

MEMO

TO: Superintendents, Chief Administrators, Business Managers, and Directors
of School Nutrition Programs

FROM: Vonda Cooke, State Director, Child Nutrition Programs

DATE: July 27, 2018 (*revised*)

RE: *Updated Meals for Students with Insufficient Funds and Local Meal Charge*

MESSAGE:**Important Change to State Law**

As you may already be aware, Act 55 of 2017, a new law making significant changes to the Pennsylvania Public School Code, was enacted on November 6, 2017. Among its various amendments was a revision to Section 1337 prohibiting schools from denying a school food program meal to any student who requests one but does not have the money to pay for the meal at the time of service or in his or her meal account. Based on this change, schools may only withhold meals from a student if they receive written direction from a parent or guardian. *This revised memo incorporates amendments made to Section 1337 as a result of Act 39 of 2018, enacted June 22, 2018 and effective July 1, 2018. All changes are indicated in italics for ease of distinguishing new guidance.*

Under the amendment to Section 1337, communication about a student's school meal debt must be directed to the parent/guardian. The amendment provides that such communication must occur when the student owes money for five or more meals. The school must then make at least two attempts to reach the parent or guardian. *For students enrolled in grade nine through twelve, the board of school directors may require the schools to direct communications regarding a low balance or money owed to the student if the communications are made individually to the student by appropriate school personnel and are made discreetly. This is in addition to the communication to the parent.*

The amendment to Section 1337 also states that schools cannot publicly identify or stigmatize students because they have a school meal debt. Likewise, students cannot be made to do chores or other work to earn a school meal. Lastly, the amendment prohibits schools from directing a student to discard a meal that has been served to them because they cannot pay for it at the time of service or because they have an existing school meal debt.

Elements to Consider During Implementation

When implementing the new requirements in Section 1337, schools should be mindful that any changes made to address the new state legislation must align with the federal Local Meal Charge Policy requirements effective July 1, 2017 (see USDA memo SP 46-2016, located on PEARS Download Forms, Charge Policy section). The Pennsylvania Department of Education (PDE) suggests that schools revise their Local Meal Charge Policy to incorporate and align the new state requirements as they relate to:

- charging meals,
- communicating with parents/guardians,

- pursuing collection of meal debt, and
- removing bad debt from the Food Service Account.

In addition, to prevent students from being charged for meals when they may be eligible for free meals, PDE recommends schools perform a direct certification match weekly using the PrimeroEdge system. Since the list is updated weekly and students are routinely added to the Direct Certification list throughout the school year, this should ensure that all direct certified students are being identified for free meals.

If a student is not on the Direct Certification list, the school may assist the family with applying for free or reduced-price meals. Schools should keep in mind that they must provide assistance to families in need of language interpretation services. Under special and limited circumstances (see Eligibility Manual for School Meals, Section 2, Eligible Households that Have Not Applied), an administrator may complete an application on behalf of a household when it is known from other sources that the student would qualify for free or reduced-price meals. In these situations, the parent must be made aware that the student was granted benefits for free or reduced-price meals and may choose to deny these benefits.

Please contact the School Nutrition Programs section, at RA-NSLP@pa.gov with any questions.

**Frequently Asked Questions on Act 55 of 2017
and the United States Department of Agriculture (USDA) Local Meal Charge Policies**

1. What requirements and prohibitions does Act 55 of 2017 create in Section 1337 of the Pennsylvania School Code?

Act 55 of 2017 amends Section 1337 of the Pennsylvania School Code. Pursuant to these new amendments:

School policy must require the following:

- (1) A student who requests a school meal must be provided with one regardless of whether the student has money.
- (2) When a student owes money for five or more school meals, the school must make at least two attempts to reach the student's parent or guardian and have the parent or guardian apply for participation in the school food program.
- (3) Communications regarding money owed by a student for school meals must be made to the student's parent or guardian. *For students in kindergarten through eighth grade, this communication may not be made to the student. For students enrolled in grade nine through twelve, the board of school directors may require the schools to direct communications regarding a low balance or money owed to the student if the communications are made individually to the student by appropriate school personnel and are made discreetly. This is in addition to the communication to the parent.*

School policy must prohibit the following:

- (1) A student who cannot pay for a school meal or who owes money for school meals may not be publicly identified or stigmatized.
- (2) A student who cannot pay for a school meal may not be required to perform chores or other work to pay for the school meal.
- (3) A student may not be required to discard a school meal after it was served to the student due to the student's inability to pay for the meal or the amount of money owed by the student for prior school meals.

2. When does the amendment to Section 1337 of the Pennsylvania School Code take effect?

December 6, 2017. *Act 39, 2018 provided additional amendments that were effective July 1, 2018.*

3. If a school does not participate in the federal School Nutrition Programs (National School Lunch or School Breakfast Programs), do the changes in Section 1337 still apply?

Yes. Section 1337 applies to any school food program meal served on a nonprofit basis to children in attendance. School food programs include, but are not limited to, federal school food programs.

4. Does the amendment to Section 1337 of the Pennsylvania School Code apply to private and charter schools and residential childcare institutions (public and private)?

Yes. Section 1337 applies to any school food program meal served on a nonprofit basis to children in attendance. These programs include school food programs in public schools (including charter schools) as well as nonprofit meal programs in private and non-public schools. The amendment does not apply to non-school entities.

5. Does the amendment to Section 1337 apply to both breakfast and lunch?

Yes.

6. What are the requirements of the federal Local Meal Charge Policy?

Effective July 1, 2017, all schools participating in the School Nutrition Programs (National School Lunch and School Breakfast Program) were required to have a Local Meal Charge Policy that balances the nutritional needs of students and the financial integrity of the food service account. The policy must address the impact on students who have insufficient funds on hand or in their meal account to pay for a meal and the steps the school will take to collect the debt (delinquent meal charges). The policy must also ensure that a transfer of funds will occur into the food service account from non-federal sources once the collection procedures identified in the Local Meal Charge Policy have been exhausted (resulting in a bad debt) since bad debts are an unallowable cost to the food service account.

Please see the PEARS, Charge Policy section of Download Forms for additional guidance on the federal Local Meal Charge Policy (Charge Policy Section).

7. Does the Act 55 of 2017 amendment to Section 1337 of the Pennsylvania Public School Code supersede the federal Local Meal Charge Policy?

No. Act 55 of 2017 does not supersede the federal Local Meal Charge Policy. Schools must carefully review the requirements in Section 1337 of the Pennsylvania Public School Code and the guidance provided through the federal Local Meal Charge Policy to ensure that both are being met.

In many cases, the federal and state requirements supplement each other. For example, the federal Local Meal Charge Policy must identify the impact on students who have insufficient funds on hand or in their meal account to pay for a meal. However, it does not dictate whether a school meal must be offered to a student with insufficient funds. In contrast, Section 1337 requires that schools provide students with a school meal regardless of whether they have funds on hand or in their meal account.

Similarly, the federal Local Meal Charge Policy requires schools to address the collection of delinquent school meal charge debt, while the amendment to Section 1337 of the Pennsylvania Public School Code does not address delinquent debt.

An additional example relating to aligning the federal and state requirements is that federal guidance requires that the Local Meal Charge Policy be communicated to parents/guardians in writing each year and to all staff responsible for policy enforcement (including negative balances). It also makes recommendations on how schools can communicate this information effectively.

The amendment to Section 1337 of the Pennsylvania Public School Code requires that schools communicate negative school meal account balances directly to a student's parent/guardian after the student owes money for five or more meal charges. The amendment also prohibits using the student as the communication channel to the parent/guardian.

8. The amendment to Section 1337 of the Pennsylvania Public School Code indicates the board of school directors may accept gifts to the food service account. Isn't this prohibited by federal regulations?

Yes. 2 CFR, Part 200 includes language pertaining to gifts and donations being accepted by entities that receive federal funds. Schools should keep in mind that "gifts" and "donations" not in compliance with federal regulations must not be accepted.

However, it is a common occurrence for individuals or community organizations to "gift" or "donate" money to schools to be used for students that have insufficient funds. Providing the gift or donation is not in conflict of 2 CFR, Part 200, the school may accept gifts or donations for the direct benefit of

students. The revenue must have a separate account or funding number so it is not co-mingled with food service account revenue funds from federal and state reimbursement, food sales, etc. The donated or gifted funds may be transferred to the food service account or fund, at the appropriate time, to offset delinquent student meal accounts. The process for accepting and utilizing gifts or donated funds, for this purpose, should be included in the Local Meal Charge Policy. The transaction will be transparent as a debit and credit in the General Ledger.

Schools should establish a distribution method for these donated or gifted funds to determine if individual students or delinquent accounts as a whole will be the beneficiary. The process for accepting and utilizing gifted or donated funds for the purpose of offsetting delinquent student meal accounts, should be included in the Local Meal Charge Policy.

USDA has issued a publication, *Overcoming the Unpaid Meal Challenges: Proven Strategies from Our Nation's Schools*, which contains a section specific to Alternate Funding Sources. This publication is available on PEARS Download Forms, Charge Policy section, or at www.fns.usda.gov.

9. Should we amend our Local Meal Charge Policy to include the new requirements in the amendment to Section 1337 of the Pennsylvania Public School Code?

Section 1337 of the Pennsylvania School Code does not mention the Local Meal Charge Policy, therefore there is not a mandate to amend the Local Meal Charge Policy to include the new requirements from Section 1337. However, PDE strongly encourages schools to amend their policy to include these requirements so that they can communicate a single, consistent, and comprehensive policy to parents and staff.

10. Can the students still be charged for the school program meal that they are required to be provided upon request when they do not have the funds to pay for the meal (cash on hand or in meal account)?

Yes. The charges will continue to accrue to the student's school meal account.

11. The amendment to Section 1337 requires that the parent/guardian be notified when the student has charged five meals – does this mean five meals in total (breakfast and lunch combined) or five charges for each individual meal service (breakfast and lunch)?

Parents/guardians must be notified when there is a total of five meal charges (combined between breakfast and lunch).

12. The amendment to Section 1337 of the Pennsylvania Public School Code also requires schools to make at least two attempts to communicate with a student's parent or guardian after the student owes money for five or more meals. What happens if those two attempts are unsuccessful?

Regardless of the result of the two initial attempts (successful or unsuccessful) to reach the parent/guardian, the school must continue with its procedures to collect delinquent debt, as outlined in its Local Meal Charge Policy.

13. Is a student permitted to charge meals after he or she owes money for five or more meals, and after the school makes at least two attempts to reach the parent or guardian?

Yes. The amendment prohibits schools from denying a meal to any student who requests one but does not have the money in their meal account to pay for the meal at the time of service. A meal can only be denied if the student's parent or guardian has directed the school, in writing, to withhold meals from the student.

14. Are schools permitted to notify the parent/guardian prior to the fifth meal being charged?

Yes, but the communication must be directed to the parent/guardian and not through the student, except for students in grades ninth through twelfth, the board of school directors may require the schools to direct communications regarding a low balance or money owed to the student if the communications are made individually to the student by appropriate school personnel and are made discreetly. This is in addition to the required communication to the parent.

15. If the school notifies the parent/guardian prior to the fifth meal being charged, does this count towards the two required communications to the parent/guardian?

Yes

16. In the past, students who owed money or did not have money to pay for their meal could be offered an alternate meal, as indicated in the school's Local Meal Charge Policy. Is an alternate meal still permissible?

No. Students with insufficient funds must be offered the school food program meal options that are available to all students.

17. When students do not have money to pay for the meal or have a meal charge balance, can the student be refused a meal or have their meal taken away?

No. The amendment to Section 1337 of the Pennsylvania Public School Code prohibits schools from requiring a student to discard a meal after it was served to them due to their inability to pay for the meal or due to any prior debt for meals.

18. Does this apply to a la carte meals?

Section 1337 of the Pennsylvania Public School Code applies to any school food program meal served on a nonprofit basis. Generally, the purpose of a la carte food sales is to sell individual foods (not a complete meal) to generate a profit, therefore the amendment to Section 1337 of the Pennsylvania Public School Code does not apply to a la carte food sales.

In many situations, individual a la carte foods are also available and priced more economically as part of a meal through the school food program, therefore students, including those with insufficient funds, will have access to these foods through the school food program meal.

19. Must schools allow students to charge a la carte snacks (cookies, chips, sports drinks, ice cream, etc.) or second meals? Can the cafeteria staff ask students to put a la carte snack items or second meals back if they do not have the funds to pay for them?

Section 1337 of the Pennsylvania School Code only applies to the school food program meal and does not apply to snacks and second meals. As such, these are local level decisions.

20. Does the uncollectable negative balance need to be removed from the food service account?

USDA memo SP 47-2016, Unpaid Meal Charges: Clarification on Collection of Delinquent Meal Payments, dated July 8, 2016, identifies the progression of uncollectable debt, beginning as delinquent debt and moving to bad debt.

Per USDA Memo SP 46-2016, Unpaid Meal Charges: Local Meal Charge Policies, the Local Meal Charge Policy must identify the steps the school will use to collect the money from the parent/guardian for charged meals. Once the school has utilized the collection measures in their Local Meal Charge Policy, and the debt remains uncollected, it is considered bad debt. Bad debt is an unallowable charge to the food service account. Therefore, a transfer into the food service account to cover the amount incurred by bad debt must occur. This should occur no later than the end of each school year. Only debt that is actively being pursued can be carried into the subsequent school year, per the Local Meal Charge Policy.

21. When does the negative balance need to be removed from the food service account?

When the school has utilized the collection procedures identified in their Local Meal Charge Policy and has continued to be unsuccessful in collecting the unpaid school meal debt (delinquent debt), the debt becomes bad debt and must be removed from the food service account by receiving a transfer from a non-federal source.

22. Can negative balances carry over into the following school year?

Delinquent debt can carry over to the immediate subsequent school year if the delinquent debt is being actively pursued using the collection procedures identified in the school's Local Meal Charge Policy.

23. How should schools handle the large amounts of delinquent and bad debt that may incur as a result of providing all students a meal regardless of whether they have the funds on hand or in their meal account to pay for the meal?

Schools should be sure that their Local Meal Charge Policy includes their collection process and that they remain persistent in contacting parents/guardians for delinquent amounts. Schools should also:

- run their Direct Certification list weekly to make sure that all students eligible for free meals through Direct Certification are captured,
- assist parents with applying for free/reduced meals if the student is not directly certified,
- in limited situations where a student is known through other sources to be eligible for free/reduced meals, a school should consider having an administrator complete the application on behalf of the family, and
- schools should also work with parents/guardians who have delinquent debt to establish a payment plan.

24. As schools are working with parents/guardians to collect meal charges, can they prevent the student from walking at graduation, participating in extra-curricular activities or special events, prohibit prom, withhold report cards, etc.?

Act 39 of 2018 states that a school may restrict privileges or activities of students who owe money for school meals if those same restrictions apply to students who owe money for other school-related purposes.

25. What means of communication can be addressed to the parent/guardian but delivered by the student?

A letter or written notice, addressed to the parent/guardian and provided to the student to deliver to the parent/guardian is acceptable. The envelope containing the letter should be marked "confidential – to be opened by addressee only." The communication may not be addressed to the student. Additionally, communication addressed to parents/guardians of students with delinquent meal accounts should not be handed to students in the lunch line because that action could lead to stigmatization since that could be a clear indication to other students about that student's meal account. It should also be noted that using students to deliver information is not always a reliable method of communication.

26. What other means of communication can be used to notify parents/guardians that a student's meal account is in the negative?

Schools have found success with collecting delinquent debt by communicating with parents/guardians via text, automated calling systems, and email.

27. Parents/guardians and students often can check their meal account balances through an online meal payment system or app. These same systems can sometimes provide warning notices. Is it acceptable for students to check their balances or be given a warning letter through the online system or app or must this information be conveyed strictly through the parents?

It is acceptable for the students to access this system to check their balances and see warning notices. However, when a student charges five or more meals, it is the parent/guardian that must be notified. A communication (e-mail, push notification, text message, etc.) sent from an online system or app that is directed to the parent, is acceptable. However, a warning notice that requires logging into the account to see the notice does not fulfill the intent of Section 1337.

28. Can schools send notices to parents/guardians when their student's meal account begins to run low?

Yes, many schools have a system in place where they communicate with parents/guardians when the student's meal account begins to run low on funds (e.g., a parent/guardian receives notice when the account has \$10 remaining). This approach should be incorporated into the school's Local Meal Charge Policy. *Schools should not communicate directly with the student regarding low meal account balances except when required by the board of school directors for students in grades nine through twelve.*

29. Can the cashier provide a student with their meal account balance if a student asks for the information?

Yes. if a student asks, it is permissible for the cashier to verbally let them know their meal account balance. This should be done as discreetly as possible (i.e., low voice, show student the screen, etc.) For students in kindergarten through eighth grade, verbal communications regarding meal account balances to a student only apply when a student asks directly. Cashiers should not provide account balances as a matter of common procedure and verbal updates do not take the place of the required communications. However, for students in grades ninth through twelfth, the board of school directors may require the schools to direct communications regarding a low balance or money owed to the student if the communications are made individually to the student by appropriate school personnel and are made discreetly.

29. If a parent/guardian sends a written request that the child cannot charge meals, can we deny the student the reimbursable meal?

If you have a written directive from the parent/guardian indicating the child may not charge meals, you may refuse the student a meal. Be sure to keep the written request from the parent/guardian as documentation.

Concerns pertaining to parents/guardians limiting access to meals as it relates to the welfare of the student should be addressed to the school guidance counselor.

30. Can a school apply penalty costs when negative balances are not paid off in a timely manner?

A school may institute a policy to add an upcharge or financial penalty to delinquent meals charges for students who are in the paid category for school meals. Upcharges and financial penalties cannot be

added to reduced price meals since federal regulations prevent the cost of reduced price meals from exceeding 30 cents for breakfast and 40 cents for lunch. If a school refers bad debts to a collection agency or district magistrate, these entities may apply collection fees (regardless of the student's eligibility for free or reduced-price meals).

31. If a student with a negative balance later applies and qualifies for free meals, can the district pursue collection of the debt incurred prior to the student qualifying for free meals?

If a student has a negative balance and is later determined as eligible for free meals, it is a local decision if the school will pursue the debt or cover the debt from non-federal resources outside the food service account. Federal funds cannot be used to cover the debt.

32. We have brochures/handbooks that are distributed to parents/guardians at the beginning of the year to all the parents notifying them of our local meal charge policy. Does this need to be updated?

The contents of the federal meal charge policy must be communicated to parents. There is no requirement for Section 1337 of the Pennsylvania School Code to be incorporated into the meal charge policy. Although incorporating information about Section 1337 helps to ensure consistent communication to parents/guardians, it is not required to be included in the local meal charge policy. The school should determine how much of Section 1337 to include in their external policy that is communicated to parents/guardians. Section 1337 of the Pennsylvania School Code only states that parents/guardians must be communicated with once the student charges five or more meals.

33. Can we have a separate cash-only line for a la carte snack items?

Yes.

34. Can a school publicly post a list of parents who are in debt to the school?

No. This activity stigmatizes those students who have not paid.

35. Can we clear negative balances at the end of the school year with Food Service Account Profits?

No. Negative balances must be recovered from non-federal sources outside the Food Service Account.

36. We will be receiving donations to help pay for negative student meal account balances. Should we deposit that money into our General Fund and then have the General Fund cut the Food Service Account a check for the donation? Or could we just deposit the money directly into our Food Service Account and post it under a separate revenue account?

When a student's debt is delinquent (the debt has not yet been determined a bad debt), donations for students with negative account balances may be deposited into the Food Service Account, provided a separate revenue account is used.

If a student's account balance is deemed to be uncollectable (bad debt), the bad debt must be recovered by making a transfer from the General Fund to the Food Service Account. Donations received after this transfer is made may be deposited into the General Fund.

It is a local policy decision to determine if donations will be applied to student accounts when they are in delinquent status or deemed uncollectable (bad debt).

37. Parents of graduating students with positive meal account balances can elect to donate the money into an account to cover negative student meal accounts balances at the end of the school year. Does this money need to be transferred out of the Food Service Account before it can be applied to student balances?

If permitted under school policy, parents of graduating students with positive meal account balances at the end of the school year can elect to donate the money into an account to cover negative student meal account balances. Donations from the positive meal account balances may stay within the Food Service Account and transferred an account designated for donations to students within the Food Service Account.