
NMAC 6.12.16: Healthy Universal School Meals

Agency: Public Education Department

Rulemaking Action: New Rule

Date Proposed: April 23, 2024

Proposed Effective Date: July 1, 2024

Summary

The New Mexico Public Education Department (PED) proposed a [new rule](#) to direct implementation of the Healthy Universal School Meals program as authorized by [Laws 2023, Chapter 30, Senate Bill 4](#). The proposed rule establishes the certification criteria of meal quality improvement requirements for school food authorities (SFAs) to receive state reimbursement for the provision of school meals to all enrolled students.

The meal quality improvement requirements as established by this rule cover a broad range of actions to support school meal programs. The meal quality improvement certification criteria offer two levels of compliance for SFAs:

- Level 1:

Adherence to level 1 of compliance is demonstrated by the following:

(1) No less than 50 percent of reimbursable national school lunch program and school breakfast program meals, including the entrée and grains, prepared each week, shall be freshly prepared meals at an onsite kitchen prepared by the school food authority, the central kitchen, a vendor, or a food service management company.

(2) School food authorities shall offer at least three items on a weekly basis from New Mexico farms, ranches, or food businesses.

(3) School food authorities shall also adhere to one of the following performance measures:

(a) No less than fifty percent of schools in a school food authority shall grow food on campus with seasonal incorporation of produced food into breakfast, lunch, or snack programs. If a single school is its own school food authority, that school shall grow food on campus with seasonal incorporation of produced food into breakfast, lunch, or snack programs.

(b) No less than fifty percent of schools in a school food authority shall have cafeterias with print or digital resources promoting locally sourced nutrition education. If a single school is its own school food authority, that school shall have at least one cafeteria with print or digital resources promoting locally sourced nutrition education.

(4) School food authorities shall also adhere to the below performance measures:

(a) All students, kindergarten through grade five, shall have up to 20 minutes of seat time to eat lunch, not including time spent walking to or from class, waiting in line, or going to recess. Schools shall provide sufficient lunch periods that are long enough to give all students adequate time to eat.

(b) Share tables shall be provided where food service staff, students, and parents may return unopened allowable food daily at most exit points in the cafeteria.

(c) Schools shall have a system for monthly donation of unused food to students or community-based organizations.

(5) School food authorities shall also adhere to at least one of the following performance measures:

(a) All students, kindergarten through grade five, shall be offered recess before lunch at least two days during the school week.

(b) At least fifty percent of schools in a school food authority shall engage in plate waste studies on a quarterly basis. If a single school is its own school food authority, that school shall engage in plate waste studies on a quarterly basis.

(c) At least fifty percent of schools in a school food authority shall have a composting program in place. If a single school is its own school food authority, that school shall have a composting program in place.

(6) On at least a quarterly basis, school food authorities shall actively engage students and families in food and nutrition services through formal processes to incorporate their feedback within food and nutrition services.

(7) School food authorities shall also adhere to two of the following performance measures.

(a) Empaneling an advisory council that shall consider student and family input and shall meet with school food authority administration on a quarterly basis.

(b) Inviting students and families to provide formal feedback to school leadership on meal quality on a quarterly basis.

(c) Inviting students and families to provide formal feedback to school food authorities on menu design, including the addition of new items, on a quarterly basis.

(d) Schools shall conduct taste tests for both breakfast and lunch menu items on a quarterly basis.

(8) School food authorities shall also adhere to two of the following performance measures.

(a) Schools shall incorporate food and nutrition education into teacher and school staff professional development training on a quarterly basis.

(b) Schools shall monthly include culinary or nutrition education during the school day or during out-of-school time at all elementary and secondary schools.

(c) Schools shall monthly ensure that middle and high school students engage in food preparation for breakfast, lunch, or snacks.

(d) All schools shall have access to nutrition education activities on a quarterly basis.

- Level 2:

Adherence to level 2 of compliance is demonstrated by the following:

(1) Seventy five percent or greater of reimbursable national school lunch program meals and school breakfast program meals, including the entrée and grains, prepared each week, shall be freshly prepared meals at an onsite kitchen prepared by the school food authority, the central kitchen, vendor, or food service management company.

(2) All school food authorities shall adhere to the below requirements:

(a) All schools shall offer more than four items weekly from New Mexico farms, ranches, or food businesses.

(b) No less than fifty percent of schools shall grow food on campus with monthly incorporation of produced food into breakfast, lunch, or snack programs. If a single school is its own school food authority, that school shall grow food on campus with monthly incorporation of produced food into breakfast, lunch, or snack programs.

(c) No less than fifty percent of schools shall have a comprehensive, schoolwide educational program that provides nutrition education to students. If a single school is its own school food authority, that school shall have a comprehensive, schoolwide educational program that provides nutrition education to students.

(3) All school food authorities shall adhere to the below requirements:

(a) All students, kindergarten through grade five, shall have up to 20 minutes of seat time to eat lunch, not including time spent walking to or from class or waiting in line. Schools shall provide sufficient lunch periods that are long enough to give all students adequate time to eat.

(b) Share tables shall be provided where food service staff, students, and parents may return unopened, allowable food daily at all exit points in the cafeteria.

(c) Schools shall have a system for weekly or daily donation of unused food to students or community-based organizations.

Starting July 1, 2025, SFAs found to not be in compliance with the requirements of this rule by July 1 of each year will be deemed ineligible for the maximum level of state reimbursement (difference between total cost of all meals at federal free rate and total cost of all meals at federal paid rate). Instead, these SFAs will receive funding equal to their total number of eligible meals served during that budget year multiplied by only the federal paid reimbursement rate.

Substantive Issues

A majority of the requirements in the proposed rule align with the provisions of Laws 2023, Chapter 30, Senate Bill 4, though several elements of the rule depart from the language of the statute.

The following analysis highlights the instances in which language in the proposed rule either departs from statute or is ambiguous in its meaning.

Scope of Rule. Statutory language directs that public school districts and charters schools operating the national school lunch and breakfast programs **shall** establish a program to offer free, high-quality meals to all students. In turn, Bureau of Indian Education schools, tribally controlled schools, and private schools operating the meal programs **may** establish a universal meals program.

In the sections on scope (NMAC 6.12.16.2) and program requirements (NMAC 6.12.16.8), the proposed language is imprecise.

NMAC 6.12.16.2

- The language of NMAC 6.12.16.2 as written does not exempt Bureau of Indian Education, tribally controlled, and private schools that operate the national school breakfast and lunch programs but **opt not to offer free meals** to all students.

NMAC 6.12.16.8

- In the sections of NMAC 6.12.16.8, the language does make note of the **option** (not requirement) for national school meal program participant private, Bureau of Indian Education, and tribally controlled schools to establish universal meal programs.
- However, this part of the rule states that “**all** public schools shall establish a healthy universal school meals program.” Contrary to statute, this language does not specify that these requirements only apply to public schools that operate the national school lunch and breakfast programs. In practice, all public schools in New Mexico operate the national school lunch and breakfast programs, but the language of the proposed rule does not account for the possibility of a school deciding not to participate (as was the case prior to the adoption of Laws 2023, Chapter 30).

Freshly Prepared Meals. Both the statute and the proposed rule require that meals be freshly prepared. However, neither source provides a definition as to what constitutes a “freshly prepared” meal for the purpose of PED oversight.

Seat Time and Recess Requirements. NMAC 6.12.16.10.B(4)(a) and NMAC 6.12.16.C(3)(a) call for at least 50 percent of schools in an SFA to provide students in kindergarten through fifth grade **up to 20 minutes** of seat time to eat lunch. The statute makes no mention of required seat time for any school meal. For schools that already provide **more than 20 minutes** of seat time for lunch, this requirement could stand to reduce the amount of time K-5 students have to eat.

Additionally, NMAC 6.12.16.10.B(5)(a) allows SFAs to meet one Level One performance measure by establishing a schedule where students in kindergarten through fifth grade are offered recess **before** lunch at least two days a week. Statute does not include any provision relating to the scheduling of recess time.

On-Campus Growing of Food. In both NMAC 6.12.16.10.B(3)(a) and NMAC 6.12.16.10.C(2)(b), school food authorities are directed to ensure no less than 50 percent of their schools grow food on campus and incorporate the produced food into school meals monthly. There is no language in statute that makes campus-grown food a component of the Healthy Universal School Meals program, nor does the section authorizing PED’s promulgation of rules for the program make mention of such activities.

Nutrition Education. NMAC 6.12.16.10.B(3)(b) and NMAC 6.12.16.10.C(2)(c) outline requirements for SFAs to implement nutrition education in no less than 50 percent of schools.

In NMAC 6.12.16.10.B(3)(b), the rule directs SFAs to have cafeterias with print or digital resources promoting “locally sourced nutrition education.” The language is ambiguous as to whether the educational materials need to be **from** local sources or that the materials should emphasize the importance of **locally sourced** food.

NMAC 6.12.16.10.C(2)(c) requires the creation of a “comprehensive, schoolwide educational program” covering nutrition. The proposed rule does not provide any guidance on the specific curriculum to be taught in this program.

Membership on School Food Authority Advisory Council. NMAC 6.12.16.10.B(7) lists four performance measures for SFAs, two of which must be followed to comply with the rule. NMAC 6.12.16.10.B(7)(a) gives SFAs the option of creating an advisory council to review and consider student and family input. The proposed rule does not clarify specific membership requirements for an advisory council.

School-based Composting Program. Under NMAC 6.12.16.10.B(5)(c), as one of three options under NMAC 6.12.16.10.B(5), SFAs may partially meet the proposed rule’s Level 1 requirements if at least 50 percent of their schools have a composting program in place. There is no language in the statute that regarding composting programs.

How to Submit Public Comment:

Public comment may be submitted in writing via email or mail to the following addresses:

- Email:
 - Rule.Feedback@ped.nm.gov
- Mail:
 - Policy and Legislative Affairs Division
New Mexico Public Education Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

Written comments must be received by 5:00 PM MDT on Wednesday, May 29, 2024.

On May 29, 2024, a public hearing on the proposed rule will be held from 1:30 to 2:30 PM MDT in Mabry Hall, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501.