

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 305 and Sections 4 and 5 of Chapter 537 of the Laws of 1976, as amended by Chapter 56 of the Laws of 2018.

Section 114.1 of the Regulations of the Commissioner of Education is amended, effective, September 18, 2018, as follows:

Section 114.1. School breakfast program.

(a) Definitions. As used in this section:

(1)...

(2) Severe need school shall mean a school where 40 percent or more of the lunches served to students at the school in the second preceding school year were served free or at a reduced price[, and in which the reimbursement rate per meal established by the United States Secretary of Agriculture is insufficient to cover the costs of a school breakfast program].

(3)...

(4)...

(5)...

(6) Breakfast after the Bell shall mean providing students access to school breakfast after the instructional school day begins.

(b) Nutritional standards. A breakfast shall [contain, as a minimum, each of the following food components in the amounts indicated:

(1) One-half pint of fluid milk served as a beverage or on cereal, or used in part for each purpose.

(2) A one-half cup serving of fruit or full-strength fruit or vegetable juice.

(3) Two servings from one of the following components or one serving from each:

(i) Bread/bread alternate—one slice of whole grain or enriched bread; one serving of a biscuit, roll, muffin, etc., made of whole grain or enriched flour, or a 3/4 cup or one ounce serving of whole grain or enriched or fortified cereal.

(ii) Meat/meat alternate—one ounce of meat/poultry, fish or cheese, 1/2 large egg, two tbsp. of peanut, nut or seed butter, four tbsp. of cooked dry beans, or one ounce or more of the following: peanuts, soynuts, tree nuts, or seeds.

(4) Offer versus serve. Each school shall offer its students all four required food items as set forth under subdivision (b) of this section. Each school may allow students to refuse one food item from any component that the student does not intend to consume. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items shall not affect the charge for breakfast.] meet the minimum meal pattern requirements contained in 7 CFR 220.8 and 7 CFR 220.23 (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 12234 and such breakfast shall be served in conformance with the offer versus serve requirements contained in 7 CFR 220.8 (e) (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 12234).

(c) [Eligible participants. Any public school district, private nonprofit school or residential child care institution, as defined in 7 CFR 220.2 (Code of Federal Regulations, 1993 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1993—available at Office for Regional Field Services, Room 775, Education Building Annex, Albany, NY 12234), may apply. In the case of a public school district, approval may be granted for selected schools rather than an entire district.

(d) Free and/or reduced-price breakfasts. Children to whom free and/or reduced price breakfasts will be served are to be determined by local [sponsoring] agencies in conformity with their existing written policy statements on file in the official records of every sponsoring agency in conformance with [7 CFR 220.7(e) (Code of Federal Regulations, 1993 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1993—available at Office for Regional Field Services, Room 775, Education Building Annex, Albany, NY 12234).] 7 CFR Part 245 (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).

[(e) Application. Application will be made on forms required by the commissioner.

(f) Reporting requirements. Monthly reports shall be filed no later than the 10th day of each month. Severe need schools shall report financial data to support the need for the additional reimbursement on the December claim for the period July through December and the June claim for the period January through June.]

[(g)] (d) . . .

[(h)] (e) . . .

[(i)] (f)

[(j)] (g) . . .

(h) Breakfast after the Bell program.

(1) All participating public elementary or secondary schools in this state, not including a charter school authorized by article 56 of the education law, with at least seventy percent or more of its students eligible for free or reduced-price meals under the federal National School Lunch Program as determined by the Commissioner based upon data submitted by schools through the basic educational data system (BEDS) for the prior school year, shall be required to offer all students a school breakfast after the instructional day has begun.

(2) Each public school may determine the breakfast service delivery model that best suits its students. Service delivery models may include, but are not limited to, breakfast in the classroom, grab and go breakfast, and breakfast served in the cafeteria. Time spent by students consuming breakfast may be considered instructional time when students consume breakfast in the students' classrooms and instruction is being provided while students are consuming breakfast. In determining a service delivery model, schools shall consult with teachers, parents, students and members of the community.

(3) Schools subject to this requirement shall provide annual notice to students' parents and guardians that the school will be offering breakfast to all students after the instructional day has begun.

(4) Any school identified pursuant to this section may apply to the Commissioner for a waiver from establishing a school breakfast program after the instructional day has begun. Such waivers shall be annually submitted to the Commissioner in a format and manner prescribed by the Commissioner prior to July 1st of each school year. Such waiver may be granted by the Commissioner upon the school demonstrating:

(i) a lack of need for a School Breakfast Program after the instructional day has begun because of a successful existing breakfast program; or

(ii) that providing a school breakfast program after the instructional day has begun would cause economic hardship for the school.

