



COMMONWEALTH of VIRGINIA
DEPARTMENT OF EDUCATION

DATE: April 7, 2023

TO: Division Superintendents

FROM: Aimee Guidera, Acting Superintendent of Public Instruction and Secretary of Education

SUBJECT: Implementation of House Bill 5113 (2020 SSI) regarding the Community Eligibility Provision

During its 2020 Special Session I, the General Assembly passed House Bill 5113 ([Chapter 2 of 2020 SSI Acts of Assembly](#)) requiring any local school board that governs a public elementary or secondary school that is eligible to participate in the Community Eligibility Provision (CEP), as administered by the U.S. Department of Agriculture Food and Nutrition Service (FNS), to apply to FNS to participate in CEP for each such school by the established deadlines or unless a waiver is granted. CEP is a non-pricing meal service option for schools and local educational agency (LEA) in low-income areas allowing schools to serve breakfast and lunch at no cost to all enrolled students without collecting household applications.

The Virginia Department of Education (Department) has received guidance from the U.S. Department of Agriculture highlighting language in the National School Lunch Act which clarifies conditions of LEA participation in CEP. The relevant language in the National School Lunch Act, found at [42 USC 1759a\(a\)\(2\)\(F\)\(ii\)](#) with implementing regulations at [7 CFR 245.9\(f\)](#), is permissive and gives local school boards discretion in whether to participate in CEP.

Below are excerpts from the National School Lunch Act, with emphasis added:

(ii) Election of special assistance payments.-

(I) In general.-A local educational agency (LEA) may, for all schools in the district or on behalf of certain schools in the district, elect to receive special assistance payments under this subparagraph in lieu of special assistance payments otherwise made available under this paragraph based on applications for free and reduced price lunches if —

(aa) during a period of 4 successive school years, the local educational agency elects to serve all children in the applicable schools free lunches and breakfasts ...

(II) Election to stop receiving payments.-A local educational agency may, for all schools in the district or on behalf of certain schools in the district, elect to stop receiving special assistance payments under this subparagraph for the following school year by notifying the State agency not later than June 30 of the current school year of the intention to stop receiving special assistance payments under this subparagraph.

Per the above language, eligible LEAs may participate in CEP to serve breakfast and lunch at no charge without collecting meal applications and be reimbursed for those meals for four subsequent years under the initial application. Likewise, the LEA may stop participation in CEP for the following school by notifying the Department no later than June 30 of the current school year.

We are providing this information so that local school boards may consult with their local school board attorneys to ensure their participation in CEP is consistent with federal and state law.

VDOE will release additional information in May 2023 that includes additional details regarding the CEP application process for the 2023-2024 school year.

For more information on HB5113, you may contact the Office of Policy at (804) 225-2092 or policy@doe.virginia.gov.

For more information on CEP, eligibility, and details for participation, you may contact the Office of School Nutrition Programs at (804) 225-2074 or snppolicy@doe.virginia.gov.

AG/LMS