

ARTICLE 67-21
SCHOOL FOOD PROGRAMS

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CHAPTER 67-21-01
SCHOOL LUNCH PROGRAM

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67-21-01-01. Purpose.

The school lunch program, initiated at the federal level and in partnership with the states, is designed to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food by assisting the states, through grants-in-aid and other means, in providing an adequate supply of foods and facilities for the operation of the nonprofit school lunch program.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-02, 28-32-02

Law Implemented: NDCC 15-54-01

67-21-01-02. State agency.

The department of public instruction has been designated by the United States department of agriculture as the state agency in the state of North Dakota to assist in the implementation, maintenance, and funding of the program.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-02, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.2

67-21-01-03. Use of federal rules and policies.

Unless otherwise specified in this chapter, eligibility to participate in the national school lunch program is governed by federal national school lunch program regulations. The local program must conform to lawfully issued rules and policies relating to the national school lunch program.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-02, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210

67-21-01-04. Eligibility.

Local agencies eligible for participation in school lunch programs include:

1. Educational units of high school grade or under, recognized as part of the educational system in the state;
2. Public or nonprofit private classes of pre-primary grade conducted in educational units as a part of the educational system in the state;
3. Public or nonprofit private residential institutions that operate principally for the care of children; and
4. Private institutions licensed by the department of human services to provide residential child care services.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-03, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.2

67-21-01-05. Application.

Application forms are available at the department of public instruction, 600 east boulevard avenue, department 201, Bismarck, North Dakota 58505-0440. The application forms include:

1. Program agreement that includes:
 - a. Identification of the program or programs the local agency wants to participate in;
 - b. Verification that the local agency will comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all provisions required by the implementing regulations of the United States department of agriculture. Signature by an authorized representative of the local agency will serve as verification; and
 - c. Verification of agreement that the local agency agrees to compile data, maintain records, and submit reports as required and permit authorized personnel to review such records, books, and accounts as needed to ascertain compliance with the program. Signature by an authorized representative of the local agency will serve as verification. Such records must be maintained for three years after the end of the fiscal year to which they pertain.
2. Renewal agreement. This document is presented annually to the local agency by the state agency for any appropriate revisions. Forms and information are forwarded to the local agency in July and must be returned for approval and renewal by September.
3. Free or reduced-price policy statement and attachments. This document will be automatically renewed unless a new or updated statement is entered into by the state and local agency.

4. The program agreement, in its entirety, stipulates that local agencies:
 - a. Maintain a nonprofit school food service program;
 - b. Limit its net cash resources to an amount that does not exceed three months' average expenditures;
 - c. Maintain a financial management system and comply with related requirements;
 - d. Serve meals that meet the minimum requirements;
 - e. Price meals as a unit;
 - f. Serve meals free or at a reduced price to all children who are determined by the local agency to be eligible for such meals;
 - g. Count meals served and claim reimbursement for reimbursable free, reduced-price, and paid meals;
 - h. Maintain proper sanitation and health standards in conformance with applicable state and local laws and regulations;
 - i. Accept and use donated foods offered by the United States department of agriculture, if desired;
 - j. Maintain necessary facilities for storing, preparing, and serving food;
 - k. Upon request, make all accounts and records pertaining to the program available to the state agency and to the United States department of agriculture; and
 - l. Maintain files of currently approved and denied free and reduced-price applications or alternative documents and retain them for three years after the end of the fiscal year to which they pertain.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-03, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.9

67-21-01-06. Monitoring.

The department of public instruction will conduct onsite reviews of local agency program operations as specified by federal regulations for the purpose of providing guidance and technical assistance to local agency food service programs. All such reviews must include the assessment of claims by the state agency for any overpayment and appropriate corrective action.

History: Effective January 1, 2000; amended effective January 1, 2020.

General Authority: NDCC 15-54-05, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210; 7 CFR 210.18

67-21-01-07. Reimbursement claims.

Local agencies are required to submit claims for reimbursement using the basic claim for reimbursement form provided by the department of public instruction. Such claims are due on the tenth day of the month following the month of the claim. Federal and state reimbursement levels are determined on a periodic basis according to 7 CFR 210.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-05, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210

67-21-01-08. Meal costs.

The local agency has complete discretion in establishing student meal prices. However, if student payments are required, they cannot exceed forty cents for a reduced-price lunch. Qualifying students shall receive lunch free or at a reduced price. Local agencies must agree to establish and use fair hearing procedures as stipulated in the free and reduced-price policy for households contesting the agency's decision regarding an application for reduced-price or free meals. Local agencies under alternative provisions 2 and 3 for annual determinations of eligibility for free and reduced-price school meals and daily meal count by type, or the community eligibility provision may not charge for meals.

History: Effective January 1, 2000; amended effective January 1, 2020.

General Authority: NDCC 15-54-03, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.14; 7 CFR 245

67-21-01-09. Menus.

All lunch served under the program must meet the dietary guidelines for Americans as established by the federal regulations in 7 CFR 210.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-03, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.10

67-21-01-10. Food distribution.

Local participating agencies may receive United States department of agriculture foods or the value of entitlement through the federal food distribution program through four categories:

1. Entitlement United States department of agriculture foods, which are foods that local agencies are entitled to receive under the regulation and are distributed by the state contracted warehouse and transportation facility.
2. A portion of United States department of agriculture food entitlements allocated by local agencies into the department of defense fresh fruit and vegetable program. Local agencies place orders through the department of defense fruit and vegetable ordering and reporting system and receive deliveries from the nationally contracted distributor.
3. A portion of their United States department of agriculture food entitlements allocated by local agencies into the net off invoice value pass through system. Local agencies order state procured and approved net off invoice United States department of agriculture food items directly from their contracted distributor.
4. Bonus United States department of agriculture foods, which are foods offered by United States department of agriculture and do not deduct from United States department of agriculture food entitlement. These foods are periodic and only available if offered by the United States department of agriculture.

The amount of United States department of agriculture food entitlement to which local agencies are entitled is determined by 7 CFR 210 and 7 CFR 250 and the availability of the United States department of agriculture foods.

History: Effective January 1, 2000; amended effective January 1, 2020.

General Authority: NDCC 15-54-02, 15-54-03, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.4

67-21-01-11. Health and safety.

The local agency food service program must adhere to state and local health and food safety requirements, as adopted by the North Dakota state department of health, overviews of which are available from the department of public instruction. A school food service employee who functions as a food preparation site manager must complete training in food safety and sanitation as defined by the superintendent of public instruction.

History: Effective January 1, 2000.

General Authority: NDCC 15-54-03, 15-54-08, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.13

67-21-01-12. Fiscal management.

Each local agency must maintain a financial management system to account for revenues and expenditures of its food service program. In local agencies that are public schools, ledgers must be reported and available at the department of public instruction.

History: Effective January 1, 2000; amended effective January 1, 2020.

General Authority: NDCC 15-54-04, 15-54-05, 28-32-02

Law Implemented: NDCC 15-54-01; 7 CFR 210.14

67-21-01-13. Procurement standards.

Local agencies shall comply with the requirements of the office of management and budget guidance for grants and agreements, 2 CFR 200 subpart D, concerning the procurement of supplies, food, equipment, and other services with program funds.

History: Effective January 1, 2000; amended effective January 1, 2020.

General Authority: NDCC 15.1-35-03, 28-32-02

Law Implemented: NDCC 15.1-35-03, 15.1-35-05; 2 CFR 200 subpart D, 7 CFR 210.15