

**CHAPTER 36****CHILD NUTRITION PROGRAMS****Authority**

N.J.S.A. 18A:33-4 and 5 and 18A:33-9 et seq.

**Source and Effective Date**

R.2004 d.289, effective June 30, 2004.  
See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

**Chapter Expiration Date**

Chapter 36, Child Nutrition Programs, expires on June 30, 2009.

**Chapter Historical Note**

Chapter 36, Child Nutrition Programs, was originally codified in Title 6 as Chapter 79, Child Nutrition Programs. Chapter 79 was adopted as R.1975 d.161, effective June 12, 1975. See: 7 N.J.R. 201(c), 7 N.J.R. 307(a).

Chapter 79, Child Nutrition Programs, was recodified as N.J.A.C. 6:20-9 by R.1992 d.202, effective May 4, 1992. See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:20-9 was readopted by R.1997 d.9, effective December 10, 1996. See: 28 N.J.R. 4297(a), 29 N.J.R. 124(a).

Pursuant to Reorganization Plan No. 002-1997, N.J.A.C. 6:20-9 was recodified as N.J.A.C. 2:36, effective February 10, 1998. See: 30 N.J.R. 870(b).

Chapter 36, Child Nutrition Programs, expired on December 10, 1998.

Chapter 36, Child Nutrition Programs, was adopted as new rules by R.1999 d.62, effective March 1, 1999. See: 30 N.J.R. 4093(a), 31 N.J.R. 637(b).

Chapter 36, Child Nutrition Programs, was readopted as R.2004 d.289, effective June 30, 2004. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. GENERAL PROVISIONS****2:36-1.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Agreement for School Nutrition Programs” means the agreement entered into between the Department and each sponsor pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245.

“Application” means the notifying letter and application form issued to all parents of students enrolled in school to determine eligibility for child nutrition programs.

“Bureau” means the Bureau of Child Nutrition Programs, which administers the Federal child nutrition program in the State of New Jersey.

“Child Nutrition Programs” means the National School Lunch Program, School Breakfast Program, After School Snack Program, Special Milk and Split-Session Kindergarten Milk Programs, Child Care Food Programs and the Summer Food Service Program.

“Department” means the State Department of Agriculture.

“Department’s Consolidated Enrollment Report: Current School Enrollment Data” means a comprehensive report which districts are required to submit each October to the State Department of Education to provide information on school enrollment data, including the number of students eligible for free and reduced price meal benefits.

“Division” means the Division of Food and Nutrition which is the division within the State Department of Agriculture that contains the Bureau of Child Nutrition and the Bureau of Food Distribution.

“Enrolled student” means all students enrolled in the school including pre-kindergarten, kindergarten and grades one through 12 regardless of participation in the School Nutrition Programs.

“Five percent threshold” means the point at which five percent or more of the total school enrollment of each school in the district is eligible for free or reduced price meals and/or free milk.

“Foods of minimal nutritional value” means those foods contained in the following categories as specified in the United States Department of Agriculture, regulations 7 CFR Part 210 Appendix B: soda water, water ices, chewing gum, certain candies: hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn.

“Free and Reduced Priced Policy” means the free and reduced-price policy required by applicable regulations of the USDA, 7 CFR Parts 210, 215, 220 and 245.

“Hours of operation” means from the beginning of the first scheduled meal period until the end of the last scheduled meal period.

“Nutrition standards” means those standards established by the U.S. Department of Agriculture at 7 CFR Parts 210 and 220 incorporated by reference by the State Department of Agriculture. These standards govern the type and nutritional value of all food items offered as part of the school lunch, school breakfast and after school snack meal pattern and a la carte food items.

“Point of service” means that point in the food service operation where a determination can accurately be made that a reimbursable free, reduced-priced or paid meal and/or free or paid milk has been served to an eligible child.

“School” means a site operating under the supervision of a sponsor as defined herein.

“School food authority” means the governing body which is responsible for the administration of one or more schools; which has the legal authority to operate the National School Lunch, School Breakfast, After School Snack or Special Milk Program.

“School Nutrition Programs” means those programs administered by the Bureau of Child Nutrition, which include the National School Lunch Program, School Breakfast Program, After School Snack Program, and Special Milk Programs.

“Secretary” means the Secretary of the New Jersey Department of Agriculture.

“Sponsor” means the school food authority participating in any child nutrition program.

“Survey” means the procedure required of every school and sponsor to determine eligibility of every enrolled student for free and reduced-price meals regardless of whether the school has an agreement with the Department to participate in any of the School Nutrition Programs.

“20 percent threshold” means the point at which 20 percent or more of the total school enrollment of each school is eligible for free or reduced priced meals and/or free milk.

“USDA” means the United States Department of Agriculture.

Amended by R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Definitions substantially amended.

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Recodified and added new definitions for “Child Nutrition Programs”, “Department’s Consolidated Enrollment Report: Current School Enrollment Data”, “enrolled student”, “five percent threshold”, “nutritional standards”, “school food authority” and “school nutrition programs”; amended “sponsor” and “survey”.

Amended by R.2004 d.289, effective August 2, 2004.

See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote the section.

### 2:36-1.2 Policy and Agreement for School Nutrition Programs

(a) All school districts participating under one of the Federal child nutrition programs shall adopt a free and reduced price policy pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245 on the form prescribed by the Secretary entitled “Policy for the Free and Reduced-Price Meals or Free Milk.” This form is available from the Division of Food and Nutrition, Bureau of Child Nutrition, New Jersey Department of Agriculture, PO Box 334, Trenton, NJ 08625-0334.

(b) Each school district shall certify and submit this policy to the Division no later than the end of the second calendar month for which any reimbursement can be claimed for meals and milk served under the child nutrition programs. Sponsors starting programs in September shall submit the policy no later than September 30 of that year.

(c) The Agreement for School Nutrition Programs shall contain the policy referred to in (a) above and shall be submitted with the application packet to participate in any Child Nutrition Program prescribed by the Secretary pursuant to 7 CFR §§ 210.9, 215.7, 220.7 and 245.10.

Amended by R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Substituted “Agreement for School Nutrition Programs” for “school feeding agreement”.

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Added new (a) and (c) regarding the adoption of free and reduced price policies in all school districts; recodified from N.J.A.C. 6:79-1.2. Administrative Correction to (a).

See: 24 N.J.R. 2712(c).

Amended by R.2004 d.289, effective August 2, 2004.

See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote (a) and (b); in (c), deleted “in accordance” preceding “with the application” and inserted “packet to participate in any Child Nutrition Program” preceding “prescribed by the Secretary”.

#### Case Notes

Statute authorizing exemption from mandatory school lunch program upheld against due process constitutional challenge. *Robbiani v. Burke*, 77 N.J. 383, 390 A.2d 1149 (1978).

### 2:36-1.3 Eligibility

The Division shall administer eligibility standards pursuant to the Federal Income Eligibility Guidelines set forth at 7 CFR Part 245 for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. These standards shall be used by all sponsors participating in the child nutrition programs and by all nonparticipating schools for the purpose of completing the survey as required by N.J.A.C. 2:36-1.4.

Amended by R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Substituted "administer" for "establish".  
Amended by R.1992 d.202, effective May 4, 1992.  
See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Recodified and added reference to Federal regulations and recodified from N.J.A.C. 6:79-1.3.

Amended by R.2004 d.289, effective August 2, 2004.  
See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote the section.

#### 2:36-1.4 Survey

(a) By the last school day prior to October 16 of each school year, each school, under the supervision of its sponsor, shall survey the parent or guardian of each student enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The purpose of the survey is to determine whether the school meets or exceeds the five percent threshold established by N.J.S.A. 18A:33-4 for school lunch programs and the 20 percent threshold established for school breakfast programs in N.J.S.A. 18:33-9.

(b) This survey shall be conducted using the "Application for Free and Reduced Price Meals or Free Milk" as prescribed by the Secretary pursuant to Federal regulations (7 CFR Part 245). This application shall be distributed to the parent or guardian of every student enrolled in the school.

(c) The results of this survey shall be included in the Department of Education's Consolidated Enrollment Report: Current School Enrollment Data for the school year in which the survey is made.

Amended by R.1987 d.524, effective December 21, 1987.  
See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Added "which shall include" to text.

Amended by R.1992 d.202, effective May 4, 1992.  
See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

New due date added in (a) and purpose; at (b) required use of specific application; at (c) requires submission of information in specific report and recodified from N.J.A.C. 6:79-1.4.

Amended by R.2004 d.289, effective August 2, 2004.  
See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

In (a), rewrote the second sentence.

#### 2:36-1.5 Free and reduced price meal and/or free milk application

(a) The Division shall prepare an application form that shall be used by all school districts. A copy of the application completed by each school district must be filed with the Division together with the Free and Reduced Priced Policy described in N.J.A.C. 2:36-1.2.

(b) The parent or guardian shall be given at least two weeks from the date of receipt of the application to complete and submit the application to the school district which must provide adequate assistance to parents in completing these applications.

(c) Applications in languages other than English must be provided by the school food authority where non-English speaking parents are possible applicants. (An application in

Spanish and French is available upon request from the Division of Food and Nutrition, Bureau of Child Nutrition.)

(d) Upon receipt of the completed application, the district must determine each student's eligibility for a free or reduced-price meal and/or free milk from the information submitted. Each student shall be offered free or reduced-price meals and/or free milk as soon as eligibility has been determined. Applications from the preceding year may be used to determine eligibility only for the month of September. If the school has reason to question the information provided, the student affected must continue to receive the free or reduced-price meals and/or free milk until completion of the appeal procedures set forth in the sponsor's policy pursuant to Federal regulations (7 CFR § 245.7 Hearing Procedure for Families and School Food Authorities).

(e) Local officials may complete an application for a student believed to be eligible if the household fails to apply. The school official must complete an application on behalf of the student based on the best household size and income information available to the school official. The source of the information must be noted on the application. This option is intended for limited use in individual situations and must not be used to make eligibility determinations for categories or groups of students.

Amended by R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Deleted text "said information is found to be incorrect by" and substituted "completion of" in (d).

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Replaced term "sponsor" with "school district"; added reference to Federal regulations in (d) and recodified from N.J.A.C. 6:79-1.5.

Amended by R.2004 d.289, effective August 2, 2004.

See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote (a) and (e); in (c), inserted "by the school food authority" preceding "where non-English", "Division of Food and Nutrition," preceding "Bureau" and "of Child Nutrition" following "Bureau"; in (d), inserted the second sentence.

#### 2:36-1.6 Participation requirements

(a) Any school in which five percent or more of the school enrollment is found to be eligible for free or reduced-price meals shall participate in the National School Lunch Program or, at the minimum, offer lunch to all students enrolled in that school, with free or reduced price lunches offered to all qualifying children. Such lunches shall meet minimum nutritional standards established by the U.S. Department of Agriculture (7 CFR § 210.10). Any school may participate in the National School Lunch Program without participating in any other Federal programs.

(b) Any school in which 20 percent or more of the school enrollment is found to be eligible for free or reduced price meals as of October 1 of the preceding school year, shall offer the School Breakfast Program to all students enrolled in that school, with free and reduced price breakfasts offered to all qualifying children. Such breakfasts shall meet

minimum nutritional standards established by the U.S. Department of Agriculture 7 CFR § 220.8. Any school may participate in the School Breakfast Program without participating in any other Federal programs.

1. Any school meeting the 20 percent threshold that requires the implementation of the School Breakfast Program must comply with the following requirements:

i. Each school food authority shall submit a school breakfast implementation plan to the Division by November 1 of the year prior to implementing the program in said school(s). Each implementation plan shall be reviewed and evaluated by the Division no later than February 1 of the following year.

ii. Any schools that have a participation rate of less than 50 percent of eligible students in a school breakfast program during any year of the program shall submit a revision of their school breakfast plan to include changes designed to increase student breakfast participation.

(c) The school food authority shall maintain a non-profit school food service. All revenues are to be used only for the operation or improvement of the school food service.

(d) The school food authority shall limit its net cash resources to an amount that does not exceed three months' average expenditures for its non-profit school food service.

Amended by R.1987 d.524, effective December 21, 1987.  
See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Added (c).

Amended by R.1992 d.202, effective May 4, 1992.  
See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Required that all qualifying students be offered free and reduced price lunches and recodified from N.J.A.C. 6:79-1.6.

Amended by R.2004 d.289, effective August 2, 2004.  
See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote (a) and (b).

### 2:36-1.7 Nutrition standards

Nutrition standards established by the Department for meals served under the National School Lunch, School Breakfast, and After School Snack Programs or as mandated by N.J.S.A. 18A:33-4 shall be identical to those established in the USDA regulations at 7 CFR § 210.10 and Part 220.8, respectively. These Federal regulations and all subsequent amendments are adopted herein by reference. These standards are published in the Department's Nutrition Standards for School Nutrition Programs available through the New Jersey Department of Agriculture, Division of Food and Nutrition, PO Box 334, Trenton, New Jersey 08625-0334.

Amended by R.1992 d.202, effective May 4, 1992.  
See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Adopted by reference USDA Nutritional Standards for School Nutrition Programs and recodified from N.J.A.C. 6:79-1.7.

Amended by R.2004 d.289, effective August 2, 2004.  
See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Rewrote the section.

### 2:36-1.8 Review and evaluation

(a) Each sponsor's implementation of the Free and Reduced Price Policy shall be reviewed and evaluated by the Division on a continuing basis.

(b) Federal and State child nutrition program funds may be withheld and/or fiscal action taken against sponsors (see: 7 CFR §§ 210.19(c), 215.12(a), 220.14(a) and 245.10) found not to be in compliance with applicable Federal regulations (7 CFR Parts 210, 215 and 220).

(c) Sponsors shall not alter or amend standards set forth in the Free and Reduced Price Policy without prior written approval by the Division.

R.1974 d.198, effective July 19, 1974.

See: 6 N.J.R. 302(e).

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Added references to Federal regulations and recodified from N.J.A.C. 6:79-1.8.

Amended by R.2004 d.289, effective August 2, 2004.

See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Substituted references to Free and Reduced Price Policy for references to policy and references to Division for references to Bureau throughout; in (b), inserted "and 245.10" following "220.14(a)"; in (c), inserted "written" preceding "approval by".

### 2:36-1.9 Maximum charge

(a) The Division shall annually establish the maximum per meal and milk charge pursuant to 7 CFR §§ 210.2, 220.2 and 215.8(c); however, sponsors may appeal to the Division to increase such maximum per meal or milk charges.

1. The maximum milk charge shall be established based on the rate of reimbursement from the USDA per  $\frac{1}{2}$  pint of milk, consideration of the annual average State-wide student price/charge for milk and the average cost of a  $\frac{1}{2}$  pint of milk as purchased from the dairy.

2. The maximum meal charge shall be established based on the rate of reimbursement from the USDA for a free meal minus the rate of reimbursement from the USDA for a paid meal, and consideration of the annual average statewide student price/charge for a paid meal in the elementary, middle and secondary grades.

3. Adult meal prices shall be established to cover all costs associated with the production and service of the adult meal, including the market value of commodities allocated.

Amended by R.1983 d.71, effective March 21, 1983.

See: 14 N.J.R. 1248(b), 15 N.J.R. 440(a).

Deleted old (a) concerning sponsors establishing milk prices.

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Added new (a)1 and 2 and new (b) specifying how maximum charges are established and recodified from N.J.A.C. 6:79-1.9.  
 Amended by R.2004 d.289, effective August 2, 2004.  
 See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).  
 Rewrote the section.

### 2:36-1.10 Competitive food policy

(a) The sale or free promotion of extra food items of minimal nutritional value on the school property at any time before the end of the last lunch period shall not include those items prohibited by regulations promulgated by the United States Department of Agriculture for the administration of child nutrition programs and as contained in the Department's nutritional standards as referenced in N.J.A.C. 2:36-1.7. This policy also applies to all school districts required to make school lunch available pursuant to N.J.S.A. 18A:33-4 regardless of participation in the National School Lunch Program.

(b) All income derived from the sale of food and beverage items within a school during the hours when the school lunch and school breakfast programs are in operation must accrue to the accounts of said programs.

Amended by R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Deleted old text in (a) and added new.

Amended by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Free promotion of extra food items of minimal nutritional value prohibited and recodified from 6:79-1.10.

### 2:36-1.11 Meal accountability

Sponsors shall count and record daily, at the point of service, the number of meals/snacks or milks served by category (free, reduced price and paid).

As amended by R.1983 d.71, effective March 21, 1983.

See: 14 N.J.R.1248(b), 15 N.J.R. 440(a).

Repealed nonfood assistance.

New Rule, R.1987 d.524, effective December 21, 1987.

See: 19 N.J.R. 1599(a), 19 N.J.R. 2399(a).

Recodified from N.J.A.C. 6:79-1.11 by R.1992 d.202, effective May 4, 1992.

See: 24 N.J.R. 324(a), 24 N.J.R. 1791(c).

Amended by R.2004 d.289, effective August 2, 2004.

See: 36 N.J.R. 1915(a), 36 N.J.R. 3523(b).

Inserted "/snacks" following "number of meals".