

## Food Service Professional Standards under the Healthy, Hunger-Free Kids Act of 2010

A Fact Sheet for Staff

April 15, 2015

### Executive Summary for Busy Staff

On March 2, 2015 the USDA issued its final “Professional Standards Rule” – the regulations implementing the education and training requirements of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The rules are imperfect—they provide possible opportunities to help food service ESP elevate their careers, but also carry with them the risk that school districts will try to apply the rules in ways that will harm our members.

There are **no education prerequisites** for school nutrition managers and staff – the job groups that our members are in. This means that food service ESPs will not have to worry about being grandfathered. The rules specify numbers of hours of annual training that Food Service ESPs will have to receive. The Fair Labor Standards Act mandates that if this training is a condition of employment the employer must pay wages for the time spent in the training. However, there is no requirement in the regulations or in other Federal law that the training occur during regular working hours, or that the employee pay for the cost of the training.

This fact sheet provides a brief outline of the major elements of the Professional Standards Rule that apply to our members, and information about the applicability of the Fair Labor Standards Act to food service ESP training. In addition, there are suggestions of how Associations can advocate for food service members about these training requirements, both to defend members from inappropriate implementation of the requirements, and to work with school district nutrition programs to develop professional development programs that both help advance our members’ careers and serve the interest of students by developing high-quality school nutrition programs.

### The Rest of the Story

On March 2, 2015 the USDA issued its final “Professional Standards Rule” – regulations that implement the education and training requirements of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The provisions that apply to our ESP members are only slightly modified from the draft rule that USDA proposed in February 2014. These regulations may be a double-edged sword:

- Some school districts may try to implement training requirements in ways that are harmful to our members.
- The training requirements can provide opportunities for our food service ESPs to elevate their careers, help improve school nutrition programs, and gain increased skills, professionalism and recognition.

This document outlines the key provisions of the Professional Standards Rule which apply to ESPs, and provides guidance to staff who are dealing with this issue.

### **What the Professional Standards Rule says**

Effective Date: The rule is **effective as of July 1, 2015**.

Definitions of kinds of nutrition staff: The rule defines 3 groups of school nutrition staff:

1. School nutrition program directors – the school district’s nutrition or food service director
2. School nutrition program managers – “those individuals directly responsible for the management of the day-to-day operations of school food service for a participating school(s)”
3. School nutrition program staff – “those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).”

Our food service ESP members are in the second and third groups. There are education prerequisites for new nutrition program director hires, which vary according to the size of the school district. However there are **no education prerequisites** for managers and staff. This means that food service ESPs will not have to worry about being grandfathered.

Who is covered by the training requirements: All school food authorities (generally school districts) that operate the National School Lunch Program or the School Breakfast Program must implement these professional standards for school nutrition program directors, managers, and staff. **The standards apply equally to employees of private food service contractors.** They also apply to all staff in the school nutrition program, including clerical staff, delivery drivers, etc. (see the section on training topics below).

Required annual training hours: The regulations require that school nutrition program managers receive 10 hours of training per year, and school nutrition program staff receive 6 hours of training per year. For nutrition program staff who work less than 20 hours per week these requirements are reduced to 4 hours per year. The training hour requirement is being phased in for the period July 1, 2015 to June 30, 2015, with 6 hours required for managers and 4 hours for staff during this first year.

Training topics: For school nutrition managers, the annual training must include, but is not limited to:

1. Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures);
2. The identification of reimbursable meals at the point of service;
3. Nutrition;
4. Health and safety standards; and
5. Any specific topics identified by FNS, as needed, to address Program integrity or other critical issues.

For school nutrition staff, the annual training must include, but is not limited to:

1. Free and reduced price eligibility;
2. Application, certification, and verification procedures;
3. The identification of reimbursable meals at the point of service;
4. Nutrition;
5. Health and safety standards; and
6. Any specific topics identified by FNS, as needed, to address Program integrity or other critical issues.

Training should be relevant to the person's job. For instance, application, certification, and verification procedures are relevant for someone in a clerical position in the nutrition program, while food safety is relevant to a truck driver delivering food to schools from a central location.

Training format, sources and timing: Training may be delivered in a variety of formats (virtual/web-based and in-person -- including free or low-cost options), and from a variety of sources:

- USDA Food and Nutrition Service (FNS)
- National Food Service Management Institute (NFSMI)
- Professional Associations and organizations (e.g. School Nutrition Association)
- In-house
- States
- Commercial vendors

USDA has created an extensive on-line database of available trainings at <http://professionalstandards.nal.usda.gov/>. Training that is delivered in intervals as short as 15 minutes can count towards the annual hourly total. When a supervisor delivers training, this may count as training time for both the trainees and the trainer.

The professional standards rule does not contain any requirement that training be delivered during the regular work day, or that time spent in training be paid.

Funding: School food authorities may pay for annual training from food service funds. There is no additional funding being provided to all SFA's for training. However, NSFMI is receiving an additional \$2 million for training, and \$4 million in grants is being provided to states (up to \$150,000 per state) to provide online and/or in-person trainings for school nutrition personnel.

Recordkeeping: School districts are required to keep three years of records to demonstrate compliance with the Professional standards. USDA FNS is developing a downloadable tool, expected to be released within the next few weeks, which school districts can use to track each employee's training.

This is only a summary of the major provisions of the Professional Standards Rule. The full text of the rule can be read, and a PDF downloaded at:

<http://www.regulations.gov/#!documentDetail;D=FNS-2011-0030-0241>

### **What can we do about the Professional Standards Rule? – Some initial advocacy guidance**

Protecting our members: Unfortunately, we fear that some school districts may try to apply the new requirements in ways that harm our members, by not paying for time spent in training, by asking food service ESPs to participate in training outside of their regular work schedule, or by expecting ESPs to pay for the cost of the training. Although the USDA's rule is silent on this issue, the federal Fair Labor Standards Act still applies.

There are two basic situations which have been addressed in a legal memorandum from the NEA's Office of General Counsel (contact Jon Falk in NEA ESP Quality – [jfalk@nea.org](mailto:jfalk@nea.org) – if you want a copy of this memorandum, which contains citations to the relevant sections of the FLSA and their application to this situation):

1. A school district provides training to comply with the law and requires food service staff to attend the training outside of their regular working hours but does not pay them for their time; or
2. A school district does not provide training, but requires food service employees to obtain the training needed to comply with the law on their own, and does not compensate them for the cost of the training or for their time.

In brief, the Fair Labor Standards Act requires that employees be paid for their time in both cases.

The cost of enrolling in outside training courses is not addressed in federal laws, so there is no federal violation if employees are not compensated for the cost of the training. Also, even if wages are paid for training time, many food service ESPs have second jobs or other commitments, and training that is scheduled outside of regular work hours will present a significant hardship to them. For these situations we will have to rely on means other than federal law to persuade school districts make training available in ways that do not adversely impact our members. Depending on the advocacy avenues available to the particular local Association, this might mean negotiating contract language, engaging in impact bargaining, filing grievances, or other forms of collective action.

#### Using the Professional Standards Rule as a tool to elevate Food Service ESPs' profession:

Ongoing relevant, high-quality food service professional development for food service ESPs can provide a way to improve member's professional skills, improve school nutrition programs and student health, and gain much-deserved recognition for food service ESPs as essential partners in ensuring student success. Here are some initial ideas about what Food Service ESPs and their Associations can do to make these goals a reality:

- Form a joint labor-management professional development committee to identify key training needs, the best times, locations and formats for training, and plan and deliver professional development that will help our members.
- Ensure that Food Service ESPs can keep their own portfolios of the training they have received. School districts are already required to maintain these records.
- Provide certificates to ESPs who have attained different levels of training. USDA FNS is planning to develop its own certificate program. Depending on what this looks like, district-level certificates could coordinate with or adopt this program for their own use. (One idea is to develop career ladders which incorporate the certificates.)
- Identify key trainings which will be in high demand, and create a cadre of peer trainers (e.g. other food service ESPs) who can deliver these trainings, either within a single school district or a group of districts.

These are only preliminary ideas. NEA ESPQ Quality will be continuing to work on this issue in the coming months. If you have ideas, feedback, questions or experiences to share, please contact Jon Falk at [jfalk@nea.org](mailto:jfalk@nea.org).