

DATE: July 12, 2011

MEMO CODE: SP 28- 2011 - Revised

SUBJECT: Child Nutrition Reauthorization 2010: Water Availability During National School Lunch Program Meal Service

TO: Child Nutrition Programs

This memorandum provides questions and answers to update the Child Nutrition Reauthorization 2010 implementation memorandum SP 28-2011, Water Availability During National School Lunch Program Meal Service. The Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, establishes a requirement for making water available to children in the National School Lunch Program (NSLP). The purpose of this memorandum is to provide guidance on the implementation of this provision.

Section 203 of the Act amends section 9(a) of the Richard B. Russell National School Lunch Act (42 U.S.C. (1758(a)) by requiring that schools participating in the NSLP make potable water available to children at no charge in the place where lunch meals are served during the meal service. There are a variety of ways that schools can implement this requirement. For example, schools can offer water pitchers and cups on lunch tables, a water fountain, or a faucet that allows students to fill their own bottles or cups with drinking water. Whatever solution is chosen, the water must be available without restriction in the location where meals are served. Schools should be working toward developing a reasonable method to implement this requirement.

While potable water is required to be made available to students, it is not considered part of the reimbursable meal and students are not required to take water. There is no separate funding available for this provision and reimbursement may not be claimed. However, reasonable costs associated with providing potable water would be an allowable cost to the non-profit food service account.

We understand that some food service areas and/or procedures may require significant changes to properly incorporate this provision. We also recognize the range of complexities that may be involved in a school's ability to implement this provision. Therefore, we encourage schools to comply with this requirement as soon as possible, but not later than the beginning of School Year 2011-12.

The Food and Nutrition Service (FNS) plans to issue a proposed rule regarding water availability in conjunction with the proposed nutrition standards for all foods sold in schools. FNS has issued separate guidance to implement a similar provision in the Child and Adult Care Food Program (CACFP 20-211, 5/11/2011).

Attachment

## Questions and Answers:

### Location Requirement

- 1. Q. The HHFKA requires potable water be “in the place where meals are served during meal service”. Can you provide additional detail on what this means?**

A. The location of the potable water must be in the foodservice area or immediately adjacent to the meal service area. For example, if a school has a water fountain that is immediately outside the door to the foodservice area (and accessible to all students during the lunch period) this could be considered sufficient. The water fountain must be operational and able to provide potable water to students in a reasonable time during their meal period.

- 2. Q. If there is a water fountain in the food service area available to students during the meal period, would this meet the requirement?**

A. Yes. This meets the requirement, as long as the students have sufficient time to use the water fountain during their meal period. It is important to consider the amount of time it takes students to obtain water, children should not have to wait in long lines.

- 3. Q. We have two water fountains in the courtyard outside the cafeteria. Would this be acceptable?**

A. Only if the water fountain is adjacent to the foodservice area and children are routinely allowed access to this area during the meal.

- 4. Q. Is water required in each location if a school has multiple locations in which they are serving NSLP?**

A. Yes. Water must be available in each of the meal service locations.

### Reasonable Costs

- 1. Q. What is considered “reasonable costs associated with providing water would be an allowable charge to the non-profit food service account?” For example, constructing fixed water fountains, major plumbing renovations, purchasing water dispensers, providing bottled water throughout the school, reverse osmosis machines?**

A. A reasonable cost associated with providing water, in its nature and amount, is a cost that does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The cost must be the result of sound business practice and competitive prices. The cost must be reasonable, necessary, and allocable to the Federal school meal programs to be an allowable cost. In determining whether a cost is a reasonable and necessary cost associated with providing water, a school food authority (SFA) should ask the following questions:

- Would a prudent person find the cost to be reasonable?
- Is this cost at a fair rate or do alternatives exist that may be more cost effective?
- Is the cost a significant deviation from the established practices of the SFA which may unjustifiably increase costs borne by the nonprofit school food service account?
- Could the SFA defend this purchase to the State agency (SA)?

For example, the cost of providing pitchers or cups that would be filled with potable water from the faucet or providing them to students to fill with potable water from a faucet is a reasonable cost. Some schools may want to provide water bottles to students or other alternatives; however, the SFA would need to determine whether such an option would meet the requirements for cost allowability (i.e. necessary, reasonable, and allocable) and meet the specific needs of the SFA.

Additionally, a cost is generally not reasonable if it adds materially to the value of the school building and related facilities or appreciably prolongs its intended life, as those types of costs are capital expenditures and should be borne by the school district's general fund. While the cost associated with major plumbing would likely add to the permanent value of the school building and is typically a cost that should be borne by the school district's general fund, the addition of a water fountain to allow for compliance with the statutory potable water requirement makes the cost acceptable. Moreover, equipment to filter water (e.g., a reverse osmosis filter system) could be reasonable depending on the cost, the need for such equipment, and if the SFA can show:

- (1) that it has sufficient funds;
- (2) that the district truly is lacking in capital improvement funding; and
- (3) that the expenditure is necessary to carry out the mission of the program.
- (4) It is difficult to assess reasonableness without knowledge of the specific cost and an understanding of that cost. Many costs have to be analyzed on a case-to case basis in order to determine if the cost is truly reasonable; in such cases, the SFA should consult with its SA for guidance.

**2. Q. Is the cost of a five gallon dispenser an allowable cost?**

A. This *could* be an allowable cost assuming that an SFA has determined this method of providing water to be cost efficient and practical.

**3. Q. Can a SFA charge the student for the cups in order to access water?**

A. No. Charging students for cups in order to access water would be considered restricting access to water.

**Alternate Serving Areas:**

**1. Q. Would SFAs have to make potable water available to students on field trips where reimbursable meals are served to students?**

A. Field trips may be exempted from the water requirement; however, schools should make an effort to have water available for all school related functions including field trips.

**2. Q. What should an SFA do about meals that are served outside of the cafeteria, such as those served in a classroom, in-school suspension etc.?**

A. Schools must make water available for these students.

**Program Questions:**

**1. Q. Is potable water required to be available during lunch at Seamless Summer sites?**

A. Yes.

**2. Q. Does the water requirement apply to non-school summer feeding sites?**

A. No, the water requirement only applies to seamless summer feeding sites at schools.

**3. Q. Is water required at breakfast?**

A. This provision specifically applies to the National School Lunch Program; however schools are encouraged to provide water during all meal service.

**4. Q. Is potable water required to be available during afterschool snacks?**

A. Yes. The Afterschool Snack Program falls under the jurisdiction of the National School Lunch Program.

**Food Safety:**

**1. Q. Water dispensers must be monitored and probably refilled and cleaned. Who will do that? If left unattended in kitchen or cafeteria, safety is a big concern.**

A. School food service staff would be responsible for maintaining all of their equipment which would include dispensers.

**General Questions:**

**1. Q. Can the water be served at room temperature? Does the water have to be ice water?**

A. The water does not have to be served chilled, water can be served at room temperature. However, children may find water to be more palatable if served chilled.

**2. Q. How should water be provided to students under the American Disabilities Act (ADA)?**

A. The school should continue to follow the procedures documented in the IEP or the medical referral form.

**3. Q. Can I flavor the water? For example, can I add fruit or vegetables for flavor?**

A. No. The water must be served plain.

**4. Q. If a water fountain is used and children are required to "raise their hand" to get up and go to the fountain, would that be considered "unrestricted access"?**

A. Yes, although not ideal, as long as this is used to provide order and the student is not denied the opportunity to obtain water, this would be considered unrestricted access. All children should be able to use the water fountain in a timeframe that still allows enough time for consumption of the meal.

**5. Q. Must cups be provided and is there a minimum required size for cups (if provided)?**

A. The SFA must provide cups if providing water in a bulk container (other than a drinking fountain). The water should be provided in cups suitable for the age of the child.

**6. Q. Can SFAs require that children bring their own cups, bottles, drinking vessels?**

A. The SFA must provide cups at no cost to the child. Children cannot be required to bring their own cups for water provided in a bulk container.