**DRAFT CREATED BY JV**

**581-051-0600 Breakfast After the Bell Requirement and Exemption Process**

(1) As used in this section:

(a) “Breakfast” means a reimbursable breakfast provided through the federal School Breakfast Program.

(b) “Eligible student” means a student who is eligible for free or reduced price meals under the United States Department of Agriculture’s guidelines.

(c) “School district” means an Oregon common school district, joint school district, union high school district, education service district, or public charter school.

(2)(a) If, in the second preceding school year, 70 percent or more of the students at a school site were eligible students, then a school district must make breakfast accessible at that school site after the beginning of the school day. If eligibility data from the second preceding school year is unavailable, the most current applicable available data will be used.

(b) A school district that must make breakfast accessible after the beginning of the school day under this subsection must ensure that the breakfast is:

(A) Accessible to all students after the beginning of the school day, regardless of a student’s grade or arrival time; and

(B) Provided free of charge to all students, regardless of whether a student is an eligible student.

(c) As used in this subsection, “arrival time” means the time of day, prior to the start of the school site’s lunch service, when the student has arrived on campus for the purpose of attending classes or participating in school activities.

(3) Notwithstanding subsection (2) of this section, a school district:

(a) Is not required to make breakfast accessible to a student after the beginning of the school day if the student does not arrive at the school site at least 30 minutes before the start of the school site’s lunch service.

(b) May claim an exemption from the requirement to make breakfast accessible after the beginning of the school day at a school site if the district can demonstrate that 70 percent or more of the eligible students regularly receive breakfast at the school site, even though the district does not make breakfast accessible at that site after the beginning of the school day.

(4)(a) The department will announce the school sites that are eligible for an exemption from the requirement to make breakfast accessible after the beginning of the school day.

(b) School districts claiming an exemption from the requirement to make breakfast accessible after the beginning of the school day must notify the department using the notification form and procedure published by the department.

(c) Eligible school sites that claim an exemption from the requirement to make breakfast accessible after the beginning of the school day are exempt from complying with the requirement during the applicable school year.

(5) If a school district claimed an exemption on behalf of a school site that is not eligible to receive one, then the department will notify the district in writing and the school site must comply with the requirement to make breakfast accessible after the beginning of the school day.

(6) Beginning in the 2020-21 school year, school districts subject to the requirement in subsection (2) of this section must make breakfast accessible after the beginning of the school day.

Statutory/Other Authority: 2019 Or Laws, ch. 122, sec. 26 (Enrolled HB 3427)

Statutes/Other Implemented: 2019 Or Laws, ch. 122, sec. 26 (Enrolled HB 3427)

**581-051-0610 Community Eligibility Provision Incentive Reimbursement Program**

(1) As used in this section:

(a) “Breakfast” means a reimbursable breakfast that is provided through the federal School Breakfast Program.

(b) “Community Eligibility Provision” refers to the alternative reimbursement option administered by the United States Department of Agriculture for schools and school districts in high-poverty areas through which participating schools or school districts agree to provide breakfasts and lunches at no charge to all students in exchange for receiving federal meal reimbursements based on the schools’ or districts’ identified student percentage.

(c) “Eligible school or district” means a school, a group of schools, or a school district that:

(A) Has an identified student percentage of at least 40 percent, as of April 1 of the school year prior to participating in the Community Eligibility Provision;

(B) Participates in both the federal National School Lunch and School Breakfast Programs; and

(C) Complies with the regulations and procedures established by the United States Department of Agriculture for the administration of the Community Eligibility Provision.

(d) “Identified students” has the meaning given that term in 7 CFR 245.9(f).

(e) “Identified student percentage” has the meaning given that term in 7 CFR 245.9(f).

(f) “Identified student percentage reimbursement goal” is the percentage of all breakfasts and lunches an eligible school or district served to its students during a school year that the Oregon Department of Education has determined should be reimbursed at an amount equal to either the applicable federal free meal reimbursement rate, or a supplemental meal reimbursement rate calculated by the department for the Community Eligibility Provision Incentive Reimbursement Program.

(g) “Lunch” means a reimbursable lunch that is provided through the federal National School Lunch Program.

(h) “School district” means an Oregon common school district, joint school district, union high school district, education service district, or public charter school.

(i) “School year” means the twelve-month period beginning on July 1 and ending on June 30.

(2) The purpose of the Community Eligibility Provision Incentive Reimbursement Program is to encourage participation in the federal Community Eligibility Provision, and maximize the number of schools participating in the provision, by making the provision financially viable for more eligible schools and districts. The program achieves its purpose by supplementing the federal reimbursements participating schools and school districts receive for the breakfasts and lunches they serve at no cost to their students with an additional state-funded meal reimbursement.

(3)(a) The Oregon Department of Education will notify each school or district that is eligible for participation in the Community Eligibility Provision Incentive Reimbursement Program of its eligibility and that it will receive a supplemental, state-funded meal reimbursement that is in addition to any federal meal reimbursement received through the Community Eligibility Provision. The program is not competitive; participation in the program is open to all eligible schools and districts.

(b) An eligible school or district must notify the department of its intent to participate in the Community Eligibility Provision Incentive Reimbursement Program in the form and manner prescribed by the department.

(4)(a) The Oregon Department of Education will make the first reimbursements under the Community Eligibility Provision Incentive Reimbursement Program for breakfasts and lunches eligible schools and districts serve their students during the 2020-21 school year.

(b) Beginning in the 2020-21 school year, the department will publish the identified student percentage reimbursement goal for the current school year. Depending on the number of claims received, the amount of state funds allocated for reimbursements, the amount of state funds available for paying claims, changes in student enrollment, or other related factors, the department may revise the identified student percentage reimbursement goal for the current school year. The department will notify eligible schools and districts eight weeks in advance of any changes in the current school year’s identified student percentage reimbursement goal.

(5) The Oregon Department of Education will issue periodic reports about the Community Eligibility Provision Incentive Reimbursement Program. The reports will include, but are not limited to, how much remains of the funds allocated for the program, the number of schools or districts participating, and the number of students served.

(6)(a) The Oregon Department of Education will publish a Community Eligibility Provision Incentive Reimbursement Program agreement form. Eligible schools or districts must submit a signed agreement form to the department before they can receive supplemental, state-funded meal reimbursements through the program.

(b) The department will base its program agreement on an eligible school or district’s existing agreement with the department to operate one or more federal school nutrition programs. The program agreements will include, but are not limited to, a requirement that the eligible school or district comply with applicable state and federal requirements for the administration of the federal school nutrition programs and the terms of its existing agreement to operate one or more federal school nutrition programs.

(7)(a) The Oregon Department of Education will develop an annual supplemental meal reimbursement rate for the Community Eligibility Provision Incentive Reimbursement Program. The supplemental meal reimbursement rate will be based on:

(A) The free reimbursement rate established by the United States Department of Agriculture for reimbursable meals; and

(B) Any amounts otherwise reimbursed or paid by state, federal or other sources.

(b) Notwithstanding paragraph (a) of this subsection, the department may calculate an alternative supplemental meal reimbursement at a lower rate for schools and districts participating in the program that have an identified student percentage that is equal to or greater than 30 percent, but less than 40 percent, as of April 1 of the fourth year of the school or district’s four-year community eligibility cycle, and are continuing on the Community Eligibility Provision for a fifth year.

(8)(a) Eligible schools and districts participating in the Community Eligibility Provision Incentive Reimbursement Program must submit a monthly claim for reimbursement in the form and manner prescribed by the Oregon Department of Education. The department will process supplemental, state‑funded meal reimbursements paid through the program according to the United States Department of Agriculture’s rules and procedures for submitting and processing meal reimbursement claims through the National School Lunch and School Breakfast Programs.

(b) If a monthly claim for reimbursement submitted by a school or district participating in the program is adjusted after the school or district received federal or state reimbursements for the meals it served during that month, the department may take steps to avoid an overpayment or underpayment, including but not limited to reducing or increasing the amount of the following month’s supplemental meal reimbursement by the amount of the overpayment or underpayment.

(c) A school or district participating in the program may not receive supplemental state funds if it does not submit a monthly claim for reimbursement.

(9) A school or district participating in the Community Eligibility Provision Incentive Reimbursement Program must deposit any supplemental, state-funded meal reimbursements it receives through the program in its nonprofit school food service account.

(10)(a) The Oregon Department of Education shall publish performance measures and guidance documents for participants in the Community Eligibility Provision Incentive Reimbursement Program.

(b) Every year, a school or district participating in the program must report on the program in the manner and form prescribed by the department. The department may only require reporting that is necessary:

(A) For making reimbursements under this section;

(B) To ensure the accuracy of reimbursements made under this section, and compliance with this section and the program agreement; or

(C) To prevent waste, fraud, and abuse in reimbursements made under this section.

Statutory/Other Authority: 2019 Or Laws, ch. 122, sec. 30 (Enrolled HB 3427)

Statutes/Other Implemented: 2019 Or Laws, ch. 122, sec. 30 (Enrolled HB 3427)

**581-051-0615 Expanded Income Eligibility Group Reimbursement Program**

(1) As used in this section:

(a) “Breakfast” means a reimbursable breakfast that is provided through the federal School Breakfast Program.

(b) “Community Eligibility Provision” refers to the alternative reimbursement option administered by the United States Department of Agriculture for schools and school districts in high-poverty areas through which participating schools or school districts agree to provide breakfasts and lunches at no charge to all students in exchange for receiving federal meal reimbursements based on the schools’ or districts’ identified student percentage.

(c) “Eligible school or district” means a school, a group of schools, or a school district that is not participating in the Community Eligibility Provision.

(d) “Eligible student” means a student who is from a household with an income that is greater than 185 percent, but does not exceed 300 percent, of the applicable federal poverty guidelines.

(e) “Federal poverty guidelines” means the federal poverty guidelines that are issued annually by the United States Department of Health and Human Services and used to determine financial eligibility for various federal programs, including but not limited to free and reduced price breakfasts and lunches.

(f) “Lunch” means a reimbursable lunch that is provided through the federal National School Lunch Program.

(g) “School district” means an Oregon common school district, joint school district, union high school district, education service district, or public charter school.

(h) “School year” means the twelve-month period beginning on July 1 and ending on June 30.

(2) The purpose of the Expanded Income Eligibility Group Reimbursement Program is increasing students’ access to and participation in school nutrition programs, such as the National School Lunch and School Breakfast Programs. The program achieves its purpose by reimbursing eligible schools or districts participating in the program for each breakfast and lunch they serve at no charge to an eligible student.

(3)(a) An eligible school or district must notify the Oregon Department of Education of its intent to participate in the Expanded Income Eligibility Group Reimbursement Program in the form and manner prescribed by the department before the eligible school or district will begin providing eligible breakfasts and lunches to all eligible students at no charge.

(b) The department will publish an agreement form for the program. Eligible schools or districts must submit a signed program agreement form to the department before they can receive supplemental, state-funded meal reimbursements through the program.

(c) The department will base its program agreement form on an eligible school or district’s existing agreement with the department to operate one or more federal school nutrition programs. The program agreements will include, but are not limited to, a requirement that the eligible school or district comply with applicable state and federal requirements for the administration of the federal school nutrition programs and the terms of its existing agreement to operate one or more federal school nutrition programs.

(4)(a) The Oregon Department of Education will develop and publish meal reimbursement rates for the Expanded Income Eligibility Group Reimbursement Program each year.

(b) The department will base its meal reimbursement rates on:

(A) The free reimbursement rate established by the United States Department of Agriculture for reimbursable meals; and

(B) Any amounts otherwise reimbursed or paid by state, federal or other sources.

(c) The maximum meal reimbursement provided through the Expanded Income Eligibility Group Reimbursement program may not exceed the annual meal reimbursement rates published by the department.

(5) As a condition of participating in the Expanded Income Eligibility Group Reimbursement Program, eligible schools and districts must serve available breakfast and lunch to all eligible students at no charge.

(6) The Oregon Department of Education will develop and publish a confidential household income application for the Expanded Income Eligibility Group Reimbursement Program.

(7)(a) To determine whether individual students are eligible to receive breakfast and lunch at no charge through the Expanded Income Eligibility Group Reimbursement Program, an eligible school or district participating in the program must have households complete and return the confidential household income application published by the department.

(b) Students will qualify as eligible students, and may receive breakfast and lunch at no charge through the program, if the confidential household income application submitted on behalf of a student shows that the student’s household has an income that is greater than 185 percent, but does not exceed 300 percent, of the applicable federal poverty guidelines.

(c) Eligible schools or districts must notify households if their students qualify as eligible students and may receive breakfast and lunch at no charge through the program by no later than ten business days after receiving the household’s confidential household income application.

(8)(a) Notwithstanding subsection (7) of this section, eligible schools may use census data produced by the United States Census Bureau to determine the percentage of meals they served that were reimbursed at the federal paid rate and are eligible for a supplemental, state-funded reimbursement through the Expanded Income Eligibility Group Reimbursement Program, if:

(A) The eligible schools are participating in Provision 2, an alternative meal reimbursement program administered by the United States Department of Agriculture; and

(B) The first year of the eligible school’s four-year Provision 2 cycle occurred prior to the 2020-21 school year.

(b) The Oregon Department of Education will publish guidance on using data from the United States Census Bureau to determine the percentage of meals reimbursed at the federal paid rate that are eligible for a supplemental, state-funded reimbursement through the program, and provide technical assistance to eligible schools participating in Provision 2.

(9) The Oregon Department of Education will make the first reimbursements under the Expanded Income Eligibility Group Reimbursement Program for breakfasts and lunches served to eligible students at no charge during the 2020-21 school year.

(10)(a) Eligible schools and districts participating in the Expanded Income Eligibility Group Reimbursement Program must submit a monthly claim for reimbursement in the form and manner prescribed by the Oregon Department of Education. The department will process supplemental, state-funded meal reimbursements paid through the program according to the United States Department of Agriculture’s rules and procedures for meal reimbursement claim submission and processing for schools and districts participating in the National School Lunch and School Breakfast Programs.

(b) If a monthly claim for reimbursement submitted by a school or district participating in the program is adjusted after the school or district received federal or state reimbursements for the meals it served during that month, the department may take steps to avoid an overpayment or underpayment, including but not limited to reducing or increasing the amount of the following month’s supplemental meal reimbursement by the amount of the overpayment or underpayment.

(c) A school or district participating in the program may not receive supplemental state funds if it does not submit a monthly claim for reimbursement.

(11) A school or district participating in the Expanded Income Eligibility Group Reimbursement Program must deposit any supplemental, state-funded meal reimbursements it receives through the program in its nonprofit school food service account.

(12)(a) The Oregon Department of Education shall publish performance measures and guidance documents for participants in the Expanded Income Eligibility Group Reimbursement Program.

(b) Every year, a school or district participating in the program must report on the program in the manner and form prescribed by the department. The department may only require reporting that is necessary:

(A) For making reimbursements under this section;

(B) To ensure the accuracy of reimbursements made under this section, and compliance with this section and the program agreement; and

(C) To prevent waste, fraud, and abuse in reimbursements made under this section.

(13) On an ongoing basis, the department will track the reimbursements made under this section and the balance of funds available for the biennium. In the event that funds fall to a level that is insufficient to reimburse schools or districts participating in the Expanded Income Eligibility Group Reimbursement Program:

(a) The department will notify participating schools and districts 12 weeks in advance of cessation of the State Eligibility Group Reimbursement due to insufficient funds;

(b) Until sufficient funds again become available, reimbursement of eligible meals claimed will revert to:

(A) The applicable reimbursement rate established by the United States Department of Agriculture for reimbursable meals; and

(B) Any amounts, other than the Expanded Income Eligibility Group reimbursement, reimbursed or paid by state, federal or other sources.

(c) Schools or districts affected will follow guidance provided by the department.

Statutory/Other Authority: 2019 Or Laws, ch. 122, sec. 30 (Enrolled HB 3427), 2021 Enrolled HB 2536

Statutes/Other Implemented: 2019 Or Laws, ch. 122, sec. 30 (Enrolled HB 3427), 2021 Enrolled HB 2536