

**§6602. School food service programs**

Public schools shall provide nonprofit school food service programs as follows. [PL 1981, c. 693, §§5, 8 (NEW).]

**1. Participation.** A public school shall participate in food service programs.

A. A public school shall participate in the National School Lunch Program in accordance with 7 Code of Federal Regulations, Part 210 (2007) and provide Type A meals as determined by the United States Department of Agriculture. [PL 2007, c. 539, Pt. IIII, §1 (NEW).]

B. A public school or a private school approved for tuition purposes, as defined in section 1, subsection 23, that enrolls at least 60% publicly funded students as determined by the previous year's October and April average enrollment and participates in the National School Lunch Program in accordance with 7 Code of Federal Regulations, Part 210 (2007) that serves breakfast shall provide a student who is eligible for free and reduced-price meals under paragraph A a meal that meets the requirements of the federal School Breakfast Program set forth in 7 Code of Federal Regulations, Part 220 (2007) at no cost to the student. The State shall provide to the public school or private school funding equal to the difference between the federal reimbursement for a free breakfast and the federal reimbursement for a reduced-price breakfast for each student eligible for a reduced-price breakfast and receiving breakfast. [PL 2021, c. 759, Pt. D, §1 (AMD).]

C. A school administrative unit shall participate in the federal summer food service program for children established in 42 United States Code, Section 1761 as required under this paragraph. The commissioner shall assist school administrative units subject to the requirements of this paragraph in developing a plan to participate in the federal summer food service program for children and in obtaining federal, state and private funds to pay for this program. Beginning with the 2013-2014 school year, a school administrative unit with at least one public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year shall participate in the federal summer food service program for children in accordance with 42 United States Code, Section 1761 during the following summer vacation, subject to the provisions of this paragraph.

A school administrative unit with a public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year shall operate a federal summer food service program in the area served by that public school during the following summer vacation if that public school operates a summer educational or recreational program. The school administrative unit is required to operate the federal summer food service program only on days that the public school operates the summer educational or recreational program. The school administrative unit may collaborate with a service institution to operate the federal summer food service program.

A school administrative unit with a public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year that does not operate a summer educational or recreational program shall collaborate with a service institution to operate a federal summer food service program if there is a service institution that provides food service to children in the summer in the area served by the public school.

Notwithstanding this paragraph, a school administrative unit that is required to operate a federal summer food service program may choose not to operate such a program if it determines by a vote of the governing body of the school administrative unit after notice and a public hearing that operating such a program would be financially or logistically impracticable.

For purposes of this paragraph, "service institution" means a public or private nonprofit school, a municipal or county government, a public or private nonprofit higher education institution or a private nonprofit summer camp. [PL 2013, c. 445, §1 (AMD).]

D. A public school or a private school approved for tuition purposes, as defined in section 1, subsection 23, that enrolls at least 60% publicly funded students as determined by the previous year's October and April average enrollment and participates in the National School Lunch Program in accordance with 7 Code of Federal Regulations, Part 210 (2007) that serves lunch shall provide a student who is eligible for free and reduced-price meals under paragraph A a meal that meets the requirements of the federal National School Lunch Program set forth in 7 Code of Federal Regulations, Part 210 (2019) at no cost to the student. The State shall provide to the public school or private school funding equal to the difference between the federal reimbursement for a free lunch and the federal reimbursement for a reduced-price lunch for each student eligible for a reduced-price lunch and receiving lunch. [PL 2021, c. 759, Pt. D, §2 (AMD).]

**REVISOR'S NOTE:** (Paragraph D as enacted by PL 2019, c. 428, §1 is REALLOCATED TO TITLE 20-A, SECTION 6602, SUBSECTION 1, PARAGRAPH E)

E. **(REALLOCATED FROM T. 20-A, §6602, sub-§1, ¶D)** A school administrative unit shall participate in the federal child and adult care food program established in 42 United States Code, Section 1766 as required under this paragraph. The commissioner shall assist school administrative units subject to the requirements of this paragraph in developing a plan to participate in the federal child and adult care food program to serve at-risk students who attend after-school programming and in obtaining federal, state and private funds to pay for this program. Beginning with the 2019-2020 school year, a school administrative unit with at least one public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year shall participate in the federal child and adult care food program in accordance with 42 United States Code, Section 1766 during the school year, subject to the provisions of this paragraph.

Notwithstanding other provisions of this paragraph, a school administrative unit that is required to operate a federal child and adult care food program may choose not to operate such a program if it determines by a vote of the governing body of the school administrative unit after notice and a public hearing that operating such a program would be financially or logistically impracticable. [PL 2019, c. 428, §1 (NEW); RR 2019, c. 1, Pt. A, §18 (RAL).]

F. Except as provided under paragraph G, a school administrative unit with a public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year shall operate an alternative breakfast delivery service that provides breakfast after the start of the school day and before any lunch period in the school begins for students at that public school. A school administrative unit with a public school in which at least 70% of students who are eligible for free and reduced-price meals under paragraph A participate in the breakfast program under paragraph B is exempt from the requirements of this paragraph.

The department shall publish annually, by July 1, 2020 and every July 1st thereafter, on its publicly accessible website, information regarding schools required to comply with and schools exempt from this paragraph in the preceding school year, including, but not limited to, the name of the school, any alternative breakfast delivery service operated, free and reduced-price breakfast participation rate and the financial impact of the program on the school nutrition budget. [PL 2019, c. 556, §1 (NEW).]

G. A school administrative unit subject to paragraph F may opt out of the alternative breakfast delivery service required under paragraph F if the following conditions are met:

- (1) The governing body of the school administrative unit holds a public hearing regarding the service. The governing body of the school administrative unit shall post public notice in each municipality in the unit of the time and location of the hearing at least 10 days before the hearing. The chair of the governing body of the school administrative unit shall conduct the hearing;

- (2) The school administrative unit submits to the governing body a detailed cost-benefit analysis and any other material that demonstrates that implementing the alternative breakfast delivery service would cause undue financial or logistical hardship;
- (3) The public and the governing body of the school administrative unit evaluate the cost-benefit analysis and any written material submitted for purposes of this paragraph;
- (4) Within 30 days of the public hearing under subparagraph (1), the governing body of the school administrative unit, by majority vote, determines that an alternative breakfast delivery service is not financially or logistically viable and that the school administrative unit will opt out; and
- (5) The governing body of the school administrative unit notifies the department of the vote to opt out under subparagraph (4).

Opting out under this paragraph must be renewed every 2 years. A school administrative unit with a public school shall notify the department of the intent to renew its decision to opt out under this paragraph before the end of the 2nd school year after the previous vote.

The department shall adopt rules to implement this paragraph including rules governing the application process and standards to address evaluation criteria based on need for the funding of alternative breakfast delivery services in school administrative units. The rules must include procedures to track health and academic outcomes through data collection and evaluation of students and schools that participate in alternative breakfast delivery services. Procedures to track health and academic outcomes must include tracking and ensuring that all public schools required to implement the alternative breakfast delivery service are demonstrating at least an annual 10 percentage point increase in their school breakfast participation rate. If the department determines that a participating public school has not increased its breakfast participation rate by at least 10 percentage points, the department shall provide written notification including improvement strategies to the public school. Upon receipt of written notification by the department, a public school that has not increased its breakfast participation rate by at least 10 percentage points shall submit a final plan within 30 days after the start of the next school year documenting new strategies to increase its breakfast participation rate. A public school that demonstrates a successful breakfast program, which means that at least 70% of the students who are eligible for free and reduced-price meals under paragraph A are participating in the breakfast program under paragraph B, is not required to meet the annual 10 percentage point breakfast participation rate increase as long as that public school maintains at least a 70% breakfast participation rate. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2019, c. 556, §2 (NEW).]

H. A public school or a private school approved for tuition purposes, as defined in section 1, subsection 23, that enrolls at least 60% publicly funded students as determined by the previous year's October and April average enrollment and participates in the National School Lunch Program in accordance with 7 Code of Federal Regulations, Part 210 (2007) that serves breakfast shall provide a student who is ineligible for free or reduced-price meals under paragraph A a meal that meets the requirements of the federal School Breakfast Program set forth in 7 Code of Federal Regulations, Part 220 (2007) at no cost to the student. The State shall provide to the public school or private school funding equal to the difference between the federal reimbursement for a free breakfast and the full price of the breakfast for each student ineligible for a free or reduced-price breakfast and receiving breakfast. [PL 2021, c. 759, Pt. D, §3 (AMD).]

I. A public school or a private school approved for tuition purposes, as defined in section 1, subsection 23, that enrolls at least 60% publicly funded students as determined by the previous year's October and April average enrollment and participates in the National School Lunch Program in accordance with 7 Code of Federal Regulations, Part 210 (2007) that serves lunch shall provide

a student who is ineligible for free or reduced-price meals under paragraph A a meal that meets the requirements of the federal National School Lunch Program set forth in 7 Code of Federal Regulations, Part 210 (2019) at no cost to the student. The State shall provide to the public school or private school funding equal to the difference between the federal reimbursement for a free lunch and the full price of the lunch for each student ineligible for a free or reduced-price lunch and receiving lunch. [PL 2021, c. 759, Pt. D, §4 (AMD).]

J. A school or school administrative unit shall request the parent or guardian of each student to complete a household income form provided by the department to determine a family's economic status to determine eligibility for state and federal food assistance programs under this subchapter. This requirement does not apply if the school or school administrative unit is able to obtain equivalent information through another means. [PL 2021, c. 398, Pt. OOOO, §5 (NEW).]

K. The Meals for Students Fund, referred to in this section as "the fund," is established as a nonlapsing, dedicated fund within the Department of Education to provide funds for the costs to the State to pay the difference between the federal reimbursement for a free breakfast or lunch and the full price of a breakfast or lunch for students that are ineligible for a free or reduced-price breakfast or lunch. The fund may receive money from any available state, federal or private source. [PL 2021, c. 398, Pt. OOOO, §6 (NEW).]

[PL 2021, c. 759, Pt. D, §§1-4 (AMD).]

**2. Exceptions.** The following are exempt from subsection 1, paragraphs A, B and F:

A. All secondary schools limited to students in grades 9, 10, 11 and 12; and [PL 1981, c. 693, §§5, 8 (NEW).]

B. A school administrative unit authorized by the commissioner under subsection 9 to postpone the establishment of the program. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 2019, c. 556, §3 (AMD).]

**3. Administration.** The school board shall administer and operate the food service programs. The school board:

A. Shall make all contracts to provide material, personnel and equipment necessary to carry out section 6601; and [PL 1981, c. 693, §§5, 8 (NEW).]

B. Shall hire the necessary employees to manage and operate their school food service programs. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 1981, c. 693, §§5, 8 (NEW).]

**4. Funds.** The following shall be used to pay for the administration and operation of food service programs:

A. State funds, gifts and appropriations for school food service programs, including state funds specifically for school administrative units with a public school in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year that operate an alternative breakfast delivery service that provides breakfast after the start of the school day pursuant to subsection 1, paragraph F; and [PL 2019, c. 556, §4 (AMD).]

B. Receipts from the sale of meals under food service programs. [PL 1981, c. 693, §§5, 8 (NEW).]

[PL 2019, c. 556, §4 (AMD).]

**5. Rules.** The commissioner shall adopt or amend, with the state board's approval, rules under this subchapter, including rules about the qualifications of food service programs' personnel and rules to implement the federal summer food service program for children under subsection 1, paragraph C. To the extent allowed under federal law, rules adopted under this subchapter must allow for the greatest amount of flexibility in meal times and packaging of meals to send home with students.

[PL 2023, c. 181, §1 (AMD).]

**6. Nutrition report.** The commissioner may assess the nutritional benefits of school lunch programs and school breakfast programs and report to the state board.

[PL 2007, c. 539, Pt. IIII, §2 (AMD).]

**7. Technical assistance.** The commissioner may give technical assistance to a school board concerning a food service program and may assist in training food service program personnel.

[PL 1981, c. 693, §§5, 8 (NEW).]

**8. Application for postponement.** An administrative unit, which had been authorized by the commissioner to postpone the establishment of a National School Lunch Program, may apply to the commissioner for a renewal of the postponement. The commissioner may grant the requested postponement provided that:

A. The school board has held a public hearing on its proposed application; and [PL 1981, c. 693, §§5, 8 (NEW).]

B. One of the following conditions is met:

(1) It has been documented to the commissioner's satisfaction that the administrative unit lacks space for the program and there is no appropriate alternative source of meals for the students;

(2) It is impossible for the administrative unit to contract for or to otherwise procure Type A meals for its students; or

(3) The lack of need for the program, as determined by the school board is documented to the commissioner's satisfaction and was evident at the public hearing. [PL 1983, c. 422, §18 (AMD).]

If the postponement is granted for the conditions in paragraph B, subparagraphs (1) and (2), it shall be for 3 years. If the postponement is granted for the condition in paragraph B, subparagraph (3), it shall be for 4 years.

[PL 1987, c. 395, Pt. A, §68 (AMD).]

**8-A. State board review of commissioner's decisions.** A school administrative unit or interested parties may request that the state board reconsider decisions made by the commissioner in subsection 8. The state board shall have the authority to overturn decisions made by the commissioner. In exercising this power, the state board is limited by this section.

[PL 1987, c. 395, Pt. A, §69 (NEW).]

**9. Annual review of postponement.** The commissioner shall annually review the conditions in the school administrative units which have been granted a postponement. On finding that the conditions in a unit have changed so that a postponement is no longer warranted, the commissioner may require that the unit establish a National School Lunch Program at the start of the next school year.

[PL 1981, c. 693, §§5, 8 (NEW).]

**10. Petition by 1% of residential unit.** Whenever petitioned by 1% of the residents of a unit, the commissioner shall call a public hearing on the postponement prior to the next annual review.

[PL 1981, c. 693, §§5, 8 (NEW).]

**11. The state may administer.** The state may administer the programs under the United States Child Nutrition Act, Public Law 89-642 in nonprofit, private schools, provided that the State shall not be required to appropriate or distribute state funds for meals served in private schools to those private schools.

[PL 1983, c. 276 (NEW).]

**12. Local Foods Fund.** The Local Foods Fund is established within the department. The fund is authorized to receive revenue from public and private sources. The fund must be held separate and

apart from all other money, funds and accounts. Any balance remaining in the fund at the end of the fiscal year must be carried forward to the next fiscal year. The fund must be used to match \$1 for every \$3 a school administrative unit pays for produce, value-added dairy, protein or processed foods purchased directly from a farmer, farmers' cooperative, local food hub, local food processor or food service distributor in the State, to a maximum state contribution of \$5,000 per school administrative unit in fiscal year 2021-22 and subsequent years or \$5,500 per school administrative unit if funding is received and the school administrative unit sends a food service employee to local foods training administered by the department under subsection 13. All foods purchased using the fund must be grown or produced in the State, with the exception of processed and value-added food products produced in the State, which must meet standards set by the department. The department shall create standards for allowable processed and value-added food products produced in the State and provide guidance to school administrative units regarding which of those products are allowable for reimbursement under this subsection and subsection 12-A. At the end of the fiscal year, the school administrative unit may provide the department with receipts documenting purchases pursuant to this subsection during that year. Reimbursement or partial reimbursement to school administrative units may only be made up to the amount available in the fund. Failure to reimburse does not constitute an obligation on behalf of the State to a school administrative unit. The department shall apply for federal grant funding to provide state contributions in excess of \$5,000 per school administrative unit in fiscal year 2021-22 and subsequent years pursuant to this subsection if applicable grant funding is available. The department may accept grant funding from hospitals and other sources to provide state contributions in excess of \$5,000 per school administrative unit in fiscal year 2021-22 and subsequent years pursuant to this subsection.

[PL 2023, c. 101, §1 (AMD).]

**12-A. Local Foods Fund reimbursement.** Reimbursement or partial reimbursement to school administrative units may be made only up to the amount appropriated to support the provisions of the Local Foods Fund as established in subsection 12. Funds appropriated for this purpose do not lapse but must be carried forward to the next fiscal year to be used for the same purpose.

[PL 2021, c. 426, §2 (NEW).]

**13. Local foods training.** The department shall administer a program to encourage and expand the use of local foods in school food service programs. As used in this subsection, unless the context otherwise indicates, "local food" means food produced or harvested by a Maine food producer as defined by Title 7, section 212, subsection 2, and "food hub" means any business or organization that locates and obtains food from local growers and fisheries and is able to handle the logistics of supplying and delivering local foods to schools. The program must:

A. Provide competitive grants for a training program to be conducted in up to 6 regions to provide training throughout the State without cost for local school food service programs to encourage and expand the use of local foods in school food service programs. The training program must emphasize practical training for food preparers, including creative and effective cooking skills using local fresh foods and local food procurement skills. The training program must also inform participants about practical supply chain solutions, including local food hubs and cooperatives within and across each region of the State; [PL 2015, c. 267, Pt. 000, §2 (NEW).]

B. Foster collaboration between school food service programs throughout the State; [PL 2015, c. 267, Pt. 000, §2 (NEW).]

C. Facilitate and encourage the use of local food hubs; and [PL 2015, c. 267, Pt. 000, §2 (NEW).]

D. Provide guidance to schools in the use of local food products and the nutritional attributes of local foods and provide strategies for encouraging maximum knowledge and acceptance of the

nutritional value of locally produced food by students and communities. [PL 2015, c. 267, Pt. OOO, §2 (NEW).]

The department shall apply for federal grant funding to implement this subsection. The department may implement this subsection only if the department receives funding covering the costs of the program under this subsection.

[PL 2015, c. 267, Pt. OOO, §2 (NEW).]

**14. Food service program personnel; position description.** The department shall develop and post a model position description for school food service program personnel on its publicly accessible website. The position description must meet the federal guidelines established under the Nutrition Education and Training Program and Team Nutrition initiative of the National School Lunch Program under 7 Code of Federal Regulations, Part 210.

[PL 2015, c. 267, Pt. OOO, §2 (NEW).]

**15. Food service recognition.** The department shall provide for the development of an annual competitive skill-oriented school food service recognition based on criteria developed by the department emphasizing creative and effective use of local food products to attract students to eat healthier meals and snacks and promoting community interest in good nutrition and other factors determined by the department.

[PL 2015, c. 267, Pt. OOO, §2 (NEW).]

#### SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1983, c. 276 (AMD). PL 1983, c. 422, §18 (AMD). PL 1985, c. 263 (AMD). PL 1987, c. 395, §§A68,A69 (AMD). PL 1989, c. 875, §G1 (AMD). PL 1991, c. 9, §II3 (AMD). PL 2001, c. 447, §1 (AMD). PL 2007, c. 539, Pt. IIII, §§1, 2 (AMD). PL 2011, c. 379, §§4-6 (AMD). PL 2013, c. 445, §1 (AMD). PL 2015, c. 267, Pt. OOO, §§1, 2 (AMD). PL 2019, c. 343, Pt. NNNN, §1 (AMD). PL 2019, c. 428, §1 (AMD). PL 2019, c. 511, §1 (AMD). PL 2019, c. 511, §2 (AFF). RR 2019, c. 1, Pt. A, §18 (COR). PL 2019, c. 556, §§1-4 (AMD). PL 2021, c. 398, Pt. OOOO, §§1-6 (AMD). PL 2021, c. 426, §§1, 2 (AMD). PL 2021, c. 759, Pt. D, §§1-4 (AMD). PL 2023, c. 101, §1 (AMD). PL 2023, c. 181, §1 (AMD).

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