

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:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "healthy schools act".
3 S 2. Paragraphs (a) and (c) of subdivision 2 of section 2599-b of the
4 public health law, as amended by section 88 of part B of chapter 58 of
5 the laws of 2005, are amended to read as follows:
6 (a) developing media health promotion campaigns targeted to children
7 and adolescents and their parents and caregivers that emphasize increas-
8 ing consumption of low-calorie, [high-nutrient] NUTRIENT-RICH foods,
9 decreasing consumption of high-calorie, low-nutrient foods [and],
10 increasing physical activity designed to prevent or reduce obesity, AND
11 COMMUNICATING THE POSITIVE CORRELATION BETWEEN CHILD HEALTH, PHYSICAL
12 ACTIVITY AND ACADEMIC PERFORMANCE;
13 (c) (I) establishing community-based childhood obesity prevention
14 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.

LBD17039-01-0

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25 A. DIETARY CHOLESTEROL;
- 26 B. SODIUM;
- 27 C. PERCENT OF CALORIES DERIVED FROM FAT AND SATURATED FAT;
- 28 D. PERCENT OF CALORIES DERIVED FROM SUGAR;
- 29 E. TOTAL CALORIE AMOUNTS;
- 30 F. TOTAL FAT CONTENT OF MILK AND OTHER DAIRY PRODUCTS; AND
- 31 G. SERVING SIZES.

32 S 5. Section 915 of the education law is REPEALED and a new section
33 915 is added to read as follows:

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

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

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

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

3 D. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING: A
4 STUDENT OR SCHOOL EMPLOYEE FROM CONSUMING ANY FOOD OR FOOD ITEM
5 PURCHASED BY THE STUDENT OR SCHOOL EMPLOYEE OFF OF SCHOOL GROUNDS AND
6 BROUGHT INTO THE SCHOOL FOR THE STUDENT'S OR EMPLOYEE'S PERSONAL
7 CONSUMPTION OR FOR CLASSROOM-WIDE ACTIVITIES OR CELEBRATIONS; OR CAFFEI-
8 NATED COFFEE OR TEA FROM BEING SOLD, SERVED OR OFFERED TO SCHOOL EMPLOY-
9 EES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 7. INGREDIENT AND NUTRIENT DOCUMENTATION. SCHOOLS SHALL MAKE AVAIL-
24 ABLE TO THE DEPARTMENT, UPON REQUEST, DOCUMENTATION SETTING FORTH THE
25 INGREDIENTS AND NUTRIENTS OF ANY FOOD ITEM SOLD, SERVED OR OFFERED BY OR
26 ON BEHALF OF SUCH ENTITIES, WHETHER SUCH ITEM IS SOLD, SERVED OR OFFERED
27 IN THE FORM PURCHASED BY OR ON BEHALF OF SUCH ENTITIES OR IS USED AS AN
28 INGREDIENT IN AN ITEM SOLD, SERVED OR OFFERED BY OR ON BEHALF OF SUCH
29 ENTITIES.

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

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

41 A. INVOLVE, AT A MINIMUM, PARENTS AND GUARDIANS, STUDENTS, REPRES-
42 TATIVES OF THE SCHOOL FOOD AUTHORITY, SCHOOL ADMINISTRATORS, SCHOOL
43 NURSES OR OTHER HEALTH STAFF, A CERTIFIED DIETITIAN/NUTRITIONIST IF
44 AVAILABLE, PHYSICAL EDUCATION STAFF, AND TEACHERS; AND

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

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

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

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

1 (II) WHETHER AND TO WHAT EXTENT ADMINISTRATORS, TEACHERS, SCHOOL FOOD
2 SERVICE STAFF, AND OTHER STAFF SHOULD BE TRAINED IN NUTRITION AND NUTRI-
3 TION EDUCATION;

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

6 (IV) WHETHER STUDENTS ARE PROVIDED WITH SUFFICIENT TIME TO EAT BREAK-
7 FAST AND LUNCH AND WHETHER TO REQUIRE SCHOOLS TO PROVIDE STUDENTS WITH A
8 MINIMUM AMOUNT OF TIME FOR SUCH PURPOSES;

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

12 (VI) HOW TO INCREASE AND ENCOURAGE THE PURCHASE OF FRESH AND/OR ORGAN-
13 IC FRUITS, VEGETABLES AND DAIRY PRODUCTS WHICH ARE PRODUCED BY LOCAL OR
14 REGIONAL FARMS, CONSISTENT WITH APPLICABLE FEDERAL PROCUREMENT STAND-
15 ARDS;

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

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

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

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

34 (v) BY NOT LATER THAN SEPTEMBER 1, 2013 SCHOOL DISTRICTS SHALL ESTAB-
35 LISH A SCHOOL BREAKFAST PROGRAM IN ALL MIDDLE SCHOOL AND HIGH SCHOOL
36 FACILITIES UNDER THE DISTRICT'S JURISDICTION WHEREIN EACH PUPIL ATTEND-
37 ING SUCH SCHOOL FACILITY SHALL BE AFFORDED THE OPPORTUNITY TO RECEIVE A
38 FREE, REDUCED OR FULL PAID BREAKFAST.

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

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

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

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

5 S 922. BREAKFAST AND LUNCH STATE SUBSIDIES. 1. STATE SUBSIDIES SHALL
6 BE MADE AVAILABLE TO SCHOOL FOOD AUTHORITIES RESPONSIBLE FOR THE ADMIN-
7 ISTRATION OF A BREAKFAST AND/OR LUNCH PROGRAM AUTHORIZED BY THE NATIONAL
8 SCHOOL LUNCH ACT, AS AMENDED, OR THE CHILD NUTRITION ACT OF 1966, AS
9 AMENDED.

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

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

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

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

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

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

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

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

40 C. THE PRODUCT OF THE PAID LUNCH STATE SUBSIDY MULTIPLIED BY THE
41 NUMBER OF PAID LUNCHESES SERVED TO CHILDREN.

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

44 4. IN ADDITION TO THE STATE SUBSIDIES FOR BREAKFAST AND LUNCH UNDER
45 SUBDIVISIONS TWO AND THREE OF THIS SECTION, IN THE SCHOOL YEARS COMMENC-
46 ING JULY FIRST, TWO THOUSAND ELEVEN AND THEREAFTER, AN AMOUNT EQUAL TO
47 THE DIFFERENCE BETWEEN THE TOTAL COMBINED FEDERAL AND STATE REIMBURSE-
48 MENT FOR FREE BREAKFAST AND FREE LUNCH AND THE TOTAL COMBINED FEDERAL
49 AND STATE REIMBURSEMENT FOR REDUCED BREAKFAST AND REDUCED LUNCH SHALL BE
50 MADE AVAILABLE TO EACH SCHOOL FOOD AUTHORITY PROVIDED THAT CHILDREN
51 RECEIVING A REDUCED BREAKFAST AND/OR LUNCH SHALL NOT BE CHARGED ANY
52 AMOUNT FOR THESE MEALS.

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

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

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

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

16 S 11. This act shall take effect July 1, 2010; provided, however, that
17 subdivisions 2 and 3 of section 915 of the education law as added by
18 section five of this act shall take effect September 1, 2013; subdivi-
19 sions 4 and 5 of section 915 of the education law as added by section
20 five of this act shall take effect September 1, 2011; and such amend-
21 ments shall apply to all contracts issued, renewed, modified, altered or
22 amended on or after such effective dates; provided further, however,
23 that section seven of this act shall take effect September 1, 2013;
24 provided further, however, that section ten of this act shall take
25 effect July 1, 2013.