



New Hampshire

Department of Education

Serving New Hampshire's Education Community

Technical Advisory

Bake Sales & Fundraiser Exemptions for Non-Compliant Foods

The Healthy Hunger-Free Kids Act (HHFKA) of 2010

This Technical Advisory is issued to modify the New Hampshire Department of Education's Technical Advisory that was issued on March 8, 2012, and to clarify the number of exemptions the Department is authorizing for bake sales or fundraisers of non-compliant foods in schools.

Bake Sales & Fundraiser Exemptions for Non-Compliant Foods

Federal regulation requires that food and beverage items sold during the school day meet the United States Department of Agriculture (USDA) nutrition standards Smart Snack Guidelines (<https://fns-prod.azureedge.net/sites/default/files/tn/USDASmartSnacks.pdf>), but allows for special exemptions for the purposes of conducting infrequent school sponsored fundraisers as specified in *The Healthy Hunger-Free Kids Act* (HHFKA) of 2010. In implementing that federal program:

“USDA is confident that State agencies possess the necessary knowledge, understanding and resources to make decisions about what an appropriate number of exempt fundraisers in schools should be and that the most appropriate approach to specifying the standards for exempt fundraisers is to allow State agencies to set the allowed frequency of such fundraisers. If a State agency does not specify the exemption frequency, no fundraiser exemptions may be granted.” Individual states have the flexibility to determine a specific number of exemptions that allow for infrequent school-sponsored bake sales or fundraisers that can sell food or beverages which do not conform to the USDA’s nutritional standards (“non-compliant foods”). “Non-compliant foods” are foods that do not meet Smart Snack Guidelines. *National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the HHFKA of 2010*, 81 Fed. Reg..

Previously, the New Hampshire Department of Education (“Department”) allowed schools to have a total of three (3) exempt bake sales or fundraisers per school, per year. The maximum duration for each exempted bake sale or fundraiser was three (3) days. Like the USDA, the NH DOE is confident that LEA’s possess the necessary knowledge, understanding and resources to make decisions about what an appropriate number of exempt fundraisers in school should be and is striving to provide more flexibility to school districts. However, to meet the federal requirement that the State agency specify an exemption frequency and to support fundraisers which assist student-centered activities, the Department will now allow schools to hold up to ***nine exempt bake sale or fundraisers, which are one day in duration, per school year.*** This number was derived from the previous exemption policy, as explained above, and was determined by the Fundraiser Stakeholder Group to be an equitable regulation. ***This new exemption policy will become effective for the 2017-2018 academic year.*** It is important to

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NEW

Page 1 of 3



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note that districts may implement a more stringent exemption limit.¹ All other bake sales or fundraisers that include only items which comply with the USDA Smart Snack Guidelines are not limited by this exemption policy.

Under this new policy schools may configure the bake sale or fundraiser exemptions in a variety of ways to meet individual school needs. For example, a school could hold 9 separate, exempt bake sales or fundraisers throughout the academic school year. Alternatively, a school could hold three events, such as a school carnival, each of which is three days in duration, at which bake sale or fundraisers of non-compliant foods are held. Districts seeking to adopt the exemption policy should consider the number of groups or clubs which may seek to hold a bake sale or fundraiser at which non-compliant foods are sold and contemplate the best way to accommodate such requests given the number of exemptions permitted.

As with the previous exemption policy, no exempted bake sale or fundraiser food or beverage may be sold in competition with school meals in the food service area during the meal service—this includes breakfast and lunch service. As a reminder, The USDA’s regulations only include foods that are sold during the school day²—the rule does not encompass foods which are sold either prior to the start of the school day or after school. Therefore, the nutritional standards are not applicable to food and beverages which are sold at events held after school, off campus or on the weekends such as school plays or sporting events. The USDA standards also do not prevent the distribution of order forms for fundraisers which sell food that is not intended for immediate consumption within the school such as cookie dough or frozen pizza.

Finally, the USDA’s regulations do not limit the number of fundraisers that sell non-food items or fundraisers which sell food or beverages which meet the USDA nutritional standards. LEAs should remind organizations which are seeking to hold a fundraiser that there are many healthy fundraising options available which include, but are not limited to, selling books, fresh fruit and vegetables, and school spirit merchandise.

The Department recognizes that school nutrition programs strive to provide children with nutritious meals which support healthy child development, academic achievement and obesity prevention. This new exemption policy is not intended to detract from the positive work that school nutrition programs do on a daily basis in their respective schools. Rather, the exemption

¹ See Ed 306.04(a) provides that: “In accordance with Ed 303.01, the local school board shall adopt and implement written policies and procedures relative to: . . . (23) Supporting the availability and distribution of healthy foods and beverages that create a healthy environment in all schools throughout all school buildings during the school day.”

² The USDA defines the “school day” as “the midnight before to 30 minutes after the end of the school day.”

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Page 2 of 3



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policy was created from a collaborative effort based on an understanding that monies raised from bake sales and fundraisers often benefit students who need assistance to participate in various school-related activities and trips. Therefore, it is the position of the Department that this new exemption policy, if adopted by individual districts, can be easily integrated into the school nutrition program to help achieve the shared goals of supporting children's health, education and overall well-being.

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Page 3 of 3