



STATE OF ALABAMA
DEPARTMENT OF EDUCATION



Eric G. Mackey, Ed.D.
State Superintendent of Education

September 4, 2019

MEMORANDUM

TO: City and County Superintendents of Education
FROM: Eric G. Mackey *EGM*
State Superintendent of Education
RE: Food Surplus Donations (Act 2019-526)

Alabama Act 2019-526 ("the Act"), which provides that a local school system may allow its schools to donate surplus food to a charitable organization and further provides that a local board may adopt a policy under which donated food may be provided to certain students at no costs, became effective on September 1, 2019. School systems have the option of donating food to a charitable organization, but are not required to do so.

The Alabama State Department of Education (ALSDE), Child Nutrition Programs (CNP) Section, has developed the recommendations below to assist in the adoption of policies should your local system choose to donate surplus food under the Act. These recommendations are not fully inclusive of all related issues that may be encountered in a local education agency (LEA). A few recommendations for School Food Authorities and LEA leaders include the following:

- Be certain that overt identification of free and reduced students does not occur.
- Be certain that food donation recipients qualify as a charitable organization as defined in the Act.
- Be certain that intentional overproduction of food for the purpose of donation does not occur.
- Establish a process for documenting food donations to include food safety records.
- Establish a process to ensure separation of Child Nutrition Programs food and donated food, especially if the donated food is stored at the school.
- Be certain that food donations do not violate any current policies, laws, or regulations—to include but not limited to, the Smart Snacks in School and Fundraising Activities Policy.

Attached are copies of the Alabama Implementation of Smart Snacks in School and Fundraising Activities and Act 2019-526.

If you have any questions, please contact Ms. June Barrett, Program Coordinator for Child Nutrition Programs, at (334) 694-4656 or jbarrett@alsde.edu.

EGM/JB/JR

Attachments

cc: Child Nutrition Program Directors
Mr. E. Perry Taylor
Ms. June Barrett

FY19-3057

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of Education

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ACT #2019- 526

1 HB566
2 199963-4
3 By Representatives Kitchens, Rowe, Faulkner, Sullivan,
4 Stadthagen, Estes, Moore (P), Lawrence, Fincher, Gray, Shiver,
5 Coleman, Drummond, Wilcox, Faust, Collins, Allen, Ledbetter,
6 Standridge, Rich, Brown (K), Robertson, Wood (D), Shaver,
7 Kiel, Marques, Isbell, Whitt, Crawford, Reynolds, Morris and
8 Easterbrook
9 RFD: Education Policy
10 First Read: 02-MAY-19



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ENROLLED, An Act,

Relating to public K-12 school nutrition; to provide that a public school district may allow its schools to donate surplus, non-expired food to a charitable organization for the purpose of redistributing the food to needy students participating in the federal school nutrition programs for consumption at the school or off school grounds.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) For purposes of this section, the following terms have the following meanings:

(1) CHARITABLE ORGANIZATION. Any food bank or charitable organization as defined in the federal Richard B. Russell National School Lunch Act.

(2) DEPARTMENT. The State Department of Education.

(3) FOOD. Any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(4) SCHOOL. A public elementary school, middle school, or high school.

(b) A local board of education may allow any school under its jurisdiction to donate surplus, non-expired food to a charitable organization through an official of the charitable organization who is directly affiliated with the school, including a teacher, counselor, support staff, or any

1 employee of the school, or a parent of a student enrolled at
2 the school. The donated food may be received, stored, and
3 distributed at the school. All applicable federal and state
4 food safety requirements shall be followed during handling,
5 storage, and distribution of the food.

6 (c) Food donated to a charitable organization
7 pursuant to this section may be distributed at the school at
8 any time. School employees may assist in preparing and
9 distributing the food as volunteers for the charitable
10 organization.

11 (d) A local board of education may adopt a policy
12 under which schools provide donated food pursuant to this
13 section at no cost to a student who receives free or reduced
14 cost school meals under the National School Breakfast and
15 Lunch Programs for breakfast, lunch, or dinner meals or for a
16 snack if the student is unable to purchase breakfast, lunch,
17 or dinner meals or a snack. A policy adopted pursuant to this
18 section may not require that food provided pursuant to the
19 policy be consumed at the school or prohibit the food from
20 being transported away from school grounds by the student.

21 (e) (1) ~~No~~ Pursuant to Section 36-1-12, Code of
22 Alabama 1975, no school employee or school shall be subject to
23 civil or criminal liability arising from the nature, age,
24 packaging, or condition of food that the employee or school

1 donates in good faith to a charitable organization for
2 ultimate distribution to students pursuant to this section.

3 (2) ~~A charitable organization~~ Pursuant to Section
4 6-5-336, Code of Alabama 1975, a person performing services
5 for a nonprofit organization, a nonprofit corporation, a
6 hospital, or a governmental entity without compensation may
7 not be subject to civil or criminal liability arising from the
8 nature, age, packaging, or condition of food that the person
9 or school donates in good faith to a charitable organization
10 for ultimate distribution to students pursuant to this
11 section.

12 (3) Subdivisions (1) and (2) do not apply to an
13 injury to or death of an ultimate user or recipient of the
14 food that results from an act or omission of the donor
15 constituting gross negligence or intentional misconduct.

16 (f) The State Board of Education shall adopt rules
17 as necessary to implement this section.

18 Section 2. This act shall become effective on the
19 first day of the third month following its passage and
20 approval by the Governor, or its otherwise becoming law.

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Mac McClatchey

Speaker of the House of Representatives

[Signature]

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 23-MAY-19, as amended.

Jeff Woodard
Clerk

Senate

30-MAY-19

Passed

APPROVED 6-10-19

TIME 2:34

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2019-526
Bill Num....: H-566

Recv'd 06/10/19 04:22pmSLF

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HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 600

YEAS 100 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. 600 AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees _____

SENATE ACTION

DATE: 2014
RD 1 RFD _____

This Bill was referred to the Standing Committee of the Senate on Education and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) _____ w/sub _____ by a vote of yeas 14 nays 0 abstain 0 this 24 day of May 2014 _____ Chairperson

DATE: _____ 20____
RF _____ RD 2 CAL _____

DATE: _____ 20____
RE-REFERRED _____ RE-COMMITTED _____
Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 600
YEAS 100 NAYS 0
PATRICK HARRIS, Secretary

Alabama

Implementation of USDA Smart Snacks in School and Fundraising Activities

Nutrition Implementation Guidelines

School Settings (Cafeteria and Vending Machines)

Beginning SY 2015-2016, schools shall provide a consistent environment that is conducive to healthful eating behaviors during school hours. The school campus shall reflect healthy nutrition environments. Schools must not establish policies, class schedules, bus schedules or other barriers that directly or indirectly restrict access to and compete with meal schedule. After being seated with their meal, students must have a minimum of 15-20 minutes to consume their meal.

Healthy and appealing foods shall be available through cafeteria meals and a la carte items. Foods served and/or sold through the cafeteria shall adhere to the Smart Snacks in School standards established by USDA and the Healthy Hunger-Free Kids Act of 2010. Portion sizes, calories, sodium, fat, and sugar limits must comply with the requirements as described by the USDA Smart Snacks in School standards.

Schools must review the items offered as a la carte sales and evaluate the nutritional contribution of each item. Single items and additional portions of foods that constitute the reimbursable meal may be sold as a la carte so long as these items are also in compliance with the USDA Smart Snacks in School standards. Foods sold as the "entrée" of any single meal are exempt from the USDA Smart Snacks in School standards, and may be sold a la carte on the day of, and the day after, the item is on the menu. Except in the case of entrees, as outlined above, all foods sold a la carte during the school day must meet the USDA Smart Snacks in School standards as outlined below. Food items that do not meet these standards should be eliminated from a la carte sales, or be sold in reduced portion sizes in order to comply with the USDA requirements.

Schools should focus on improving food quality in the school meal programs by offering whole grain-rich breakfast and lunch items, having one percent or less fat milk as the standard beverage, and increasing fruit and vegetables preferably using freshly grown, Alabama produce. Preparation of foods in the cafeteria must use cooking techniques to reduce fat, sugar, and sodium in school meals. School districts must not prepare foods by deep or pan frying and should reduce the number of pre-prepared (i.e. processed) food items that are planned and served each week. Food flash-fried by the manufacturer may be served but should be prepared by a food preparation method other than frying. The State staff in the Child Nutrition Program (CNP) will work with local school system CNP employees to address modifications necessary to offer healthier school meals.

Every school shall ensure that all foods sold in vending machines, school stores, and cafeterias are in compliance with the USDA Smart Snacks in Schools standards. The School Food Authority (SFA) may wish to utilize focus group(s), surveys and other methods to evaluate and approve items that are in compliance with USDA Smart Snacks in Schools standards. Healthy products must be priced at a level that encourages students to purchase them.

Amendments made by Section 208 of the Healthy Hunger-Free Kids Act of 2010 required the Secretary of Agriculture to establish nutrition standards for all foods sold in schools, other than food sold under the school lunch and breakfast programs. Foods sold will follow the Smart Snacks in School Standards, or "Nutrition Standards for All Foods Sold in School FNS-2011-0019. Food items in competition with the CNP scheduled meal time may not be sold or provided free of charge to students. This includes, but is not limited to food items purchased through school organizations and those donated from outside sources. To encourage students to eat healthy meals, schools are required to restrict student access to concessions,

extra sales, vending, and fundraisers one hour before or after meal periods. Therefore, schools may not schedule sales of such items immediately before or after meals that would compete with the meal service. If sales should occur that are in competition with the meal, then all income generated from such sales will be required to be given to Child Nutrition for depositing in the school cafeteria account. The policy is not intended to restrict access to healthy snacks during recess, or at times other than the meal service.

Nutrition Standards for Foods Sold Individually (exempts reimbursable meals)

Smart Snacks in Schools guidelines as established by the USDA:

Any food sold in schools must:

- *Be a "whole grain-rich" grain product; or*
- *Have as the first ingredient a fruit, a vegetable, a dairy product, or a protein food; or*
- *Be a combination food that contains at least ¼ cup of fruit and/or vegetable; or*
- *Contain 10% of the Daily Value (DV) of one of the nutrients of public health concern in the 2010 Dietary Guidelines for Americans (calcium, potassium, vitamin D, or dietary fiber)**

**On July 1, 2016, foods may not qualify using the 10% DV criteria.*

Foods must also meet several nutrient requirements:

- *Calorie Limits*
 - *Snack items: 200 calories or less*
 - *Entrée items: 350 calories or less*
- *Sodium Limits*
 - *Snack items: 230 mg or less***
 - *Entrée items: 480 mg or less*
- *Fat Limits*
 - *Total fat: 35% of calories or less*
 - *Saturated fat: Less than 10% of calories*
 - *Trans fat: zero grams*
- *Sugar Limit*
 - *35% or less of weight from total sugars*

***On July 1, 2016, snack items must contain 200 mg sodium or less per item.*

Accompaniments

- *Must be included in the nutrient profile as part of the food item sold to help control the amount of calories, fat, sugar, and sodium added to foods.*
- *Examples include: cream cheese, salad dressing, catsup, mustard, pickles, pickle relish, dips, sauces, and butter.*

School Definitions:

- **Elementary Schools** *Pre K-Grade 5*
- **Middle Schools** *Grades 6-8*
- **High Schools** *Grades 9-12*

Beverages Portion Sizes

All schools may sell:

- *Plain water (with or without carbonation)*
- *Unflavored low fat milk*
- *Unflavored or flavored fat free milk and milk alternatives permitted by NSLP/SBP*
- *100% fruit or vegetable juice*
- *100% fruit or vegetable juice diluted with water (with or without carbonation), and no added sweeteners.*

Portion size limitations by school categories:

- *Elementary schools may sell up to 8-ounce portions of milk or juice*
- *Middle schools and high schools may sell up to 12 ounce portion of milk and juice.*
- *There is no portion size limit for plain water.*

Additional “no calorie” and “lower calorie” beverage options for high school students:

- **No more than 20-ounce portions of calorie-free, flavored water (with or without carbonation); and other flavored and/or carbonated beverages that are labeled to contain less than 5 calories per 8 fluid ounces or 10 calories or less per 20 fluid ounces.**
- **No more than 12 ounce portions of beverages with 40 calories or less per 8 fluid ounces, or 60 calories or less per 12 fluid ounces.**

School Day

School Day means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

Fundraising Activities

Fundraising activities that involve the selling of food should reinforce food choices that promote good health.

Allowable Fundraising on School Campuses:

- Foods that meet the USDA Smart Snacks in School standards, but are not sold in competition with school meals. Example: Fruit
- Foods that do not meet the USDA Smart Snacks in School standards, but are not consumed at school. Example: Cookie Dough Sales
- Non-food items. Example: School Supplies
- Food fundraisers which meet exempt fundraising definition.

Exempt Fundraiser Definition

An exempt food fundraiser is defined as the sale of food items that do not meet the USDA Smart Snacks in School standards and are sold during the school day. A school may sponsor up to and not to exceed **30 exempt fundraisers per year**, for no more than one (1) day each in length. Exempt fundraiser food is prohibited from being sold as a la carte item, in vending machines or in school stores, or before school on school campus.

Foods sold as part of exempt fundraisers may not be sold one (1) hour before or after meal periods. Example: If lunch ends at 12:30 p.m., then the fundraiser could not start until 1:30 p.m. Exempt Food Fundraiser Procedure:

- School principal
 - Alabama’s Implementation of USDA Smart Snacks in School and Exempt Fundraisers Form.
 - Complete, approve and sign form (attachment 3).
 - Provide copy to CNP Director.
 - Provide documentation of approval upon request by Alabama State Department of Education (ALSDE) for audit review.
- Superintendent
 - Attestation of Compliance with Alabama Implementation of USDA Smart Snacks in School and Fundraising Activities.
 - Complete and sign the attestation document (attachment 4).
 - Provide to CNP Director’s to support the annual online application renewal
- Child Nutrition Director
 - Place a copy of the Alabama’s Implementation of USDA Smart Snacks in School and Exempt Fundraisers Form (signed by the school principal) in the wellness plan file.
 - Provide documentation of approval upon request by ALSDE.

Revised March 27, 2015

Semi-annual due dates are: July 1 and January 1 of each school year. The completed Alabama's Implementation of USDA Smart Snacks in School and Exempt Fundraisers Form is required to be signed and on file as described above before exempt food fundraisers commence.

^a *Richard B. Russell National School Lunch Act (79 P.L. 396, 60 Stat.230)*

^b *Healthy Hunger Free Kids Act of 2010*

^c *Federal Register, Vol. 78, No. 125, Friday, June 28, 2013, Rules and Regulations*

^d *U.S. Department of Agriculture, Food and Nutrition Service, FNS-466, December 2013*

^e *U.S. Department of Agriculture Memo SP 36-2014, Smart Snacks Nutrition Standards and Exempt Fundraisers*