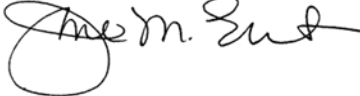






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** Jhone M. Ebert 

**SUBJECT:** Proposed Addition of Section 114.5 to the Regulations of the Commissioner Relating to the Prohibition Against Meal Shaming

**DATE:** September 6, 2018

**AUTHORIZATION(S):**  

## SUMMARY

### **Issue for Decision**

Should the Board of Regents add a new §114.5 to the Commissioner's regulations to establish standards to prohibit meal shaming in schools?

### **Reason(s) for Consideration**

Required by State statute (Education Law §908 as enacted by Part B of Chapter 56 of the Laws of 2018).

### **Proposed Handling**

The proposed amendment is presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency rule at the September 2018 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

### **Procedural History**

A Notice of Emergency Action and Proposed Rulemaking will be published in the State Register on October 3, 2018. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

In the enacted 2018 State Budget, a new Education Law §908 was added which requires all public school districts, charter schools, and non-public schools that participate in the National School Lunch Program or School Breakfast Program in which there is a school at which 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., to develop a plan to ensure that a pupil whose parent or guardian has unpaid school meal fees is not shamed or treated differently than a pupil whose parent or guardian does not have unpaid school meal fees.

Education Law §908 requires that such plans include the following elements:

- A statement that the school or school district shall provide the student with the student's meal of choice for that school day of the available reimbursable meal choices for such school day, if the student requests one, unless the student's parent or guardian has specifically provided written permission to the school to withhold a meal, provided that the school or school district shall only be required to provide access to reimbursable meals, not a la carte items, adult meals, or other similar items;
- an explanation of how staff will be trained to ensure that the school or school district's procedures are carried out correctly and how the affected parents and guardians will be provided with assistance in establishing eligibility for free or reduced-price meals for their children;
- procedures requiring the school or school district to notify the student's parent or guardian that the student's meal card or account balance is exhausted and unpaid meal charges are due. The notification procedures may include a repayment schedule, but the school or school district may not charge any interest or fees in connection with any meals charged;
- a communication procedure designed to support eligible families enrolling in the National Free and Reduced-Price Meal Program. Such communication procedures shall also include a process for determining eligibility when a student owes money for five or more meals, wherein the school or school district shall: (i) make every attempt to determine if a student is directly certified to be eligible for free meals; (ii) make at least two attempts, not including the application or instructions included in a school enrollment packet, to reach the student's parent or guardian and have the parent or guardian fill out a meal application; and (iii) require a school or school district to contact the parent or guardian to offer assistance with a meal application, determine if there are other issues within the household that have caused the child to have insufficient funds to purchase a school meal, and offer any other assistance that is appropriate;
- a clear explanation of procedures designed to decrease student distress or embarrassment, provided that no school or school district shall: (i) publicly identify or stigmatize a student who cannot pay for a meal or who owes a meal debt by any means including, but not limited to, requiring that a student wear a

- wristband or hand stamp; (ii) require a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals; (iii) require that a student throw away a meal after it has been served because of the student's inability to pay for the meal or because money is owed for earlier meals; (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 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 (v) discuss any outstanding meal debt in the presence of other students;
- a clear explanation of the procedure to handle unpaid meal charges, provided that nothing in the statute is intended to allow for the unlimited accrual of debt; and
  - procedures to enroll in the Free and Reduced-Price Lunch Program, provided that such procedures shall include that, at the beginning of each school year, a school or school district shall provide a free, printed meal application in every school enrollment packet, or if the school or school district chooses to use an electronic meal application, provide in-school enrollment packets an explanation of the electronic meal application process and instructions for how parents or guardians may request a paper application at no cost.

The statute requires such schools and school districts to submit their plan to the Commissioner by July 1, 2018, in conformance with the Commissioner's regulations. After submission of such plan, the school or school district shall adopt and post the plan on its website.

The Department's Child Nutrition Program Administration (CNPA) Office has been reviewing meal shaming policies submitted to the CNPA Office as of July 1, 2018 to ensure that they comply with federal and state requirements. In addition, by July 1, 2018 CNPA established guidance, training, and a template Meal Shaming Policy which is posted on the Department's website at [Meal Shaming Policy](http://www.cn.nysed.gov/content/revised-prohibition-against-meal-shaming) (<http://www.cn.nysed.gov/content/revised-prohibition-against-meal-shaming>) .

### **Related Regents Items**

None.

### **Recommendation**

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

VOTED: That a new §114.5 of the Regulations of the Commissioner of Education be added, as submitted, effective September 18, 2018, 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 implement the requirements of Education Law §908 as added by Section 1 of Part B of Chapter 56 of the Laws of 2018.

### **Timetable for Implementation**

If adopted at the September 2018 Regents meeting, the emergency rule will become effective September 18, 2018. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2019 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.

Because the emergency regulation will expire before the January 2019 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the December 2018 Regents meeting.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305 and 908 (as added by Section 1, Part B of Chapter 56 of the Laws of 2018).

A new section 114.5 is added to the Regulations of the Commissioner of Education, effective September 18, 2018, as follows:

§114.5 Prohibition against meal shaming.

(a) All public school districts, charter schools and non-public schools in the state that participate in the National School Lunch Program or School Breakfast Program in which there is a school at which 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., shall develop a plan to ensure that a pupil whose parent or guardian has unpaid school meal fees is not shamed or treated differently than a pupil whose parent or guardian does not have unpaid school meal fees. The plan shall be submitted to the Commissioner by July 1, 2018 in conformance with this section. After submission of such plan, the school or school district shall adopt and post the plan on its website.

(b) The plan shall include, but not be limited to, the following elements:

(1) a statement that the school or school district shall provide the student with the student's meal of choice for that school day of the available reimbursable meal choices for such school day, if the student requests one, unless the student's parent or guardian has specifically provided written permission to the school to withhold a meal, provided that the school or school district shall only be required to provide access to reimbursable meals, not a la carte items, adult meals, or other similar items;

(2) an explanation of how staff will be trained to ensure that the school or school district's procedures are carried out correctly and how the affected parents and guardians will be provided with assistance in establishing eligibility for free or reduced-price meals for their children;

(3) procedures requiring the school or school district to notify the student's parent or guardian that the student's meal card or account balance is exhausted and unpaid meal charges are due. The notification procedures may include a repayment schedule, but the school or school district may not charge any interest or fees in connection with any meals charged;

(4) a communication procedure designed to support eligible families enrolling in the National Free and Reduced Price Meal Program. Such communication procedures shall also include a process for determining eligibility when a student owes money for five or more meals, wherein the school or school district shall:

(i) make every attempt to determine if a student is directly certified to be eligible for free meals;

(ii) make at least two attempts, not including the application or instructions included in a school enrollment packet, to reach the student's parent or guardian and have the parent or guardian fill out a meal application; and

(iii) require a school or school district to contact the parent or guardian to offer assistance with a meal application, determine if there are other issues within the household that have caused the child to have insufficient funds to purchase a school meal and offer any other assistance that is appropriate;

(5) a clear explanation of procedures designed to decrease student distress or embarrassment, provided that, no school or school district shall:

(i) publicly identify or stigmatize a student who cannot pay for a meal or who owes a meal debt by any means including, but not limited to, requiring that a student wear a wristband or hand stamp;

(ii) require a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals;

(iii) require that a student throw away a meal after it has been served because of the student's inability to pay for the meal or because money is owed for earlier meals;

(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 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

(v) discuss any outstanding meal debt in the presence of other students;

(6) a clear explanation of the procedure to handle unpaid meal charges, provided that nothing in this section is intended to allow for the unlimited accrual of debt;

(7) procedures to enroll in the free and reduced price lunch program, provided that such procedures shall include that, at the beginning of each school year, a school or school district shall provide a free, printed meal application in every school enrollment packet, or if the school or school district chooses to use an electronic meal application, provide in school enrollment packets an explanation of the electronic meal application process and instructions for how parents or guardians may request a paper application at no cost;

(c) if a school or school district becomes aware that a student who has not submitted a meal application is eligible for free or reduced-fee meals, the school or school district shall complete and file an application for the student pursuant to title 7

CFR 245.6(d) (Code of Federal Regulations, 2018 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001: 2018— available at Office for Counsel, New York State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12231); and

(d) school liaisons required for homeless, foster, and migrant students shall coordinate with the nutrition department to make sure such students receive free school meals, in accordance with federal law.



**8 NYCRR §114.5**

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to add section 114.5 to the Commissioner's regulations is necessary to timely implement Section 1 of Part B of Chapter 56 of the Laws of 2018 which requires all public, charter and non-public schools that participate in the National School Lunch Program or School Breakfast Program in which there is a school at which 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., to develop a plan to ensure that a pupil whose parent or guardian has unpaid school meal fees is not shamed or treated differently than a pupil whose parent or guardian does not have unpaid school meal fees by July 1, 2018.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the January 2019 Regents meeting. Therefore, emergency action is necessary at the September 2018 Regents meeting for the preservation of the public health and general welfare in order to immediately conform the Commissioner's regulations to the requirements of Section 1 of Part B of Chapter 56 of the Laws of 2018, which requires all public, charter and non-public schools that participate in the National School Lunch Program or School Breakfast Program in which there is a school at which 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., to

develop a plan to ensure that a pupil whose parent or guardian has unpaid school meal fees is not shamed or treated differently than a pupil whose parent or guardian does not have unpaid school meal fees by July 1, 2018.