

Kirsten Baesler
State Superintendent



NORTH DAKOTA DEPARTMENT OF
PUBLIC INSTRUCTION

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January 28, 2019

1. **State agency submitting waiver request and responsible State agency staff contact information:** North Dakota Department of Public Instruction

2. **Region:** Mountain Plains

3. **Eligible service providers participating in waiver and affirmation that they are in good standing:**

State-wide waiver request for all participating SFSP sponsor organizations. All SFSP sponsor organizations are in good standing.

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]:**

The State agency is seeking to request a state-wide waiver for the SFSP flexibility within SFSP 06-2017 that were rescinded by FNS on October 11, 2018 that extended Offer Versus Serve (OVS) to non-school food authority sponsors.

These FNS waivers have benefitted both State agencies and SFSP sponsors by helping them efficiently operate the SFSP in a more cost effective manner. It has also allowed SFSP sponsors to align the SFSP meals more closely with the enrichment programs operating in their communities. These waivers have also allowed sites to be more welcoming and increase the number of children reached by the SFSP. Rescinding these flexibilities will place undue burden on both the State agency and the SFSP sponsoring organizations and sites.

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

Offer Versus Serve:

We are requesting a waiver to extend Offer Versus Serve to non-school food authority sponsors and to allow OVS with use of both the NSLP and SFSP meal patterns.

Section 13(f)(7) of the NSLA OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an

ND School for the Deaf/RCDHH
Devils Lake, ND
(701) 665-4400

ND State Library
Bismarck, ND
(701) 328-2492

ND Vision Services/School for the Blind
Grand Forks, ND
(701) 795-2700

offered food item shall not affect the amount of payments made under this section to a school for the meal.

42 USC 1761(f)(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

7 CFR 225.16(f)(1)(ii) Offer versus serve. School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this “offer versus serve” option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the “offer versus serve” must not be reduced because children choose not to take all components of the meals that are offered.

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

Offer Versus Serve:

All SFSP sites, regardless of location or type of sponsorship, may utilize OVS for breakfast, lunch or supper.. Use of OVS will be extended to non-school sponsors. All non-school sponsors electing to use OVS and schools participating in SFSP and electing to follow the SFSP meal pattern will be required to follow the SFSP OVS requirements as outlined in SFSP 06-2017. Sponsors must indicate their intention to utilize OVS on the sponsor or site application. School sponsors that elect to use the NSLP or SBP patterns and SFAs operating SSO will be required to follow the OVS requirements of NSLP and SBP.

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]:

Previously, the State agency has not had to address any regulatory barriers as these flexibilities were in place.

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

The State agency does not anticipate that these waivers will present any challenges to the agency or SFSP sponsor organizations as these flexibilities have already been implemented and in place.

The challenges that the State Agency and SFSP sponsor organizations may face if the waiver is NOT approved include:

- Increased costs to State agency to update software systems to bring into compliance with regulation changes, including application, claims, and compliance modules
- Increased burden to State agency to update training materials, re-train SFSP sponsors, and monitor compliance regarding rescinded flexibilities
- Increased food costs and food waste for SFSP sponsors not allowed to implement OVS
- Decreased child satisfaction with meal selection requirements with potentially decreased participation at site.
- Increased food costs and food waste for non-school food authority sponsors that no longer have the option to implement offer versus serve.

- Loss of choice for children in meal selection, resulting in decreased participation and an increase in childhood hunger in North Dakota.

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(I)(1)(A)(iii) of the NSLA]:

The State agency does not anticipate that these waivers will increase the overall cost of the Program to the Federal Government. These waiver will however continue to assist the SFSP sponsors and the State agency stream line and control costs to their programs.

10. Anticipated waiver implementation date and time period:

To be effective with the start of the 2019 SFSP and approved for a period of 5 years.

11. Proposed monitoring and review procedures:

The State agency will do individual sponsor technical assistance during preapproval visits and annual application renewal; then continue to follow their standard SFSP review procedures. Sponsors found to have noncompliance issues as related to these waivers will work with the State agency on an individualized corrective agency plan and will have follow-up reviews scheduled as needed.


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

The State agency will report to FNS any compliance issues noted with these flexibilities during application approvals and reviews by October 1st each year.

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

<http://itdwww7.nd.gov/dpi/SchoolStaff/ChildNutritionFoodDistribution/SummerFoodServiceProgram/>

14. Signature and title of requesting official:


Name: _____ Title: Director, Child Nutrition and Food Distribution Programs

Requesting official's email address for transmission of response: lkschloer@nd.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(I)(1)(A)(ii) of the NSLA

- **Regional Office Analysis and Recommendations:**