






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: James N. Baldwin 

SUBJECT: Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees

DATE: December 2, 2021

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of 114.5 of the Regulations of the Commissioner of Education relating to the prohibition against suing parents or guardians for unpaid meal fees?

Reason(s) for Consideration

Required by State statute (Chapter 315 of the Laws of 2021).

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the December 2021 meeting. A copy of the proposed rule is included as Attachment A and a statement of facts and circumstances which necessitate emergency action is included (Attachment B).

Procedural History

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the September 2021 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on September 29, 2021 for a 60-day public comment period and a Notice of Emergency Adoption was published in the State Register on

October 27, 2021. Because the first emergency action will expire on January 3, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the February 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on January 19, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

On July 29, 2021, Chapter 315 of the Laws of 2021 was signed into law which, effective immediately, amended Education Law §908 to prohibit public school districts, charter schools, and non-public schools that participate in the National School Lunch Program or School Breakfast Program from filing a lawsuit against a student's parent or guardian if such student has unpaid school meal fees. This does not apply to schools that participate in the Community Eligibility Provision or Provision Two of the Federal National School Lunch Act, 42 U.S.C. Sec. 1751 et seq., which permits all students to be served free breakfast and lunch. This legislation expands on a 2018 law which prohibited the practice known as "meal shaming" in such schools.

The proposed amendment to section 114.5 of the Regulations of the Commissioner of Education implements Chapter 315 of the Laws of 2021, by amending such section to include the prohibition of lawsuits against students' parents or guardians for unpaid meal fees as required by Education Law §908.

Related Regent's Items

September 2021: [P-12 Education Committee Meeting - Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees](https://www.regents.nysed.gov/common/regents/files/921p12a1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/921p12a1.pdf>)

January 2019: [Proposed Addition of Section 114.5 to the Regulations of the Commissioner Relating to the Prohibition Against Meal Shaming](https://www.regents.nysed.gov/common/regents/files/119brca8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/119brca8.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 114.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 4, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's regulations to Chapter 315 of the Laws of 2021.

Timetable for Implementation

If adopted as an emergency rule at the December 2021 Regents meeting, the emergency rule will become effective January 4, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2022 meeting, the proposed amendment will become effective as a permanent rule on March 2, 2022.

Attachment A

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305 and 908 (as amended by Chapter 315 of the Laws of 2021).

Subparagraph (iv) of paragraph (5) of subdivision (b) of section 114.5 of the Regulations of the Commissioner of Education, is amended, as follows:

(iv) take any action directed at a pupil to collect unpaid school meal fees. A school or school district may attempt to collect unpaid school meal fees from a student's parent or guardian, but shall not use a debt collector, as defined in Section 803 of the Federal Consumer Credit Protection Act, 15 U.S.C. Sec. 1692a or file a lawsuit against such student's parent or guardian; or

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to section 114.5 of the Regulations of the Commissioner of Education is necessary to implement Chapter 315 of the Laws of 2021, which amended the Education Law, effective July 29, 2021. Chapter 315 prohibits public school districts, charter schools and non-public schools participating in the National School Lunch Program or School Breakfast Program in which there is a school where all pupils are not eligible to be served breakfast and lunch under the Community Eligibility Provision or Provision Two of the Federal National School Lunch Act, 42 U.S.C. Sec. 1751 et seq., from filing a lawsuit against a student's parent or guardian if such student has unpaid school meal fees.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the September 2021 meeting of the Board of Regents, effective October 6, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the February 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the February 2022 meeting, would be March 2, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire January 3, 2022. Therefore, a second emergency action is necessary at the February 2022 meeting for the preservation of the general welfare in order to immediately conform the Commissioner's regulations to Chapter 315 of the Laws of 2021 and to ensure that the emergency action taken at the September 2021 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the February 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.