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ACTING SECRETARY OF EDUCATION

SUSANA MARTINEZ  
GOVERNOR

June 30, 2017

**MEMORANDUM**

**TO:** Superintendents  
Charter School Administrators  
Bureau of Indian Education Administrators  
Private and Parochial School Administrators

**FROM:** Michael Chavez, Deputy Director, Coordinated School Health Wellness Bureau

**RE:** **New Mexico's "Hunger-Free Students' Bill of Rights Act" and USDA's Unpaid Meal Charges: Local Meal Charge Policies effective July 1, 2017**

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Recently, the Honorable Governor Susana Martinez signed the "Hunger-Free Students' Bill of Rights" into law. This act was a result of legislation from the 2017 Legislative Session also known as Senate Bill 374. This is an anti-stigmatization and anti-discrimination law. The purpose of this memorandum is to provide you with an overview of the act and you are encouraged to read the act in its entirety which is attached to this memorandum and posted on the Public Education Department's (PED) Coordinated School Health and Wellness website at <http://ped.state.nm.us/nutrition/index.html>. This memorandum will provide you general highlights of the United States Department of Agriculture (USDA) SP 46-2016 *Unpaid Meal Charges: Local Meal Charge Policies* effective July 1, 2017 for specific requirements on the local policy requirements see <https://www.fns.usda.gov/sites/default/files/cn/SP46-2016os.pdf>.

States and school districts are required to have policies in place that address unpaid meal charges. The USDA does allow for a combination of state and school district policies. The "Hunger-Free Students' Bill of Rights" is considered to be the state's policy and school districts and schools (state charter schools, Bureau of Indian Education schools, private schools, and parochial schools) will need to develop their own local policies that comply with the act and USDA SP 46-2016. The policies must be provided to the PED during the administrative review. USDA SP 23-2017 *Unpaid Meal Charges: Guidance and Q and A* will provide you with

additional information <https://www.fns.usda.gov/school-meals/unpaid-meal-charges-guidance-and-q>. USDA has additional resources for schools and school districts to assist with policy development (<https://www.fns.usda.gov/school-meals/unpaid-meal-charges>) including the recently released *Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools* Guidance Manual (May 2017) located at <http://ped.state.nm.us/nutrition/index.html>. Policies for schools and school districts participating in the national school lunch program and school breakfast program as a standard provision programs must:

- Ensure that the policy is provided in writing to all households at the start of each school year and to households that transfer to the school during the school year.
- Provide the meal charge policy to all school or school food authority staff responsible for policy enforcement.

### Applicable Entities and Students

This act will go into effect on June 16, 2017 and does not relieve a parent or guardian of a non-eligible student of any debt incurred prior to implementation of the law.

This act applies to school districts and schools, including Bureau of Indian Education schools, private and parochial schools, participating in the national school lunch program or school breakfast program. Community Eligibility Program, Provision 2 and 3 programs providing breakfast and lunch to all students at no cost to the student or family are exempted, unless they change their program status. However, schools and school districts are required to continue to directly certify students and determine if students are categorically eligible for free meals.

### School Meals Eligibility Requirements for School Districts and Schools

- Standard Provision schools (those schools not participating in the Community Eligibility Program), must provide a printed meal application in every school enrollment packet or if the school chooses to use an electronic meal application, the school enrollment packet must include an explanation about the electronic meal application process and how parents or guardians may request a paper application at no cost to them.
- Meal applications and instructions must be in a language that parents and guardians understand. If a parent or guardian cannot read or understand a meal application, the school must offer assistance in completing the application.
- If a Standard Provision school becomes aware that a parent or guardian of a student who is eligible for free or reduced-price meals has not submitted a meal application, the school shall complete and file an application under 7 CFR § 245.6(d) as indicated below.  
*7 CFR § 245.6(d) Households that fail to apply. After the letter to parents and the applications have been disseminated, the local educational agency may determine, based on information available to it, that a child for whom an application has not been submitted meets the local educational agency's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the local educational agency shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a local educational agency has obtained a determination of individual family*

*income and family-size data from other sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the local educational agency's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the local educational agency to make eligibility determinations or certifications by categories or groups of children.*

- The public schools or public school district's McKinney-Vento liaison for students who are homeless shall work with the school's or school district's nutrition staff to make sure that students who are homeless are directly certified as categorically eligible to receive free meals without delay. In addition, those students must be appropriately identified and entered into the Student Teacher Accountability Reporting System (STARS).

### Provision of School Meals

Regardless of whether or not a student has money to pay for a school meal or owes the school or school district for previously charged meals, a school or school district must provide a student who requests a meal with a USDA reimbursable meal, unless the student's parent has specifically provided written permission to withhold the meal from the student. Students who have been served a meal cannot be required to throw the meal away because they did not have money to pay for it or because a student's parent or guardian owes the school or school district money from previous meals.

Students who are not eligible for free and reduced price meals may continue to request meals and may continue to accrue a balance on his or her account. Schools may charge students at the USDA's "paid" meal rate. The act does not authorize the withholding of transcripts for lack of payment for meals. Withholding of transcripts on such grounds for students with disabilities who require a summary of performance when exiting special education programs would violate §614(c)(5) of the Individuals with Disabilities Education Act. Further, such practice may additionally implicate the Family Educational Rights and Privacy Act, as well as other applicable laws.

### Enrolling Eligible Students in School Meals Programs

If a student owes money for five or more meals, the school shall:

- Check the state's direct certification list to determine if the student is categorically eligible for free school meals;
- Make at least two attempts to reach the student's parent or guardian to have the parent or guardian complete a school meal's application. (Note: including the school meal application or instructions in the school enrollment application does not constitute a parent or guardian contact); and
- Require a principal, assistant principal or counselor to contact the parent or guardian to offer assistance with a meal application.

### Prohibition of Stigmatization and Discrimination

A school shall not publicly identify or stigmatize a student who cannot pay for a meal or whose parent or guardian owes a meal debt. A student who cannot pay for a meal or whose parent or guardian owes a meal debt shall not be required to complete chores or other work to pay for meals.

A school or school district must communicate with a parent or guardian directly about the meal debt and not the student. However, a school can send home a letter to the parent or guardian regarding the meal debt via the student.

### Debt Collection and Uncollectable Debt

A school shall not require a parent or guardian to pay fees or costs associated with debt collection from agencies hired to collect meal debt. Court costs cannot be passed on to parents or guardians if they are incurred by a collection agency. Collection agencies can keep a portion of what is collected from the parent or guardian.

However, the definition of collection agency under Section 61-18A-2(C)(3) does not include any officer or employee of any political subdivision. Since school districts are local public bodies which are political subdivisions, collecting or attempting to collect debt is part of their official duties. In addition, attorneys-at-law are also excluded from the definition of collection agency and can collect debt on behalf of their clients.

Court costs incurred by either an employee of the district or an attorney working on behalf of the school district can be passed on to the parent or guardian. It is recommended that a parent or guardian receive written notice that the school or school district is considering legal action before any legal action is taken.

If you have any questions, please do not hesitate to call the CSHWB at (505) 827-3704.

cc: Paul "Hipolito" Aguilar, Deputy Secretary, Finance and Operations  
Matt Pahl, Director, Policy Division  
Denise Koscielniak, Director of Federal Programs  
Dean Hopper, Director, Coordinated School Health and Wellness Bureau  
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