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Senate Bill 250 and Senate Bill 265

Nutrition Program Sponsor Guidance for CA Senate Bill 265.

Nutrition Services Division Management Bulletin

Purpose: Policy, Beneficial Information

To: School Nutrition Program Sponsors

Number: SNP-22-2019

Attention: Superintendents, Chief Business Officers, and Food Services Directors

Date: October 2019

Reference: Senate Bill 250 (Hertzberg) and U.S. Department of Agriculture Food and Nutrition Service Policy Memorandum SP 46-2016

Supersedes: Management Bulletin SNP 05-2018: Senate Bill 250: USDA Meal Charge Policy

Subject: Senate Bill 265: Pupil Meals: Child Hunger Prevention and Fair Treatment Act of 2017 and USDA Meal Charge Policy Requirements

This management bulletin (MB) provides updated guidance related to Senate Bills 250 and 265 (Hertzberg) Pupil Meals: Child Hunger Prevention and Fair Treatment Act of 2017 (Chapter 785, Statutes of 2019) and to the U.S. Department of Agriculture (USDA) unpaid meal charge policies. SB 265 was signed into law on October 12, 2019, and went into effect immediately due to the urgency statute in the act. SB 265 supersedes SB 250 and can be found on the California Legislative Information web page at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB265. The USDA Policy Memorandum SP 46-2016: Unpaid Meal Charges: Local Meal Charge Policies can be found on the USDA Food and Nutrition Service Unpaid Meal Charges web page at <https://www.fns.usda.gov/school-meals/unpaid-meal-charges>.

Purpose of the law

SB 250 Pupil Meals: Child Hunger Prevention and Fair Treatment Act of 2017 (also known as the No Shaming Act), became law on January 1, 2018, and was superseded by SB 265 which became law effective October 12, 2019. The purpose of the law is to prevent the shaming of children who do not have the money to pay for a meal or whose family has unpaid meal debt. All public school districts, county offices of education (COE), and charter schools that participate in the National School Lunch Program (NSLP) or School Breakfast Program (SBP) must comply with this law.

What does this law mean?

SB 265 amended Section 49557.5(b)(1) of the California *Education Code (EC)* stating that a pupil whose parent or guardian has unpaid meal charges is not to be shamed, treated differently, or **denied a reimbursable meal of the pupils choice because of the fact that the pupil's parent or guardian has unpaid meal fees, and shall ensure that the pupil is not shamed or treated differently from other pupils**. Schools participating in the Community Eligibility Provision or Provision 2 are not affected by this law, as all students receive their meals at no cost; therefore, there is no unpaid meal debt.

A child who has unpaid meal charges, is to be served a reimbursable meal of their choice throughout the school year regardless of the level of debt incurred by the household.

LEAs with a current meal charge policy that allows for alternate meals or debt limits, are out of compliance with the law as of October 12, 2019, and must immediately revise their local meal charge policies and provide written communication to households.

EC 49557.5(b)(2) emphasizes that all LEAs participating in the NSLP and/or SBP must have an approved federal meal charge policy in place, per the USDA, as of July 1, 2017, and that policy must be communicated in writing to families at the start of the school year and families transferring to the school midyear.

EC 49557.5(c) prohibits school personnel from denying or delaying a school meal as a way to punish a child for any reason. Therefore, school personnel and volunteers cannot deny or delay students from receiving meals based on **any** disciplinary action.

EC 49557.5(d) states that the LEA **may not** take any action directed at a pupil to collect unpaid meal debt, but must direct these efforts to the parent or guardian of the child. The section states that an LEA cannot use a debt collector, as defined in Section 803 of the federal Consumer Credit Protection Act (Title 15, *U.S. Code* [15 *U.S.C.*], Section 1692a), which is stricter than USDA guidance.

EC 49557.5(e) requires the LEA to conduct a direct certification match and encourages the household to submit a household application no later than 10 days after the pupil's school meal account has reached a negative balance. While USDA regulations require LEAs to conduct direct certification at least three times per year, the California Department of Education (CDE) highly recommends conducting the direct certification match on a monthly basis. All LEAs affected by this law have access to the direct certification results (CalFresh, CalWORKs, and Medi-Cal [free and reduced-price]) on the CDE's California Longitudinal Pupil Achievement Data System (CALPADS).

Before sending the notification to parents or guardians regarding debt balances, the LEA must attempt to directly certify the student for free or reduced-price (F/RP) meals. If the LEA cannot directly certify the student—or find their names on a homeless, migrant, runaway, foster, or Head Start list from the liaison, or the foster list available on CALPADS—then the LEA shall provide the household with a paper or electronic application. Please note that the LEA cannot mandate that a household complete and return the application.

The new law has an urgency statute is effective on October 12, 2019.

Federal and State Requirements

Federal Meal Charge Policy Requirements

A meal charge policy is still required by federal regulations, and you must also consider the legal requirements of the California law when developing the policy.

- **Reimbursable meals for children qualifying for free meals:** Children who qualify for free meals may never be denied a meal, even if they have accrued a negative balance from other purchases. Note: School food authorities (SFA) may prohibit a child from charging a la carte meals or "extra items" if the account is negative, but may not deny the child a reimbursable meal.
- **Local meal charge policies:** Effective July 1, 2017, all SFAs must have a policy in place for children who are participating at the reduced-price and paid rate, but either do not have the money in their account or on hand to cover the cost of the meal at the time of service. Such a policy ensures that school food service professionals, school administrators, families, and students have a shared understanding of expectations in these situations.
- **Policy communication:** SFAs must ensure the policy is provided in writing to all families at the start of each school year and to families transferring to the school midyear. SFAs must provide the unpaid meal charge policy to all school or district-level staff responsible for policy enforcement. This includes school food service professionals responsible for collecting payment of meals at the point of service, staff involved in notifying families of low or negative balances, and staff involved in enforcing any other aspect of the policy. School social workers, school nurses, liaisons for homeless, migrant, and/or runaway students, and other staff members assisting children in need should also be informed of the policy.
- **Delinquent meal charge debt:** Also known as unrecovered debt, delinquent debt refers to meal charges that have not been paid by the student(s) or parent(s) during the fiscal year. SFAs must include policies regarding the collection of delinquent or unrecovered debt in the written meal charge policy and communicate the policy to households. After an SFA has taken all reasonable steps to recover the unrecovered or delinquent debt, and if the SFA is unsuccessful in collecting the debt by the end of the fiscal year, then the CDE considers the debt as bad debt.
- **Recordkeeping:** Once delinquent debts are converted to bad debts, records relating to those charges must be in accordance with the record retention requirements outlined in Title 7, *Code of Federal Regulations* (7 *CFR*), sections 210.9(b)(17) and 210.15(b).
- **Bad debt must be covered by nonfederal funding sources**

(e.g., Parent-Teachers Association or district general fund) to repay the nonprofit school food service account for the total amount: Title 2, *Code of Federal Regulations*, Section 200.426: Bad debts are an unallowable cost to federal programs. According to federal guidance, unpaid meal charges are designated as unrecovered or delinquent debt until it is deemed uncollectable, at which time it becomes bad debt. Additionally, the district bad debt and collection policy must be included as part of the LEA's Unpaid Meal Charge Policy requirement per the Policy Communication section above. The state requirements regarding federal bad debt are different; please review the Bad Debt section under the State Meal Charge Policy Requirements below.

- **Federal meal charge policy must be available for the CDE and USDA review:** All LEAs participating in the NSLP and/or SBP must have a meal charge policy in place per the USDA, as of July 1, 2017, and that policy must be communicated in writing to families at the start of the school year and to families transferring to the school midyear.

State Meal Charge Policy Requirements

- **LEAs affected by the state law:** This law applies to schools, school districts, COEs, and charter schools participating in the federal NSLP and/or SBP.

- **Students shall not be shamed:** A pupil whose parent or guardian has unpaid meal charges shall not be shamed, treated differently, or served a meal that differs from what a pupil receives whose parent or guardian does not have unpaid meal fees. Pupils must be able to select a reimbursable meal of choice regardless of unpaid meal status.
- **LEAs may not take action against students for unpaid meal debt or use a debt collector:** The LEA may not take any action directed at a pupil to collect unpaid meal debt, but must direct these efforts to the parent or guardian of the child. The LEA cannot use a debt collector, as defined in Section 803 of the federal Consumer Credit Protection Act (15 U.S.C. Section 1692a), which conflicts with USDA guidance.
- **Meals cannot be delayed or denied to students:** School personnel and volunteers cannot deny or delay students from receiving meals based on any disciplinary action. For example, a teacher cannot hold students back from going to lunch as a discipline action.
- **LEAs are required to conduct direct certification matches and encourage households to submit household meal applications:** The law requires LEAs to review direct certification match lists and encourage the household to submit a household application no later than 10 days after the pupil's school meal account has reached a negative balance. Before sending the notification, the LEA must attempt to directly certify the student for F/RP meals. If the LEA cannot directly certify the student—or find their names on a homeless, migrant, runaway, foster, or Head Start list from the liaison, or the foster list available on CALPADS—then the LEA shall provide the household with a paper or electronic application. **Please note that the LEA cannot mandate that a household complete and return the meal application.**
- **Reimburse school meal fees paid during the time the students would have been determined eligible:** To the extent of federal regulations, LEAs shall reimburse school meal fees paid by parents or guardians during the time that the student would have been determined eligible for F/RP meals. For example, if the parent or guardian submitted a household meal application on September 1, and the LEA informed the household that the student qualifies for F/RP meals on September 8, the LEA would return any meal fees collected between September 1 and September 8.
- **Bad debt:** Is defined as unrecovered or delinquent debt that, after all reasonable steps have been taken, has not been recovered by or before the end of the fiscal year in which the debt was incurred. Although USDA Policy Memo SP 47-2016 states that unpaid meal charges may be carried over to the next fiscal year, the policy memo also states that, "SFAs [are] to rely on state and local policies for such determinations [emphasis added]."

Federal and State Guidance related to Unpaid Meal Charges

All SFAs operating the NSLP and/or SBP must have a written unpaid meal charge policy in place by July 1, 2017, and must immediately comply with the California law. The SFA must communicate the policy to all families with children within the SFA and all school or district-level staff members responsible for the policy's enforcement.

On July 8, 2016, the USDA distributed Policy Memo 46-2016: Unpaid Meal Charges: Local Meal Charge Policies on the USDA Food and Nutrition Service Unpaid Meal Charges web page at <https://www.fns.usda.gov/school-meals/unpaid-meal-charges>.

In April 2017, the CDE provided additional guidance in MB SNP-03-2017: Unpaid Meal Charges and Excess Account Balances on the CDE School Nutrition Programs MB web page at <https://www.cde.ca.gov/ls/nu/sn/mb.asp>.

The USDA developed the guidance manual Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools on the USDA Food and Nutrition Service web page at <https://www.fns.usda.gov/school-meals/2017-edition-overcoming-unpaid-meal-challenge-proven-strategies-our-nations-schools>. This guidance offers many best practice tips.

Additional Resources

The resources below are helpful tools for LEAs to be successful in addressing unpaid meal charges.

CDE Web Page: Senate Bill 250 and 265 Frequently Asked Questions:

(<https://www.cde.ca.gov/ls/nu/sn/senatebill250faq.asp#accordionfaq>)

USDA Policy Memo: SP-57-2016: Unpaid Meal Charges: Guidance and Q&As (<https://www.fns.usda.gov/school-meals/unpaid-meal-charges-guidance-and-q>)

USDA Policy Memo: SP 46-2016: Unpaid Meal Charges: Local Meal Charge Policies (<https://www.fns.usda.gov/unpaid-meal-charges-local-meal-charge-policies>)

USDA Policy Memo: SP 43-2016: Ensuring Access to Free and Reduced Price School Meals for Low-Income Students (<https://www.fns.usda.gov/ensuring-access-free-and-reduced-price-school-meals-low-income-students>)

USDA Policy Memo: SP 17-2014: Discretionary Elimination of Reduced Price Charges in the School Meal Programs (<https://www.fns.usda.gov/discretionary-elimination-reduced-price-charges-school-meal-programs>)

Guidance: USDA Overcoming the Unpaid Meal Challenge: Proven Strategies from Our Nation's Schools (<https://www.fns.usda.gov/school-meals/2017-edition-overcoming-unpaid-meal-challenge-proven-strategies-our-nations-schools>)

Webinar: Unpaid Meal Charges: Local Charge Policy Requirement (<https://www.fns.usda.gov/school-meals/unpaid-meal-charges-local-charge-policy-requirement>)

Web page: Provisions: Claiming Alternatives (<https://www.cde.ca.gov/ls/nu/sn/provisions.asp>)

Web page: Community Eligibility Provision (<https://www.cde.ca.gov/ls/nu/sn/cep.asp>)

Course Catalog: The following online courses are currently being updated to reflect the amended Child Hunger Prevention and Fair Treatment Act of 2017, and are located in the CDE Child Nutrition Programs Course Catalog at <https://www.cde.ca.gov/ls/nu/ed/cnpscourcecatalog.asp>. The Local Meal Charge Policy, SB 250, and SB 265 courses are:

- Part 1–Local Meal Charge Policy (Course 068)
- Part 2–Child Hunger Prevention and Fair Treatment Act of 2017 (Course 137)
- Part 3–Resources and Best Practices (Course 321)
- Part 4–Guidelines to Developing a Meal Charge Policy (Course 605)

Contact Information

If you have any questions regarding this subject, please contact the Resource Management Unit by email at snpcafefundquestions@cde.ca.gov.

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Questions: Nutrition Services Division | 800-952-5609

Last Reviewed: Monday, October 21, 2019

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