



DEPARTMENT OF EDUCATION

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Secretary of Education
(302) 735-4000
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October 20, 2023

MEMORANDUM

TO: School Nutrition Supervisors
Single Unit and Special School Administrators

FROM: Aimee F. Beam, MS, RD *AB*
Education Associate, Nutrition Programs

RE: **SY 2023-2024 Operational Memo #15**
Waiver of Community Eligibility Provision (CEP) Election Deadline

The Delaware Department of Education (DDOE) has received approval from the United States Department of Agriculture (USDA) to waive the June 30 CEP election deadline codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives for DDOE the statutory requirement that LEAs intending to elect CEP for School Year (SY) 2023-2024 must submit Identified Student Percentage (ISP) documentation by “not later than June 30 of the current school year,” and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30”. Instead, LEAs that intend to elect CEP for SY 2023-2024 must submit ISP documentation to the State Agency by March 31, 2024.

The final rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*, published on September 26, 2023, lowers the minimum ISP required to elect CEP from 40% to 25%. This waiver allows for mid-year implementation of the CEP if a School Food Authority (SFA) would like to elect CEP for SY 2023-2024 using an ISP lower than 40%.

SFAs electing to implement CEP after the June 30, 2023 deadline **must** use ISP data from April 2023. DDOE has this data on file from the annual reporting period. If electing CEP, SFAs must submit the documentation that was used to determine the ISP. This documentation includes the direct certification lists, extended eligibility documentation, and enrollment lists; the data will be validated before claiming percentages are approved. **SFAs must contact DDOE to opt into this waiver.** Waivers cannot be retroactive to the start of the school year. The first month SFAs can elect CEP or claim under CEP using the new minimum ISP is October 2023. SFAs may not implement CEP prior to the month they elect it. Therefore, if a SFA elects CEP in November, it may not operate CEP for October.

The waiver approval is attached to this memo for your review. If you have any questions, or would like to implement CEP for SY 2023-2024, please contact the Nutrition Programs office at (302) 857-3356.

Attachment: Delaware CEP Mid-Year Election Waiver Response

cc: Nutrition Team



Food and
Nutrition
Service

Braddock
Metro Center
1320
Braddock
Place
Alexandria
VA 22314

October 18, 2023

Aimee F. Beam
Education Associate, Nutrition Programs
Delaware Department of Education
35 Commerce Way, Suite 1
Dover, Delaware 19904

Dear Aimee Beam:

This letter is in response to the Delaware Department of Education’s (DDOE) October 12, 2023, request to waive the requirement to meet the annual Community Eligibility Provision (CEP) election deadline for school year (SY) 2023-2024. USDA published a final rule, *Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools*, September 26, 2023, that lowers the minimum identified student percentage (ISP) needed to elect CEP to 25 percent. The new minimum ISP is in effect as of October 26, 2023. Because the election deadline for school year (SY) 2023-2024 has passed, DDOE requested a waiver to allow newly eligible LEAs and schools to elect CEP mid-year and participate in CEP during SY 2023-2024.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the Program, the State or eligible service provider must provide notice and information to the public regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that DDOE’s waiver request satisfies these statutory requirements.

Specifically, DDOE requested a statewide waiver of the following CEP deadline:

June 30 Election Deadline

Under Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, LEAs that intend to elect CEP in the following school year must notify the State agency and submit ISP documentation not later than June 30 of the current school year. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives for DDOE the statutory requirement that LEAs intending to elect CEP for SY 2023-2024 must submit ISP documentation by “Not later than June 30 of the current school year,” and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30.” Instead, LEAs that intend to elect CEP for SY 2023-2024 must submit ISP documentation to the State agency by March 31, 2024.

Aimee Beam

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The State agency should inform LEAs of the flexibilities provided by this waiver as quickly as possible.

Reporting Requirements

The waiver authority at Section 12(l) of the NSLA requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, DDOE must provide to the FNS Mid-Atlantic Regional Office (MARO) a written report by June 30, 2024, quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted NSLP and SBP operations in CEP participating schools;
- A description of whether the waiver resulted in improved services to children; and
- The number of LEAs that used the waiver.

If you have questions, please contact the FNS MARO.

Sincerely,

Tina Namian
Director
School Meals Policy Division