



# DEPARTMENT OF EDUCATION


Townsend Building  
401 Federal Street Suite 2  
Dover, Delaware 19901-3639  
<http://education.delaware.gov>

Mark A. Holodick, Ed.D.  
Secretary of Education  
(302) 735-4000  
(302) 739-4654 - fax

July 18, 2022

## MEMORANDUM

**TO:** Directors of Residential Child Care Institutions  
Other Appropriate Personnel

**FROM:** Aimee F. Beam, MS, RD, LDN   
Education Associate, Nutrition Programs

**RE:** **SY 2022 - 2023 Operational Memo #4**  
**Paid Lunch Equity and Carryover Eligibility 12(l) Waiver Approval**

The United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) has granted approval for the Delaware Department of Education's (DDOE) 12(l) waiver request for Paid Lunch Equity (PLE) and Carryover Eligibility Flexibilities for School Year (SY) 2022-2023. Through this memo, our office is providing details regarding the waiver flexibilities approved for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP).

**Additional Flexibilities (NSLP/SBP):** The following waivers provide needed flexibility and allow State and local Program operators to overcome challenges resulting from COVID-19. FNS expects Program operators to use the flexibilities for only the duration and extent that they are needed.

### *Paid Lunch Equity (NSLP):*

Under Program requirements, School Food Authorities (SFAs) must meet PLE requirements as outlined in Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented in NSLP regulations at 7 CFR 210.14(e). Currently through Section 752, Division A of the Consolidated Appropriations Act of 2022 (P.L. 117-103) enacted on March 15, 2022, Congress provided that only SFAs that had a negative balance in the nonprofit school food service account as of December 31, 2021, shall be required to establish prices for paid lunches according to the PLE provision.

In meeting PLE requirements, SFAs may need to increase paid lunch prices or offset any difference with non-Federal funds. However, FNS recognizes that during this transition year, requiring SFAs to increase their paid meal prices could place a burden upon families who have not paid for meals over the last two school years.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives paid lunch equity requirements found at Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented at 7 CFR 210.14(e). This waiver pertains to school lunch prices for SY 2022-2023.

*Carryover Eligibility (NSLP and SBP):*

At 42 U.S.C. 1758(b)(9)(C) and 7 CFR 245.6(c)(1), the statute and regulations indicate that eligibility for free or reduced-price meals remains in effect for the entire school year and for a certain number of days into the subsequent school year. Under Program regulations at 7 CFR 245.6(c)(2), eligibility from the preceding year must be used to determine eligibility for the first 30 operating days of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned statutory and regulatory requirements and allows schools that operated under the SSO in SY 2021-2022 and do not have eligibility determinations from SY 2021-2022 to use the most recent free and reduced-price determinations since SY 2019-2020 during the 30-day carryover period of SY 2022-2023. This waiver is effective for the carryover period during SY 2022-2023.

To opt into any of these waivers or if you have additional questions regarding these waivers, please contact Melissa Sayers at [melissa.sayers@doe.k12.de.us](mailto:melissa.sayers@doe.k12.de.us) or Brittany Coleman at [brittany.coleman@doe.k12.de.us](mailto:brittany.coleman@doe.k12.de.us).

Attachment: DE 2022-2023 Additional Waivers Signed Final.pdf

cc: Nutrition Team



Food and  
Nutrition  
Service

July 14, 2022

Braddock  
Metro Center

Dr. Susan Keene Haberstroh, MPA, Ed.D.

1320  
Braddock  
Place  
Alexandria  
VA 22314

Delaware Department of Education  
Collette Education Resource Center  
35 Commerce Way, Suite 1  
Dover, DE 19904

Dear Dr. Haberstroh:

This letter is in response to the Delaware Department of Education's (DDOE) July 11, 2022 request to provide operational flexibilities in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) for school year (SY) 2022-2023. Program operators continue to respond to and recover from the COVID-19 pandemic, including managing challenges related to increased administrative burden and staffing issues, which are demanding significant Program operator resources. In order to support access to nutritious meals while State agencies continue to mitigate the administrative, fiscal, and operational challenges exacerbated by COVID-19, FNS recognizes that continued operating flexibilities may be necessary.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the Program to the Federal Government. FNS finds that DDOE's waiver request satisfies these statutory requirements.

Specifically, DDOE requested a statewide waiver of the requirements explained below.

**Additional Flexibilities (NSLP/SBP):**

The following waivers provide needed flexibility and allow State and local Program operators to overcome challenges resulting from COVID-19. FNS expects Program operators will only use these flexibilities for the duration and extent that they are needed.

**Waiver 25: Paid Lunch Equity (NSLP)**

Under Program requirements, SFAs must meet Paid Lunch Equity (PLE) requirements as outlined in Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented in NSLP regulations at 7 CFR 210.14(e). Currently through Section 752, Division A of the Consolidated Appropriations Act of 2022 (P.L. 117-103) enacted on March 15, 2022, Congress provided that only SFAs that had a negative balance in the nonprofit school food service account as of December 31, 2021, shall be required to establish prices for paid lunches according to the PLE provision.

In meeting PLE requirements, SFAs may need to increase paid lunch prices or offset any difference with non-Federal funds. However, FNS recognizes that during this transition year requiring SFAs to increase their paid meal prices could place a burden upon families who have not paid for meals over the last two school years.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives paid lunch equity requirements found at Section 12(p) of the NSLA, 42 U.S.C. 1760(p) and implemented at 7 CFR 210.14(e). This waiver pertains to school lunch prices for SY 2022-2023.

*Waiver 26: Carryover Eligibility (NSLP and SBP):* At 42 U.S.C. 1758(b)(9)(C) and 7 CFR 245.6(c)(1), the statute and regulations indicate that eligibility for free or reduced price meals remains in effect for the entire school year and for a certain number of days into the subsequent school year. Under Program regulations at 7 CFR 245.6(c)(2), eligibility from the preceding year must be used to determine eligibility for the first 30 operating days of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned statutory and regulatory requirements and allows schools that operated under the SSO in SY 2021-2022 and do not have eligibility determinations from SY 2021-2022 to use the most recent free and reduced price determinations since SY 2019-2020 during the 30-day carryover period of SY 2022-2023. This waiver is effective for the carryover period during SY 2022-2023.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves DDOE's waiver request for the provisions mentioned above. Effective dates of each waiver are listed in the associated sections above. The State agency should inform Program operators of the flexibilities provided by this waiver as quickly as possible. Should DDOE determine any of these waivers are no longer necessary prior to the expiration date of any waivers above, please notify the Mid-Atlantic Regional Office (MARO).

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by October 30, 2023, DDOE must provide to the FNS MARO a report quantifying the impact of the waivers included in this approval as described below.

State agencies may submit one report for all waivers included in this approval. The report must include the following:

- A description of how the waivers impacted meal service operations at participating sites;

- A description of whether the waivers resulted in improved services to children;
- A description of how the waivers reduced the quantity of paperwork necessary to administer the Program; and
- The number of program operators that used the waivers.

FNS appreciates DDOE's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS MARO.

Sincerely,

Tina Namian  
Director  
School Meals Policy Division

Electronic Copy: Roberta Hodsdon; Joanna Jackson