

# Local School Wellness Policy Final Rule--Revised

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## Nutrition Services Division Management Bulletin

**Purpose:** Policy, Beneficial Information

**To:** National School Lunch and School Breakfast Program Sponsors

**Number:** SNP-13-2017

**Attention:** County and District Superintendents, Chief Business Officials, and Food Service Directors

**Date:** December 2017

**Reference:** Title 7, *Code of Federal Regulations*, parts 210 and 220, *California Education Code* Section 49431.9

**Supersedes:** Management Bulletin SNP-20-2016

**Subject:** Local School Wellness Policy Final Rule as of April 6, 2017

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This management bulletin (MB) supersedes MB SNP-20-2016 and provides federal and state law requirements under the heading **Policies for Food and Beverage Marketing**.

A link to the U.S. Department of Agriculture's (USDA) Policy Memo SP 24-2017 titled Local School Wellness Policy: Guidance and Questions and Answers (Q&A) can be found on the USDA Local School Wellness Policy (LSWP): Guidance and Q&As Web page at <https://www.fns.usda.gov/school-meals/local-school-wellness-policy-guidance-and-qas>.

Marketing and advertising practices according to Title 7, *Code of Federal Regulations* (7 CFR), Section 210.31 and the Federal Register.

Marketing and advertising practices according to California Assembly Bill 841 (Weber), which created California *Education Code* (EC) Section 49431.9.

## Background

The Child Nutrition and Women, Infants, and Children Reauthorization Act of 2004 mandated that all local educational agencies (LEA) participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) were required to establish an LSWP by School Year (SY) 2006–07. The Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111-296, required significant changes in the Child Nutrition Programs (CNP) to give eligible children access to nutrition benefits, improve children's diets, and reduce childhood obesity as well as to strengthen integrity in CNPs. Section 204 of the HHFKA added Section 9A to the Richard B. Russell National School Lunch Act (Title 47, *United States Code*, Section 1758[b]) to expand the scope of the LSWP and requires additional stakeholder involvement in the development, implementation, and review of LSWP, and periodic assessment and public updates.

## **Final Rule**

On July 29, 2016, USDA Food and Nutrition Service (FNS) issued the final rule for the federal LSWP implementation under the HHFKA (7 *CFR*, parts 210 and 220), which became effective on August 29, 2016. The rule is on the USDA FNS School Meals Final Rule Web page at <https://www.fns.usda.gov/school-meals/fr-072916c>.

## **Summary of the Changes in the Final Rule**

The LSWP final rule requires all LEAs that participate in the NSLP and SBP to meet the expanded LSWP requirements consistent with the requirements set forth in Section 204 of the HHFKA. LEAs are required to establish minimum content requirements for the LSWP, ensure stakeholder participation in the development and updates of policies, and periodically assess and disclose compliance with the LSWP to the public. These regulations are expected to result in LSWP policies that strengthen the ability of an LEA to create a school environment that promotes student health, well-being, and ability to learn. In addition, these regulations will increase transparency for the public with regard to the LSWP and contribute to the integrity of the School Nutrition Programs. (Please refer to the LSWP Comparison Chart of the HHFKA versus 2016 Final Rule Requirements following the contact information of this MB as a reference for the changes in the LSWP final rule.)

## **Administrative Reviews**

LEAs were required to comply with the LSWP mandates by June 30, 2017. Therefore, administrative reviews (AR) conducted during SY 2016–17 will evaluate all LSWP requirements set prior to the LSWP final rule. The ARs conducted during SY 2017–18 will evaluate all LSWP requirements included in the LSWP final rule.

## **Local School Wellness Policy Leadership**

LEAs are required to identify to the public the position or title of the LEA or school official(s) responsible for the LSWP oversight. Methods could include posting the information on the LEA Web page or mailing letters to families. LEAs have discretion designating the responsible person(s) for leadership. The USDA recommends that the contact information, such as phone numbers or e-mails, also be included in the public disclosure, but is not required. This requirement can be found in 7 *CFR*, Section 210.31(c)(4).

## **Public Involvement in the Local School Wellness Policy**

As defined in 7 *CFR*, Section 210.31(c)(5), LEAs must allow parents, students, school food authority representatives, teachers of physical education, school health professionals, the school board, school administrators, and members of the general public to participate in the development, implementation, and periodic review and update of the LSWP. LEAs are also encouraged to include Supplemental Nutrition Assistance Program Education coordinators or educators on the LSWP committee, as appropriate. LEAs, however, have discretion in exactly how they implement this requirement. LEAs must include a plan for involving the required stakeholders in the written LSWP.

## **Public Notification**

LEAs are still required to notify households on an annual basis of the availability of the LSWP and provide information that would enable interested households to obtain additional details. LEAs have flexibility to determine the most effective method of providing this notification within their communities. LEAs can locate this requirement in 7 *CFR*, Section 210.31(d)(2).

## **Nutrition Promotion and Education, Physical Activity, and Other School-based Activities**

LEAs are required to include in their LSWP specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, LEAs must review and consider evidence-based strategies and techniques. At minimum, the LEA is required to review Smarter Lunchrooms Movement tools and strategies. LEAs can locate this requirement in 7 *CFR*, Section 210.31(c)(1).

## **Nutrition Guidelines for All Foods**

All LSWPs must include nutrition guidelines that are consistent with the federal meal standards and competitive food and beverage requirements for all food and beverage items available on the school campus during the school day. This includes food or beverage items given away or sold. The LEA has discretion in establishing food and beverage standards for items offered but not sold to students on the school campus during the school day including foods and beverages provided at classroom parties, school celebrations, or offered as rewards and incentives. LEAs simply need to have a policy in place that addresses food and beverage items provided in school, but not made available for sale. LEAs can locate this requirement in 7 *CFR*, Section 210.31(c)(2).

## **Policies for Food and Beverage Marketing**

### **Federal Policy**

The final rule clarifies that school marketing of food and beverage items must meet the federal competitive food and beverage standards called Smart Snacks in School (SSIS). Additionally, the final rule clarifies what is and is not subject to policies for food and beverage marketing in schools.

Marketing is defined as advertising and other promotions in schools. LEAs are required to include marketing policies in their LSWP. The LSWP marketing policies must only allow the marketing and advertising of those food and beverage items that meet the SSIS requirements.

LEAs must apply the marketing policies to products on the exterior of vending machines, posters, menu boards, coolers, trash cans, and other food service equipment, as well as cups used for beverage dispensing. LEAs are not required to immediately replace menu boards, coolers, tray liners, beverage cups, and other food service equipment with depictions of noncompliant products or logos, or remove or replace an existing scoreboard on a sports field or in a gymnasium. However, as LEAs review new contracts and consider replacing durable equipment, decisions should reflect the applicable marketing guidelines established in the LEA LSWP. LEAs can locate this requirement in 7 CFR, Section 210.31(c) (3).

On April 6, 2017, the USDA released Policy Memo SP 24-2017, LSWP: Guidance and Q&As (<https://www.fns.usda.gov/school-meals/local-school-wellness-policy-guidance-and-qas>). In addition to this policy memo, the CDE received additional guidance from the USDA's Western Region Office. The additional guidance explains that regardless where or when the food or beverage items are purchased, distributed, or consumed, if they do not meet the SSIS requirements they cannot be marketed or advertised on school campus during the school day.

An example of unallowable marketing may be a poster displayed or flyer distributed to students on school campus, during the school day that markets a pizza night fundraiser. Regardless if the pizza night occurs off school campus and/or outside of the school day, the poster or flyer cannot be posted or distributed for this event unless all items allowed for sale for this fundraiser meet the SSIS requirements. In other words, because the restaurant sells items that do not meet the SSIS requirements, it cannot be marketed to students on school campus, during the school day. If, on the other hand, specific items that meet the SSIS requirements are being marketed and those are the only items allowed for sale during the fundraiser, then the marketing of these items are allowed.

Another example requires district and school food service departments to consider how they market or advertise their offerings in the school meal programs. The LSWP regulations do not allow the marketing or advertising of individual foods or beverages if they do not meet the SSIS requirements—regardless if, how, or where these items are being sold. For example, a district food service department cannot market or advertise a side dish that is solely being served in the school meal program if it does not meet the SSIS requirements. However, a district food service department may be able to market the entrees served in school meals if they do not meet SSIS rules. The SSIS rules state that entrees served in the school meal program are exempt from the SSIS rules the day of and day after they appear on the district's school meal menu. Therefore, the district food service department is allowed to market these entrees, only during this time frame, since they are exempt from the SSIS rules. Please note that entrees are exempt from the SSIS rules the day of and day after they appear on the menu, but are not exempt from the California competitive food standards. Additional information can be found on the USDA Final Rule: Local School Wellness Policy Implementation Under the HHFKA of 2010 Web page at <https://www.fns.usda.gov/school-meals/fr-072916c>. The Federal Register link on this Web page includes the LSWP Final Rule. Specifically it states:

FNS would like to respond to the recommendation that the final rule allow in-school marketing of foods and beverages that meet the NSLP and SBP meal pattern standards. School meals are considered a unit that is comprised of several food components. Alternatively, competitive food

standards look at the nutrition standards of an individual food item. Because school meal programs do not have standards for individual food items, it would be difficult, and even inconsistent, to allow marketing of foods and beverages that meet the school meal patterns.

## State Policy

In addition to federal marketing and advertising requirements, California passed AB 841 which becomes effective January 1, 2018. This law creates EC 49431.9 which requires a school, school district, or charter school participating in the NSLP or SBP to follow certain food and beverage marketing and advertising practices. According to AB 841 a school, school district, or charter school participating in the NSLP or SBP cannot:

- ❖ Advertise any food or beverage on school campus, during the school day unless the item complies with the applicable state and/or federal competitive food requirements
- ❖ Participate in a corporate incentive program that rewards students with free or discounted foods or beverages that do not comply with the state and/or federal competitive food requirements

AB 841 advertising restrictions do not apply in the following circumstances:

- ❖ Advertising on broadcast, digital, or print media, unless the media are produced or controlled by the LEA, school, faculty, or its students
- ❖ Advertising on clothing with brand images
- ❖ Advertising contained in product packaging

AB 841 does not require the school, school district, or charter school to immediately replace durable, nonconsumable items such as scoreboards, team uniforms, etc., but does require schools to comply as these items are replaced or contracts are renegotiated.

While AB 841 allows advertising of infrequent school fundraising events involving food or beverages that do not meet the state and/or federal competitive food requirements, the federal rule is stricter and does not allow this practice. Therefore, a school, school district, or charter school participating in the NSLP or SBP is not allowed to advertise on school campus during the school day, any foods or beverages that do not comply with the state and/or federal competitive food requirements, including infrequent school fundraising events.

## Summary

Advertising requirements in California:

- ❖ Define advertising as an oral, written, or graphic statement or representation, including a company logo or trademark, made for the purposes of promoting the use or sale of a product by the producer, manufacturer, distributor, seller, or any other entity with a commercial interest in the product

- ⊕ Apply to all schools, school districts, and charter schools participating in the NSLP or SBP
- ⊕ Allow advertising on school campus, during the school day, of only foods and beverages that meet the applicable state and/or federal competitive food requirements regardless of when or where the items will be consumed or purchased
- ⊕ Does not allow students to receive free or discounted noncompliant foods or beverages as part of a corporate incentive program
- ⊕ Does not apply to clothing or personal items used by students or staff; packaging or products brought from home for personal consumption; items used for educational purposes in the classroom; or broadcast, digital, or print media unless the media are produced or controlled by the LEA, school, faculty, or its students
- ⊕ Require schools to comply with advertising rules for durable goods as these items are replaced or contracts are renegotiated

## **Implementation, Assessments, and Updates**

LEAs are required to assess compliance with its LSWP within three years of their update and to make this assessment available to the public. The assessment must include, at a minimum, compliance with the LSWP, how the LSWP compares to model LSWPs, and progress made in attaining the goals of the LSWP. There is no requirement for LEAs to annually report progress of LSWPs for each school. However, LEAs are required to annually notify the public about the content of the LSWP and any updates to the policy. 7 *CFR*, Section 210.31(e)(2).

LEAs can use a variety of methods to assess compliance with the LSWP with schools in their jurisdiction and determine progress toward benchmarks, goals, and objectives. Developing an LSWP with measurable objectives, and realistic annual benchmarks will help when it is time to evaluate progress. The USDA School Nutrition Environment and Wellness Resources Web page at <https://healthymeals.nal.usda.gov/school-wellness-resources> offers various LSWP resources.

## **Recordkeeping**

The final rule requires LEAs to retain records such as the most current and approved LSWP with documentation showing how the LEA involved the community, the triennial assessment, and showing the LEA notified the public. LEAs can locate this requirement in 7 *CFR*, Section 210.31(f).

Documentation demonstrating compliance with community involvement requirements may include a copy of the invitation to participate, which is located on the LEA's Web page. Documentation demonstrating compliance with the every three-year assessment may include a copy of the report regarding the results of the assessment and the date the assessment was conducted. Documentation of compliance with the public notification requirements may include a copy of the LEA's Web page where the LSWP has been posted.

## Implementation Timeline

LEAs must comply with the requirements of the final rule by June 30, 2017. LEAs must completely assess their LSWP implementation every three years—the first assessment must be completed by June 30, 2020. This MB includes a comparison chart that summarizes the changes made in the final rule from the HHFKA. (Please see the LSWP Comparison Chart of the HHFKA versus 2016 Final Rule Requirements. Also, please refer to the LSWP Action Steps for SY 2017–18 which details recommended action for LEAs to complete for SY 2017–18 to meet the requirements for the final rule. The LSWP Action Steps for SY 2017–18 can be found immediately following the LSWP Comparison Chart of the HHFKA versus 2016 Final Rule Requirements below.)

## Contact Information

If you have any questions regarding this subject, please contact Heather Reed, Nutrition Education Consultant (NEC), by phone at 916-323-3581 or by e-mail at [hreed@cde.ca.gov](mailto:hreed@cde.ca.gov), or Michael Danzik, NEC, by phone at 916-445-7346 or by e-mail at [mdanzik@cde.ca.gov](mailto:mdanzik@cde.ca.gov).

# Local School Wellness Policies Comparison Charts of the Healthy, Hunger-Free Kids Act of 2010 versus 2016 Final Rule Requirements

## Overview

Healthy, Hunger-Free Kids Act of 2010 (HHKFA)	Local School Wellness Policy (LSWP) 2016 Final Rule
Strengthened LSWP and added rules for public input, transparency, and implementation	Strengthens the nutrition guidelines for foods provided outside the meal programs and further strengthens requirements for assessment

## Elements of LSWP

Policy Component	HHFKA	LSWP 2016 Final Rule
Student Wellness Goals	Required local educational agencies (LEA) to include goals for nutrition education, nutrition	Adds requirement for specific goals and for LEAs to consider evidence-based strategies and techniques, such as the Smarter Lunchrooms Movement in the development of these goals

	promotion, physical activity, and other student-based activities	Adds recommendation that nutrition education be part of a comprehensive health education curricula as well as recommending that it be integrated into other core subjects
Nutrition Guidelines	Required minimum federal guidelines for all foods available on school campus—required that competitive foods and beverages sold on school campus during the school day meet the Smart Snacks in School (SSIS) standards	Requires all foods and beverages sold outside the meal programs on school campus during the school day to meet SSIS standards—requires that all foods and beverages provided, but not sold, during classroom celebrations or as rewards have standards specified in the LEA LSWP
Marketing	Not mentioned	Prohibits marketing of foods that do not meet the SSIS requirements during school day on school campus

### Stakeholder Engagement

Policy Component	HHFKA	LSWP 2016 Final Rule
Stakeholder Involvement	Required LEAs to involve parents, students, and representatives of the LEAs, school board, school administrators, and the public in the development of the LSWP and permit teachers of physical education and school health professionals to participate in the development of the LSWP	Adds encouragement for LEAs to include Supplemental Nutrition Assistance Program Education (SNAP-Ed) coordinators or educators on the LSWP committee, as appropriate
Stakeholder Participation	Required LEAs to permit stakeholders to participate in the implementation, periodic review, and updates of the LSWP	Adds requirement to include a plan in the written LSWP for stakeholder involvement and participation
Local Discretion	Determined the LEAs had local discretion in establishing specific policies appropriate for the schools under their jurisdiction provided that those policies include all the required elements specified in the act	No change



## Transparency

Policy Component	HHFKA	LSWP 2016 Final Rule
Public Notification	Required LEAs to inform and update the public about the content and implementation of the LSWP	Adds requirement for LEAs to make the LSWP and any updates available to the public on annual basis
Local Leadership and Designation	Designated one or more LEA officials or school officials to ensure each school complies with the LSWP	Adds requirement for LEAs to notify the public about the position title of the LEA or school official(s) responsible for oversight (do not need to list contact information)

## Measurement of Implementation

Policy Component	HHFKA	LSWP 2016 Final Rule
Assessment	Required LEAs to periodically measure and make available to the public an assessment on the implementation of the LSWP, including to the extent to which the LSWP compares to model LSWP and description of progress made in attaining goals of LSWP	Adds requirement for LEAs to conduct the assessment on the implementation of the LSWP every three years (triennial basis) and to notify the public on an annual basis about the progress and any updates to the LSWP
Implementation Deadlines	None specified	Adds implementation deadlines as follows:  August 29, 2016, begin meeting LSWP final rule requirements  June 30, 2017, full compliance of final rule requirements  June 30, 2020, complete the first assessment and at least every three years afterwards
Recordkeeping	Required written LSWP (also posted in cafeteria)	Adds requirement for LEAs to

for Administrative Reviews	Required maintaining documentation demonstrating compliance with stakeholder and community involvement  Required maintaining documentation of the assessment of the LSWP	demonstrate compliance with annual public notifications.
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## Local School Wellness Policies Action Steps for School Year 2017–18

Below represents additional guidance to meet the requirements of the final rule:

- Review the LSWP requirements on the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) School Meals final rule under the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) Web page at <https://www.fns.usda.gov/school-meals/fr-072916c>.
- Establish local school wellness policy (LSWP) leadership of one or more Local Educational Agency (LEA) or school official(s) who have the authority and responsibility to ensure each school complies with the policy. Made sure the position or title of the LSWP leader(s) was made available to the public as of June 30, 2017. Some suggestions for public notification include posting the information on the LEA Web page or sending out the information through district correspondence.
- Build or re-engage your district wellness committee, making sure to invite the various stakeholders to participate—be sure to collect documentation of community involvement. The California LSWP Collaborative has developed a School Wellness Committee Guide located on the Dairy Council of California School Wellness LSWP Web page at <https://www.healthyeating.org/Schools/School-Wellness/School-Wellness-Policies.aspx>.
- Continue to inform and update the public about the content, implementation, and assessment of wellness policies. As of June 30, 2017, LEAs must update the public annually. By School Year 2019–20, LEAs must conduct and report on the triennial assessment of wellness policies. Keep a contact log as documentation.
- Update the LSWP to meet the new requirements as of June 30, 2017. The California Department of Education (CDE) recommends using the model LSWP policy template from the Alliance for a Healthier Generation, which is located on the Alliance for a Healthier Generation Take Action Schools Wellness Committees Policies Web page at [https://www.healthiergeneration.org/take\\_action/schools/wellness\\_committees\\_policies/](https://www.healthiergeneration.org/take_action/schools/wellness_committees_policies/). A best practice is to tailor the language in the model policy to fit local priorities and resources. The San Diego County Obesity Prevention Initiative Resources Policy Clearinghouse Web page at <http://www.ourcommunityourkids.org/resources/policy-clearinghouse.aspx> has a policy clearinghouse that provides useful examples of policy language. The CDE recommends the Well SAT 2.0 tool for assessing the strength of the policy language as it compares to model policy. The tool can be accessed on the Well SAT Web site at <http://www.wellsat.org/>.

- Begin the process for conducting an assessment by developing a work plan to complete the assessment by the deadline for compliance three years after updating the LSWP or no later than June 30, 2020. The CDE recommends using the School Health Index (SHI) as an assessment tool. The SHI can be accessed on the Center for Disease Control and Prevention Web page at [https://nccd.cdc.gov/DASH\\_SHI/default/Login.aspx](https://nccd.cdc.gov/DASH_SHI/default/Login.aspx).
- Develop or update the LSWP implementation plan and begin monitoring progress to meet the deadline for compliance as of June 30, 2017. Consult the resources on the USDA FNS Implementation Tools and Resources Web page at <https://www.fns.usda.gov/in/implementation-tools-and-resources>.
- Keep all supporting documentation on file as LEAs will be held accountable for LSWP implementation, assessment, and public updates.
- Visit the CDE LSWP Web page often at <https://www.cde.ca.gov/ls/nu/he/wellness.asp>, as the CDE will continue to update resources. Another resource is the Dairy Council of California School Wellness Web page at <https://www.healthyeating.org/Schools/School-Wellness.aspx>.

**Questions: Nutrition Services Division | 800-952-5609**

Last Reviewed: Tuesday, January 9, 2018

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