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Kate Brown, Governor



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Date: August 31, 2017

To: School districts sponsoring the National School Lunch and School Breakfast Programs

From: School Nutrition Programs (SNP) team, Child Nutrition Programs section

Re: House Bill (HB) 3454 (2017)

Introduction

Commonly referred to as a ban on “lunch shaming” by the media, HB 3454 is more than just an anti-stigmatization law; it also establishes a statewide policy regarding unpaid meal charges which includes procedures school districts must follow when communicating with a student and the student’s parents or guardians about amounts owed for meals taken by the student. As a statewide policy, it supersedes any contrary provision of an Oregon school district’s local meal charge policy.

In this memo we’ll provide you with an overview of HB 3454 and share suggestions for how you can ensure your school district’s meal charge policy complies with it.

What is “lunch shaming”?

“Lunch shaming” is a term that describes a variety of practices which identify or stigmatize a student who cannot afford a meal or has accrued unpaid meal charges. They can include, but are not limited to, requiring that the student perform chores or work in exchange for a meal, providing the student with a less desirable alternate meal (commonly referred to as the “cheese sandwich of shame”), marking the student’s hand with a marker or stamp, affixing a band to the student’s wrist, or, if the student has already gone through the lunch line and received a meal, taking the meal away from the student at the point-of-service and throwing it into the trash.

Applicability and Effective Date

Who does HB 3454 apply to?

HB 3454 is directed towards school districts which “make[] meals accessible to students at school sites under the...National School Lunch Program or School Breakfast Program...” That means it applies to those school districts which have sites participating in either the National School Lunch Program (NSLP) or School Breakfast Program (SBP), or both.

The bill does not apply to private schools, the Oregon School for the Deaf, or schools operated by the Bureau of Indian Education which participate in the NSLP or SBP.

We discuss whether HB 3454 applies to a charter school in the next section, titled “[Does HB 3454 apply to charter schools?](#)”.

We discuss whether HB 3454 applies to districts which contract with a food service management company (FSMC) in another section, titled “[Does HB 3454 apply to school districts which contract with a food service management company?](#)”.

Does HB 3454 apply to charter schools?

It can, depending on who is operating the charter school’s meal program.

If a school district claims a charter school as a serving site participating in either the NSLP or SBP, or both, on the district’s meal program operation agreement with the Oregon Department of Education (ODE), then the



district is operating the charter school's meal program and HB 3454 would apply because the district is making the meals available at that school site.

However, if a charter school participating in either the NSLP or SBP, or both, has its own meal program operation agreement with the ODE, or operates its own independent meal program, HB 3454 would not apply to that charter school.

Does HB 3454 apply to school districts which contract with a food service management company?

Yes, it does. All Oregon school districts which participate in either the NSLP or SBP, or both, must comply with HB 3454 – regardless of whether they contract with a food service management company (FSMC) to operate all or a portion of their nonprofit food service programs. Because FSMCs act on behalf of the contracting district, a district would be liable for any violations of HB 3454 committed by its FSMC.

Districts should notify their FSMCs about the statewide unpaid meal charge policy and procedures established by HB 3454, as well as any related changes districts make to their own local meal charge policies. ODE recommends that districts which contract with a FSMC have their legal counsel review those contracts to ensure they address, if applicable, the district's meal charge policy and the requirements of HB 3454. If they don't, districts should consult with their legal counsel to determine their options and review ways to mitigate the possibility of violating HB 3454.

When does HB 3454 take effect?

Governor Kate Brown signed [HB 3454](#) on August 8, 2017. HB 3454 has an effective date of July 1, 2017, and will first apply to the 2017-18 school year.

When must a district revise its meal charge policy to conform with HB 3454?

A school district operating either the NSLP or SBP, or both, must have a written meal charge policy in place by no later than July 1, 2017. See [U.S. Department of Agriculture \(USDA\) Food and Nutrition Service \(FNS\) Memo # 46-2016, Unpaid Meal Charges: Local Meal Charge Policies \(July 8, 2016\)](#). That is also the effective date of HB 3454.

School districts should review their local meal charge policies and then, if necessary, revise them to conform with HB 3454. Districts' local meal charge policies should conform with HB 3454 by no later than January 1, 2018.

Providing Meals to Students, Regardless of Their Ability to Pay

What does HB 3454 require?

School districts participating in NSLP or SBP, or both, must provide a student who requests a meal with a USDA reimbursable meal, regardless of whether the student owes money for previous meals or has money to pay for a meal.

Can a district withhold a meal from a student who requests one?

There is only one situation in which a school district participating in the NSLP or SBP, or both, may, pursuant to HB 3454, withhold a meal from a student: when the student's parent or guardian has provided the district with written permission to do so.



Can a district develop a low-cost reimbursable meal as an alternative specifically for students who cannot pay for a meal, or who owe money for previous meals?

No, that's prohibited by HB 3454 because serving such an alternative meal would stigmatize and could publicly identify students who cannot pay for a meal, or owe money for previous meals.

The USDA's regulations and policies encourage offering students more than one reimbursable meal option each day, but they also establish restrictions on alternate meals for students who cannot pay, or owe money for previous meals. For example, schools participating in the USDA's Offer versus Serve (OvS) provision must offer students five food components for the NSLP and four for the SBP. Alternate meals which don't allow students to select all food components of their meals are not reimbursable. For more information, see the FNS publication [Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools](#) (May 10, 2017).

Schools – generally elementary schools – not participating in the OvS provision can provide a simple, low-cost reimbursable meal as one of at least two mealtime options that are available to all students every day. Districts and schools cannot restrict the daily low-cost reimbursable meal option to those students who cannot pay for a meal, or owe money for previous meals.

Must districts provide à la carte items at no charge to a student who requests an à la carte item, regardless of whether the student can pay or owes for previous items?

HB 3454 does not address à la carte items; it only requires that districts participating in the NSLP or SBP, or both, provide USDA reimbursable meals. À la carte items are not reimbursable, so a district would not be required to provide an à la carte item to a student at no charge if the student requests one.

Whether a district will provide à la carte items at no charge to the students who request them should be addressed by the district as part of its local meal charge policy.

Must districts provide a second meal at no charge to a student who has already received a reimbursable meal?

HB 3454 only requires that districts participating in the NSLP or SBP, or both, provide students with a USDA reimbursable meal at no charge if the student requests one. Second meals are not reimbursable, so a district would not be required to provide a second meal at no charge to a student who requests one.

Whether a district will provide second meals at no charge to the students who request them should be addressed by the district as part of its local meal charge policy.

Can a district require that a student work in exchange for meals?

School districts may not require that a student who cannot pay for a meal, or who owes money for a meal, do chores or work as payment for the student's meals, with one exception: if all other students do similar chores or work for the district, regardless of whether they owe money for meals, then the district may require that a student who cannot pay for a meal, or who owes money for a meal, do chores or work in exchange for the student's meals.



Direct Communications About Unpaid Meals to Parents and Guardians, Not Students

Can staff on the lunch line or at the point-of-service inform students whether they owe money for unpaid meal charges when the students take their meals?

No, district staff on the lunch line or at the point-of-service may not inform students that they owe money for either the meal they just received, or for previous meals. Doing so, especially if other students or staff are nearby, could publicly identify the student as having an unpaid meal charge. Also, HB 3454 requires that districts direct their communications about any amounts students owe for their meals to the students' parents or guardians, and not the students themselves.

If students request their meal account balances at the point-of-service, can staff inform them if they have a zero or negative balance?

The ODE recommends that staff in the lunchroom or at the point-of-service direct students who have questions about their meal account balances to staff in the front office. That avoids the potential for publically identifying the student as being unable to pay for a meal, or owing money for previous unpaid meals.

Office staff can answer students' questions about their meal account balances in a more discreet setting.

Can staff tell a student to remind the student's parents or guardians that they should pay any outstanding unpaid meal charges?

No, they may not. HB 3454 establishes a statewide policy of directing communications about unpaid meal charges to a student's parents or guardians, rather than the student.

Can staff send a letter about unpaid meal charges home with a student?

Yes, so long as the letter is addressed to the student's parents or guardians.

Accrued Unpaid Meal Charges

What must a district do when a student owes money for five or more meals?

HB 3454 lays out three actions a district must take once a student owes money for five or more meals. They are:

- 1) The district must determine if the student has been identified as being categorically eligible for free meals and can be certified without application through the direct certification process. The following are categorically eligible for free meals:
 - a) Students who meet the definition of homeless, runaway, or migrant children;
 - b) Foster children under the legal responsibility of a foster care agency or court; and
 - c) Children from households that receive benefits under the:
 - i) Supplemental Nutrition Assistance Program (SNAP);
 - ii) Temporary Assistance for Needy Families (TANF); or
 - iii) Food Distribution Program on Indian Reservations (FDIR).
- 2) If the student is not categorically eligible for free meals, then district staff must make at least two attempts to contact the student's parents or guardians to have them fill out a Free and Reduced-price School Meals Application. This will help determine if the student is eligible for free or reduced-price



meals under the USDA's Income Eligibility Guidelines. Under the Guidelines, students from households with incomes:

- a) At or below 130 percent of the Federal poverty level are eligible for free meals.
 - b) Between 130 and 185 percent of the poverty level are eligible for reduced-price meals.
- 3) If the student is not categorically eligible for free meals, and the student's parents or guardians have not submitted a Free and Reduced-price School Meals Application, then district staff must make reasonable efforts to contact the student's parents or guardians and offer their assistance completing the application.

Is there additional information available about the direct certification process?

Yes, there is. The ODE hosted a direct certification training webinar on August 28, 2017, and a repeat will be held on September 19. [You can register for the webinar via this hyperlink.](#)

If you cannot attend either webinar, the ODE will upload a copy to [the SNP Training webpage](#) during the fall of 2017.

Does your district need help identifying categorically eligible students?

The ODE recommends that school and district staff coordinate with each other and with staff at the ODE, their local education service district, and local tribes to ensure that students who are categorically eligible for free meals are identified and receive those meals. For example, have the homeless student liaisons at the district and school level coordinate with nutrition services to ensure that homeless students are both receiving free meals at school and appropriately coded in any reporting systems.

May districts accept Free and Reduced-price School Meals Applications after the school year starts?

Yes, a student's parent or guardian may submit an application for free or reduced-price meals at any point during the school year. The ODE recommends that districts make the application available year-round and routinely remind all students' parents and guardians that they may submit the application any time there is a change in their households' financial circumstances.

Can a district hire a collection agency to collect money owing for meals?

Yes, a district can hire a collection agency to collect any unpaid meal charges, with one significant caveat: HB 3454 prohibits districts from requiring that parents or guardians of a student who accrued unpaid meal charges pay any fees or costs from the district's collection agency.

Because of that prohibition on assessing collection fees and costs against parents and guardians, districts should consider whether the benefits of hiring a collection agency to collect unpaid meal charges outweigh the costs incurred to achieve those collections. Additionally, districts which bundle unpaid fees and other charges before handing them over to a collections agency must separate any unpaid meal charges from those other delinquent debts. Doing so will help prevent the district and collection agency from violating HB 3454 by charging parents or guardians collection fees or costs, a portion of which is attributable to unpaid meal charges.



How long can a district attempt to collect unpaid meal charges?

That is a matter for each district's own local meal charge policy. Generally speaking, USDA policy provides that unpaid meal charges may be carried over at the end of the school year; however, a district could continue its collection efforts as long as the district considers the unpaid charges collectible.

Once a district determines that those unpaid charges are uncollectible, then they become "bad debt." A district may not use funds from its nonprofit food service account to collect bad debt. See [2 CFR § 200.426](#).

Determining a District's Compliance with HB 3454

When will the ODE assess a district's compliance with HB 3454?

Staff from the ODE's SNP team will review districts' unpaid meal charge policies to ensure compliance with USDA regulations and policies, as well as HB 3454, during the annual Administrative Review process.

Closing

Who do I contact if I have additional questions about HB 3454?

Matthew Barber is the SNP team's contact for questions concerning HB 3454. You can reach him at either matt.barber@ode.state.or.us or (503) 947-5939.

And don't forget your district's legal counsel. That person can review the district's meal charge policy and then, if necessary, help you revise it so that it conforms with HB 3454.

Who do I contact if I have questions about the federal meal charge policy requirement?

The SNP team member who has been assigned to your school district can help you with any questions you may have regarding the USDA's meal charge policy requirement. If you don't recall which team member has been assigned to work with your district, you can find that information on the Assigned Child Nutrition Specialist Sponsor List – which is available on [our SNP webpage](#).

The USDA also has an [Unpaid Meal Charges webpage](#) with policy guidance and resources regarding unpaid meal charges and developing a local meal charge policy.