



**TO:** P-12 Education Committee

**FROM:** James N. Baldwin 

**SUBJECT:** Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees

**DATE:** September 2, 2021

**AUTHORIZATION(S):**  

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents adopt the proposed amendment of 114.5 of the Regulations of the Commissioner of Education relating to the prohibition against suing parents or guardians for unpaid meal fees?

#### **Reason(s) for Consideration**

Required by State statute (Chapter 315 of the Laws of 2021).

#### **Proposed Handling**

The proposed amendment is presented to the P-12 Education Committee for discussion and to the Full Board for adoption as an emergency rule at its September 2021 meeting. A copy of the proposed rule is included (Attachment A) and a statement of facts and circumstances justifying emergency action is included (Attachment B).

#### **Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on September 29, 2021 for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

On July 29, 2021, Chapter 315 of the Laws of 2021 was signed into law which, effective immediately, amended Education Law §908 to prohibit public school districts, charter schools, and non-public schools that participate in the National School Lunch Program or School Breakfast Program from filing a lawsuit against a student's parent or guardian if such student has unpaid school meal fees. This does not apply to schools that participate in the Community Eligibility Provision or Provision Two of the Federal National School Lunch Act, 42 U.S.C. Sec. 1751 et seq., which permit all students to be served free breakfast and lunch. This legislation expands on a 2018 law which prohibited the practice known as "meal shaming" in such schools.

The proposed amendment to section 114.5 of the Regulations of the Commissioner of Education implements Chapter 315 of the Laws of 2021, by amending such section to include the prohibition of lawsuits against students' parents or guardians for unpaid meal fees as required by Education Law §908.

## **Related Regent's Items**

January 2019: [Proposed Addition of Section 114.5 to the Regulations of the Commissioner Relating to the Prohibition Against Meal Shaming](https://www.regents.nysed.gov/common/regents/files/119brca8.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/119brca8.pdf>)

## **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 114.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 29, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner's regulations to Chapter 315 of the Laws of 2021.

## **Timetable for Implementation**

If adopted as an emergency rule at the September 2021 Regents meeting, the emergency rule will become effective September 29, 2021. It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the January 2022 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2021 meeting.

**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305 and 908 (as amended by Chapter 315 of the Laws of 2021).

Subparagraph (iv) of paragraph (5) of subdivision (b) of section 114.5 of the Regulations of the Commissioner of Education, is amended, as follows:

(iv) take any action directed at a pupil to collect unpaid school meal fees. A school or school district may attempt to collect unpaid school meal fees from a student's parent or guardian, but shall not use a debt collector, as defined in Section 803 of the Federal Consumer Credit Protection Act, 15 U.S.C. Sec. 1692a or file a lawsuit against such student's parent or guardian; or

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The proposed amendment to section 114.5 of the Regulations of the Commissioner of Education is necessary to implement Chapter 315 of the Laws of 2021, which amended the Education Law, effective July 29, 2021. Chapter 315 prohibits public school districts, charter schools and non-public schools participating in the National School Lunch Program or School Breakfast Program in which there is a school where all pupils are not eligible to be served breakfast and lunch under the Community Eligibility Provision or Provision Two of the Federal National School Lunch Act, 42 U.S.C. Sec. 1751 et seq., from filing a lawsuit against a student's parent or guardian if such student has unpaid school meal fees.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the January meeting, would be January 26, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the September 2021 meeting for the preservation of the general welfare to conform the Commissioner's regulations to Chapter 315 of the Laws of 2021.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the January 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state

agency rule making. However, since the emergency action will expire before the January 2022 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2021 Regents meeting.