

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.2009 d.387, effective November 25, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1(c)(2), Chapter 36, Child Nutrition Programs, expires on May 24, 2017. See: 49 N.J.R. 5(a).

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

Chapter 36, Child Nutrition Programs, was readopted as R.2009 d.387, effective November 25, 2009. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 36, Child Nutrition Programs, was scheduled to expire on November 25, 2016. See: 43 N.J.R. 1203(a).

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**APPENDIX. NEW JERSEY SCHOOL NUTRITION/
WELLNESS POLICY****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.

“Candy” is defined as any food item, that as served in its finished form, contains, by weight, 40 percent or more sugar (in crystalline form or in solution as syrup, both monosaccharides and disaccharides) and/or other sweetening agents, or any food product commonly referred to as “candy.”

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

“Competitive foods” means all food and beverage items, other than the reimbursable meals, sold, served, or given away during the school day.

“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.

"Local educational agency" means a public board of education or other public or private nonprofit authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public or private nonprofit elementary schools or secondary schools in a city, county, township, school district or other political subdivision of a State, or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public or private nonprofit elementary schools or secondary schools, which has legal authority to operate the National School Lunch, School Breakfast, After School Snack, Fresh Fruit and Vegetable or Special Milk Program.

"Meal" means a reimbursable school breakfast, school lunch and/or after school snack.

"New Jersey School Nutrition/Wellness Policy" means the nutrition policy containing standards developed by the State Department of Agriculture, incorporated herein by reference as the chapter Appendix.

"Nonprofit school food service" means that all food service operations conducted by the school food authority must be conducted principally for the benefit of school children, all of the revenue from which is to be used solely for the operation or improvement of such food services.

"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 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, Fresh Fruit and Vegetable 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.

"Sugar" means any class of water-soluble crystalline carbohydrates having a sweet taste. Sugar also comes in syrup form. Other words for sugar include, but are not limited to, fructose, sucrose, lactose, maltose, glucose, galactose, honey, dextrin, malt, molasses, maple syrup and corn syrup.

"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.
Amended by R.2005 d.185, effective June 20, 2005.
See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Added "Candy", "Competitive foods", "Meal", "Model School Nutrition Policy", and "Sugar".
Amended by R.2009 d.387, effective December 21, 2009.
See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

In definition "Child Nutrition Programs", inserted "Fresh Fruit and Vegetable Program"; added definitions "Local educational agency" and "Nonprofit school food service"; substituted definition "New Jersey School Nutrition/Wellness" for definition "Model School Nutrition"; deleted definition "School food authority"; and in definition "School Nutrition Programs", inserted "Fresh Fruit and Vegetable Program".

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 electronically certify compliance with the "Policy for Free and Reduced Price

Meals or Free Milk” pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245. The policy is available through the Department’s web-based program School Nutrition Electronic Application and Reimbursement System (SNEARS).

(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”.

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Rewrote (a).

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).

Commissioner affirmed denial of a local school board’s requests for early childhood funds for food service salaries, benefits, and other operating costs, finding that food service expenditures for the pre-school program should be placed in the local school board’s general food services budget (its “Fund 50”), which was established for program activities that can generate income to offset costs; such allocation is appropriate for reasons already articulated in the Commissioner’s April 15, 2005 decision in *Board of Educ. of Vineland v. New Jersey State Dep’t of Educ.*, OAL Dkt. No. EDU 660-05, 2005 N.J. AGEN LEXIS 803. Bd. of Educ. of Vineland v. N.J. State Dep’t of Educ., OAL Dkt. No. EDU 648-07, 2007 N.J. AGEN LEXIS 300, Commissioner’s Decision (April 12, 2007).

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 a household application form that shall be used by all school districts. A copy of the application shall be provided to each district upon approval of a web-based submission/certification of the accompanying letter to parents.

(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 is available upon request from the Division of Food and Nutrition, Bureau of Child Nutrition.) Other language translations are available on the USDA Food and Nutrition Service website at: <http://www.fns.usda.gov/cnd/FRP/frp.process.htm>.

(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 proceeding 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.

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Rewrote (a); and in (c), deleted "and French" following "Spanish", and inserted the last 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 New Jersey School Nutrition/Wellness Policy

(a) The Department hereby adopts and incorporates by reference the Dietary Guidelines for Americans and the USDA nutrition standards for National School Lunch, School Breakfast and/or After School Snack programs as required by 7 CFR Parts 210, 215, 220 and 245 as the basis for local policies. Such policies shall regulate the types of food items offered outside the Federal meal requirements, such as a la carte sales, vending machines, school stores and fundraisers. The policy shall also address the dining environment, adequate time for student meal service and consumption and coordination of lunch and recess or physical education schedules.

1. A copy of the Dietary Guidelines for Americans may be obtained at <http://www.usda.gov/cnpp/DietGd.pdf>. A copy of the Guidelines are also on file in the Director's Office, Division of Food and Nutrition, NJ Department of Agriculture, PO Box 334, Trenton, NJ 08625.

2. A copy of 7 CFR Parts 210, 215, 220 and 245 is on file in the Director's Office, Division of Food and Nutrition, NJ Department of Agriculture, PO Box 334, Trenton, NJ 08625.

(b) Each school district/sponsor shall implement a policy consistent with New Jersey School Nutrition/Wellness Policy, which is set forth in the chapter Appendix. The New Jersey School Nutrition/Wellness Policy is a minimum standard and does not preclude the adoption of a more stringent policy by the school district/sponsor.

New Rule, R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Former N.J.A.C. 2:36-1.7, Nutrition standards, recodified to N.J.A.C. 2:36-1.8.

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Section was "Local school nutrition policy". In the introductory paragraph of (a), deleted the first and last sentences and substituted "local policies" for "this local policy"; and in (b), substituted "Each" for "By September 2007, each" and "New Jersey" for "Model" following "The", deleted "Department of Agriculture's Model" following the first occurrence of "New Jersey", and inserted "/Wellness" following "Nutrition" twice.

2:36-1.8 Nutrition standards

(a) 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.

(b) Nutrition standards for all other food and beverage items shall comply with the Competitive Food Policy as referenced in N.J.A.C. 2:36-1.11.

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.

Recodified from N.J.A.C. 2:36-1.7 and amended by R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Designated former paragraph as (a) and added (b). Former N.J.A.C. 2:36-1.8, Review and evaluation, recodified to N.J.A.C. 2:36-1.9.

2:36-1.9 Review and evaluation

(a) Each sponsor's implementation of the Free and Reduced Price Policy and the New Jersey School Nutrition/Wellness 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, 220 and 245) and the New Jersey School Nutrition/Wellness Policy.

(c) Sponsors shall not alter or amend standards set forth in the Free and Reduced Price Policy or the New Jersey School Nutrition/Wellness 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".

Recodified from N.J.A.C. 2:36-1.8 and amended by R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Inserted references to the Department's Model School Nutrition Policy throughout. Former N.J.A.C. 2:36-1.9, Maximum charge, recodified to N.J.A.C. 2:36-1.10.

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Inserted "/Wellness" following "Nutrition" throughout; in (a), substituted "New Jersey" for "Model"; in (b) and (c), substituted "New Jersey" for "Department's Model"; and in (b), deleted "\$" preceding "210.19(c)".

Case Notes

Day care center was terminated from the New Jersey Department of Agriculture Child and Adult Care Food Program, and its principals were disqualified from future participation in the program. There was no dispute that the day care center and its principals were seriously deficient in complying with federal and State requirements for operating the program, especially in the areas of eligibility for program, meal counts, training, and documentation. Numerous violations were observed during the 2007, 2009, and 2012 Administrative Reviews that had not been remedied or corrected. 15th St. Kiddie Corner Day Care Ctr. v. N.J. Dep't. of Agric. Child, and Adult Care Food Program, OAL Dkt. No. AGR 15892-12, 2013 N.J. AGEN LEXIS 58, Final Decision (March 25, 2013).

2:36-1.10 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 ½ pint of milk, consideration of the annual average Statewide student price/charge for milk and the average cost of a ½ 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.

Recodified from N.J.A.C. 2:36-1.9 by R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Former N.J.A.C. 2:36-1.10, Competitive food policy, recodified to N.J.A.C. 2:36-1.11.

2:36-1.11 Competitive food policy

(a) The competitive food policy prohibits certain snack and beverage items by regulations promulgated by the USDA for the administration of child nutrition programs and as contained in the New Jersey School Nutrition/Wellness Policy. The following items shall not be served, sold or given away as a free promotion anywhere on school property at any time before the end of the school day, including items served in the reimbursable After School Snack Program:

1. Foods of minimal nutritional value as defined by USDA regulations;

2. All food and beverage items listing sugar, in any form, as the first ingredient (beginning September 1, 2007); and

3. All forms of candy (beginning September 1, 2007).

(b) Schools shall reduce the purchase of any products containing trans fats (beginning September 1, 2007) (Federal labeling of trans fats on all food products is required by January 1, 2006.)

(c) 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.

(d) As of September 2007, all snack and beverage items, sold or served anywhere on school property during the school day, including items sold in a la carte lines, vending machines, snack bars, school stores and fundraisers or served in the reimbursable After School Snack Program, shall meet the following standards:

1. Based on manufacturers' nutritional data or nutrient facts labels:

i. No more than eight grams of total fat per serving, with the exception of nuts and seeds;

ii. No more than two grams of saturated fat per serving.

2. All beverages, other than milk containing two percent or less fat, or water, shall not exceed a 12-ounce portion size; whole milk may not exceed an eight-ounce portion;

3. In elementary schools, beverages shall be limited to milk, water or 100 percent fruit or vegetable juices;

4. In middle and high schools, at least 60 percent of all beverages offered, other than milk or water, must be 100 percent fruit or vegetable juice; and

5. In middle and high schools, no more than 40 percent of all ice cream/frozen desserts shall be allowed to exceed the above standards for sugar, fat and saturated fat.

(e) Food and/or beverages served during special school celebrations or during curriculum related activities shall be exempt from this policy with the exception of foods of minimal nutritional value as defined by USDA regulations 7 CFR Part 210.10.

(f) Medical exemption: This policy does not apply to:

1. Medically authorized special needs diets pursuant to 7 CFR Part 210;

2. School nurses using foods of minimal nutritional value (FMNVs) during the course of providing health care to individual students; or

3. Special needs students whose Individualized Education Plan (IEP) indicates their use for behavior modification.

(g) The requirements of (a) through (f) above not only apply to all participating sponsors, both public and non-public, but also 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.

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.

Recodified from N.J.A.C. 2:36-1.10 and amended by R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Rewrote the section. Former N.J.A.C. 2:36-1.11, Meal accountability, recodified to N.J.A.C. 2:36-1.12.

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

In the introductory paragraph of (a), substituted "New Jersey" for "Department's Model", and inserted "/Wellness".

2:36-1.12 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".

Recodified from N.J.A.C. 2:36-1.11 by R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

2:36-1.13 Biosecurity for school food service

(a) The Department hereby adopts and incorporates by reference the USDA "A Biosecurity Checklist for School Food Service Programs," March 2004 version, as amended and supplemented, as the State's Biosecurity policy for child nutrition programs.

(b) By September 1, 2006, school districts/sponsors shall implement a local level biosecurity plan consistent with the parameters identified in (a) above.

(c) A copy of the publication in (a) above is available at: <http://schoolmeals.nal.usda.gov/Safety/biosecurity.pdf>. A copy is also available at the Division Director's Office, New Jersey Department of Agriculture, Division of Food and Nutrition, PO Box 334, Trenton, New Jersey 08625.

New Rule, R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

APPENDIX

New Jersey School Nutrition/Wellness Policy

The Board of Education, or recognized school authority, recognizes that child and adolescent obesity has reached epidemic levels in the United States and that poor diet combined with the lack of physical activity negatively impacts on students' health, and their ability and motivation to learn. The Board is committed to:

- Providing students with healthy and nutritious foods;
- Encouraging the consumption of fresh fruits and vegetables, low fat milk and whole grains;
- Supporting healthy eating through nutrition education;
- Encouraging students to select and consume all components of the school meal; and
- Providing students with the opportunity to engage in daily physical activity.

All reimbursable meals shall meet Federal nutrient standards as required by the U.S. Department of Agriculture Child Nutrition Program regulations. All items served as part of the After School Snack Program shall meet the standards as outlined within this policy.

The following items may not be served, sold or given out as free promotion anywhere on school property at anytime before the end of the school day:

- Foods of minimal nutritional value (FMNV) as defined by U.S. Department of Agriculture regulations;
- All food and beverage items listing sugar, in any form, as the first ingredient; and
- All forms of candy.

Schools shall reduce the purchase of any products containing trans fats. (Federal labeling of trans fats on all food products is required by January 1, 2006.)

All snack and beverage items sold or served anywhere on school property during the school day, including items sold in a la carte lines, vending machines, snack bars, school stores and fundraisers or served in the reimbursable After School Snack Program, shall meet the following standards:

1) Based on manufacturers nutritional data or nutrient facts labels:

- No more than eight grams of total fat per serving, with the exception of nuts and seeds.
- No more than two grams of saturated fat per serving.

2) All beverages shall not exceed 12 ounces, with the following exceptions:

- Water.
 - Milk containing two percent or less fat.
- 3) Whole milk shall not exceed eight ounces.

In elementary schools:

- 100 percent of all beverages offered shall be milk, water or 100 percent fruit or vegetable juices.

In middle and high schools:

- At least 60 percent of all beverages offered, other than milk and water, shall be 100 percent fruit or vegetable juices.
- No more than 40 percent of all ice cream/frozen deserts shall be allowed to exceed the above standards for sugar, fat, and saturated fat.

Food and beverages served during special school celebrations or during curriculum related activities shall be exempt from this policy, with the exception of foods of minimal nutritional value as defined by USDA regulations.

This policy does not apply to: medically authorized special needs diets pursuant to 7 CFR Part 210; school nurses using FMNVs during the course of providing health care to individual students; or special needs students whose Individualized Education Plan (IEP) indicates their use for behavior modification.

Adequate time shall be allowed for student meal service and consumption. Schools shall provide a pleasant dining environment. The Board recommends that physical education or recess be scheduled before lunch whenever possible.

This school district's curriculum shall incorporate nutrition education and physical activity consistent with the New Jersey Department of Education Core Curriculum Standards.

The Board of Education is committed to promoting the Nutrition Policy with all food service personnel, teachers, nurses, coaches and other school administrative staff so they have the skills they need to implement this policy and promote healthy eating practices. The Board will work toward expanding awareness about this policy among students, parents, teachers and the community at large.

New Rule, R.2005 d.185, effective June 20, 2005.

See: 36 N.J.R. 5028(a), 37 N.J.R. 2234(b).

Amended by R.2009 d.387, effective December 21, 2009.

See: 41 N.J.R. 2749(a), 41 N.J.R. 4699(a).

Appendix was "Model School Nutrition Policy".