

Kentucky Department of Education
Summer Food Service Program Waiver Request
Extension of Waivers for Operation of the SFSP during COVID-19
School Year 2020-2021
Submission Date: August 3, 2020

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for the USDA to waive requirements for State agencies or eligible service providers under certain circumstances.

Local Education Agencies (LEAs) in Kentucky, at the strong recommendation of the Governor, shifted learning to non-traditional instruction in mid-March 2020 and this continued through the end of the 2019-2020 school year. Since that time, an intense focus on planning for reopening has occurred across the state. The Kentucky Department of Education has created and distributed a multitude of guidance documents in collaboration with the Kentucky Department for Public Health aimed at assisting LEAs with the challenges they face, all the while stressing that they must develop plans that are flexible and able to shift based upon the evolving situation within the state. These plans include considerations for learning methods including in-person, remote and hybrid plans. Each plan will be different based on the unique academic and operational needs of their LEA and community.

In early July, cases of COVID-19 began to increase in Kentucky and recent changes in the metrics have created concern among health officials. This is impacting the planning and course of action taken already, or in process, by our LEAs regarding reopening for schools in just a few short weeks. Due to these factors, some of Kentucky's LEAs are opting to begin the 2020-2021 school year with non-traditional instruction only (no in-person classes), including Kentucky's two largest school districts. Our LEAs are struggling to adapt to the health crisis yet continue to serve nutritious meals to children/students during this time.

1. State agency submitting waiver request and responsible State agency staff contact information:

Kentucky Department of Education
Division of School and Community Nutrition
300 Sower Boulevard,
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2. **Region:** Southeast
3. **Eligible service providers participating in waiver and affirmation that they are in good standing:**

Kentucky School Food Authorities (SFAs) and other sponsoring organizations in good standing will be able to participate in the waiver. SFAs and sponsoring organizations are in good standing if they have had no serious deficiencies declared in their most recent review cycle.

4. **Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

SFAs are challenged with adapting their meal service practices to the National School Lunch Program (NSLP) during the COVID-19 pandemic for the upcoming school year 2020-21. The Kentucky Department of Education has provided flexibility to schools on how to determine participation and attendance for students receiving alternate (non-traditional or virtual) forms of instruction outside of the school building due to COVID-19. The flexibilities to date include options that give families the ability to decide (sometimes on a daily basis) if their student will physically attend in school or participate in a virtual setting. Due to the configuration of the statewide student information system in Kentucky, schools are developing new methods of tracking student enrollments and attendance, as well as defining participation, such as creating new schools with virtual only enrollments. The creation of these solutions necessitated only by COVID-19 pose challenges for food service operators to identify the original enrolled school of students who are receiving alternate instruction in a virtual setting and retroactive attendance tracking based on participation as determined by completeness of coursework. This challenge is exacerbated by the parent/household's ability to select the physical or virtual option on a daily basis therefore creating significant challenges for food service to identify a student's eligibility and how to claim meals appropriately while trying to maintain NSLP program integrity. In essence, student demographics at school feeding sites will be constantly changing across the school systems throughout the year. For SFAs that have partial participation in the Community Eligibility Provision (CEP) it will be very difficult to identify eligibilities of students due to the mixed population of students selecting virtual instruction. Additional program challenges include: 1) the inability and limitations of software Points of Service to operate in a school wide capacity when needed at centralized meal distribution area or areas (outside of typical feeding site) to ensure that meal counts are associated with the enrolled students eligibility for accurate claiming as well as payment processing when necessary, 2) barriers to ensuring full access to the USDA household school meals application for households

in need due to distance, language and technology hurdles and 3) heightened food insecurity since children not enrolled in school will not receive meals as they have under the Summer Food Service Program (SFSP) since mid-March. The goal of the waiver is to improve meal availability to community children during the national public health crisis. In 2019, Kentucky's economy was ranked in the bottom five states. With record numbers of unemployment claims associated with job loss during the health crisis, the need for nutritious meals for children is exponentially greater at this time. The need is evidenced by the 35% increase in the number of Kentucky households receiving SNAP benefits with a substantial portion of the ever-increasing numbers not being included in ISP calculations due to the CEP timeline. By providing meals under the SFSP, school nutrition programs and SFSP sponsors may continue to serve as a safety net for all food-insecure children in Kentucky. Through this approach, SFAs and other sponsoring organizations will be able to serve nutritious meals to more children when the need is greatest while avoiding program integrity issues associated with the challenges presented above.

5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:

The Kentucky Department of Education is requesting a waiver to allow SFA's and other SFSP sponsoring organizations to provide SFSP with a continuation of the following waivers through June 30, 2021:

- Operation of SFSP During Unanticipated School Closures- 7 CFR 225.6(d)(1)(iv)
- Non-congregate meal service waiver - 7 CFR 225.6(e)(15) and 7 CFR 226.19(b)(6)(iii)
- Parent/Guardian Meal Pick-up – 7 CFR 225.2 and 7 CFR 225.9(d)(7)
- Meal Service Time Restrictions -7 CFR 225.16(c)(2) and (3)
- Area Eligibility - 7 CFR 225.2, 225.6(c)(2)(i)(G), 225.6 (c)(3)(i)(B), 225.6(d)(1)(i); 225.14(c)(3), and 225.16(b)(4)

SFA's would designate either NSLP or SFSP as the federal child nutrition program to be used for the duration of the school year.

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

The impact on Program operations for the State Agency will be minimal since most Kentucky LEAs have participated in SFSP since mid-March of this year. There will be no anticipated impact on technology for the State Agency or sponsors. The State Agency will continue to provide training and technical assistance to SFSP sponsors and will comply with any additional monitoring that may be required by USDA.

7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(l)(2)(A)(ii) of the NSLA]:

There are no regulatory barriers at the state level.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

The Kentucky Department of Education does not anticipate any challenges with implementation of the waiver or waivers as SFA's and SFSP sponsoring organizations have successfully implemented the SFSP to date throughout the pandemic.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(l)(1)(A)(iii) of the NSLA]:

Considering the economic impact of the pandemic as outlined in item 4 above, we anticipate an overall cost increase to the Child Nutrition Programs. It is not anticipated that the increase would be due to the approval of this waiver. Currently, 88% of NSLP sponsors have some level of participation in the Community Eligibility Program (CEP), with 76% of sponsors having full participation and over 87% of our CEP sites successfully restarting their CEP cycle beginning in 2020-2021 due to increased Identified Student Percentages (ISPs). Increased ISPs correlate to an increase in the reimbursement amounts as more students are reimbursed at the higher free student rate, therefore potentially increasing the overall cost of the program.

10. Anticipated waiver implementation date and time period:

The Kentucky Department of Education respectfully requests expedited approval of this waiver request. This waiver will be implemented upon date of USDA approval through June 30, 2021. This will aid SFAs planning for the upcoming school year 2020-2021.

11. Proposed monitoring and review procedures:

The Kentucky Department of Education will monitor program operations and sites during the application and administrative review process. All aspects of operation will be reviewed according to regulation and prevailing guidance. Sponsors will submit corrective action plans as necessary to ensure program integrity.

12. Proposed reporting requirements (include type of data and due date(s) to FNS):

Reports will include the number of sponsors, sites and overall impact of the waiver and will be reported within one year of the waiver expiration date or when USDA requires the report.

13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]:

KDE SFSP Website link:

[https://education.ky.gov/federal/SCN/Pages/Summer-Food-Service-Program-\(SFSP\).aspx](https://education.ky.gov/federal/SCN/Pages/Summer-Food-Service-Program-(SFSP).aspx)

14. Signature and title of requesting official:



Title: Director, Division of School and Community Nutrition

Requesting official's email address for transmission of response:

lauren.moore2@education.ky.gov
cathy.Gallagher@education.ky.gov

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.

Date request was received at Regional Office:

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**

• Regional Office Analysis and Recommendations: