmental Health and Safety, as saying “Our business is to keep children safe and to educate them and I can’t use general fund dollars to go and clean up somebody else’s pollution.”).

30 CDC Report, supra note 5, at 1.


33 Second Reuters Report, supra note 1, at 9. According to healthy homes advocate Linda Kite, “[a]mid an affordable housing crisis in Los Angeles, many renters don’t confront landlords to fix lead paint hazards, fearing eviction if they raise the alarm.”

34 Barboza & Poston, supra note 2.


36 First Reuters Report, supra note 1; Second Reuters Report, supra note 1; Third Reuters Report, supra note 1. As noted above, with gentrification and its ensuing remodeling and rehabilitation of older properties, exposure to
lead remains a problem everywhere and across economic lines, especially given the lack of comprehensive testing to identify impacted children.  
38 First Reuters Report, supra note 1; Second Reuters Report, supra note 1; Third Reuters Report, supra note 1.  
41 http://www.thereporter.com/article/NG/20180517/NEWS/180519865  
44 878 F.3d 779 (9th Cir. 2017).  
48 Shame of the City: Slum Housing and the Critical Threat to the Health of L.A. Children and Families, supra note 44; Shame of the City – the Sequel, Slum Housing: L.A.’s Hidden Health Crisis, Healthy Neighborhoods Same Neighbors Collaborative, supra note 44.  
50 Promise Zone zip codes—90004, 90005, 90010, 90015, 90017, 90019, 90020, 90026, 90027, 90028, 90029, 90036, 90038, 90039, 90057, 90068. See also Third Reuters Report at 8 where it is reported that “[s]ince August, a sampling of children from the Los Angeles neighborhoods of Westlake, Koreatown and Pico Union revealed about 5 percent with high lead results, said Jeff Sanchez, a public health specialist at Impact Assessment, which helps Los Angeles run its lead poisoning prevention program. ‘The more you look,’ Sanchez said, ‘the more you find.’”  
53 Second Reuters Report at 7, 12; First Reuters Report at 13.”’A lot of people don’t even think of the West Coast as a place where kids get poisoned,’ said Linda Kite, executive director at L.A.-based Healthy Homes Collaborative. “The biggest problem we have is medical apathy. Many doctors don’t test for lead.”’ Second Reuters Report at 7.