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Rep. Dorsey Walker & Rep. Heffernan & Rep. Morrison  
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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 125

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO FREE SCHOOL MEALS.

1 WHEREAS, access to school meals should not cause stigma or stress for any student seeking an education; and

2 WHEREAS, during the COVID-19 pandemic, the United States Department of Agriculture eased program  
3 restrictions to allow free meals to continue to be available to all students universally, ensuring that all students facing  
4 hunger had access to food while in school; and

5 WHEREAS, now that strategies exist to prevent hunger for all students during the school day, it is imperative that  
6 the State embrace these strategies to move forward the goal of ending child hunger; and

7 WHEREAS, the General Assembly finds that it is in the best interests of the students of Delaware and their  
8 families to enact a free school meals for all program to provide free meals for school students.

9 NOW, THEREFORE:

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

11 Section 1. Amend Chapter 41, Title 14 of the Delaware Code by making deletions as shown by strike through and  
12 insertions as shown by underline as follows:

13 ~~§ 4137. Alternative service models for school breakfast.~~

14 ~~(a) Purpose.~~

15 ~~The purpose of allowing for alternative service models for school breakfast is:~~

16 ~~(1) To increase the total number of public school, excluding charter school, students eating breakfast on~~  
17 ~~school days;~~

18 ~~(2) To help improve the academic performance of these students; and~~

19 ~~(3) To improve the overall health of these students in the State.~~

20 ~~(b) Definitions.~~

21 ~~For the purposes of this section:~~

22 ~~(1) "Alternative service model" means breakfast meal service that may include 1 or more of the following:~~

23 ~~a. Breakfast in the Classroom.~~

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~~b. Grab and Go Breakfast.~~

~~e. Second Chance Breakfast.~~

~~(2) “Breakfast in the Classroom” means that breakfast meals are eaten in the classroom at the start of the school day. A breakfast meal can either be delivered to the classroom or be served from the cafeteria or a cart or kiosk placed within the school, the cafeteria, or another location deemed appropriate by the school.~~

~~(3) “Community eligibility provision” means a provision from the Healthy, Hunger-Free Kids Act of 2010 [P.L. 111-296] that allows schools and local education agencies with high poverty rates to provide a breakfast and lunch to all students at no cost.~~

~~(4) “Department” means the State of Delaware Department of Education.~~

~~(5) “Free claiming percentage rate”, for the purposes of this program, means the identified student percentage of a school multiplied by a factor of 1.6.~~

~~(6) “Grab and Go Breakfast” means that students are able to access a breakfast meal from a cart or kiosk placed within the school, the cafeteria or another location deemed appropriate by the school.~~

~~(7) “Identified student percentage” means the number of students in a school directly certified for free meals (any student in a household receiving Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance for Needy Families (TANF) plus any student identified as homeless, foster, migrant or runaway) between the period of July 1 through April 1 annually.~~

~~(8) “National School Lunch Program” means the federal National School Lunch Act created in 42 U.S.C. § 1751 et seq.~~

~~(9) “Reduced price meal” means a meal a child is entitled to in the School Breakfast or National School Lunch Program where the family’s income is between 130 and 185 percent of the federal poverty threshold, published annually in the Federal Register as required by § 9 of the Richard B. Russell National School Lunch Act [42 U.S.C. § 1758].~~

~~(10) “School Breakfast Program” means the federal School Breakfast Program created in 42 U.S.C § 1773 et seq.~~

~~(11) “Second Chance Breakfast” means that students are offered the opportunity to obtain a breakfast meal at a time prior to the beginning of second period.~~

~~(c) The Program.~~

52 ~~Beginning in school year 2017-2018, every public school site, including charter school sites, participating in the~~  
53 ~~community eligibility provision, shall be required to offer a breakfast at no cost to every student in the school through an~~  
54 ~~alternative service model, which may be in addition to their traditional breakfast meal service.~~

55 ~~(d) Administration.~~

56 ~~The Department may promulgate regulations regarding the implementation of this section. [Repealed.]~~

57 § 4137. Free School Meals Program.

58 (a) Definitions.

59 As used in this section:

60 (1) “Alternative service model” means breakfast service that may include 1 or more of the following:

61 a. Breakfast in the Classroom.

62 b. Grab-and-Go Breakfast.

63 c. Second-Chance Breakfast.

64 (2) “Breakfast in the Classroom” means breakfast meals that are eaten in the classroom at the start of the  
65 school day. A breakfast meal can either be delivered to the classroom or be served from the cafeteria or a cart or kiosk  
66 placed within the school, the cafeteria, or another location deemed appropriate by the school.

67 (3) “Community eligibility provision” means a provision from the federal Healthy, Hunger-Free Kids Act of  
68 2010 created in 42 U.S.C. §1759a (a)(1)(F) that allows schools and local education agencies with high poverty rates to  
69 receive federal special assistance payments for school meals in exchange for providing meals free of charge to all  
70 students enrolled in all or selected schools of the local education agency.

71 (4) “Department” means the Department of Education.

72 (5) “Free claiming percentage”, for the purpose of this Program, means the identified student percentage of a  
73 school multiplied by a factor of 1.6.

74 (6) “Grab-and-Go Breakfast” means a breakfast meal that students are able to access from a cart or kiosk  
75 placed within the school or can access breakfast in the cafeteria and take it to an alternate location for consumption.

76 (7) “Identified student percentage” means the number of students in a school directly certified for free meals  
77 (any student in a household receiving Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance  
78 for Needy Families (TANF) plus any student identified as homeless, foster, migrant or runaway) between the period of  
79 July 1 through April 1 annually.

80 (8) “School Breakfast Program” means the federal School Breakfast Program created in 42 U.S.C. §1773 et.

81 seq.

82           (9) “National School Lunch Program” means the federal Richard B. Russell National School Lunch Act  
83           created in 42 U.S.C. §1751 et seq.

84           (10) “Program” means the Free School Meals for All Program created in this section.

85           (11) “Reduced-price meal” means a meal a child is entitled to receive under the School Breakfast Program or  
86           National School Lunch Program” when the family’s income is between 130% and 185% of the federal poverty  
87           threshold, as published annually in the Federal Register, and as required under §9 of the Richard B. Russell National  
88           School Lunch Act, 42 U.S.C. §1758.

89           (12) “Second-Chance Breakfast” means the opportunity for students to obtain a breakfast meal at a time prior  
90           to the beginning of second period.

91           (b) All schools that participate in the School Breakfast Program and National School Lunch Program, must  
92           provide a breakfast meal and a lunch meal free of charge to any pupil who requests a meal without consideration of the  
93           pupil’s eligibility for a federally free funded or reduced-price meal, with a maximum of 1 free meal for each meal service  
94           period. The meals provided free of charge under this Program must meet the meal pattern requirements under the School  
95           Breakfast Program and National School Lunch Program.

96           (c) All schools participating in the Community Eligibility Provision are required to offer a breakfast through an  
97           alternative service model in addition to their traditional breakfast meal service.

98           (d) The Department shall reimburse all schools participating in the Program. The amount of reimbursement, by the  
99           Department, to each participating school, for each budget year, will be equal to the federal free reimbursement rate  
100           multiplied by the total number of eligible meals that the participating school serves during the applicable budget year minus  
101           the total amount of reimbursement for eligible meals served during the applicable budget year that the participating school  
102           receives under the School Breakfast Program and National School Lunch Program.

103           (e) If the U.S. Department of Agriculture creates the option for the State, as a whole to participate in the  
104           Community Eligibility Provision, the Department shall participate in the option and shall work with local education  
105           agencies and necessary State and local agencies to collect data and implement the Community Eligibility Provision  
106           statewide.

107           (f) Schools and local education agencies participating in this Program that do not participate in the Community  
108           Eligibility Provision must request a parent or guardian for each student to complete a household income form provided by  
109           the Department to determine a family’s eligibility for federal and state food assistance programs. This requirement does not  
110           apply if the school is able to obtain equivalent information through another means.

111 (g) The Department may promulgate rules and regulations as necessary to implement this Program, including rules  
112 to maximize the amount of federal funding available to implement and operate this Program.

113 Section 2. This Act takes effect 30 days following the date of publication in the Register of Regulations of a notice  
114 from the Controller General that funds have been appropriated to implement the provisions of this Act.

#### SYNOPSIS

During the COVID-19 pandemic the U.S. Department of Agriculture eased program restrictions to allow for free breakfast and lunch for all students. With the expiration of U.S. Department of Agriculture waivers on June 30, 2022, Delaware schools participating in the USDA School Breakfast Program and National School Lunch Program were required to return to pre-pandemic policies as they related to free breakfast and lunch meals. At present some Delaware schools and school districts provide free breakfast and lunch meals for all students because the schools qualify for Community Eligibility Provisions based on the percentage of students from low-income households. These schools are reimbursed by the U.S. Department of Agriculture using a formula. This Act would require all schools to offer all students free breakfast and lunch every school day. The Department would reimburse all schools for all expenses not reimbursed by the U.S. Department of Agriculture. The amount of reimbursement, by the Department, for each budget year, for each participating school, will be equal to the federal free reimbursable rate multiplied by the total number of eligible meals that the participating school serves during the applicable budget year minus the total amount of reimbursement for eligible meals served that the participating school receives under the School Breakfast Program and National School Lunch Program. This Act takes effect 30 days after publication in the Register of Regulations of the notice by the Controller General that funds have been appropriated to implement this Act.