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

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

Re: ORS 327.537 (2017), formerly House Bill (HB) 3454 (2017)

Introduction

Commonly referred to as a ban on “lunch shaming” by the media, [ORS 327.537](#) (more commonly known by its bill number, [HB 3454](#)) is more than just an anti-stigmatization law; it also established 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 [ORS 327.537](#) 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 [ORS 327.537](#) apply to?

[ORS 327.537](#) 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 [statute](#) 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 [ORS 327.537](#) applies to charter schools in the next section, titled “Does [ORS 327.537](#) 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 [ORS 327.537](#) apply to school districts which contract with a food service management company?”.

Does [ORS 327.537](#) 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 [ORS 327.537](#) 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, [ORS 327.537](#) would not apply to that charter school.

Does [ORS 327.537](#) 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 [ORS 327.537](#) – regardless of whether they contract with a 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 [ORS 327.537](#) committed by its FSMC.

Districts should notify their FSMCs about the statewide unpaid meal charge policy and procedures established by [ORS 327.537](#), 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 [ORS 327.537](#). If they don't, districts should consult with their legal counsel to determine their options and review ways to mitigate the possibility of violating [ORS 327.537](#).

When did ORS 327.537 take effect?

[ORS 327.537](#) took effect on July 1, 2017, and first applied to the 2017-18 school year.

When was the deadline for revising local meal charge policies to conform with ORS 327.537?

The deadline for revising local meal charge policies so they conformed to [ORS 327.537](#) was January 1, 2018. Schools and school districts operating either the NSLP or SBP, or both, must have a written meal charge policy in place. See [U.S. Department of Agriculture \(USDA\) Food and Nutrition Service \(FNS\) Memo # 46-2016, Unpaid Meal Charges: Local Meal Charge Policies \(July 8, 2016\)](#).

Providing Meals to Students, Regardless of Their Ability to Pay

What does [ORS 327.537](#) 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 [ORS 327.537](#), 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 inform parents and guardians that they may request that staff withhold meals from their students?

Yes, district staff may inform parents and guardians that they may permit district staff to withhold a meal from a parent or guardian's student. Parents or guardians must submit that permission in writing; communicating it via a phone call or in-person conversation is insufficient.

Can a district develop for parents or guardians a template letter permitting district staff to withhold meals from their students?

Yes, district staff may assist parents and guardians by developing a template permission letter that parents and guardians may use if they choose to permit district staff to withhold meals from their students.

If a student's parent or guardian has provided the district with written permission to withhold meals from the student, and district staff subsequently and mistakenly provide a meal to that student, can staff take the meal away from the student?

Yes, a district could take a meal away from a student who inadvertently received a meal, even though the student's parent or guardian had provided written permission to withhold meals from that student. [ORS 327.537](#) prohibits taking a meal away from a student only if the student cannot pay for that meal, or because the student owes for previous meals. The bill does not prohibit taking away a meal **district staff** mistakenly served to a student whose parent or guardian provided the district with written permission to withhold meals from the student.

However, before taking a meal away from the student whose parent or guardian provided written permission to withhold meals, consider whether taking the meal away from the student could potentially stigmatize the student, or possibly identify – whether correctly or not – the student as either unable to pay for the meal received, or owing for previous meals. [ORS 327.537](#) prohibits both.

District staff must be respectful and considerate of the students from whom they are taking a meal, and aware of how the act of taking a meal from a student will be viewed and interpreted by other students in the serving line. It should go without saying that students are children and younger children especially may not fully appreciate or understand why staff are taking away their meal. When taking a meal back from a student whose parent or guardian provided written permission to withhold meals, consider reminding the student that the student's parent or guardian has instructed the district that they don't want their student taking a meal at school, or wants the student to eat the meal the student brought from home, if the student brought one.

If staff decide that they can take the meal back without stigmatizing or identifying the student, and the school has a sharing or "no thank you" table, take the meal back to the kitchen area. Once in the kitchen, and out of students' sight, separate those components of the meal that can be placed on the sharing table from those that can't. Staff can dispose of the meal components that aren't eligible for the sharing table in the kitchen, and then place the components that are on the sharing table. For more information about sharing tables, see USDA FNS memo # SP 41-2016, [The Use of Share Tables in Child Nutrition Programs \(June 22, 2016\)](#).

Alternatively, if the school does not have a sharing table, it's preferable to let the student take the meal, rather than have staff take it back and throw it away. Doing so will help reduce food waste. Program sponsors

can find more information about food waste and suggestions for combating it on [the USDA's food waste webpage](#).

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 [ORS 327.537](#) 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?

[ORS 327.537](#) does not address à la carte items; it 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. 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?

[ORS 327.537](#) does not address second meals; it 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 to a student at no charge if the student 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?

School districts must direct "communications about amounts owed by a student for meals to the student's parent or guardian," not the student. [ORS 327.537\(4\)\(a\)](#). District staff on the lunch line or at the point-of-service may not inform students that they owe money either for 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.

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.

Alternatively, staff in the lunchroom or at the point-of-service could discretely hand students a printout or receipt showing the student's meal account balance.

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. [ORS 327.537](#) 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 staff address the letter to the student's parents or guardians.

Are there best practices for communicating with parents or guardians about their students' unpaid meal debt?

Yes, there are. Many districts have found a degree of success at getting parents or guardians to pay their students' unpaid meal debts by:

- Employing multiple methods of communication (e.g., phone calls, emails, text messages, or letters sent home in a student's backpack) to reinforce the same message: "Please pay your student's unpaid meal debt."
- Communicating with parents or guardians on a regular and frequent basis so they don't forget about and can't ignore their students' unpaid meal debt.
- Encouraging an "all hands on deck" approach in which staff from many district offices are involved in communicating with and reminding parents and guardians that they must pay their students' unpaid meal debts.

Some districts have shared that there is a risk parents or guardians may opt out of receiving certain communications, or ignore them, rather than face repeated reminders of their students' unpaid meal debt. To avoid scaring or putting off parents and guardians, communications about unpaid meal debt should not just remind parents and guardians that they owe money, but also include information about the availability of payment plans or outside assistance, as well as links to the [Confidential Family Application for Free and Reduced Meals](#).

What to Do When Students Accrue Unpaid Meal Charges

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

[ORS 327.537\(2\)](#) 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 [Confidential Family Application for Free and Reduced Meals](#). 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 additional information available about the direct certification process?

Yes, there is. [The ODE's SNP Eligibility webpage](#) has information about direct certification for schools and districts.

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.

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: [ORS 327.537](#) 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 that 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 [ORS 327.537](#) 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](#).

Can a district treat unpaid meal debt as it does other forms of student debt?

Yes, a district can treat unpaid meal debt as it does other forms of student debt. (However, see "[Can a district hire a collection agency to collect money owing for meals?](#)" for an important caveat.) If district policy provides that students with debts, such as unpaid extracurricular or lab fees, can't attend certain extracurricular activities or events, such as prom or field trips, then the district can refuse to admit students with unpaid meal debts to those activities or events. What a district may not do is stigmatize students with unpaid meal debt by treating them differently than students with other types of debt. For example, if only students with unpaid meal debts are refused admission to the winter formal, while students with other types of debts can still attend, the district has stigmatized those students for having unpaid meal debt. That is prohibited by [ORS 327.537](#).

Can staff refuse to sell an à la carte item to a student with unpaid meal debt?

Districts may prohibit students from charging nonprogram foods, such as mochas from the student bistro or an extra sandwich from the cafeteria, to their meal accounts. Districts can also implement a "cash only" policy for nonprogram food purchases, or prohibit students from buying nonprogram foods if they don't satisfy certain attendance, academic, or behavioral requirements (e.g., students can't buy cookies from the student store if they've been late to class too many times, or aren't maintaining a 2.0 GPA, or are on in-school suspension). But the district cannot refuse to sell nonprogram food items to a student who has the money to pay for them solely because that student has unpaid meal debt. That would violate [ORS 327.537's](#) prohibition against stigmatizing students with unpaid meal debt.

If a student with unpaid meal debt wants to buy something from the student store, can staff ask that student if the student would rather apply that money towards their unpaid meal debt?

Doing so, especially if other students are nearby, could publicly identify the student as having an unpaid meal charge, which is prohibited by [ORS 327.537](#). Additionally, the law requires that districts direct their communications about any amounts students owe for their meals to the students' parents or guardians, not the students themselves. Staff can instead complete the sale and then ask if the student wants their change, or would rather apply it to their meal account. Staff can also work with the student's parents or guardians to resolve the student's unpaid meal debt.

The Confidential Family Application for Free and Reduced Meals is Still Necessary for Determining Benefits

Does [ORS 327.537](#) eliminate the need for parents and guardians to complete the Confidential Family Application for Free and Reduced Meals?

No, it does not. [ORS 327.537](#) is not a substitute for the [Confidential Family Application for Free and Reduced Meals](#); it prohibits stigmatizing students, or publicly identifying students as unable to pay for a meal, or owing for previous meals. Parents and guardians must still fill out the application to qualify for state and federal meal benefits.

[ORS 327.537](#) does not prohibit districts from attempting to collect payment for the meals students receive at no charge as a result of the bill. This means that students who would otherwise qualify for free or reduced-price meals if their parents or guardians had filled out the application could be charged for the meals they receive – even if those meals were initially provided at no charge under [ORS 327.537](#).

For this reason, districts must make a strong effort to educate students' parents and guardians about the importance of submitting the [Confidential Family Application for Free and Reduced Meals](#). Doing so is the only way to ensure that those children who qualify for free and reduced-price meals receive those state and federal benefits. It's also the only way to ensure that parents and guardians aren't charged for the meals their children could otherwise receive at no cost to them.

Another reason submitting the [Confidential Family Application for Free and Reduced Meals](#) is so important is that it's the only way to ensure that students who qualify for meals provided during the school year through the Child and Adult Care Food Program (CACFP), as well as meals provided during the summer months through the Summer Food Service Program (SFSP), receive those meals. A parent or guardian's failure to submit the [Confidential Family Application for Free and Reduced Meals](#) could result in their children losing their CACFP and SFSP meal benefits.

May districts accept the Confidential Family Application for Free and Reduced Meals after the school year starts?

Yes, a student's parent or guardian may submit the [Confidential Family Application for Free and Reduced 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.

May school or district staff complete the Confidential Family Application for Free and Reduced Meals for students who take a meal at no charge?

Staff may complete the [Confidential Family Application for Free and Reduced Meals](#) on behalf of a student, but some caveats apply because the authority [7 CFR § 245.6\(d\)](#) gives school and district staff to complete the [Confidential Family Application for Free and Reduced Meals](#) “is intended for limited use in individual situations...” USDA FNS, [Eligibility Manual for School Meals: Determining and Verifying Eligibility, pg. 42 \(July 2017\)](#).

First, staff may only complete the application on a student’s behalf if the student’s parent or guardian has not previously submitted one. It is the parent or guardian’s failure to apply which triggers [7 CFR § 245.6\(d\)](#), allowing staff to submit the application. If the student’s parent or guardian submitted an application in August and didn’t qualify for benefits, then staff may not subsequently submit an application on the student’s behalf in December – regardless of whether staff learned of a change in the student’s financial status which would indicate that the student is now eligible for meal benefits.

Second, even if a student’s parent or guardian did not submit the [Confidential Family Application for Free and Reduced Meals](#), staff may only submit an application on the student’s behalf after they have determined, “based on information available to [them], that [the student] for whom an application has not been submitted meets the...eligibility criteria for free and reduced price meals or for free milk.” [7 CFR § 245.6\(d\)](#). Making this determination requires more than simply observing that the student is taking meals at no charge, as provided under [ORS 327.537](#), because taking a meal at no charge does not, by itself, give staff any knowledge of the student’s eligibility for meal benefits. There are several reasons why a student might take a lunch that are unrelated to the student’s financial status. Perhaps the student forgot their lunch at home that day, or maybe the student didn’t want the lunch they brought from home.

Staff “must complete the application based on the best household size and eligibility information known to [them],” and identify how they know a student is eligible for meal benefits on the application they are completing for that student. USDA FNS, [Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation’s Schools, pg. 30 \(May 2017\)](#). Knowledge of a student’s eligibility for meal benefits can come from a staff member’s personal knowledge of the student’s circumstances, or from information students, other staff members, or community members with knowledge of the student’s circumstances have shared with the staff member.

Third, the decision to complete a [Confidential Family Application for Free and Reduced Meals](#) on a student’s behalf must be made on an individual basis. If staff completed an application for each student who took a meal at no charge, that would be seen as making an eligibility determination on a group, rather than an individual, basis. And [7 CFR § 245.6\(d\)](#) specifically prohibits school and district staff from “mak[ing] eligibility determinations or certifications by categories or groups of children.”

Will parents or guardians receive notification that school or district staff completed the Confidential Family Application for Free and Reduced Meals on their student’s behalf?

No, parents or guardians will not receive notification that school or district staff completed a [Confidential Family Application for Free and Reduced Meals](#) on behalf of their student. However, they will be notified if the school or district’s certifying official subsequently determines that the student “has been certified to

receive free or reduced price benefits.” USDA FNS, [Eligibility Manual for School Meals: Determining and Verifying Eligibility, pg. 42 \(July 2017\)](#).

Will parents or guardians receive notification if a certifying official determines that their student is certified for free or reduced-price meals based upon an application submitted by school or district staff?

Yes, school or district staff “must notify the household that their child has been certified to receive free or reduced price benefits.” USDA FNS, [Eligibility Manual for School Meals: Determining and Verifying Eligibility, pg. 42 \(July 2017\)](#); see also [7 CFR § 245.6\(d\)](#).

After receiving notification that their student has been certified for benefits, some parents and guardians will, for a variety of reasons, “notify the [school or district] that they do not want free or reduced price benefits...” [7 CFR § 245.6\(c\)\(iii\)](#). If a school or district receives notification from a parent or guardian that they are declining free or reduced price benefits for their student, then the school or district must discontinue them “as soon as possible.” [Id.](#) The school or district must maintain a record of a parent or guardian’s decision to decline benefits for a period of four years – the year in which the notice was provided and the three years immediately following it. [7 CFR § 245.6\(e\)](#).

Determining a District’s Compliance with [ORS 327.537](#)

When will the ODE assess a district’s compliance with [ORS 327.537](#)?

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 [ORS 327.537](#), during the annual Administrative Review process.

Closing

Who do I contact if I have additional questions about [ORS 327.537](#)?

Matthew Barber is the SNP team’s contact for questions concerning [ORS 327.537](#). 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 [ORS 327.537](#).

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 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.