

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 9 BREAKFAST PROGRAM

6.12.9.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.12.9.1 NMAC – Rp, 6.12.9.1 NMAC, 1/28/2020]

6.12.9.2 SCOPE: All public schools, bureau of Indian education schools, state-supported schools, state-sponsored schools, and residential child care institutions eligible to participate in the breakfast program established by Section 22-13-13.2 NMSA 1978.
[6.12.9.2 NMAC – Rp, 6.12.9.2 NMAC, 1/28/2020]

6.12.9.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-13-13.2, and 9-24-8 NMSA 1978.
[6.12.9.3 NMAC – Rp, 6.12.9.3 NMAC, 1/28/2020]

6.12.9.4 DURATION: Permanent.
[6.12.9.4 NMAC – Rp, 6.12.9.4 NMAC, 1/28/2020]

6.12.9.5 EFFECTIVE DATE: January 28, 2020 unless a later date is cited in the history note at the end of a section.
[6.12.9.5 NMAC – Rp, 6.12.9.5 NMAC, 1/28/2020]

6.12.9.6 OBJECTIVE: To establish the standards, procedures for waiver requests and the award of waivers, and procedures for funding necessary to implement the breakfast program established by Section 22-13-13.2 NMSA 1978.
[6.12.9.6 NMAC – Rp, 6.12.9.6 NMAC, 1/28/2020]

6.12.9.7 DEFINITIONS:

A. “Breakfast program” means the free breakfast program established by Section 22-13-13.2 NMSA 1978.

B. “Community eligibility provision” or “CEP” means a non-pricing meal service option for schools and school districts in low-income areas. Schools that adopt the CEP are reimbursed with federal USDA funds using a formula based on the percentage of students categorically eligible for free meals based on their participation in other means-tested programs such as the supplemental nutrition assistance program (SNAP) and temporary assistance for needy families (TANF).

C. “Congregate feeding” means all eligible students remain with their classmates for breakfast program service, and one or more students may not be separated from their classmates to access a meal.

D. “Eligible school” means a public school in which eighty-five percent or more of enrolled students were eligible for free or reduced-price lunch under the national school lunch act during the prior school year or a public school implementing the CEP or Provision 2. Eligible schools shall not include private, parochial, or home schools.

E. “Eligible student” means a student enrolled in an eligible school.

F. “Federal reimbursement rate” means an amount prescribed annually by the United States secretary of agriculture for federal payments toward each meal served. The federal reimbursement rate differs for free, reduced-price, and paid meals and whether the school is in “severe need,” as defined in 7 CFR Part 220.2 and according to the criteria in 7 CFR 220.9.

G. “Financial hardship” means the situation in which implementation of the breakfast program would cause a school to operate at a financial loss such that cost would exceed revenue and the use of funds from the state equalization guarantee would be required to cover the cost of serving breakfast. Financial hardship shall not include a school’s or staff’s non-interest or refusal to participate in the breakfast program.

H. “Multiplier” means the number established by the USDA to generate meal reimbursement rate percentages.

I. “Provision 1” means an alternative provision to the normal requirements for annual determinations of eligibility for free and reduced-price school meals, as defined in section 104(a) of the Healthy, Hunger Free Kids Act. Provision 1 allows free eligibility to be certified for a two-year period. There is no requirement to offer meals at no charge to all students.

J. “Provision 2” means an alternative provision to the normal requirements for annual determinations of eligibility for free and reduced-price school meals, as defined in section 104(a) of the Healthy, Hunger Free Kids Act. Provision 2 allows schools to establish claiming percentages and to serve meals at no charge to all participating children for a four-year period.

K. “Provision 3” means an alternative provision to the normal requirements for annual determinations of eligibility for free and reduced price school meals, as defined in section 104(a) of the Healthy, Hunger Free Kids Act. Provision 3 allows schools to receive the same level of federal cash and commodity assistance each year, with some adjustments, for a four-year period and to serve meals at no charge to all participating children for a four-year period.

L. “United States Department of Agriculture” or “USDA” means the federal agency that provides oversight and funding for school meal programs through food and nutrition service programs.

M. “Voluntary school” means a public school in which fewer than eighty-five percent of students were eligible for free or reduced-price lunch under the national school lunch act during the prior school year that selects to establish a breakfast program, so long as state funds exist.

[6.12.9.7 NMAC – Rp, 6.12.9.7 NMAC, 1/28/2020]

6.12.9.8 BREAKFAST PROGRAM REQUIREMENTS:

A. All eligible schools shall establish a breakfast program unless the school is granted a waiver by the department pursuant to 6.12.9.9 NMAC.

B. Voluntary schools may establish a breakfast program provided that state funding is available and the voluntary school complies with 6.12.9 NMAC and applicable state and federal laws.

C. Eligible and voluntary schools participating in the breakfast program shall offer breakfast to all eligible students, including to students arriving as much as two hours after the start of the instructional day.

D. Eligible and voluntary schools serving breakfast may:

- (1) choose to offer breakfast service before the start of the instructional day, provided that the school shall also serve breakfast after the beginning of the instructional day;
- (2) select the location of breakfast delivery, including the cafeteria, classroom, bus, or by providing a hand-carried breakfast; and
- (3) determine whether or not instruction will occur simultaneously while breakfast is served or consumed.

E. Eligible schools and voluntary schools serving students in prekindergarten, preschool, and kindergarten through grade 6 shall serve breakfast to all students by congregate feeding. Eligible and voluntary schools serving students in grades seven through 12 may serve breakfast by congregate feeding.

[6.12.9.8 NMAC – Rp, 6.12.9.8 NMAC, 1/28/2020]

6.12.9.9 BREAKFAST PROGRAM WAIVER:

A. Eligible schools may apply for a waiver of breakfast program participation if the eligible school can demonstrate that implementation of the breakfast program will result in financial hardship.

B. Waiver requests shall be submitted using the department’s breakfast program waiver request form no later than 30 calendar days after receiving a breakfast award.

C. Breakfast program waivers for eligible schools shall be posted on the department’s website.

[6.12.9.9 NMAC – Rp, 6.12.9.9 NMAC, 1/28/2020]

6.12.9.10 FUNDING OF BREAKFAST PROGRAMS:

A. CEP schools with a post-multiplier amount of one-hundred percent or higher shall not be eligible to receive a breakfast program award.

B. CEP schools with a post-multiplier amount greater than eighty-five percent but less than one-hundred percent shall be considered an eligible school and shall receive a breakfast program award. The award shall be for the amount calculated by subtracting the school’s post-multiplier amount from one-hundred percent.

C. Provision 1, 2, and 3 schools may be eligible for the breakfast program and shall be reimbursed at the federal reduced and free paid rates.

D. The department shall award eligible public schools serving students in grades 7 through 12 based on availability of funding.

E. The department shall award voluntary schools funding after all funds for eligible schools have been disbursed.

(1) The department shall award voluntary schools with the highest percentage of enrolled students eligible for free and reduced-lunch first.

(2) The department shall provide voluntary schools a preliminary estimate of funding to be used for planning purposes within 30 calendar days of the release of the federal reimbursement rate.

F. The department shall reimburse eligible and voluntary schools participating in the breakfast program:

(1) for students eligible for free or reduced-price lunch on a per meal basis at the federal reimbursement rate; and

(2) for students not eligible for free or reduced-price lunch on a per meal basis at a rate calculated by subtracting the school's post-multiplier amount from one-hundred percent.

[6.12.9.10 NMAC – Rp, 6.12.9.10 NMAC, 1/28/2020]

HISTORY OF 6.12.9 NMAC:

6.12.9 NMAC, Elementary School Free Breakfast Program During Instructional Time, filed 10/31/2011, was repealed and replaced by 6.12.9 NMAC, Breakfast Program, effective 1/28/2020.