

MEMORANDUM OF UNDERSTANDING
Between the
Wisconsin Department of Public Instruction (DPI)
and the
Wisconsin Department of Health Services (DHS)
July 1, 2010 - June 30, 2012

1. Purpose

Public law 108-265, The Child Nutrition and WIC Reauthorization Act of 2004, requires that all schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP) shall, at least twice during each school year, obtain a food safety inspection conducted by a state or local governmental agency responsible for food safety inspections. DPI and DHS enter into this Memorandum of Understanding (MOU) in order to coordinate such inspections, to implement and monitor a school food safety program and to assist schools in complying with food safety standards in Wis. Admin. Code ch. DHS 196.

2. Agency Authority

- 2a. DPI may contract for the operation and maintenance of school lunch and breakfast programs under Wis. Stat. § 115.34 and § 115.341.
- 2b. DHS and its agent local health departments (hereinafter, "agent" or "agents") inspect and issue permits for restaurants under Wis. Stat. ch. 254, subch. VII. The statutes currently exempt from licensing as a restaurant any public or private school lunchroom for which food service is directly provided by the school. DHS enters into this MOU to establish food protection measures for the health, safety and welfare of the public, under the authority granted in Wis. Stat. § 254.62(1) and § 250.04(1).

3. Applicability

- 3a. This MOU applies to all Wisconsin elementary and secondary schools, schools for visually and hearing impaired, residential group homes, and juvenile detention facilities participating in the NSLP or SBP.
- 3b. Both agencies will continue to work cooperatively with local health departments to assist those schools affected by this MOU in achieving compliance with changes in the National School Lunch Act, 42 U.S.C. 1758.
- 3c. This MOU will not supersede established DPI school food service requirements so long as food safety inspections are conducted at least twice per State fiscal year (July 1st – June 30th). Because Federal law recognizes that certain local health departments conduct voluntary annual

health inspections, this MOU is not intended to interfere with established inspection agreements between school districts and local health departments provided two inspections are completed annually.

4. Licensure Considerations

- 4a. Wis. Stat. § 254.61(5)(c) exempts from licensing as a restaurant any public or private school lunchroom for which food service is directly provided by the school.
- 4b. A public or private school selling meals to organizations or institutions not associated with the school or school district, including but not limited to licensed daycare or adult daycare, Head Start, senior centers, or public or private schools, shall be licensed as a restaurant unless the public or private school selling the meals is receiving two annual inspections as a result of participation in the NSLP or SBP. .
- 4c. Vending machines, which are operated by a school food service receiving two annual inspections as part of the NSLP or SBP, and which provide meals solely to students, faculty and school employees, shall be exempt from licensing under Wis. Admin. Code ch. DHS 198, based on approved comparable compliance under Wis. Admin. Code § DHS 198.02(2), provided they are inspected during the NSLP/SBP inspections. School vending machines, which are used for purposes other than providing meals under the NSLP or SBP, or are operated other than by the school food service, shall meet the requirements prescribed in DHS 198.

5. Requirement for Food Safety Inspection

As amended by Section 111 of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004, Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1785(h) specifies the food safety inspection requirements this MOU seeks to implement as follows:

(h) Food safety.

(1) In general. A school participating in the school lunch program under this Act [42 USCS § § 1751 et seq.] or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall--

(A) at least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) on request, provide a copy of the report to a member of the public.

(2) State and local government inspections. Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) Audits and reports by States. For each of fiscal year, each State shall annually:

(A) audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) submit to the USDA Secretary of Agriculture a report of the results of the audit.

(4) Audit by the USDA Secretary of Agriculture. For each of fiscal year, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) School food safety program. Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.

6. Inspection of School Food Service Facilities

- 6a. Except as provided under 6b, DHS or its agents will conduct a minimum of two inspections based on Wis. Admin. Code ch. DHS 196 requirements, while school is in session, each State fiscal year (July 1st-June 30th), of every school food service facility participating in the NSLP or SBP as defined by 7 CRF § 210.2 and 7 CFR § 220.2. DHS or its agent will conduct food safety inspections during meal preparation and/or meal service time to determine if food is being handled and prepared in a manner consistent with proper food safety procedures as defined in the Wisconsin Food Code. The second inspection will include a verification inspection of the facility's food safety plan.
- 6b. DHS or its agent will complete a written report for each school food service facility inspection and provide a copy to the school food authority at the time of the inspection. If during the second inspection the school food service facility has not implemented the required food safety plan, DHS or its agent will notify DPI.
- 6c. Inspection reports will be made available to DPI from DHS or its agent upon request.
- 6d. DHS or its agent may assess a fee for each inspection completed under this MOU. The fees apply to production and satellite kitchens. Pursuant to the DHS - Food Safety and Recreational Licensing Section Policy Memo, "Definition of a Satellite School for Establishment of Fees," the definition of "satellite kitchen" is as follows:
- "A satellite kitchen will do no food preparation. Activities that are permitted include reheating and/or holding cooked food that has been delivered from the production kitchen, storage of cold ready-to-eat (RTE) items, and portioning and serving bulk products either delivered from the production kitchen or requiring no preparation."*
- 6e. DHS's agent shall have the right to negotiate inspection fees with the local school districts within the agent's jurisdiction. The agent's fee shall not exceed the cost of the inspection service.
- 6f. DHS or its agent shall notify DPI of any unresolved critical food safety issues, including orders to correct or cease operating pending compliance and correction, and shall notify DPI of any resolutions to these issues.
- 6g. DHS or its agent shall provide, to the extent that resources are available, training for food service employees. DHS or its agent will recommend corrective actions based on Wis. Admin. Code ch. DHS 196.

7. Records

- 7a. Under this MOU and in accordance with 7 CFR § 210.9(b)(17) and § 220.7(e)(13), school food service inspection records shall be maintained for three years plus the current year. The Child Nutrition and WIC Reauthorization Act of 2004 requires that the most recent inspection report be publicly posted and a copy provided to the public upon request.
- 7b. Records shall include the name and address of the school food service facility, the name of the person in charge on premises, the name of the authorized representative, the name of the school

food authority, inspection findings, the response from the school food authority and DHS's or its agent's response to the school food service authority.

7c. DHS or its agent performing the school food service inspections shall retain copies of the current report plus the records for the previous three years.

8. Investigation of Complaints Against School Food Service Operations

8a. Complaints received by DHS or its agent regarding any school inspected under this MOU shall be investigated in a timely manner. DHS or its agent shall investigate complaints made against a school and notify the school food authority of the complaints and the findings.

8b. All complaints received by DPI under this MOU shall be forwarded to DHS or its agent for investigation.

8c. Unresolved complaints of a critical nature shall be forwarded to DPI.

9. Conflict Resolution

- DPI and either DHS or DHS's agent shall meet with the local school food authority to resolve conflicts that may arise from the implementation of this MOU. For guidance, use the joint document prepared by DHS and DPI titled, "Protocol for Resolving Non-compliance Issues" (Attachment A).

10. Joint Development of Policies and Procedures

10a. DPI and DHS will cooperate in the development of policies and procedures related to food safety inspection of, and compliance by, participating schools and other entities.

10b. DHS and DPI intend to explore legislation to codify the policies and procedures related to food safety inspection of schools and other entities that participate in the NSLP and SBP, as time and resources permit.

11. Revisions

11a. DPI and DHS will review this MOU prior to the expiration date to determine whether it should be revised or canceled.

11b. The agencies may, at any time, amend this MOU or replace it with a MOU signed by the secretary and state superintendent.

12. Cancellation

- DPI or DHS may terminate this MOU upon 90 days advance written notice to the other party.

13. Signatures

The undersigned, as the duly-authorized representatives of their respective agencies, hereby agree to the terms of this Memorandum of Understanding.

Wisconsin Department of Public
Instruction

Wisconsin Department of Health
Services

Dated: 9-14-2010

Dated: _____

By: Suzanne Linton
Suzanne Linton
Director of Management Services
Department of Public Instruction

By: _____
Seth Foldy, MD, MPH, FAAFP
State Health Officer and Administrator
Wisconsin Department of Health Services
Division of Public Health



**Protocol for Resolving Non-Compliance Issues
WI Food Code, Food Safety Plan and Payment of Inspections Fees**

Wisconsin Food Code – Critical Area Citation

Immediate attention is required when school agencies fail to take appropriate action to correct WI Food Code critical area citations.

1. Environmental Health Specialists (EHS) finding that no action was taken by the school agency will take measures to ensure the health and well-being of students, school personnel and others is protected. Measures may be those followed when licensed facilities fail to make corrections, including ordering food to be discarded and/or shutting down operations.
2. To expedite corrective action, the EHS will report failures immediately to:

James C. Mack, REHS, MPA
Food Safety Program Manager
Wisconsin Department of Health Services
Phone: 608-266-8351
Fax: 608-267-3241
Email: james.mack@wisconsin.gov

James Kaplanek, RS
Chief
Food Safety & Recreational Licensing
WI Department of Health Services
Phone: 608-261-8361
Fax: 608-267-3241
Email: James.Kaplanek@dhs.wisconsin.gov

Jessica Sharkus, RD, CD
Assistant Director
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2416
Fax: 608-267-0363 or 608-267-2296
Email: jessica.sharkus@dpi.wi.gov

Kathy Bass, SNS, RS
Nutrition Program Consultant
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2410
FAX: 608-267-0363 or 608-267-2296
Email: kathleen.bass@dpi.wi.gov

3. The EHS will make contact by phone or email. Initial or follow-up contacts will include the name of the school agency, the specific school building and address, copies of the inspection reports and written observations.

4. The DPI Nutrition Program Consultant listed below, DPI Assistant Director and/or Director will contact the Authorized Representative and the Food Service Manager/Director to discuss the citations and explain what action may be necessary if corrective measures are not taken by the agency.
5. The school agency will notify DPI in writing within 10 business days to describe the corrective action taken and specific date(s) action was taken.
6. DPI will contact the school agency if this deadline is not met and notification is not received. Follow-up action may include disallowing claims made for meals served during the time operations were shut down, suspension of participation in the program to protect students and others from hazards, and withholding of claims until non-compliance problems are resolved and written notice is submitted to DPI. The Assistant Director or Director must approve disallowance of claims or withholding. DPI will notify school agencies if meals are disallowed or withholding is deemed appropriate.
7. DPI will keep the EHS and food safety program manager with DHS's Food Safety & Recreational Licensing Section informed of all developments.
8. DPI will keep copies of correspondence related to the reported critical area citation.

Wisconsin Food Code - Non-Critical Area Citation

DPI will provide assistance to ensure that school agencies take appropriate action to correct WI Food Code non-critical area citations and resolve repeated non-critical area citations of the Wisconsin Food Code.

1. EHS will notify the contacts listed below by phone, e-mail and/or mail.

James C. Mack, REHS, MPA
Food Safety Program Manager
Wisconsin Department of Health Services
Phone: 608-266-8351
Fax: 608-267-3241
Email: james.mack@wisconsin.gov

James Kaplanek, RS
Chief
Food Safety & Recreational Licensing
WI Department of Health Services
Phone: 608-261-8361
Fax: 608-267-3241
Email: James.Kaplanek@dhs.wisconsin.gov

Jessica Sharkus, RD, CD.
Assistant Director
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2416
Fax: 608-267-0363 or 608-267-2296
Email: jessica.sharkus@dpi.wi.gov

Kathy Bass, SNS, RS
Nutrition Program Consultant
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2410
Fax: 608-267-0363 or 608-267-2296
Email: kathleen.bass@dpi.wi.gov

2. Copies of the food safety inspection reports and details about unresolved non-critical WI Food Code citations will be forwarded to the DPI Nutrition Program Consultant listed above to provide documentation and aid in resolution of citation(s).
3. The DPI Nutrition Program Consultant with food safety responsibilities will contact the school agency's Authorized Representative and Food Service Manager/Director. The Assistant Director or Director will contact the school agency if the Nutrition Program Consultant is unavailable for more than a few days.
4. DPI will notify the school agency that a written response is required, indicating how the citation(s) was/were resolved. The due date for corrective action and response will be specified in writing.
5. Failure to meet the deadlines may result in withholding of reimbursement. The Assistant Director and/or Director must approve withholding. DPI will notify school agencies via certified mail if withholding is deemed appropriate.
6. DPI will keep copies of all correspondence related to the reported non-compliance findings.
7. DPI will inform the EHS and food safety program manager with DHS's Food Safety & Recreational Licensing Section of developments and follow up responses.

U. S. Department of Agriculture Food Safety Plan Requirements

1. The EHS conducting the food safety inspection will refer the names of school agencies that fail to develop, implement, and/or update food safety plans that contains prescribed components, as specified by U.S. Department of Agriculture guidance to the Nutrition Program Consultant listed below:

Kathy Bass, SNS, RS
Nutrition Program Consultant
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2410
Fax: 608-267-0363 or 608-267-2296
Email: kathleen.bass@dpi.wi.gov

2. The Authorized Representative and Food Service Manager/Director will be contacted to discuss USDA regulations pertaining to food safety plan development and implementation. Information, clarification and resources will be provided to assist school personnel.
3. The school agency will be required to demonstrate that a plan was developed and implemented by forwarding copies of certain pages or the entire food safety plan with completed monitoring forms to DPI. DPI will negotiate the deadline for developing, implementing or updating the plan with school agency.

4. The DPI Consultant will notify the school agency when a response is received and will inform the EHS and any others involved.
5. Failure to meet the deadlines may result in withholding of reimbursement. The Assistant Director and/or Director must approve withholding. DPI will notify school agencies via certified mail if withholding is deemed appropriate.

Failure to Submit Payment for Inspection Fees

1. The names of school agencies with outstanding food safety fees will be referred to the Nutrition Program Consultant listed below:

Kathy Bass, SNS, RS
Nutrition Program Consultant
School Nutrition Programs
WI Department of Public Instruction
Phone: 608-266-2410
Fax: 608-267-0363 or 608-267-2296
Email: kathleen.bass@dpi.wi.gov

2. The Consultant will contact the Authorized Representative to discuss the situation and determine if/why payment was not submitted on a timely basis.
3. The school agency will be required to document that payment was made and/or report when payment was made by phone or e-mail message. The Nutrition Program Consultant will negotiate a deadline for submitting past due payment with the school agency.
4. Reports of bookkeeping errors will be addressed via direct contact with the inspection billing person or agency.
5. Failure to pay past due fees after repeated reminders may result in withholding of reimbursement. The Assistant Director and/or Director must approve withholding. DPI will notify school agencies via certified mail if withholding is deemed appropriate.

July 2010