



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY
12234-0055

Office for Elementary, Middle, Secondary and Continuing Education
Charles A. Szuberla, Jr., Coordinator
School Operations and Management Services
Child Nutrition Program Administration
Room 55, Albany, NY 12234-0055
Tel. (518) 473-8781 Fax (518) 473-0018
Web site www.nysed.gov/cn/cnms.htm

May 14, 2004

To: District Superintendents
Superintendents of Schools
School Business Officials
Executive Directors of Residential Child Care Institutions
Food Service Directors

From: Frances N. O'Donnell, Coordinator

Subject: Impact of Increased Prices for Milk and Gasoline on Child Nutrition Programs

As you are well aware, milk and gasoline prices have increased tremendously in the past few months, with more increases expected to follow. These higher prices affect the cost of producing school meals and may result in financial hardships for school meal programs. It has come to our attention that some Food Service Management Companies (FSMCs) have asked their school food authorities (SFAs) to absorb the high cost of milk by reimbursing the FSMC for the increase in price, which can be \$ 0.05 per half pint container. Further, they are stating that this must be done or the FSMC will have to provide 100 percent juice instead of milk, which is prohibited by regulations governing the Child Nutrition Programs.

There is no provision in the contract between the SFA and the FSMC to reimburse the FSMC for the difference for any product that increases in price. The contract states: "The FSMC shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards." SFAs may not pay FSMCs for unexpected additional costs outside of the signed contract. If the FSMC insists on additional funds, an SFA should go out to bid again.

The National School Lunch and School Breakfast program menu planning requirements for all meal plans require fluid milk be offered with the meal as a beverage. Juice or juice products or other beverages cannot be substituted for fluid milk. Meals offered without providing milk will be incomplete and are not eligible for program reimbursement. A powdered milk drink may not be used and schools cannot offer milk as a beverage choice in anticipation that students will select a less costly beverage. The contract requires: "The FSMC shall serve reimbursable meal pattern lunches pursuant the National School Lunch Program regulations 7 CFR Part 210.10(c) and (d) and shall meet the Dietary Guidelines for Americans." Also, "The FSMC shall serve reimbursable breakfasts pursuant to the School Breakfast Program regulations 7 CFR Part 220.8 (b) and (c), where indicated in Appendix B of this agreement, and shall meet the Dietary Guidelines for Americans." The contract also sets terms for payment to the FSMC "No payment shall be made for meals that are spoiled or unwholesome at time of delivery, or do not meet the detailed specifications for each food component in the meal pattern or do not otherwise meet the requirements of the NSLP, SBP or the contract."

The FSMC can propose increases in the prices charged to students and adults for breakfast, lunch or a la carte items. However, price increases must be approved by the Board of Education and these increases cannot be passed on to the FSMC. As stated in the contract: "The SFA shall be responsible for establishing all program and non-program meal and a la carte prices."

Please review your contract to determine each party's rights and responsibilities under the agreement between the SFA and the FSMC. If you have any questions regarding these matters, contact Ms. Sharon M. Smith at (518) 473-8781.