

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 4

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO PUBLIC SCHOOLS; CHANGING THE NAME OF THE
HUNGER-FREE STUDENTS' BILL OF RIGHTS ACT TO THE HEALTHY
HUNGER-FREE STUDENTS' BILL OF RIGHTS ACT; AMENDING AND ENACTING
SECTIONS OF THE HEALTHY HUNGER-FREE STUDENTS' BILL OF RIGHTS
ACT; ENSURING FREE, HEALTHY SCHOOL MEALS FOR ALL STUDENTS;
PRESCRIBING DUTIES OF THE PUBLIC EDUCATION DEPARTMENT; MAKING
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-13C-1 NMSA 1978 (being Laws 2017,
Chapter 117, Section 1) is amended to read:

"22-13C-1. SHORT TITLE.--~~[This act]~~ Chapter 22, Article
13C NMSA 1978 may be cited as the "Healthy Hunger-Free
Students' Bill of Rights Act"."

SECTION 2. Section 22-13C-2 NMSA 1978 (being Laws 2017,

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1 Chapter 117, Section 2) is amended to read:

2 "22-13C-2. DEFINITIONS.--As used in the Healthy Hunger-
3 Free Students' Bill of Rights Act:

4 ~~[A. "meal application" means an application for~~
5 ~~free or reduced-fee meals pursuant to the national school lunch~~
6 ~~program and school breakfast program; and~~

7 ~~B. "school" means a public school district, a~~
8 ~~public school, a private school or a religious school.]~~

9 A. "community eligibility provision" means the
10 federal provision created pursuant to Subparagraph (F) of
11 Paragraph (1) of Subsection (a) of 42 U.S.C. Section 1759a that
12 allows school districts to choose to receive federal special
13 assistance payments for school meals in exchange for providing
14 free school meals to all students enrolled in all or selected
15 schools of the school district;

16 B. "direct certification" means the process by
17 which eligible children are certified for free meals without
18 the need for a household application based on household
19 participation in one or more means-tested federal assistance
20 programs;

21 C. "eligible meals" means meals served to full
22 price, paid students that qualify for reimbursement under the
23 national school lunch program and the school breakfast program;

24 D. "federal free meal reimbursement" means the free
25 meal reimbursement paid by the United States department of

1 agriculture under 42 U.S.C. 1759a for meals that qualify for
2 reimbursement pursuant to the national school lunch program and
3 the school breakfast program;

4 E. "federal paid meal reimbursement rate" means the
5 paid reimbursement rate as set annually by the United States
6 department of agriculture under 42 U.S.C. 1759a for meals that
7 qualify for reimbursement under the national school lunch
8 program and the school breakfast program;

9 F. "identified student percentage" means the
10 percentage of a school food authority's student enrollment that
11 is certified as eligible for free meals based on a
12 documentation of benefit of receipt or categorical eligibility
13 as described in 7 C.F.R. Section 245.6;

14 G. "meal application" means an application for free
15 or reduced-price meals pursuant to the national school lunch
16 program and the school breakfast program;

17 H. "paid meal rate" means the paid student rate
18 reported by the department to the United States department of
19 agriculture based on the average paid meal rate charged by
20 school food authorities in the prior school year;

21 I. "participating school food authority" means a
22 school food authority that chooses to participate in the New
23 Mexico grown grant program;

24 J. "program" means the healthy universal school
25 meals program created pursuant to the Healthy Hunger-Free

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1 Students' Bill of Rights Act;

2 K. "school food authority" means school districts,
3 charter schools, the United States department of the interior's
4 bureau of Indian education schools, tribally controlled schools
5 and private schools that operate the national school lunch
6 program and the school breakfast program;

7 L. "unprocessed and minimally processed products"
8 means raw or frozen products, products that retain their
9 inherent character, such as shredded carrots or ground beef,
10 and dried products, such as beans, but does not include any
11 products that are heated, cooked or canned; and

12 M. "value-added processed products" means products
13 that are altered from their unprocessed or minimally processed
14 state through preservation techniques, including cooking,
15 baking or canning."

16 SECTION 3. Section 22-13C-4 NMSA 1978 (being Laws 2017,
17 Chapter 117, Section 4) is amended to read:

18 "22-13C-4. ~~[REQUIREMENT TO PROVIDE MEALS AND ENSURE THAT~~
19 ~~ELIGIBLE STUDENTS ARE ENROLLED]~~ UNIVERSAL SCHOOL MEALS FOR
20 CHILDREN.--

21 ~~[A. Regardless of whether or not a student has~~
22 ~~money to pay for a meal or owes money for earlier meals, a~~
23 ~~school:~~

24 ~~(1) shall provide a United States department~~
25 ~~of agriculture reimbursable meal to a student who requests one,~~

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1 ~~unless the student's parent or guardian has specifically~~
2 ~~provided written permission to the school to withhold a meal;~~
3 ~~and~~

4 ~~(2) shall not require that a student throw~~
5 ~~away a meal after it has been served because of the student's~~
6 ~~inability to pay for the meal or because money is owed for~~
7 ~~earlier meals.~~

8 ~~B. If a student owes money for five or more meals,~~
9 ~~a school shall:~~

10 ~~(1) check the state list of students~~
11 ~~categorically eligible for free meals to determine if the~~
12 ~~student is categorically eligible;~~

13 ~~(2) make at least two attempts, not including~~
14 ~~the application or instructions included in a school enrollment~~
15 ~~packet, to reach the student's parent or guardian and have the~~
16 ~~parent or guardian fill out a meal application; and~~

17 ~~(3) require a principal, assistant principal~~
18 ~~or counselor to contact the parent or guardian to offer~~
19 ~~assistance with a meal application, determine if there are~~
20 ~~other issues within the household that have caused the child to~~
21 ~~have insufficient funds to purchase a school meal and offer any~~
22 ~~other assistance that is appropriate.]~~

23 A. Public school districts and charter schools
24 operating the national school lunch program and the school
25 breakfast program shall establish a program to offer

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1 high-quality meals at no charge to all students. Bureau of
2 Indian education schools, tribally controlled schools and
3 private schools operating the national school lunch and the
4 school breakfast program may establish a program to offer high-
5 quality meals at no charge to students. All participating
6 school food authorities shall offer one breakfast and one lunch
7 at no cost to students during each school day to any student
8 who requests a meal without consideration of the student's
9 eligibility for a federally funded free or reduced-price meal,
10 with a maximum of one free meal for each meal service period.

11 B. The department shall award funding to each
12 school food authority that establishes a program pursuant to
13 the provisions of Subsection E of this section as follows:

14 (1) for school food authorities that meet the
15 meal quality improvement requirements established pursuant to
16 Subsection E of this section, the department shall distribute
17 to each such school food authority an amount that is equal to
18 the federal free meal reimbursement rate multiplied by the
19 total number of eligible meals served during the applicable
20 budget year, minus an amount equal to the federal paid meal
21 reimbursement for eligible meals served during the applicable
22 budget year; or

23 (2) for school food authorities that do not
24 meet by July 1, 2025 the meal quality improvement requirements
25 established pursuant to Subsection E of this section, the

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1 department shall distribute to each such school food authority
2 an amount that is equal to the paid meal rate multiplied by the
3 total number of eligible meals served during the applicable
4 budget year.

5 C. School food authorities shall use the money
6 received pursuant to this section to purchase commodities
7 necessary to improve meal quality, including food and other
8 consumables, equipment, staffing, labor needs or training and
9 technical assistance.

10 D. By August 1 of each year, the department shall
11 inform eligible school food authorities of the amount of
12 program funding they will receive during the upcoming school
13 year. When calculating the amount of program funding that is
14 due to a school food authority, the department shall assume
15 that student participation will remain at the same level as the
16 previous school year.

17 E. The department shall promulgate rules necessary
18 for implementation of this section, including rules providing
19 for:

20 (1) meal quality improvement requirements for
21 the program, which may include purchasing New Mexico-produced
22 food, freshly preparing scratch-cooked foods, providing
23 culturally relevant meals and engaging student and family
24 voices and choices in menu development; and

25 (2) procedures for annual certification.

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1 F. School food authorities shall maximize access to
2 federal funds for the cost of school breakfast and lunch
3 programs by adopting the United States department of
4 agriculture's community eligibility provision or any other
5 federal provision that, in the opinion of the department,
6 results in the most possible federal funding for meals served
7 in that program. Each school food authority that has a school
8 or site with an identified student percentage of at least forty
9 percent, or an identified student percentage of less than forty
10 percent if authorized by federal law, as determined annually by
11 the deadline set by the United States department of
12 agriculture, shall participate in the federal community
13 eligibility provision in the subsequent school year and
14 throughout the duration of the community eligibility
15 provision's four-year cycle. School food authorities, to the
16 extent practicable, shall group public schools for purposes of
17 maximizing the number of schools eligible to participate in the
18 community eligibility provision.

19 G. If a school food authority does not elect the
20 community eligibility provision or any other federal provision
21 that, in the opinion of the department, results in the most
22 possible federal funding for meals served in that program,
23 school meal applications shall be collected and direct
24 certification shall be used to identify students receiving
25 free, reduced-price and paid meals based on United States

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1 department of agriculture guidance.

2 H. School food authorities shall take steps to
3 maximize federal revenues and minimize debt on families by, at
4 least monthly, taking steps to directly certify students for
5 free school meal status pursuant to protocol determined by the
6 department."

7 SECTION 4. A new section of the Healthy Hunger-Free
8 Students' Bill of Rights Act is enacted to read:

9 "[NEW MATERIAL] INCENTIVIZE NEW MEXICO-GROWN FOODS.--

10 A. School food authorities are eligible to receive
11 an incentive grant pursuant to this section to purchase New
12 Mexico-grown, -raised or -processed products. A participating
13 school food authority may use the amount received pursuant to
14 this section to support implementation of program requirements
15 described in Subsection E of Section 3 of the Healthy Hunger-
16 Free Students' Bill of Rights Act.

17 B. School food authorities shall use the money
18 received pursuant to this section to purchase New Mexico-grown,
19 -raised or -processed products. A minimum of seventy-five
20 percent of funds shall be used to purchase unprocessed and
21 minimally processed products. Up to twenty-five percent of
22 funds may be used for value-added processed products.

23 C. By August 1 of each year, subject to available
24 appropriations, the department shall distribute to each
25 participating school food authority the greater of one thousand

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1 dollars (\$1,000) or an amount equal to ten cents (\$.10)
2 multiplied by the number of lunches that qualified for federal
3 free meal reimbursement that the participating school food
4 authority served to students in the preceding school year.
5 When calculating the amount of program funding that is due to a
6 school food authority, the department shall assume that student
7 participation will remain at the same level as the previous
8 year."

9 SECTION 5. A new section of the Healthy Hunger-Free
10 Students' Bill of Rights Act is enacted to read:

11 "[NEW MATERIAL] ADDRESSING FOOD WASTE.--By no later than
12 July 1, 2025, a school food authority shall seek to achieve the
13 lowest level of food waste, which shall include all of the
14 following:

15 A. students in grades kindergarten through five
16 shall be allowed to have up to twenty minutes of seated lunch
17 time each school day to provide sufficient lunch periods that
18 are long enough to give all students adequate time to eat; and

19 B. share tables shall be provided where food
20 service staff, students and parents may return allowable food.
21 Allowable food placed on the share tables that is not taken by
22 a student during the course of a regular school meal period
23 shall be donated to students, food banks or other nonprofit
24 charitable organizations."

25 SECTION 6. APPROPRIATION.--Thirty million dollars

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1 (\$30,000,000) is appropriated from the general fund to the
2 department of finance and administration for expenditure in
3 fiscal year 2024 and subsequent fiscal years to implement the
4 provisions of the Healthy Hunger-Free Students' Bill of Rights
5 Act. Any unexpended or unencumbered balance remaining at the
6 end of a fiscal year shall not revert to the general fund.

7 SECTION 7. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2023.

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