



Food and Nutrition Administration
U.S. DEPARTMENT OF AGRICULTURE

September 24, 2026

Lynelle Johnson

Director of Child Nutrition and Food Distribution

North Dakota Department of Public Instruction

600 E Boulevard Ave, Dept 201

Bismarck, ND 58505

Dear Lynelle Johnson:

This letter is in response to North Dakota Department of Public Instruction's (ND DPI) September 23, 2026, request to approve local program operators to provide non-congregate meal service in the National School Lunch Program (NSLP) and School Breakfast Program (SBP), when congregate meal service operations are limited due to natural disasters, unscheduled major building repairs, court orders relating to building safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. In order to support continued access to nutritious meals, the Food and Nutrition Administration (FNA) recognizes that certain operational flexibilities may be necessary.

FNA has authority to issue statewide waivers under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l). To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the Program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the Program to the Federal Government. FNA finds that ND DPI's waiver request satisfies these statutory requirements.

Specifically, ND DPI requested a statewide waiver of the requirements explained below.

National School Lunch and School Breakfast Programs (School buildings are closed with virtual learning)

The waivers in this section are intended to provide needed flexibility to support school food authorities (SFAs) in continuing to offer nutritious meals during school building closures due to the unanticipated causes listed in the first paragraph of this waiver when virtual classes are offered. These waivers are effective through June 30, 2027.

Non-Congregate Meal Service (NSLP/SBP)

Under the NSLA, 42 U.S.C. 1753(b)(1)(A), and the Child Nutrition Act, 42 U.S.C. 1773(b)(1)(A), NSLP and SBP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNA waives the aforementioned requirements to serve meals through the NSLP and SBP in a congregate setting. Any other requirements referenced in these provisions remain in effect.

Meal Service Times (NSLP/SBP)

Under Program regulations at 7 CFR 210.10(l) and 7 CFR 220.8(l), meals served in the NSLP and SBP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNA waives the aforementioned requirements that set meal time parameters for school lunch and breakfast.

Parent and Guardian Meal Pickup (NSLP/SBP)

Under Program regulations at 7 CFR 210.10(a), 7 CFR 220.2 (Breakfast), and 7 CFR 220.8(a), meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNA waives the requirements that meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. State agencies opting to use this flexibility must have a plan for ensuring that local operators are able to maintain accountability and Program integrity. This includes putting in place processes to ensure that meals are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

Offer Versus Serve (NSLP only)

Under the NSLA, 42 U.S.C. 1758(a)(3), and Program regulations at 7 CFR 210.10(e), program operators of senior high schools (as defined by the State education agency) must participate in offer versus serve at lunch.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNA waives the requirements to serve school lunches to senior high school students using offer versus serve. FNA also extends the offer versus serve flexibility to SSO for the duration of this waiver when there is an unanticipated school closure during the school year.

As a reminder, schools that are not participating in a Special Provision Option, such as the Community Eligibility Provision or Provision 2, must continue to count and claim meals by type (free, reduced price, or paid) when operating the NSLP or SBP under this approval. Schools participating in a Special Provision Option must continue to claim meals according to the requirements of that Provision when operating NSLP or SBP under this approval.

FNA is granting these waivers to allow ND DPI and local program operators to more quickly respond to those occasions when congregate meal service is limited or negatively impacted by unanticipated building closures caused by natural disasters, unscheduled major building repairs, court orders relating to building safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. However, ND DPI **may not** approve a waiver for a local program operator for more than 10 consecutive operating days without approval from FNA. In situations that may warrant longer approval periods, the appropriate FNA office will work closely with ND DPI to determine if an extension is needed.

The waiver authority at Section 12(l) of the NSLA requires FNA to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by September 30, 2027, ND DPI must provide to FNA a report quantifying the impact of the waiver, as described below. The report must include the following:

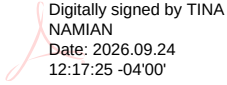
- A description of how the waiver improved services to participants;
- A summary of benefits and challenges associated with the waiver;
- The number of local program operators (i.e., LEAs) that utilized NSLP/SBP waivers; and
- A description of why congregate meal service was limited (e.g., natural disasters, unscheduled major building repairs, etc.).

In addition, State agencies should maintain sufficient documentation to ensure local program operators are appropriately implementing the waivers.

If you have questions, please contact the appropriate FNA office.

Sincerely,

TINA
NAMIAN

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NAMIAN
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Tina Namian

Deputy Associate Administrator

Child Nutrition Programs