



Dear members of the Policy and Legislative Affairs Division of the NM Public Education Department:

Public Charter Schools of New Mexico and the New Mexico Public Education Commission are writing with feedback and input on the proposed rulemaking for NMAC 6.12.16 "Healthy Universal School Meals." In partnership and collaboration, we are providing recommended resolutions to the proposed rule as the PED only has authority to define quality school meals and place requirements on school food authorities in so far as the statute directs 22-13C-4(E):

*22-13C-4E. The department shall promulgate rules necessary for implementation of this section, including rules providing for:*

- (1) meal quality improvement requirements for the program, which **may** include purchasing New Mexico-produced food, freshly preparing scratch-cooked foods, providing culturally relevant meals and engaging student and family voices and choices in menu development; and*
- (2) procedures for annual certification.*

We would like to highlight that the current language uses "may," not "shall," and should be considered when promulgating the proposed rule.

Please note that there are 10 points of feedback listed below, as well as proposed resolutions for each point.

## **Feedback Point #1: Lack of Rule Clarity Regarding Applicable Schools**

**Proposed Rule Component:** In the proposed rule, the department uses language that is not aligned with statute. The rule proposes:

6.12.16.2 Scope:

*All school districts and charter schools, bureau of Indian education schools, tribally controlled schools, state-supported schools, state-sponsored schools, private schools, and residential childcare institutions that operate the national school lunch program and the school breakfast program.*

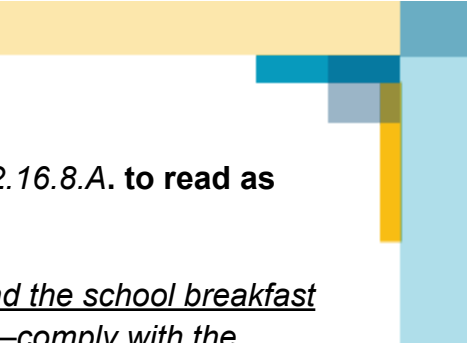
6.12.16.8 Healthy Universal School Meals Program Requirements:

*A. All public schools shall establish a healthy universal school meals program, pursuant to Section 22-13C-1 et seq. NMSA 1978.*

**Issue/Concern:** The scope and requirements of the rule do not clearly define which schools this rule applies to. The scope of the proposed rule is aligned with New Mexico statute language, however the language in the program requirements, as written, reads as though all schools must establish a healthy universal school meals program. New Mexico State law does not require all public schools to establish a healthy universal school meals program but allows for public schools to *choose* to do so if they so desire. This is articulated in current New Mexico statute under 22-13C-4 (A):

*22-13C-4. Universal school meals for children*

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



**Proposed Resolution to Address Issue/Concern: Reword 6.12.16.8.A. to read as follows:**

*All public schools that operate a national school lunch program and the school breakfast program shall establish a healthy universal school meals program—comply with the requirements of this promulgated rule.*

**Feedback Point #2: Level Consolidation**

**Proposed Rule Component: The rule proposes two levels of compliance for certification:**

*6.12.16.10. Compliance with performance measures for certification:*

*A. Certification is demonstrated by compliance with one of two levels.*

**Issue/Concern: The proposed rule creates two different levels of compliance for certification with no differentiation of reimbursement status. The concern regarding two levels of compliance is that it will set a precedent for inequitable funding after schools have incurred significant financial costs to implement the universal meal program.**

**Proposed Resolution to Address Issue/Concern: Remove Level 2 in its entirety. The rule should not have two distinct levels regarding compliance for certification. The rule should only set forth overall compliance measures to fulfill the requirements of the Healthy Universal School Meals Program. The compliance requirements should simply include a menu of options from which the school food authority may choose, to not only streamline the certification process, but to also allow for the unique needs of local communities to be met.**



### **Feedback Point #3: Onsite Kitchens**

**Proposed Rule Component:** The proposed rule requires that school meals be freshly prepared in an onsite kitchen. The rule uses the following language regarding onsite kitchens:

*6.12.16.10 B (1). No less than 50 percent of reimbursable national school lunch program and school breakfast program meals, including the entrée and grains, prepared each week, shall be freshly prepared meals at an onsite kitchen prepared by the school food authority, the central kitchen, a vendor, or a food service management company.*

*6.12.16.10 C (1). Seventy five percent or greater of reimbursable national school lunch program meals and school breakfast program meals, including the entrée and grains, prepared each week, shall be freshly prepared meals at an onsite kitchen prepared by the school food authority, the central kitchen, vendor, or food service management company.*

**Issue/Concern:** Most charter schools are the “school food authority.”

Furthermore, most charter schools, even those housed in district buildings, are also not equipped with a full kitchen. Several charter schools have contracted food vendor services that deliver hot meals to campus for breakfast and lunch, while others may receive meals from their local school districts. The language in the rule and the sentence structure conveys that even if a school uses a vendor, that vendor must prepare the food at the onsite kitchen. The rule does not clearly define that the onsite kitchen pertains to the source of where the breakfast and lunch meals are being prepared.

**Proposed Resolution to Address Issue/Concern:** Reword the onsite kitchen meal preparation requirements as follows:

*6.12.16.10 B (1). and 6.12.16.10 C (1). . . . .of reimbursable national school lunch program meals and school breakfast program meals, including the entrée and grains, prepared each week, shall be freshly prepared meals. ~~at an onsite kitchen prepared by the school food authority, the central kitchen, vendor, or food service management company.~~*



**Feedback Point #4: 3 Items on a Weekly Basis from NM Farms or Businesses**

**Proposed Rule Component:** The rule proposes the following requirements for certification:

*6.12.10.B (2) School food authorities shall offer at least three items on a weekly basis from New Mexico farms, ranches, or food businesses.*

*6.12.10.C (2) (a) All schools shall offer more than four items weekly from New Mexico farms, ranches, or food businesses.*

**Issue/Concern:** In the proposed rule, the department uses language that is not aligned with statute. Again, current New Mexico statute uses the language “may” not “shall” in 22-13C-4E when referring to New Mexico-produced food. Furthermore, there is a concern about the capacity of local ranchers and farmers to supply all local food authorities with the required New Mexico grown foods.

*22-13C-4E. The department shall promulgate rules necessary for implementation of this section, including rules providing for:*

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

**Proposed Resolution to Address Issue/Concern:** Requirement 6.12.10.B (2) and 6.12.10.C (2) (a) for certification should be removed.



## **Feedback Point #5: Growing Food on Campus**

**Proposed Rule Component:** The rule proposes that school food authorities “shall” grow food on campus as an option for a performance measure:

*6.12.10.B (3)(a) No less than fifty percent of schools in a school food authority shall grow food on campus with seasonal incorporation of produced food into breakfast, lunch, or snack programs. If a single school is its own school food authority, that school shall grow food on campus with seasonal incorporation of produced food into breakfast, lunch, or snack programs.*

*6.12.10.C(2)(b) No less than fifty percent of schools shall grow food on campus with monthly incorporation of produced food into breakfast, lunch, or snack programs. If a single school is its own school food authority, that school shall grow food on campus with monthly incorporation of produced food into breakfast, lunch, or snack programs.*

**Issue/Concern:** This is an unrealistic requirement that would not be able to be fulfilled by most New Mexico schools. Many schools, especially charter schools, do not have the facilities, staff, land, or funding mechanism to grow food on campus. Additionally, the growing and harvesting season is often outside of the traditional school year. The investment in the infrastructure needed to grow food year round (i.e., greenhouse) would be immense and there is no funding available to make these investments. Due to the requirements in the rule that food be made “fresh and from scratch,” there are additional concerns that even food grown in summer months could not be processed and frozen to be used during the winter meals.

**Proposed Resolution to Address Issue/Concern:** This component should be removed as a performance measure option to demonstrate certification compliance.



**Feedback Point #6: Use of the word “cafeteria.”**

**Proposed Rule Component:** The rule uses the term “cafeteria” in 6.12.16.10.A(3)(b); 6.12.16.10.A(4)(b); and 6.12.16.10.C(3)(b).

**Issue/Concern:** Many charter schools do not have a designated cafeteria.

**Proposed Resolution to Address Issue/Concern:** Change the term “cafeteria” to “school campus.”

**Feedback Point #7: Monthly Donation**

**Proposed Rule Component:** The rule attempts to establish the frequency of unused food donations:

*6.12.16.10.(B)(4)(c) Schools shall have a system for monthly donation of unused food to students or community-based organizations.*

**Issue/Concern:** Schools have varying food storage capacity, staffing, transportation, and schedules and should have the autonomy to determine when they will donate unused food. New Mexico statute does not specify a timeline for the donation of unused food items:

*22-13C-10. B. share tables shall- be provided where food service staff, students and parents may return allowable food. Allowable food placed on the share tables that is not taken by a student during the course of a regular school meal period shall be donated to students, food banks or other nonprofit charitable organizations.*

**Proposed Resolution to Address Issue/Concern:** Remove the monthly requirement and default to the statute which allows any timeline to donate unused food.

## **Feedback Point #8: Performance measures options are not aligned with statute.**

**Proposed Rule Component:** The rule proposes for school food authorities to adhere to at least one of three performance measures:

### **Option 1 - Recess Before Lunch Two Days a Week**

The rule attempts to establish recess requirements in grades K through 5:

*6.12.16.10.(B)(5)(a) All students, kindergarten through grade five, shall be offered recess before lunch at least two days during the school week.*

**Issue/Concern:** Schools have a variety of scheduling needs and should be allowed to schedule recess when appropriate based on the needs of the school community. The New Mexico statute does not specify recess requirements regarding lunch:

*22-13C-10. A. students in grades kindergarten through five shall be allowed to have up to twenty minutes of seated lunch time each school day to provide sufficient lunch periods that are long enough to give all students adequate time to eat.*

### **Option 2 - Plate Waste Study Requirement**

The rule attempts to have schools engage in a “plate-waste” study.

*6.12.16.10.(B)(5)(b) At least fifty percent of schools in a school food authority shall engage in plate waste studies on a quarterly basis. If a single school is its own school food authority, that school shall engage in plate waste studies on a quarterly basis.*

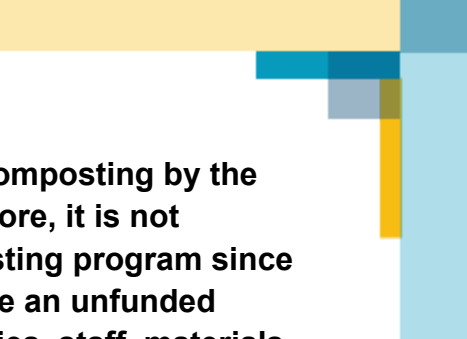
**Issue/Concern:** There is currently no definition or guidance on what a “plate-waste” study is, in law or in the department. New Mexico statute 22-13C-10 *Addressing Food Waste* does not refer to “plate waste study.”

### **Option 3 - Composting Requirement**

The rule attempts to require schools to establish a composting program.

*6.12.16.10.(B)(5)(c) At least fifty percent of schools in a school food authority shall have a composting program in place. If a single school is its own school food authority, that school shall have a composting program.*





**Issue/Concern:** New Mexico statute does not refer to composting by the school food authority to address food waste. Furthermore, it is not possible for all charter schools to implement a composting program since most are their own school food authority. This would be an unfunded requirement option that would require additional facilities, staff, materials, and security. An additional issue around public health and safety safeguards is an imminent concern (e.g., vermin, homelessness, student accessibility).

**Proposed Resolution to Address Issue/Concern:** All three options under 6.12.16.10.B (5) are not aligned with statute and should be removed from the proposed performance measures.

### **Feedback Point #9: Community Engagement and Feedback**

**Proposed Rule Component:** Sections 6.12.16.10.(B)(6); 6.12.16.10.(B)(7); and 6.12.16.10.(B)(8) attempt to require such things as menu feedback from stakeholders on a quarterly basis, taste tests for both breakfast and lunch, food and nutrition education into staff professional development, and food preparation by middle and high school students, to name a few.

**Issue/Concern:** The rule proposes requirements that are not aligned with New Mexico statute and is an overreach by the department. Again, New Mexico statute uses the language “may” not “shall” in 22-13C-4E when referring to student and family voices:

*22-13C-4E. The department shall promulgate rules necessary for implementation of this section, including rules providing for:*

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

**Proposed Resolution to Address Issue/Concern:** Remove the adherence from the proposed rule. The appropriate place for the rule requirements described in 6.12.16.10.(B)(6); 6.12.16.10.(B)(7); and 6.12.16.10.(B)(8) are in the nutritional educational standards and not in the distribution of breakfast and lunch meals.

## **Feedback Point #10: Funding and Noncompliance of Meal Quality Improvement Requirements**

**Proposed Rule Component:** In the proposed rule, the department attempts to establish how the distribution of funding to each school food authority will be determined:

### *6.12.16.11 Funding Distributions*

A. *The department shall distribute funding to each school food authority that establishes a healthy universal school meals program as follows:*

*(1) for school food authorities that meet the meal quality improvement requirements established by this rule each year, the department shall distribute to each such school food authority an amount that is equal to the federal free meal reimbursement rate multiplied by the total number of eligible meals served during the applicable budget year, minus an amount equal to the federal paid meal reimbursement for eligible meals served during the applicable budget year; or*

*(2) for school food authorities that do not meet the meal quality improvement requirements established by this rule by July 1 each year, the department shall distribute to each such school food authority an amount that is equal to the paid meal rate multiplied by the total number of eligible meals served during the applicable budget year.*

**Issue/Concern:** Schools would have incurred significant financial costs to implement the universal meal program without the ability to correct or improve compliance with certification requirements.

**Proposed Resolution to Address Issue/Concern:** In the proposed rule, there is no improvement plan for schools that have not met the meal quality improvement requirements. The schools that do not meet the requirements should be put on an improvement plan so that they can get back into compliance to receive full funding. For example: If schools comply, they will receive full reimbursement for all meals. If schools do not comply the schools may still get full reimbursement but placed on a probationary year to meet compliance standards. By the third year, if schools are still not in compliance with meal quality improvement requirements, then the school would not receive the full reimbursement for all meals.

Thank you for your willingness to hear our input as well as your consideration of our proposed resolutions.

Regards,

Public Charter Schools of New Mexico and the New Mexico Public Education Commission

