S T A T E O F N E W Y O R K

11075

I N A S S E M B L Y

May 13, 2010

Introduced by M. of A. NOLAN -- read once and referred to the Committee on Education

AN ACT to amend the public health law, in relation to requiring the department of health to develop media health promotion campaigns to communicate positive correlations between health, physical activity and academic performance; to require the department of health to identify and promote best practices in communities to support healthful nutritional choices; to require the department of education and the department of health to provide technical assistance to schools in complying with nutritional standards; to amend the education law and chapter 537 of the laws of 1976, relating to paid, free and reduced price breakfast for eligible pupils in certain school districts, in relation to establishing nutritional standards for food and beverages available in schools, requiring school wellness policies, and expanding the school breakfast program; and repealing section 915 of the education law and section 2 of chapter 537 of the laws of 1976, relating to paid, free and reduced price breakfast for eligible pupils in certain school districts relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "healthy schools act".

S 2. Paragraphs (a) and (c) of subdivision 2 of section 2599-b of the public health law, as amended by section 88 of part B of chapter 58 of the laws of 2005, are amended to read as follows:

(a) developing media health promotion campaigns targeted to children and adolescents and their parents and caregivers that emphasize increasing consumption of low-calorie, [high-nutrient] NUTRIENT-RICH foods, decreasing consumption of high-calorie, low-nutrient foods [and], increasing physical activity designed to prevent or reduce obesity, AND COMMUNICATING THE POSITIVE CORRELATION BETWEEN CHILD HEALTH, PHYSICAL ACTIVITY AND ACADEMIC PERFORMANCE;

(c) (I) establishing community-based childhood obesity prevention nutrition education and physical activity programs including programs TO

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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IDENTIFY AND PROMOTE BEST PRACTICES TO HELP COMMUNITIES CHANGE THEIR ENVIRONMENT TO SUPPORT HEALTHFUL NUTRITIONAL CHOICES, AND TO DEVELOP PROGRAMS which involve parents and caregivers, and which encourage communities, families, child care and other settings to provide safe and adequate space and time for physical activity and encourage a healthy diet;

(II) INCREASING COLLABORATION, WITHIN AND ACROSS COMMUNITIES, OF COMMUNITY BASED NUTRITION AND PHYSICAL ACTIVITY PROFESSIONALS, EDUCATORS AND HEALTH CARE PROVIDERS, INCLUDING STAFF FROM NEW YORK STATE'S COMPREHENSIVE CARE CENTERS FOR EATING DISORDERS, TO PRESENT CONSISTENT AND EFFECTIVE MESSAGES IN RELATION TO HEALTHY EATING BEHAVIORS AND PHYSICAL ACTIVITY PATTERNS;

S 3. Section 2599-c of the public health law, as amended by section 88 of part B of chapter 58 of the laws of 2005, is amended to read as follows:

S 2599-c. School-based childhood obesity prevention and physical activity programs. 1. The commissioner shall encourage the establishment of school-based childhood obesity prevention and physical activity programs that promote:

[1.] A. A healthy school environment, including physical and aesthetic surroundings and culture designed to prevent and reduce the incidence and prevalence of obesity; and

[2.] B. Parent/community involvement, including an integrated school, parent, and community approach for enhancing the health and well-being of students.

2. THE COMMISSIONER SHALL ASSIST THE COMMISSIONER OF EDUCATION IN ESTABLISHING NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY SCHOOL MEALS, SNACKS AND BEVERAGES AS THOSE TERMS ARE DEFINED UNDER SECTION NINE HUNDRED FIFTEEN OF THE EDUCATION LAW AND REGULATIONS ADOPTED PURSUANT TO SECTION NINE HUNDRED TWENTY OF THE EDUCATION LAW.

S 4. Section 305 of the education law is amended by adding two new subdivisions 42 and 43 to read as follows:

42. THE COMMISSIONER SHALL, IN CONJUNCTION WITH THE COMMISSIONER OF HEALTH, PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO SCHOOLS TO ASSIST SCHOOLS IN COMPLYING WITH THE REQUIREMENTS OF SECTION NINE HUNDRED FIFTEEN OF THIS CHAPTER.

43. THE COMMISSIONER SHALL CONDUCT A SURVEY OF ALL PUBLIC SCHOOLS IN THE STATE TO DETERMINE THE IMPLEMENTATION STATUS OF PHYSICAL EDUCATION PROGRAMS PURSUANT TO SECTION EIGHT HUNDRED THREE OF THIS CHAPTER AND THE CORRESPONDING REGULATIONS OF THE COMMISSIONER. THE SURVEY SHALL EVALUATE PHYSICAL EDUCATION PROGRAMS BY GRADE LEVEL AND BE DESIGNED TO YIELD DETAILED INFORMATION DEMONSTRATING COMPLIANCE WITH CURRENT REQUIREMENTS, REASONS FOR NON-COMPLIANCE AND OTHER INFORMATION THE COMMISSIONER DEEMS APPROPRIATE. THE SURVEY SHALL ALSO REPORT INFORMATION REGARDING THE TYPE AND CONDITION OF THE FACILITIES OR OTHER AREAS BEING USED FOR PHYSICAL EDUCATION PURPOSES. SUCH INFORMATION SHALL BE PRESENTED IN A STATEWIDE FORMAT, REGIONAL FORMAT AND OTHER FORMATS AS DEEMED USEFUL BY THE COMMISSIONER. ON OR BEFORE FEBRUARY FIRST, TWO THOUSAND ELEVEN, AND EVERY FIVE YEARS THEREAFTER, THE COMMISSIONER SHALL SUBMIT THE RESULTS OF SUCH SURVEY TO THE LEGISLATURE AND THE GOVERNOR.

S 4-a. The education law is amended by adding a new section 920 to read as follows:

S 920. NUTRITIONAL AND DIETARY STANDARDS. 1. THE REGENTS AND THE COMMISSIONER, ACTING IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, SHALL PROMULGATE REGULATIONS TO ESTABLISH NUTRITIONAL AND DIETARY STAND-

ARDS FOR HEALTHY SCHOOL MEALS, SNACKS AND BEVERAGES AS SUCH TERMS ARE DEFINED UNDER SECTION NINE HUNDRED FIFTEEN OF THIS ARTICLE.

A. THE NUTRITIONAL AND DIETARY STANDARDS MAY BE UPDATED AS DEEMED NECESSARY BY THE COMMISSIONER BUT NOT LESS THAN EVERY FIVE YEARS AND SHALL BE MADE AVAILABLE FOR PUBLIC COMMENT AND REVIEW NINETY DAYS PRIOR TO EACH ADOPTION.

B. THE NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY SCHOOL MEALS, SNACKS AND BEVERAGES SHALL BE DEVELOPED TO PROMOTE A HEALTHFUL DIET AND SHALL BE BASED ON THE PREPONDERANCE OF THE NUTRITIONAL, SCIENTIFIC AND MEDICAL KNOWLEDGE WHICH IS CURRENT AT THE TIME THE REGULATIONS ARE BEING PROMULGATED.

C. WHEN PROMULGATING SUCH REGULATIONS, THE REGENTS AND COMMISSIONER SHALL TAKE INTO ACCOUNT THE LOCAL AND REGIONAL CONCERNS OF ANY SCHOOL OR SCHOOL DISTRICT REQUIRED TO COMPLY WITH THE NUTRITIONAL AND DIETARY STANDARDS.

D. UNDER NO CIRCUMSTANCE SHALL THE NUTRITIONAL AND DIETARY STANDARDS INTERFERE WITH THE SPECIAL DIETARY NEEDS OF STUDENTS IN RELATION TO HEALTH CONDITIONS, FOOD ALLERGIES, DIETARY INTOLERANCES AND RELIGIOUS MANDATES.

E. THE NUTRITIONAL AND DIETARY STANDARDS SHALL REFLECT THE NEEDS OF STUDENTS AT DIFFERING AGES AND GRADE LEVELS.

2. THE NUTRITIONAL AND DIETARY STANDARDS SHALL INCLUDE APPROPRIATE NUTRITIONAL STANDARDS AND CONSUMPTION AMOUNTS RELATED, BUT NOT LIMITED TO:

A. DIETARY CHOLESTEROL;

B. SODIUM;

C. PERCENT OF CALORIES DERIVED FROM FAT AND SATURATED FAT;

D. PERCENT OF CALORIES DERIVED FROM SUGAR;

E. TOTAL CALORIE AMOUNTS;

F. TOTAL FAT CONTENT OF MILK AND OTHER DAIRY PRODUCTS; AND

G. SERVING SIZES.

S 5. Section 915 of the education law is REPEALED and a new section 915 is added to read as follows:

S 915. HEALTHY SCHOOL FOODS AND BEVERAGES. 1. APPLICABILITY. A. THIS SECTION APPLIES TO ELEMENTARY AND SECONDARY SCHOOLS UNDER THE JURISDICTION OF THE FOLLOWING, COLLECTIVELY REFERENCED AS "SCHOOL DISTRICTS": SCHOOL DISTRICTS, NON-PUBLIC SCHOOLS THAT PARTICIPATE IN ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, AND CHARTER SCHOOLS. SUCH SCHOOL DISTRICTS SHALL BE REQUIRED TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION.

B. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH C OF THIS SUBDIVISION, THIS SECTION SHALL APPLY TO SCHOOL MEALS, ENTREES, SNACKS AND BEVERAGES SOLD, SERVED OR OFFERED ON SCHOOL GROUNDS FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES, OR VENDING MACHINES. THIS SECTION SHALL APPLY TO SCHOOL MEALS, ENTREES, SNACKS AND BEVERAGES SOLD ON SCHOOL GROUNDS OR AT SCHOOL ACTIVITIES BEFORE, DURING AND AFTER THE REGULAR SCHOOL DAY; AND TO SCHOOL MEALS, ENTREES, SNACKS AND BEVERAGES SUPPLIED BY SCHOOLS DURING OFFICIAL TRANSPORTATION TO AND FROM SCHOOL AND SCHOOL SPONSORED ACTIVITIES INCLUDING, BUT NOT LIMITED TO, FIELD TRIPS AND INTERSCHOLASTIC SPORTING EVENTS.

C. THIS SECTION SHALL NOT APPLY TO SCHOOL MEALS, ENTREES, SNACKS AND BEVERAGES SOLD, SERVED OR OFFERED: (I) AT AFTER SCHOOL ACTIVITIES ATTENDED BY BOTH ADULTS AND STUDENTS, SUCH AS CONCERTS AND SPORTING EVENTS; (II) IN ORDER TO RAISE FUNDS FOR SCHOOL ACTIVITIES; OR (III)

UNDER THE FEDERAL CHILD AND ADULT CARE FOOD PROGRAM, WHICH SHALL BE SUBJECT TO THE REQUIREMENTS IMPOSED UNDER THAT PROGRAM.

D. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING: A STUDENT OR SCHOOL EMPLOYEE FROM CONSUMING ANY FOOD OR FOOD ITEM PURCHASED BY THE STUDENT OR SCHOOL EMPLOYEE OFF OF SCHOOL GROUNDS AND BROUGHT INTO THE SCHOOL FOR THE STUDENT'S OR EMPLOYEE'S PERSONAL CONSUMPTION OR FOR CLASSROOM-WIDE ACTIVITIES OR CELEBRATIONS; OR CAFFEINATED COFFEE OR TEA FROM BEING SOLD, SERVED OR OFFERED TO SCHOOL EMPLOYEES.

E. THIS SECTION SHALL BE IMPLEMENTED ONLY TO THE EXTENT THAT IT NOT INTERFERE WITH ANY PRACTICE OR CONSIDERATION INVOLVING THE DIETARY NEEDS OF STUDENTS IN RELATION TO HEALTH CONDITIONS, FOOD ALLERGIES, DIETARY INTOLERANCES AND RELIGIOUS MANDATES.

2. SCHOOL MEALS. AS USED IN THIS SUBDIVISION, "SCHOOL MEALS" MEANS MEALS WHICH MEET THE NUTRITIONAL REQUIREMENTS OF, AND ARE REIMBURSABLE UNDER, ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, PROVIDED, HOWEVER, THAT THIS SECTION SHALL APPLY TO SUCH MEALS ONLY TO THE EXTENT THAT THE REQUIREMENTS SET FORTH IN THIS SECTION ARE MORE STRINGENT THAN THOSE REQUIRED UNDER SUCH PROGRAMS. WHEN SELLING, OFFERING OR SERVING SCHOOL MEALS, SCHOOLS SHALL:

A. ENSURE THAT EACH SCHOOL MEAL CONTAINS NO MORE THAN 0.5 GRAMS OF ARTIFICIAL TRANS-FATTY ACIDS PER ITEM SERVED;

B. OFFER DURING EACH LUNCH PERIOD AT LEAST ONE MEAT ALTERNATIVE WHICH COMPLIES WITH THE STANDARDS OF THE FEDERAL DEPARTMENT OF AGRICULTURE;

C. OFFER DURING EACH BREAKFAST AND LUNCH PERIOD FRUIT WITH NO ADDED SWEETENERS;

D. OFFER DURING EACH LUNCH PERIOD VEGETABLES WHICH ARE NOT FRIED; AND

E. ENSURE THAT FIFTY PERCENT OF GRAIN PRODUCTS OFFERED, OVER A SCHOOL WEEK, ARE WHOLE GRAIN PRODUCTS.

3. ENTREES SOLD, SERVED OR OFFERED INDIVIDUALLY. A. FOR PURPOSES OF THIS SUBDIVISION, "ENTREES" MEANS A COMBINATION OF FOODS OR A SINGLE FOOD ITEM THAT IS SOLD, SERVED OR OFFERED AS THE MAIN COURSE.

B. ENTREES SOLD, SERVED OR OFFERED INDIVIDUALLY SHALL BE THE SAME AS THE ENTREES THAT ARE SOLD, SERVED OR OFFERED AS PART OF SCHOOL MEALS, AS THAT TERM IS DEFINED IN SUBDIVISION TWO OF THIS SECTION, OR SHALL BE COMPARABLE IN PORTION SIZE, CALORIES AND NUTRITIONAL VALUE TO THE ENTREES SOLD, SERVED OR OFFERED AS PART OF SUCH SCHOOL MEALS.

4. SNACKS. A. "SNACKS" ARE FOOD ITEMS THAT ARE SOLD, SERVED OR OFFERED INDIVIDUALLY, OUTSIDE OF SCHOOL MEALS, AS THAT TERM IS DEFINED IN SUBDIVISION TWO OF THIS SECTION, AND THAT DO NOT CONSTITUTE ENTREES, AS THAT TERM IS DEFINED IN PARAGRAPH A OF SUBDIVISION THREE OF THIS SECTION, THAT ARE SOLD, SERVED OR OFFERED INDIVIDUALLY.

B. ONLY SNACKS THAT MEET THE STANDARDS ESTABLISHED BY REGULATION PURSUANT TO SECTION NINE HUNDRED TWENTY OF THIS ARTICLE SHALL BE SOLD, SERVED OR OFFERED AT SCHOOLS INCLUDING, BUT NOT LIMITED TO: FRUITS; VEGETABLES; WHOLE GRAINS; NUTS, NUT BUTTERS OR SEEDS; DAIRY PRODUCTS OR A COMBINATION THEREOF. SNACKS SHALL BE TRANS FAT FREE, MEANING EACH SNACK SHALL CONTAIN NO MORE THAN 0.5 GRAMS OF ARTIFICIAL TRANS-FATTY ACIDS.

5. BEVERAGES. A. ONLY BEVERAGES THAT MEET THE STANDARDS ESTABLISHED BY REGULATION PURSUANT TO SECTION NINE HUNDRED TWENTY OF THIS ARTICLE SHALL BE SOLD, SERVED OR OFFERED AT SCHOOLS WHICH SHALL INCLUDE, BUT ARE NOT LIMITED TO:

(I) WATER WITH NO ADDED SWEETENERS AND NO FORTIFICATION;

(II) REGULAR OR FLAVORED MILK OR THE NUTRITIONAL EQUIVALENT OF THE SAME; AND

(III) ONE HUNDRED PERCENT FRUIT OR VEGETABLE JUICE THAT CONTAIN NO ADDED SWEETENERS, OR A COMBINATION THEREOF.

B. BEVERAGES SOLD, SERVED OR OFFERED AT HIGH SCHOOLS MAY ADDITIONALLY INCLUDE: (I) DECAFFEINATED COFFEE, DECAFFEINATED TEA AND HOT CHOCOLATE SOLD, SERVED OR OFFERED DURING BREAKFAST; AND

(II) ANY ADDITIONAL BEVERAGES THAT ARE DEEMED APPROPRIATE BY THE COMMISSIONER SUCH AS SPORTS DRINKS.

6. SCHOOL STORES AND VENDING MACHINES. (A) ALL SNACKS AND BEVERAGES SOLD, SERVED OR OFFERED IN SCHOOL STORES AND VENDING MACHINES SHALL MEET THE CRITERIA CONTAINED IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION. PROVIDED FURTHER, NOTWITHSTANDING SUBPARAGRAPH (II) OF PARAGRAPH C OF SUBDIVISION ONE OF THIS SECTION, SNACKS AND BEVERAGES SOLD, SERVED OR OFFERED TO RAISE FUNDS FOR SCHOOL ACTIVITIES THAT ARE SUPPLIED THROUGH A SCHOOL STORE OR VENDING MACHINE SHALL ALSO MEET THE NUTRITIONAL STANDARDS PURSUANT TO SUBDIVISIONS FOUR AND FIVE OF THIS SECTION.

(B) COMMERCIAL PRODUCTS OR LOGOS ON VENDING MACHINE PROHIBITED. SCHOOLS SHALL PROHIBIT VENDING MACHINES WHICH DEPICT COMMERCIAL PRODUCTS OR LOGOS OR SUGGEST THAT CONSUMPTION OF VENDED ITEMS CONVEYS A HEALTH OR SOCIAL BENEFIT, OR THAT PRODUCTS PURCHASED FROM SUCH VENDING MACHINE SUPPORTS SPECIFIC SCHOOL ACTIVITIES OR GROUPS.

7. INGREDIENT AND NUTRIENT DOCUMENTATION. SCHOOLS SHALL MAKE AVAILABLE TO THE DEPARTMENT, UPON REQUEST, DOCUMENTATION SETTING FORTH THE INGREDIENTS AND NUTRIENTS OF ANY FOOD ITEM SOLD, SERVED OR OFFERED BY OR ON BEHALF OF SUCH ENTITIES, WHETHER SUCH ITEM IS SOLD, SERVED OR OFFERED IN THE FORM PURCHASED BY OR ON BEHALF OF SUCH ENTITIES OR IS USED AS AN INGREDIENT IN AN ITEM SOLD, SERVED OR OFFERED BY OR ON BEHALF OF SUCH ENTITIES.

S 6. The education law is amended by adding a new section 921 to read as follows:

S 921. LOCAL SCHOOL WELLNESS POLICIES. 1. EACH SCHOOL DISTRICT, NON-PUBLIC SCHOOL THAT PARTICIPATES IN ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, AND CHARTER SCHOOL, COLLECTIVELY REFERRED TO AS "SCHOOL DISTRICTS", SHALL ESTABLISH A LOCAL SCHOOL WELLNESS POLICY. SUCH POLICY SHALL BE IN ADDITION TO A WELLNESS POLICY THAT MAY BE REQUIRED PURSUANT TO FEDERAL LAW AND RELATED IMPLEMENTING REGULATIONS. IN DEVELOPING THE POLICY, THE GOVERNING BODY OR OFFICER OF THE SCHOOL DISTRICT SHALL:

A. INVOLVE, AT A MINIMUM, PARENTS AND GUARDIANS, STUDENTS, REPRESENTATIVES OF THE SCHOOL FOOD AUTHORITY, SCHOOL ADMINISTRATORS, SCHOOL NURSES OR OTHER HEALTH STAFF, A CERTIFIED DIETITIAN/NUTRITIONIST IF AVAILABLE, PHYSICAL EDUCATION STAFF, AND TEACHERS; AND

B. CONSIDER ANY RECOMMENDATIONS MADE BY A SCHOOL DISTRICT NUTRITION ADVISORY COMMITTEE ESTABLISHED IN SECTION NINE HUNDRED EIGHTEEN OF THIS ARTICLE, IF SUCH COMMITTEE HAS BEEN FORMED BY THE SCHOOL DISTRICT.

2. LOCAL SCHOOL WELLNESS POLICIES SHALL: A. INCORPORATE A PLAN FOR MEASURING IMPLEMENTATION OF THE LOCAL SCHOOL WELLNESS POLICY;

B. RECOMMEND IDEAS FOR HEALTHY FUNDRAISING ACTIVITIES AND CLASSROOM EVENTS AND CELEBRATIONS;

C. DETERMINE: (I) WHETHER AND TO WHAT EXTENT EACH SCHOOL SHOULD CONTAIN NUTRITIONAL EDUCATION AS PART OF ITS CURRICULUM TO PROVIDE KNOWLEDGE AND TO TEACH SKILLS HELPING STUDENTS ADOPT AND MAINTAIN LIFELONG, HEALTHY EATING PATTERNS;

(II) WHETHER AND TO WHAT EXTENT ADMINISTRATORS, TEACHERS, SCHOOL FOOD SERVICE STAFF, AND OTHER STAFF SHOULD BE TRAINED IN NUTRITION AND NUTRITION EDUCATION;

(III) WHETHER IT IS PRACTICABLE TO REQUIRE THAT MILK AND DAIRY PRODUCTS SOLD, SERVED OR OFFERED AT SCHOOLS BE LOW FAT OR FAT FREE;

(IV) WHETHER STUDENTS ARE PROVIDED WITH SUFFICIENT TIME TO EAT BREAKFAST AND LUNCH AND WHETHER TO REQUIRE SCHOOLS TO PROVIDE STUDENTS WITH A MINIMUM AMOUNT OF TIME FOR SUCH PURPOSES;

(V) HOW TO INCREASE OPPORTUNITIES FOR PHYSICAL ACTIVITY DURING THE DAY BY REQUIRING RECESS OR IMPROVING COMPLIANCE WITH PHYSICAL EDUCATION REQUIREMENTS; AND

(VI) HOW TO INCREASE AND ENCOURAGE THE PURCHASE OF FRESH AND/OR ORGANIC FRUITS, VEGETABLES AND DAIRY PRODUCTS WHICH ARE PRODUCED BY LOCAL OR REGIONAL FARMS, CONSISTENT WITH APPLICABLE FEDERAL PROCUREMENT STANDARDS;

D. REVIEW COMPLIANCE WITH EXISTING LAW, REGULATION AND POLICIES REGARDING NUTRITION AND PHYSICAL EDUCATION STANDARDS; AND

E. ESTABLISH RECOMMENDATIONS TO THE GOVERNING BODY OR OFFICER, AS APPROPRIATE, TO ADDRESS THE DETERMINATIONS MADE PURSUANT TO PARAGRAPH C OF THIS SUBDIVISION.

3. EACH SCHOOL DISTRICT, NON-PUBLIC SCHOOL THAT PARTICIPATES IN ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, AND CHARTER SCHOOL SHALL, ON AN ANNUAL BASIS BEGINNING THE FIRST OF JULY, TWO THOUSAND ELEVEN AND WHENEVER SIGNIFICANTLY AMENDED, FILE THE LOCAL SCHOOL WELLNESS POLICY WITH THE DEPARTMENT AND VERIFY THE STATUS OF THE IMPLEMENTATION OF THE LOCAL SCHOOL WELLNESS POLICY. THE LOCAL SCHOOL WELLNESS POLICIES SHALL BE MADE AVAILABLE BY THE DEPARTMENT TO THE DEPARTMENT OF HEALTH UPON ITS REQUEST.

S 7. Paragraph (v) of subdivision c of section 1 of chapter 537 of the laws of 1976, relating to paid, free and reduced price breakfast for eligible pupils in certain school districts, as separately amended by chapters 260 and 615 of the laws of 1993, is amended to read as follows:

(v) BY NOT LATER THAN SEPTEMBER 1, 2013 SCHOOL DISTRICTS SHALL ESTABLISH A SCHOOL BREAKFAST PROGRAM IN ALL MIDDLE SCHOOL AND HIGH SCHOOL FACILITIES UNDER THE DISTRICT'S JURISDICTION WHEREIN EACH PUPIL ATTENDING SUCH SCHOOL FACILITY SHALL BE AFFORDED THE OPPORTUNITY TO RECEIVE A FREE, REDUCED OR FULL PAID BREAKFAST.

(VI) Any school not offering a breakfast program on the dates specified in this section, which would be required under the provisions of paragraph (i), (ii), (iii), [or] (iv), OR (V) of this subdivision to implement such program in September of the same year, may apply to the commissioner of education for an exemption from the provisions of this act. Such an exemption shall not be granted by such commissioner unless a school demonstrates with good cause: (1) that there is no need for such breakfast program because of low enrollment or documented projections of low participation or (2) that economic hardship or other good cause makes the establishment of such a program impractical. Such commissioner shall establish explicit good cause criteria in regulations pursuant to this act and annually review the basis for such exemptions. Such commissioner may also grant a waiver for up to one year from the provisions of this subdivision to allow adequate time for planning and implementation of a breakfast program.

S 8. Subdivision 1 of section 2854 of the education law is amended by adding a new paragraph (f) to read as follows:

(F) A CHARTER SCHOOL SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS NINE HUNDRED FIFTEEN AND NINE HUNDRED TWENTY-ONE OF THIS CHAPTER.

S 9. The education law is amended by adding a new section 922 to read as follows:

S 922. BREAKFAST AND LUNCH STATE SUBSIDIES. 1. STATE SUBSIDIES SHALL BE MADE AVAILABLE TO SCHOOL FOOD AUTHORITIES RESPONSIBLE FOR THE ADMINISTRATION OF A BREAKFAST AND/OR LUNCH PROGRAM AUTHORIZED BY THE NATIONAL SCHOOL LUNCH ACT, AS AMENDED, OR THE CHILD NUTRITION ACT OF 1966, AS AMENDED.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE SCHOOL YEARS COMMENCING JULY FIRST, TWO THOUSAND THIRTEEN AND THEREAFTER, THE PER FREE BREAKFAST STATE SUBSIDY SHALL BE TWENTY-SIX CENTS, THE PER REDUCED-PRICE BREAKFAST STATE SUBSIDY SHALL BE THIRTY-TWO CENTS, AND THE AVAILABLE PER PAID BREAKFAST STATE SUBSIDY SHALL BE TWENTY-FIVE HUNDREDTHS OF A CENT. UPON SUBMISSION BY THE SCHOOL FOOD AUTHORITY OF AN APPLICATION FOR REIMBURSEMENT, IN SUCH FORM AS THE COMMISSIONER SHALL REQUIRE, THE DEPARTMENT SHALL COMPUTE A TOTAL AMOUNT EQUAL TO THE SUM OF:

A. THE PRODUCT OF THE FREE BREAKFAST STATE SUBSIDY MULTIPLIED BY THE NUMBER OF FREE BREAKFASTS SERVED TO CHILDREN;

B. THE PRODUCT OF THE REDUCED-PRICE BREAKFAST STATE SUBSIDY MULTIPLIED BY THE NUMBER OF REDUCED-PRICE BREAKFASTS SERVED TO CHILDREN; AND

C. THE PRODUCT OF THE PAID BREAKFAST STATE SUBSIDY MULTIPLIED BY THE NUMBER OF PAID BREAKFASTS SERVED TO CHILDREN.

SUCH TOTAL AMOUNT SHALL BE USED TO COVER ALL ACTUAL COSTS OF A SCHOOL BREAKFAST PROGRAM.

3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, IN THE SCHOOL YEARS COMMENCING JULY FIRST, TWO THOUSAND THIRTEEN AND THEREAFTER, THE PER FREE LUNCH STATE SUBSIDY SHALL BE TWENTY-ONE AND ONE-HALF CENTS, THE AVAILABLE PER REDUCED-PRICE LUNCH STATE SUBSIDY SHALL BE THIRTY-SIX AND ONE-HALF CENTS, AND THE PER PAID LUNCH STATE SUBSIDY SHALL BE SIX AND ONE-HALF CENTS. UPON SUBMISSION BY THE SCHOOL FOOD AUTHORITY OF AN APPLICATION FOR REIMBURSEMENT, IN SUCH FORM AS THE COMMISSIONER SHALL REQUIRE, THE DEPARTMENT SHALL COMPUTE A TOTAL AMOUNT EQUAL TO THE SUM OF:

A. THE PRODUCT OF THE FREE LUNCH STATE SUBSIDY MULTIPLIED BY THE NUMBER OF FREE LUNCHES SERVED TO CHILDREN;

B. THE PRODUCT OF THE REDUCED-PRICE LUNCH STATE SUBSIDY MULTIPLIED BY THE NUMBER OF REDUCED-PRICE LUNCHES SERVED TO CHILDREN; AND

C. THE PRODUCT OF THE PAID LUNCH STATE SUBSIDY MULTIPLIED BY THE NUMBER OF PAID LUNCHES SERVED TO CHILDREN.

SUCH TOTAL AMOUNT SHALL BE USED TO COVER ALL ACTUAL COSTS OF A SCHOOL LUNCH PROGRAM.

4. IN ADDITION TO THE STATE SUBSIDIES FOR BREAKFAST AND LUNCH UNDER SUBDIVISIONS TWO AND THREE OF THIS SECTION, IN THE SCHOOL YEARS COMMENCING JULY FIRST, TWO THOUSAND ELEVEN AND THEREAFTER, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE TOTAL COMBINED FEDERAL AND STATE REIMBURSEMENT FOR FREE BREAKFAST AND FREE LUNCH AND THE TOTAL COMBINED FEDERAL AND STATE REIMBURSEMENT FOR REDUCED BREAKFAST AND REDUCED LUNCH SHALL BE MADE AVAILABLE TO EACH SCHOOL FOOD AUTHORITY PROVIDED THAT CHILDREN RECEIVING A REDUCED BREAKFAST AND/OR LUNCH SHALL NOT BE CHARGED ANY AMOUNT FOR THESE MEALS.

5. THE AVAILABLE STATE BREAKFAST SUBSIDIES GREATER THAN ACTUAL COSTS FOR BREAKFAST SHALL BE APPLIED TO COVER ACTUAL COSTS OF THE OPERATION OF THE SCHOOL LUNCH PROGRAM.

6. THE COMMISSIONER MAY AUTHORIZE OR REQUIRE SCHOOL DISTRICTS TO SUBMIT A SINGLE APPLICATION FOR REIMBURSEMENT FOR COSTS INCURRED IN THE OPERATION OF THE SCHOOL FOOD SERVICE PROGRAMS. SUCH APPLICATION SHALL COMBINE ALL ALLOWABLE COSTS FOR THE SCHOOL BREAKFAST AND SCHOOL LUNCH PROGRAMS INTO A CONSOLIDATED APPLICATION FOR REIMBURSEMENT. HOWEVER, SCHOOL DISTRICTS MUST ACCOUNT SEPARATELY FOR REIMBURSEMENT FOR "SEVERE NEED," WHEN SUCH REIMBURSEMENT IS AVAILABLE.

7. FOR THE PURPOSES OF THIS SECTION, FEDERAL FUNDS, AVAILABLE UNDER THE NATIONAL SCHOOL LUNCH ACT, AS AMENDED, AND THE CHILD NUTRITION ACT, AS AMENDED, SHALL BE UTILIZED TO THE MAXIMUM EXTENT POSSIBLE FOR COSTS RELATED TO THE PROVISION OF THE SCHOOL BREAKFAST PROGRAM AND THE SCHOOL LUNCH PROGRAM.

S 10. Section 2 of chapter 537 of the laws of 1976, relating to paid, free and reduced price breakfast for eligible pupils in certain school districts is REPEALED.

S 11. This act shall take effect July 1, 2010; provided, however, that subdivisions 2 and 3 of section 915 of the education law as added by section five of this act shall take effect September 1, 2013; subdivisions 4 and 5 of section 915 of the education law as added by section five of this act shall take effect September 1, 2011; and such amendments shall apply to all contracts issued, renewed, modified, altered or amended on or after such effective dates; provided further, however, that section seven of this act shall take effect September 1, 2013; provided further, however, that section ten of this act shall take effect July 1, 2013.