

# Monthly Update



## School Nutrition Programs

May 26, 2022

*Distributed to the School Nutrition Program Authorized Representatives Listserv and the Food Service Directors Listserv and posted at [www.kn-eat.org](http://www.kn-eat.org), School Nutrition Programs, What's New*

### **New Civil Rights Guidance – Application of *Bostock v. Clayton County* to Program Discrimination Complaint Processing – Policy Update (CRD 01-2022)**

This memorandum clarifies prohibitions against discrimination based on sex in all FNS programs found in Title IX of the Education Amendments of 1972; the Food and Nutrition Act of 2008, as amended, Supplemental Nutrition Assistance Program (SNAP), formerly the Food Stamp Program (7 USC § 2011 et seq.); and related implementing regulations that prohibit discrimination on the basis of gender identity and sexual orientation.

Program operators should expeditiously review their program discrimination complaint procedures and make any changes necessary to ensure complaints alleging discrimination on the basis of gender identity and sexual orientation are processed and evaluated as complaints of discrimination on the basis of sex. The changes impact the USDA Nondiscrimination Statement (NDS) and the *And Justice for All* (AJFA) posters.

### **New Nondiscrimination Statement**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**  
U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or



2. **fax:**  
(833) 256-1665 or (202) 690-7442; or
3. **email:**  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

All documents, pamphlets, websites, etc. should be updated with the 2022 NDS as follows:

- Websites must be updated within 90 days of the date of this memorandum.
- Documents, pamphlets, brochures, etc., using 2015 NDS language must be updated when current supply on hand is exhausted or by September 30, 2023.
- All new printing must use the 2022 NDS.

### **And Justice for All (AJFA) Posters**

New *And Justice for All* posters are in the design/printing phase and guidance on poster ordering will be provided once KSDE receives the new posters. A timeline for distribution cannot be determined until printing commences. Until the new posters are received, additional guidance is outlined below.

- Local agencies may request the 2019 AJFA posters from KSDE until our supply is exhausted or new posters are received.
- AJFA posters currently posted must **NOT** be removed until replaced with the new poster.
- The 2019 AJFA poster(s) language should be updated on websites, training presentations and any pending printing of brochures, pamphlets and materials and replaced with the appropriate 2022 version.

### **Questions and Answers Related to CRD 01-2022 Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update (CRD 02-2022)**

#### **Q. What next steps must be taken by State Agencies and program operators?**

A. State Agencies and program operators will have to update their program discrimination complaint processing procedures for allegations related to services and activities receiving federal financial assistance from the USDA to ensure discrimination complaints alleging sexual orientation and gender identity discrimination are processed as complaints of prohibited sex discrimination. Additionally, State Agencies and program operators will need to update their Nondiscrimination Statements and order new *And Justice for All* posters that reference gender identity and sexual orientation discrimination. The updated FNS Nondiscrimination Statement will be available in multiple languages at <https://www.fns.usda.gov/cr/fns-nondiscrimination-statement>. Additional guidance will be issued by FNS CRD specifically addressing these two topics.

#### **Q. When should program operators and State Agencies update the Nondiscrimination Statement and the *And Justice for All* posters?**

A. Although CRD 01-2022 *Application of Bostock v. Clayton County to Program Discrimination Complaint Processing – Policy Update* is effective immediately, additional guidance is forthcoming. We will work with State Agencies and program operators on the timing for updating documents and materials to include the updated Nondiscrimination Statement. Items that can be changed without further guidance should be updated as soon as possible (websites for example). Additional guidance for timelines and implementation will be provided in a separate memorandum.

**Q. What should program operators and State Agencies do with old *And Justice for All* posters?**

A. Currently, updated *And Justice for All* posters are in production and will be available in the coming months. State Agencies and program operators must continue to display the applicable version of the poster dated September 2019, until updated *And Justice for All* posters are ordered and received. Guidance on poster ordering and display is forthcoming from USDA.

**Q. What if a State Agency or program operator does not currently have an *And Justice For All* poster displayed?**

A. Contact KSDE for guidance.

**Q. How do you request a religious exemption with the U.S. Department of Agriculture?**

A. Under U.S. Department of Agriculture (USDA) regulation 7 CFR 15a.205, educational institutions and other entities may claim an exemption from the provisions of Title IX by submitting a written declaration to the Secretary of Agriculture identifying the provisions that conflict with a specific tenet of the religious organization. USDA's Postal Service mailing address is: U.S. Department of Agriculture, 1400 Independence Ave., S.W., Washington, DC 20250.

**Q. Will a finding be issued for non-compliance with the updated *And Justice for All* poster and Nondiscrimination Statement?**

A. During the grace period, findings will not be issued if the State Agency or Program Operator is unable to display the updated *And Justice for All* poster and incorporate the Nondiscrimination Statement on documents and materials. Once the grace period(s) have expired for ordering and displaying posters and reprinting documents, a State agency or program operator must demonstrate efforts taken to comply with the guidance provided before a determination is made to issue a finding of noncompliance. Additional guidance on timelines and implementation will be provided in a separate memorandum. Please note there will not be a grace period for accepting and processing discrimination complaints based on sexual orientation and gender identity in FNS programs.

**Important Town Hall Tuesday at 9 AM on June 28**

Plan now to join the Child Nutrition & Wellness team on June 28 at 9:00 am for **a Town Hall that will include important information about Direct Certification with Medicaid** at:

<https://ksde.zoom.us/j/93001580396?pwd=ZlIiMTVuemh3d0VoVU80aGVQcmpuZz09>

**New USDA Guidance****Area Eligibility for Summer 2022 and School Year 2022-23 (SP10-2022, CACFP 08-2022, SFSP 04-2022)**

This memorandum provides guidance to establish area eligibility in the Child Nutrition Programs for summer 2022 and SY 2022-23. This guidance applies to State agencies administering, and local organizations operating the National School Lunch Program's Seamless Summer Option and afterschool snack program, the Child and Adult Care Food Program At-Risk Afterschool Meals and family day care homes and the Summer Food Service Program. Since the Seamless Summer Option (SSO) was available to use during SY 2021-22, School Food Authorities (SFAs) do not have complete free and reduced price eligibility information to make area eligibility determinations for Summer 2022 and SY 2022-23. Note: Data from SY 2021-22 in KSDE Data Central cannot be used for Child Nutrition Eligibility determinations.



Therefore, USDA is offering two additional data options that sites may use to qualify as area eligible for summer 2022 and SY 2022-23. Both options are available to Program operators as applicable, including SFAs and non-SFAs, who wish to use school data to make area eligibility determinations.

### **Option 1: Use of School Year 2019-20 Free and Reduced Price Application Data**

In the absence of complete SY 2021-22 school-level free and reduced price data, Program operators may use school data from a designated month of SY 2019-20 to qualify as area eligible in summer 2022 and SY 2022-23. CACFP Program operators must use data from October 2019. Area eligibility determinations made using school data must be re-determined every 5 years, therefore area eligibility determinations made using SY 2019-20 data are effective through summer 2024 or SY 2024-25 and SY 2020-21 data will expire summer 2025 or SY 2025-26.

### **Option 2: Allow All Schools to Use Community Eligibility Provision Data**

Schools that operated SSO during SY 2021-22 do not have complete free and reduced price data necessary to establish area eligibility. However, these schools were required to conduct direct certification with Food Assistance and continued to collect data on other “identified students,” including those directly certified with other programs or who would have been categorically eligible for free school meals without an application. For Community Eligibility Provision (CEP) schools, the 1.6 multiplier provides an estimate of the total number of students eligible for free and reduced price meals in CEP schools; therefore, the product of the identified student percentage (ISP) multiplied by 1.6 is used as a proxy for the percentage of free and reduced price students for area eligibility purposes. If the result is equal to or greater than 50 percent, meal sites located at the school (or in the attendance area of the school) are area eligible. Although **only schools that operated SSO during SY 2021-22 may determine area eligibility using this option**, as noted above, once area eligibility is established all NSLP afterschool snack program, SSO, CACFP at-risk afterschool and family day care homes, and SFSP operators may establish sites based on the determination. CACFP Sponsors would need to contact their local school food service director to determine if this option could be used to determine area eligibility.

### **Transitioning to Normal Operations – Summer 2022 and SY 2022-23 Child Nutrition Programs 12(I) Waivers – Approval Received from USDA**

USDA's nationwide waiver authority is expiring as of June 30, 2022. KSDE submitted allowable State waiver requests through USDA's 12(I) authority. KSDE's waiver request has been approved. You can view the request and the checklist of waivers that USDA has determined allowable at [www.kn-eat.org](http://www.kn-eat.org), School Nutrition Programs, What's New. Sponsors may now elect the Summer waiver options in KN-CLAIM for the Summer Food Service Program (SFSP) and Child Nutrition & Wellness Consultants can now approve SFSP Sponsor and Site Applications with non-congregate meal service plans for summer operations due to COVID-19. Sponsors operating the Seamless Summer Option (SSO) should contact their Child Nutrition Consultant to discuss the approved waiver options for summer operations due to COVID-19.

### **Electing Summer Waiver Flexibilities for SSO in July & August**

Sponsors that will be offering meals through the Seamless Summer Option in July &/or August and will be utilizing any of the following waivers, non-congregate meal service, parent pick-up and/or meal service time flexibility, will elect these waivers by indicating which waivers the Sponsor will utilize in July &/or August on line 93 – General Comments on the Sponsor Application. Also, be sure to include when summer operations will conclude in this comment box as well.



## Two Additional State Waivers Approved by USDA

KSDE submitted a request for two additional Section 12 (l) waivers which were approved by USDA on 5/25/22. Instructions on how to apply for these waivers will be provided in the June Monthly Update.

- **Waiver #25: Paid Lunch Equity Requirement** waives the requirement for any Sponsor to raise paid lunch prices in accordance with Paid Lunch Equity requirements.
- **Waiver #26: Determining Carryover Eligibility in SY 2022-23** waives the requirement for carryover to be based on eligibility from the preceding year. Instead, schools may use the most recent available eligibility data, which for Kansas would be SY 2020-21, for the 30-day carryover period in SY 2022-23.

### Waivers #25 and #26 Q&As

#### **Q: Can schools carryover eligibility status from SY 2020-21 free and reduced price applications (the most recent application available in Kansas)?**

A: Yes. USDA has provided guidance that SY 2020-21 eligibility status can be used for up to 30 operating days into the new school year (or until a new eligibility determination is made, whichever comes first).

#### **Q. Are schools required to use SY 2020-21 data for carryover?**

A: No. Schools can choose not to provide carryover based on applications from SY 2020-21. This is a local level decision that should be discussed with school administration.

#### **Q: Why is Kansas applying for the statewide waiver flexibility for Paid Lunch Equity when all Kansas sponsors are required to keep a positive balance within its food service fund?**

A: Applying for this statewide waiver would allow schools to utilize food service funds to decrease the paid meal price for households assisting in the transition back to normal operations.

### PLE Tool and Guidance for SY 2022-23

The SY 2022-23 PLE Tool is now available on the Checklist Tab in KN-CLAIM. SFAs should use the price they last charged students (SY 2019-20 prices) as the basis for their SY 2022-23 PLE calculation. As a reminder, Kansas Sponsors are not required to follow the PLE requirement in SY 2022-23 – because it is state law that Sponsors have a positive balance in its nonprofit school food service fund:

*“Under Section 752, of Division A of the Appropriations Act, for SY 2022-2023, only an SFA that had a negative balance in the nonprofit school food service account as of December 31, 2021, shall be required to establish a price for paid lunches served through the National School Lunch Program (NSLP) in accordance with section 12(p) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(p)). FNS will be providing additional guidance for SFAs that are required to comply with the paid lunch equity provision during SY 2022-2023.”*

In addition, the availability of the PLE waiver, Waiver #25 (July 1, 2022 – June 30, 2023) provides schools with the flexibility to not raise their paid lunch prices in SY 2022-23. This provides schools the flexibility to price their paid lunches at the level they feel is best based on their local needs. This includes decreasing paid lunch price from their previous levels, however, schools should carefully review their budgets before adjusting their paid lunch prices in SY 2022-23. Some considerations include:

- Reimbursement will return to NSLP rates
- Reimbursement will be based on eligibility of child
- Increased food costs
- Fluctuation in participation
- Meal quality should not decrease if a school decided to lower their paid lunch prices

As a reminder, the PLE requirement only applies to school lunch paid prices.



### SNP SSO Claims and State Year End

April and May claims submitted by end of the day on June 13 will be paid and money deposited by June 17. If April or May claims are not submitted by the end of the day on June 13, payment will not be made until July due to the state fiscal year end closeout and will not receive the State Match reimbursement. The State Match re-apportionment payment will be processed on Tuesday, June 14 with direct deposit on Friday, June 17.

### Financial Management Reminders

- The April claim deadline is June 29.
- Make transfers to the Food Service Fund for free adult meals and indirect costs before the end of the state fiscal year, June 30.
- Attendance Factor for SY 2022-2023 is .94.

### Excess Cash Balance – Food Service Fund

To maintain the nonprofit status of the Food Service Fund, the fund balance or net cash resources of the fund should not exceed three (3) months' average expenditures. If the balance exceeds this threshold, the sponsor must take steps to reduce the balance or have an acceptable plan for using surplus revenues. The plan must be reviewed and approved by KSDE. Only allowable expenses to the Food Service Fund are approvable. **Due to the uncertainty of costs and participation in school meal programs for SY 2022-23, Sponsors that have excess cash balances will be allowed to indicate that higher food and labor costs paired with lower reimbursement rates and uncertain participation may impact the food service fund and can be used as acceptable reasoning on a spend down plan.**

### Transitioning to Normal Child Nutrition Operations Workgroup Creates New Resources

The Workgroup creating resources for Households and Community Members has developed two resources to help communicate the transition to normal Child Nutrition Program operations for SY 2022-23:

- Sample Letter to Households about Changes to the School Nutrition Program for SY 2022-23
- Using Social Media to Communicate with Parents, Guardians, and the Community

These resources are available at [www.kn-eat.org](http://www.kn-eat.org), School Nutrition Programs, What's New. You are welcome to share this information with your households and the community. These resources have also been sent for distribution to the KSDE Superintendent and Board Clerk Listserv and the Kansas Association of School Boards for distribution. Thank you to the local school nutrition professionals that have volunteered their time for this important project!

### SNP Administrative Update

Sponsors should make plans to attend SNP Administrative Update training. At least one representative from each Sponsor must participate in the SNP Administrative Update. Live virtual training options via zoom include:

- SNP Administrative Update – June 7, 8:30 am–12:30 pm  
<https://ksde.zoom.us/j/85861366098?pwd=cW5ZYWE5bTJlaWhUR1hoaW5tMkExZz09>
- SNP Administrative Update for RCCI's – June 9, 9:00 am–12:00 pm  
<https://ksde.zoom.us/j/81654221193?pwd=aHZocUYrOHBnNDBtdnZ5NnRSTVVGUT09>
- SNP Administrative Update/CACFP Administrative Workshop – July 6, 8:00 am–12:00 pm  
<https://ksde.zoom.us/j/88432205471?pwd=VIQ4Q2NKbmcvelY1djdFVk9KWFVVGQT09>

Sponsors unable to attend a live virtual session will have the opportunity to take the training through the KSDE Learning Portal at a later date.



### Professional Development Update

Professional development is offered through the KSDE Training Portal 24/7 and as scheduled live virtual events through Zoom. A full listing of live virtual events and links can be found on the CNW Calendar at [www.kn-eat.org](http://www.kn-eat.org), CNW Calendar. There is no preregistration for the live virtual classes through Zoom. New to the KSDE Online Training Portal: SFSP Back to the Basics and SFSP Meal Pattern Training. Watch the May Quick Bite featuring dairy at:

[https://www.youtube.com/playlist?list=PLd\\_2hYclboc\\_QUbcdjw6GfQP7i2Zv2MHM](https://www.youtube.com/playlist?list=PLd_2hYclboc_QUbcdjw6GfQP7i2Zv2MHM)

KSDE will also be offering in-person Calculating Components Technical Assistance throughout the state in July. Sign up for a location near you by using the following link:

<https://forms.office.com/r/Fbjva8U9yK>

### Summer Food Service Program: Daily Meal Count Form Tutorial – Now Live!

This tutorial provides an overview of how to access and complete the Summer Food Service Program Daily Meal Count Form. The training will help sponsors understand how to access, utilize and fill out the SFSP daily meal count form correctly. This quick train tutorial is a great resource to help train staff and volunteers who will be responsible for completing the SFSP Daily Meal Count Form at the point-of-service when a child receives a meal. To access the tutorial, go to <https://learning.ksde.org>, Child Nutrition & Wellness, Tutorials, Summer Food Service Program (SFSP) Tutorials.

### Jump Start Your Success in School Nutrition Programs – New Exciting Opportunity

Jump Start Your Success in School Nutrition Programs is a new opportunity offered exclusively by the Child Nutrition & Wellness team. Jump Start will offer a blend of in-person, live virtual, on-demand and personalized training opportunities for new and aspiring school food service directors and managers. This training opportunity is for those with less than three years of experience. Those with three years of experience or more may participate as a mentor.

The 2022-23 free, multi-week Jump Start program will offer real-time and immediately applicable training opportunities that are facilitated by CNW staff and mentors. Jump Start has been developed to incorporate personalized training and leadership development through mentoring opportunities and to encourage open-group discussion so participants can be actively involved in learning best-practices from the field. Participants who complete the Jump Start program will develop the skills and knowledge needed for the successful operation of school nutrition programs.

Don't miss out on this great opportunity to jump start your success in School Nutrition Programs and join us for the inaugural kick-off event on July 27 at the KSU Alumni Center in Manhattan. For more information about Jump Start as a participant or mentor contact Kelly Chanay at [kchanay@ksde.org](mailto:kchanay@ksde.org). Register to attend at: [https://ksde.sjc1.qualtrics.com/jfe/form/SV\\_577eu6HSSn2VhRk](https://ksde.sjc1.qualtrics.com/jfe/form/SV_577eu6HSSn2VhRk).

### Food Allergy Awareness Month

May is Food Allergy Awareness Month. Did you know that 32 million Americans live with potentially life-threatening food allergies? Or that every 3 minutes a food allergy reaction sends someone to the emergency room?

The Office of Food Safety partners with the Institute of Child Nutrition (ICN) to offer food allergy resources tailored for specific audiences. Here are several resources that have been published in recent months. All of these fact sheets, and more food allergy resources, are available through ICN's Food Safety page: [Food Safety Resources – Institute of Child Nutrition \(theicn.org\)](https://www.theicn.org)



As you may know, the [Food Allergy Safety, Treatment, Education, and Research Act of 2021](#) (FASTER Act of 2021) requires sesame to be recognized as the ninth major food allergen by the U.S. Food and Drug Administration beginning January 1, 2023. Food manufacturers may begin listing sesame as an allergen on their labels at any time between now and that date.

### Child Nutrition & Wellness KANSANS CAN 2021-22 Best Practice Awards

We encourage you and your staff to make nominations for outstanding and/or innovative practices for recognition of your heroic efforts this past program year. A simple one-page nomination entry form is available at [www.kn-eat.org](http://www.kn-eat.org), Child & Adult Care Food Program, What's New. **Nominations are due to the Child Nutrition & Wellness office on or before June 30, 2022.** Awardees will be notified by July 31 and presentations will be made at the August State Board of Education meeting. Please do not hesitate to contact any Child Nutrition & Wellness team member if we can be of assistance with the application process. We look forward to receiving your nominations and celebrating the Kansans CAN Best Practice Awards with you at the August 2022 State Board of Education Meeting.

### Staffing Update

Effective June 7, Julie Henry, Assistant Director, will be leaving the Child Nutrition & Wellness team. She has accepted the position of Director of Nutrition and Wellness for Lawrence Public Schools. Sincere appreciation to Julie for her outstanding work during her 8 years of service at KSDE as an Assistant Director, Training and Technology Consultant and Child Nutrition Consultant. Thank you, Julie, for your positive leadership in increasing access to healthy meals for Kansas children and creating technology solutions for Kansas Child Nutrition Sponsors.

Wishing everyone a healthy and happy summer and thankful for each of you and all you do for Kansas children! As always, contact your area Child Nutrition Consultant or the Topeka office if we can assist in any way!

### Cheryl, Jill and Julie



For more information, contact:

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This institution is an equal opportunity provider.

The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, sex, disability or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the nondiscrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 S.W. Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.