

1 six, and forty-nine of this act shall take effect July 1, 2008,
2 provided, however, that the amendments to subdivision 6 of section 4402
3 of the education law made by section thirty-one of this act shall not
4 affect the repeal of such subdivision and shall be deemed repealed ther-
5 ewith; provided, further, that the amendments to chapter 756 of the laws
6 of 1992, relating to funding a program for work force education
7 conducted by the consortium for worker education in New York city, made
8 by sections thirty-six, thirty-seven and thirty-eight of this act shall
9 not affect the repeal of such chapter and shall be deemed repealed ther-
10 ewith;

11 2. sections five, six, eight through twelve, and twenty-one shall be
12 deemed to have been in full force and effect on and after July 1, 2007;

13 3. section fourteen of this act shall take effect July 1, 2008, except
14 that the amendments to subparagraph 4 of paragraph a of subdivision 4 of
15 section 3602 of the education law shall be deemed to have been in full
16 force and effect on and after July 1, 2007;

17 4. section twenty-seven of this act shall take effect on the same date
18 as the reversion of paragraph b of subdivision 2 of section 3612 of the
19 education law, as provided in section 61 of part B of chapter 57 of the
20 laws of 2007; and

21 5. section forty-seven of this act shall be deemed to have been in
22 full force and effect on and after April 1, 2008 and be deemed repealed
23 March 31, 2009.

24

PART C

25 Section 1. Short title. This act shall be known and may be cited as
26 the "healthy schools act".

1 § 2. Legislative findings. The legislature finds that it is in the
2 interest of the state wherever practical to educate and encourage chil-
3 dren to make healthier food choices and develop healthy habits both in
4 and outside school. Because children spend a significant part of their
5 lives in school and at school-related activities, schools can influence
6 children's nutrition and food choices by serving as model environments
7 that support academic performance and healthful behaviors. Similarly,
8 encouraging physical activity in school will teach children the impor-
9 tance of making such activity a regular part of their lives.

10 § 3. Paragraphs (a) and (c) of subdivision 2 of section 2599-b of the
11 public health law, as amended by section 88 of part B of chapter 58 of
12 the laws of 2005, are amended and a new paragraph (h) is added to read
13 as follows:

14 (a) developing media health promotion campaigns targeted to children
15 and adolescents and their parents and caregivers that emphasize increas-
16 ing consumption of low-calorie, [high-nutrient] nutrient-rich foods,
17 decreasing consumption of high-calorie, low-nutrient foods [and],
18 increasing physical activity designed to prevent or reduce obesity, and
19 communicating the positive correlation between child health, physical
20 activity and academic performance;

21 (c) establishing community-based childhood obesity prevention nutri-
22 tion education and physical activity programs including programs to
23 identify and promote best practices to help communities change their
24 environment to support healthful nutritional choices, and to develop
25 programs which involve parents and caregivers, and which encourage
26 communities, families, child care and other settings to provide safe and
27 adequate space and time for physical activity and encourage a healthy
28 diet;

1 (h) increasing collaboration, within and across communities, of commu-
2 nity based nutrition and physical activity professionals, educators and
3 health care providers, including staff from New York state's comprehen-
4 sive care centers for eating disorders, to present consistent and effec-
5 tive messages in relation to healthy eating behaviors and physical
6 activity patterns.

7 § 4. Section 2599-c of the public health law, as amended by section 88
8 of part B of chapter 58 of the laws of 2005, is amended to read as
9 follows:

10 § 2599-c. School-based childhood obesity prevention and physical
11 activity programs. 1. The commissioner shall encourage the establishment
12 of school-based childhood obesity prevention and physical activity
13 programs that promote:

14 [1.] a. A healthy school environment, including physical and aesthetic
15 surroundings and culture designed to prevent and reduce the incidence
16 and prevalence of obesity; and

17 [2.] b. Parent/community involvement, including an integrated school,
18 parent, and community approach for enhancing the health and well-being
19 of students.

20 2. The commissioner shall, in consultation with the commissioner of
21 education and the commissioner of agriculture and markets, develop
22 recommendations for nutritional and dietary standards for healthy school
23 meals, entrees, snacks and beverages consistent with section nine
24 hundred fifteen of the education law. The recommendations shall be
25 provided in writing to the commissioner of education no later than July
26 thirty-first, two thousand eight, and revised recommendations shall be
27 provided as deemed necessary by the commissioner.

1 3. The commissioner shall collaborate with the commissioner of educa-
2 tion and consult with the commissioner of agriculture and markets in
3 gathering data and making reports pursuant to paragraph d of subdivision
4 three of section nine hundred fifteen of the education law.

5 4. The commissioner shall, in collaboration with the commissioner of
6 education, provide training and technical assistance to schools to
7 assist schools in complying with the requirements of section nine
8 hundred fifteen of the education law and the regulations promulgated
9 thereunder.

10 § 5. Section 305 of the education law is amended by adding two new
11 subdivisions 41 and 42 to read as follows:

12 41. The commissioner shall, in collaboration with the commissioner of
13 health, provide training and technical assistance to schools to assist
14 schools in complying with the requirements of section nine hundred
15 fifteen of this chapter and the regulations promulgated thereunder.

16 42. The commissioner shall conduct an assessment of all elementary and
17 secondary schools in the state to determine whether the current school
18 curriculum contains an adequate emphasis on physical education and
19 nutritional instruction. The assessment shall be designed to yield
20 detailed information demonstrating compliance with current physical
21 education requirements and reasons for noncompliance and shall examine
22 whether current physical education requirements provide for physical
23 activity of adequate duration and quality. The assessment shall also
24 examine whether schools offer a variety of activities with an emphasis
25 on skills and activities that reflect current events in fitness and age
26 appropriate active lifestyles and shall report information regarding the
27 type and condition of the facilities or other areas being used for
28 physical education purposes. Such information shall be presented in a

1 statewide format, regional format and other formats as deemed useful by
2 the commissioner. On or before February first, two thousand nine, and
3 every five years thereafter, the commissioner shall submit the results
4 of such assessment to the regents, legislature and the governor.

5 § 6. Section 915 of the education law, as added by chapter 674 of the
6 laws of 1987, is amended to read as follows:

7 § 915. [Prohibiting the sale of certain sweetened foods. From the
8 beginning of the school day until the end of the last scheduled meal
9 period, no] Healthy school foods and beverages. 1. Definitions. For
10 purposes of this section, the following terms shall have the following
11 meanings: a. "School meals" shall mean meals which meet the nutritional
12 requirements of, and are reimbursable under, any program authorized by
13 the Richard B. Russell National School Lunch Act or the Child Nutrition
14 Act of 1966.

15 b. "Entrees" shall mean a combination of foods or a single food item
16 that is sold, served or offered as the main course separately from
17 school meals.

18 c. "Snacks" shall mean food items that are sold, served or offered
19 individually, outside of school meals, and that do not constitute
20 entrees that are sold, served or offered individually.

21 2. Applicability. a. This section and the regulations promulgated
22 hereunder shall apply to elementary and secondary schools and programs
23 under the jurisdiction of the following, collectively referred to in
24 this section as "school districts": school districts, non-public schools
25 that participate in any program authorized by the Richard B. Russell
26 National School Lunch Act or the Child Nutrition Act of 1966, boards of
27 cooperative educational services, charter schools and schools operating
28 pursuant to articles eighty-three, eighty-five, eighty-seven and eight-

1 y-eight of this chapter. Such school districts shall be required to
2 ensure compliance with the provisions of this section and regulations
3 promulgated hereunder.

4 b. Except as otherwise provided in paragraph c of this subdivision,
5 this section and regulations promulgated hereunder shall apply to school
6 meals, entrees, snacks and beverages: (i) sold, served or offered on
7 school grounds before, during or after the regular school day from any
8 source including, but not limited to, school cafeterias, a la carte
9 lines, school stores, or vending machines; or (ii) supplied by schools
10 during official transportation to and from school and school sponsored
11 activities including, but not limited to, field trips and interscholas-
12 tic sporting events.

13 c. Notwithstanding any other paragraph of this subdivision, this
14 section and regulations promulgated hereunder shall not apply to: (i)
15 foods and beverages sold, served or offered at after school activities
16 attended by both adults and students, such as concerts and sporting
17 events; or (ii) foods and beverages provided under the federal child and
18 adult care food program, which shall be subject to the requirements
19 imposed under that program.

20 d. Nothing in this section shall be construed as prohibiting: (i) a
21 student or school employee from consuming any food or beverage purchased
22 by the student or school employee off of school grounds and brought into
23 the school for the student's or employee's personal consumption or for
24 classroom-wide activities or celebrations; or (ii) caffeinated coffee or
25 tea from being sold, served or offered to school employees.

26 3. Nutritional and dietary standards. a. The regents and the commis-
27 sioner shall promulgate regulations to establish nutritional and dietary
28 standards based upon the recommendations developed pursuant to subdivi-

1 sion two of section twenty-five hundred ninety-nine-c of the public
2 health law.

3 (i) The nutritional and dietary standards may be updated as deemed
4 necessary by the commissioner, in consultation with the commissioner of
5 health, but not less than every five years and shall be made available
6 for public comment and review pursuant to the state administrative
7 procedure act.

8 (ii) The nutritional and dietary standards for healthy school meals,
9 entrees, snacks and beverages shall be developed to promote a healthful
10 diet and shall be based on the preponderance of the nutritional, scien-
11 tific and medical knowledge which is current at the time the regulations
12 are being promulgated.

13 (iii) When promulgating such regulations, the regents and commissioner
14 shall take into account the local and regional concerns of any school or
15 school district required to comply with the nutritional and dietary
16 standards.

17 (iv) Under no circumstance shall the nutritional and dietary standards
18 interfere with the special dietary needs of students in relation to
19 health conditions, food allergies, dietary intolerances and religious
20 mandates.

21 (v) The nutritional and dietary standards shall reflect the needs of
22 students at differing ages and grade levels.

23 (vi) Notwithstanding any other law, rule or regulation to the contra-
24 ry, standards for school meals shall comply with all federal laws and
25 regulations applicable to such meals.

26 b. The nutritional and dietary standards shall include appropriate
27 nutritional standards and consumption amounts related, but not limited
28 to: (i) dietary cholesterol; (ii) sodium; (iii) calories derived from

1 fat and saturated fat; (iv) calories derived from sugar; (v) total
2 calorie amounts; (vi) total fat content of milk and other dairy
3 products; and (vii) serving sizes, and such standards shall further
4 prohibit artificial trans fatty acids.

5 c. The regulations described in paragraph a of this subdivision shall
6 be promulgated no later than December thirty-first, two thousand eight
7 and shall be effective upon such date or dates as determined by the
8 commissioner; provided, however, that such regulations shall be effec-
9 tive no earlier than September first, two thousand nine, and shall apply
10 only to food or beverage contracts between school districts and vendors
11 that were issued, renewed, modified, altered or amended after such
12 effective date or dates.

13 d. The department, in collaboration with the department of health and
14 in consultation with the department of agriculture and markets shall:
15 (i) periodically gather data related to the impact of the nutrition
16 standards on the health of New York state's students; (ii) make periodic
17 reports, no less than once a year, to the legislature and governor
18 regarding their findings, with the first such report being made no later
19 than December fifteenth, two thousand eleven; and (iii) modify nutri-
20 tional standards as needed, based upon criteria which shall include, but
21 not be limited to, data collected by the department and science-based
22 best practices for creating healthy nutritional choices.

23 4. The regulations promulgated pursuant to paragraph a of subdivision
24 three of this section shall provide that when selling, offering or serv-
25 ing school meals, schools shall:

26 a. offer during each lunch period at least one meat alternative which
27 complies with the standards of the federal department of agriculture;

1 b. offer during each breakfast and lunch period fruit with no added
2 sweeteners;

3 c. offer during each lunch period vegetables which are not fried;

4 d. ensure that fifty percent of grain products offered, over a school
5 week, are whole grain products; and

6 e. ensure that entrees sold, served or offered individually are the
7 same as the entrees that are sold, served or offered as part of school
8 meals, or are comparable in portion size, calories and nutritional value
9 to the entrees that are sold, served or offered as part of such school
10 meals.

11 5. No sweetened soda water, no chewing gum, no candy including hard
12 candy, jellies, gums, marshmallow candies, fondant, licorice, spun candy
13 and candy coated popcorn, and no water ices except those which contain
14 one hundred percent fruit or fruit juices, shall be sold in any [public]
15 school [within the state] district.

16 6. This section shall be implemented only to the extent that it not
17 interfere with any practice or consideration involving the dietary needs
18 of students in relation to health conditions, food allergies, dietary
19 intolerances and religious mandates.

20 7. Vending machines. a. With respect to snacks and beverages that may
21 be sold, served or offered only at particular times of the day, schools
22 that utilize vending machines for the provision of such food items or
23 beverages shall equip any such vending machine with a timing device or
24 perform an alternative action to ensure that the food items or beverages
25 are sold, served or offered only at the times allowed.

26 b. Commercial products or logos on vending machine prohibited. Schools
27 shall prohibit vending machines which depict commercial products or
28 logos or suggest that consumption of vended items conveys a health or

1 social benefit, or that products purchased from such vending machine
2 support specific school activities or groups.

3 8. Ingredient and nutrient documentation. Schools shall make avail-
4 able to the department, upon request, documentation setting forth the
5 ingredients and nutrients of any food item sold, served or offered by or
6 on behalf of such entities, whether such item is sold, served or offered
7 in the form purchased by or on behalf of such entities or is used as an
8 ingredient in an item sold, served or offered by or on behalf of such
9 entities.

10 § 7. The education law is amended by adding a new section 918-a to
11 read as follows:

12 § 918-a. Local school wellness policies. 1. Each school district,
13 non-public school that participates in any program authorized by the
14 Richard B. Russell National School Lunch Act or the Child Nutrition Act
15 of 1966, board of cooperative educational services, charter school, and
16 school operating pursuant to articles eighty-three, eighty-five, eight-
17 y-seven and eighty-eight of this chapter, collectively referred to in
18 this section as "school districts", shall establish a local school well-
19 ness policy. Such policy shall be in addition to or a part of a wellness
20 policy that may be required pursuant to federal law and related imple-
21 menting regulations. In developing the policy, the governing body or
22 officer of the school districts shall:

23 a. involve, at a minimum, parents and guardians, students, represen-
24 tatives of the school food authority, school administrators, school
25 nurses or other health staff, a certified dietitian/nutritionist if
26 available, physical education staff, and teachers; and

1 b. consider any recommendations made by a school district nutrition
2 advisory committee established in section nine hundred eighteen of this
3 article, if such committee has been formed by the school district.

4 2. Local school wellness policies shall:

5 a. incorporate a plan for measuring implementation of the local school
6 wellness policy;

7 b. recommend to schools ideas for healthy fundraising activities and
8 classroom events and celebrations;

9 c. determine: (i) whether and to what extent each school should
10 contain nutritional education as part of its curriculum to provide know-
11 ledge and teach skills to help students adopt and maintain lifelong,
12 healthy eating patterns in balance with physical activity and incorpo-
13 rate media literacy;

14 (ii) whether and to what extent administrators, teachers, school food
15 service staff, and other staff should be trained in nutrition and nutri-
16 tion education;

17 (iii) whether students are provided with sufficient time to eat break-
18 fast and lunch and whether to require schools to provide students with a
19 minimum amount of time for such purposes;

20 (iv) how to increase opportunities for physical activity during the
21 day by requiring recess or improving compliance with physical education
22 requirements; and

23 (v) how to increase and encourage the purchase of fresh fruits, vege-
24 tables and dairy products which are produced by local or regional farms,
25 consistent with applicable federal procurement standards;

26 d. review compliance with existing law, regulation and policies
27 regarding nutrition and physical education standards; and

1 e. establish recommendations to the governing body or officer, as
2 appropriate, to address the findings and determinations made pursuant to
3 paragraphs c and d of this subdivision.

4 3. Each school district shall, on an annual basis beginning the first
5 of July, two thousand nine, file the local school wellness policy with
6 the department and verify the status of the implementation of the local
7 school wellness policy. The local school wellness policies shall be made
8 available by schools to the department of health upon its request.

9 § 8. Paragraph (v) of subdivision c of section 1 of chapter 537 of the
10 laws of 1976, relating to paid, free and reduced price breakfast for
11 eligible pupils in certain school districts, as separately amended by
12 chapters 260 and 615 of the laws of 1993, is amended to read as follows:

13 (v) By not later than September 1, 2011, each school district shall
14 establish a school breakfast program in all middle school and high
15 school facilities under the district's jurisdiction wherein each pupil
16 attending such school facility shall be afforded the opportunity to
17 receive a free, reduced or full paid breakfast.

18 (vi) Any school not offering a breakfast program on the dates speci-
19 fied in this section, which would be required under the provisions of
20 paragraph (i), (ii), (iii), [or] (iv), or (v) of this subdivision to
21 implement such program in September of the same year, may apply to the
22 commissioner of education for an exemption from the provisions of this
23 act. Such an exemption shall not be granted by such commissioner unless
24 a school demonstrates with good cause: (1) that there is no need for
25 such breakfast program because of low enrollment or documented projec-
26 tions of low participation or (2) that economic hardship or other good
27 cause makes the establishment of such a program impractical. Such
28 commissioner shall establish explicit good cause criteria in regulations

1 pursuant to this act and annually review the basis for such exemptions.
2 Such commissioner may also grant a waiver for up to one year from the
3 provisions of this subdivision to allow adequate time for planning and
4 implementation of a breakfast program.

5 § 9. Subdivision 1 of section 2854 of the education law is amended by
6 adding a new paragraph (f) to read as follows:

7 (f) A charter school shall be subject to the provisions of sections
8 nine hundred fifteen and nine hundred eighteen-a of this chapter.

9 § 10. The agriculture and markets law is amended by adding a new
10 section 28 to read as follows:

11 § 28. School nutritional and dietary standards. 1. The commissioner
12 shall provide consultation to the commissioners of education and health
13 in establishing and revising nutritional and dietary standards for heal-
14 thy school meals, entrees, snacks and beverages, consistent with section
15 nine hundred fifteen of the education law and subdivision two of section
16 twenty-five hundred ninety-nine-c of the public health law.

17 2. The commissioner shall provide consultation to the commissioners of
18 education and health in gathering data and making reports pursuant to
19 paragraph d of subdivision three of section nine hundred fifteen of the
20 education law.

21 § 11. The education law is amended by adding a new section 918-b to
22 read as follows:

23 § 918-b. Breakfast and lunch state subsidies. 1. State subsidies for
24 school lunches and school breakfasts shall be made available pursuant to
25 this section to school food authorities responsible for the adminis-
26 tration of a breakfast and/or lunch program authorized by the Richard B.
27 Russell National School Lunch Act, as amended, or the Child Nutrition
28 Act of 1966, as amended. The provisions of this section shall not apply

1 to the summer food service program or the federal child and adult care
2 program.

3 2. Notwithstanding any other law, rule or regulation to the contrary,
4 the base state subsidies for school lunches and school breakfasts shall
5 be:

6 a. six and five-tenths cents per federally reimbursed free school
7 lunch served;

8 b. twenty-one and five-tenths cents per federally reimbursed reduced
9 price school lunch served;

10 c. six and five-tenths cents per federally reimbursed paid school
11 lunch served;

12 d. eleven cents per federally reimbursed free school breakfast served;

13 e. seventeen cents per federally reimbursed reduced price school
14 breakfast served; and,

15 f. twenty-five hundredths cents per federally reimbursed paid school
16 breakfast served.

17 3. In the federal fiscal year beginning October first, two thousand
18 eight and thereafter, in addition to the base state subsidies an addi-
19 tional amount per federally reimbursed reduced price breakfast or lunch
20 served equal to the greater of twenty-five cents or the difference
21 between:(i) the total combined federal and state reimbursement per meal
22 for free breakfast and free lunch; and (ii) the total combined federal
23 and state reimbursement per meal for each reduced price breakfast and
24 each reduced price lunch shall be made available to each school food
25 authority that qualifies for such reimbursement, provided that the addi-
26 tional reimbursement provided pursuant to this subdivision shall be
27 disregarded in determining such total state and federal reimbursement
28 and provided further that children receiving a federally reimbursed

1 reduced price breakfast and/or lunch shall not be charged any amount for
2 such meals. For purposes of this subdivision, "school food authority"
3 means a school food authority as defined in 7 C.F.R. §210.2.

4 4. In the federal fiscal year beginning October first, two thousand
5 nine, and each year thereafter, each school food authority shall
6 receive, in addition to the base state subsidies and any additional
7 amounts received pursuant to subdivision three of this section, an addi-
8 tional seven cents (above the state reimbursement rate provided for the
9 two thousand eight--two thousand nine school year), per the number of
10 federally reimbursed breakfasts and lunches served, in accordance with
11 an act of Congress entitled the "Richard B. Russell National School
12 Lunch Act", P.L. 79-396, as amended, or the provisions of the "Child
13 Nutrition Act of 1996", P.L. 89-642, as amended.

14 § 12. Severability clause. If any clause, sentence, paragraph, section
15 or part of this act shall be adjudged by any court of competent juris-
16 diction to be invalid, such judgment shall not affect, impair or invali-
17 date the remainder thereof, but shall be confined in its operation to
18 the clause, sentence, paragraph, section or part thereof directly
19 involved in the controversy in which such judgment shall have been
20 rendered.

21 § 13. This act shall take effect immediately.

22

PART D

23 Section 1. Subdivisions 5 and 6 of section 355 of the education law,
24 subdivision 5 as added by chapter 552 of the laws of 1985, paragraph a
25 of subdivision 5 as amended by chapter 682 of the laws of 2007, para-
26 graph c of subdivision 5 as added by chapter 103 of the laws of 1989,

1 paragraph d of subdivision 5 as added by chapter 537 of the laws of
2 1997, subdivision 6 as amended by chapter 554 of the laws of 1985, are
3 amended and a new subdivision 20 is added to read as follows:

4 5. Notwithstanding the provisions of [paragraph] subdivision two of
5 section one hundred twelve and sections one hundred fifteen, one hundred
6 sixty-one[,] and one hundred sixty-three [and one hundred seventy-four]
7 of the state finance law and sections three and six of the New York
8 state printing and public documents law or any other law to the contra-
9 ry, the state university trustees are authorized and empowered to:

10 a. (i) purchase materials, equipment and supplies, including computer
11 equipment and motor vehicles[, where the amount for a single purchase
12 does not exceed twenty thousand dollars], (ii) execute contracts for
13 services, permits, licenses, leases, contracts for the purchase or sale
14 of real property in accordance with the provisions of subdivision twenty
15 of this section, and construction contracts [to an amount not exceeding
16 twenty thousand dollars], and (iii) contract for printing [to an amount
17 not exceeding five thousand dollars], without prior approval by any
18 other state officer or agency[, but subject to rules and regulations of
19 the state comptroller not otherwise inconsistent with the provisions of
20 this section and] in accordance with [the] rules [and] or regulations
21 promulgated by the state university board of trustees after consultation
22 with the state comptroller. [In addition, the trustees, after consulta-
23 tion with the commissioner of general services, are authorized to annu-
24 ally negotiate with the state comptroller increases in the aforemen-
25 tioned dollar limits and the exemption of any articles, categories of
26 articles or commodities from these limits.] Rules [and] or regulations
27 promulgated by the state university board of trustees shall, to the
28 extent practicable, require that competitive proposals be solicited for