

# PASS THE CHANGE, PLEASE: STYMIEING AMERICA'S CHILDHOOD HEALTH CRISIS WITH LOCAL FOODS IN SCHOOLS

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## I. INTRODUCTION

A parent who coordinates a gardening program in a Durham, North Carolina public school explained to me why she began managing the gardening portion of the program to help children in the school learn life science and healthy eating habits:

I realized that there was a problem when one day, after asking [my son] what he had eaten at school, [he] told me that he had eaten Fruit Loops for breakfast. Surprised and a little upset, I asked him, 'But, why did you eat Fruit Loops?' We just don't keep those kinds of foods around the house. He told me, 'Mom, I really thought I was making the best choice. It was a choice between Fruit Loops and a pancake on a stick.' I didn't have the heart to chastise him, because he really felt good that he had chosen the more nutritious-looking thing. I realized that I needed to get more involved.<sup>1</sup>

My first reaction to her concern about Fruit Loops was one of confusion. For most of my life, I would not have seen a problem with Fruit Loops being my child's breakfast a few times per week. I therefore felt surprised that this had alerted her so immediately — even a pancake on a stick did not sound so bad from my perspective.

Even though I have the means to make healthy food choices, I struggle to think critically about some of the foods I eat, in part because it is difficult to think of food choices today as anything other than one-time choices. At a time when American workers work longer hours than those in most other developed countries, requiring shorter lunchtimes, on-the-go meals, and longer workdays that limit cooking and shopping, meals are becoming more of an afterthought for many Americans.<sup>2</sup> Lifestyle and many other factors have compounded to create a distressingly large health crisis that the United States must confront.

This note takes a multi-disciplinary approach to addressing the issue of

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1. Telephone Interview with Michele Kloda, Parent (Feb. 19, 2012).

2. See *Americans Are World's Most Productive Workers*, U.N. Report Finds, FOX NEWS, Sept. 3, 2007, <http://www.foxnews.com/story/0,2933,295556,00.html>; Paul Wiseman, U.S. Productivity Gains Stifle Job Creation, USA TODAY, Apr. 4, 2011, available at <http://www.usatoday.com/money/economy/2011-04-04-us-economy-jobs.htm>.

childhood health through local foods in schools. The primary goal of this note is to argue that low-income children are in need of urgent attention, and local foods in schools could be an important way to address those needs in places where access to fresh food is limited.

The discussion below is separated into three sections: (1) statistical analyses of increasing incidences of obesity and diabetes among adults and children, which highlight the need to address childhood health via schools; (2) an explanation of how law plays a central role in forming and reforming the way that children eat at school; and (3) an examination of policy approaches that may help low-income communities bring local foods into schools.

## II. COMING TO TERMS WITH THE PROBLEM: A CASE FOR LOCAL FOODS IN SCHOOLS

There is an emerging health crisis in the U.S. Addressing this problem requires experts, decision-makers, and the general public to take an honest look at the statistics that reveal the scope of the obesity problem that the U.S. faces.

### A. Obesity, Diabetes, and Physical Inactivity Among Adults

According to the Centers for Disease Control and Prevention (“CDC”), 35.7% of adults in the U.S. are obese today.<sup>3</sup> In 1988, no state had a prevalence of obesity higher than 14%.<sup>4</sup> By 2010, no state had a prevalence of obesity lower than 20%.<sup>5</sup> In thirty-six states, 25% or more of the adult population is obese, and in twelve of those states, 30% or more of the adult population was obese.<sup>6</sup> When the CDC combined the numbers for overweight and obesity prevalence estimates in 2007 to 2008, the amounts were staggering: 68% of all adults were either overweight or obese.<sup>7</sup> While rates of obesity have become more stable since 2000, increasing from 30.5% to 35.7% in 2010,<sup>8</sup> this average is somewhat misleading. Rates of obesity among women have remained largely the same, but the obesity rates among men and boys have risen significantly since 2000, from 27.5% in 2000 to 35.5% among men alone.<sup>9</sup> Furthermore, adult obesity rates increased in

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3. See *Defining Overweight and Obesity*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/defining.html> (last visited Apr. 27, 2012) (stating that the CDC has determined that an adult is generally obese with a body mass index (“BMI”) at 30 or higher and an adult with a BMI of 25 to 29.9 is overweight). BMI is calculated by dividing a person’s weight by his or her squared height; this does not distinguish between fat and muscle, so it is possible for certain people who have high amounts of muscle to be considered “obese” by this calculation. *About BMI for Adults*, CENTERS FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/healthyweight/assessing/bmi/adult\\_bmi/index.html](http://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/index.html) (last visited Sept. 13, 2011).

4. *U.S. Obesity Trends*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/data/trends.html> (last visited Mar. 28, 2013).

5. *Id.*

6. *Id.*

7. Katherine M. Flegal, et al., *Prevalence and Trends in Obesity Among US Adults, 1999-2008*, 303 *JAMA* 235, 238 (2010).

8. Alice Park, *U.S. Obesity Rates Remain Stubbornly High*, TIME (Jan. 17, 2012), <http://healthland.time.com/2012/01/17/u-s-obesity-rates-remain-stubbornly-high/>.

9. *Id.*

sixteen states from 2010 to 2011.<sup>10</sup> This has occurred primarily in the states with the highest obesity rates.<sup>11</sup> Twelve states now have obesity rates above 30%.<sup>12</sup> In 2007, only one state had such a high obesity rate.<sup>13</sup>

The prevalence of adult diabetes in the U.S. further illustrates issues related to obesity in America. In 2010, the CDC estimated that 25.6 million adults over twenty years old—or 11.3% of the U.S. population—had diabetes.<sup>14</sup> Approximately twenty-six percent of all Americans over sixty-five years old suffered from diabetes.<sup>15</sup> In total, the CDC estimated that 25.8 million people, or 8.3% of Americans, had diabetes.<sup>16</sup>

Physical inactivity, which the CDC says is a risk factor for developing type 2 diabetes and obesity, is also alarmingly high.<sup>17</sup> The same counties and states with the highest levels of obesity and diabetes, most of which are concentrated in the South, are also the areas with the greatest number of adults who are not physically active in their leisure time.<sup>18</sup> In 2008, anywhere from 10.1% to 43% of adults reported that they do not engage in any physical activity or exercise other than at their regular job.<sup>19</sup> Nationwide, 25.4% of adults reported no leisure-time physical activity in 2008.<sup>20</sup>

## B. The Next Generation

For the first time in 200 years, statistics predict that American children have a shorter average lifespan than that of their parents.<sup>21</sup> A study estimates in 2011 that 36% of children ages six to eleven are overweight, and another 20% are obese.<sup>22</sup> From 1980 to 2008, obesity rates have tripled for children, and increases in obesity have occurred across all demographic groups, including age, sex, race, ethnicity, socioeconomic status, education level, and even geographic region.<sup>23</sup>

New studies indicate that children who are obese are more likely to remain obese, develop diseases such as cardiovascular disease, hypertension, and high

10. See *F as in Fat: How Obesity Threatens America's Future 2011*, TRUST FOR AMERICA'S HEALTH, <http://healthyamericans.org/report/88/> (last visited Mar. 28, 2013); *U.S. Obesity Trends*, *supra* note 4.

11. *Id.*

12. *Id.*

13. *Id.*

14. *2011 National Diabetes Fact Sheet*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/diabetes/pubs/estimates11.htm#3> (last visited Mar. 28, 2013).

15. *Id.*

16. *Id.*

17. See *Physical Activity Estimates, by County*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/Features/dsPhysicalInactivity/> (last visited Mar. 28, 2013).

18. See *id.*

19. *Id.*

20. See *id.*

21. S. J. Olshansky et al., *A Potential Decline in Life Expectancy in the United States in the 21st Century*, 352 *NEW ENG. J. MED.* 1138, 1143 (2005); *National Farm to School Program*, COMMUNITY FOOD SECURITY COALITION, [http://www.foodsecurity.org/farm\\_to\\_school.html](http://www.foodsecurity.org/farm_to_school.html) (last visited Mar. 30, 2013).

22. Karen Kaplan, *Is the National School Lunch Program to Blame (in Part) for the Rise of Childhood Obesity?*, *L.A. TIMES*, Apr. 6, 2011, <http://articles.latimes.com/2011/apr/06/news/la-heb-school-lunch-program-obesity-20110406>.

23. See *F as in Fat*, *supra* note 10.

cholesterol, and are considerably more likely to die before the age of 55.<sup>24</sup> The CDC also estimates that 215,000 children now have diabetes, which constitutes approximately 0.26% of all children in the U.S.<sup>25</sup> The characteristics among subsets of the childhood population seem to mirror those of adults, as minority children are more likely to be obese or overweight and are more seriously obese and overweight.<sup>26</sup> Minority youth are also being diagnosed with type 2 diabetes at disproportionately high rates.<sup>27</sup>

Thus, there is growing evidence that children with nutritionally deficient diets suffer from the same or similar obesity-related illnesses as adults.<sup>28</sup> A national study has shown that poor nutrition among children is a key factor in the rise of chronic diseases that begin in childhood, such as diabetes, and others that develop later in life, such as cardiovascular disease.<sup>29</sup> A national survey in 2007-2008 on childhood nutrition found that, out of twelve categories of food groups, children between that ages of two and seventeen fell far below the recommended dietary intake levels of vegetables, legumes, whole grains, meat, beans, and oils.<sup>30</sup> U.S. children across all age groups reached only the recommended dietary intake levels of grains, and no other food categories.<sup>31</sup> Only children between the ages of two and five consumed the recommended amount of fruit and milk.<sup>32</sup> Across all the age groups, children ate an overabundance of saturated fat, sodium, and extra calories.<sup>33</sup>

### C. Why Are Children So Important? – Higher Costs for Low-Income Communities

The spread of obesity and related problems across the United States has already been costly.<sup>34</sup> The CDC estimates that, in 2008, medical costs associated

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24. Roni Caryn Rabin, *Child Obesity Risks Death at Early Age, Study Finds*, N.Y. TIMES, Feb. 10, 2010, <http://www.nytimes.com/2010/02/11/health/11fat.html>.

25. Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, *National Diabetes Fact Sheet*, CENTERS FOR DISEASE CONTROL & PREVENTION, 3 (2011), available at [www.cdc.gov/diabetes/pubs/pdf/ndfs\\_2011.pdf](http://www.cdc.gov/diabetes/pubs/pdf/ndfs_2011.pdf).

26. *Childhood Obesity*, U.S. DEPT OF HEALTH & HUMAN SERVICES, [http://aspe.hhs.gov/health/reports/child\\_obesity/](http://aspe.hhs.gov/health/reports/child_obesity/) (last visited Mar. 30, 2013). While 16% of all children are obese, 21% of all African American children between twelve and nineteen years old are obese, as are 23% of all Mexican American children, in comparison with 14% of all white children. Mexican American boys are also significantly more likely to have the highest BMI among children, as compared with non-Hispanic white or non-Hispanic black boys. Cynthia L. Ogden, et al., *Prevalence of High Body Mass Index in U.S. Children and Adolescents, 2007-2008*, 303 JAMA 242, 246 (2010).

27. Minority youths are experiencing proportionately higher type 2 diagnoses than white youths. White youths have the highest rate of diagnoses for type 1 diabetes, while the rates of new diagnoses of type 1 and type 2 diabetes are nearly equal for black and Hispanic youth. See Nat'l Ctr. for Chronic Disease Prevention & Health Promotion, *supra* note 25 at 4.

28. FED. INTERAGENCY FORUM ON CHILD & FAMILY STATISTICS, AMERICA'S CHILDREN: KEY NATIONAL INDICATORS OF WELL-BEING, 2011 (2011), available at [http://www.childstats.gov/pdf/ac2011/ac\\_11.pdf](http://www.childstats.gov/pdf/ac2011/ac_11.pdf).

29. *Id.* at 64.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. See *Obesity, Halting the Epidemic by Making Health Easier*, CENTERS FOR DISEASE CONTROL &

with obesity were \$147 billion.<sup>35</sup> The average annual medical costs for an obese person are \$1,429 more than those of a person with normal weight.<sup>36</sup> Obesity costs amount to 9.1% of all medical spending in the U.S.<sup>37</sup> The annual costs associated with childhood obesity rose from \$125.9 million in 2001 to \$273.6 million in 2005.<sup>38</sup> Many families who struggle with expenses related to obesity and diabetes also have difficulty with basic living expenses.<sup>39</sup>

While occurrences of obesity and related diseases are rising across the board, the most drastic increases are among the poorest populations in the United States.<sup>40</sup> Indeed, studies indicate that obesity is more prevalent in low-income populations than in higher income populations.<sup>41</sup> Due to economic constraints, many low-income families are unable to purchase the fresh, healthy foods they require to prevent these ailments. Programs providing fresh, local foods in schools could help alleviate these problems.

According to the U.S. Department of Agriculture (“USDA”), in 2007, nearly sixteen percent of households with children were “food insecure,” meaning they did not have consistent access to adequate food for the children to lead active, healthy lives.<sup>42</sup> The USDA data suggests that children who live in food-insecure households are more likely to experience health and developmental problems.<sup>43</sup> The CDC reports that low-income children and adolescents are more likely to be obese than those who are living with higher incomes.<sup>44</sup> However, race and ethnicity are also relevant.<sup>45</sup> While most children who are obese are not low income,<sup>46</sup> nearly half of all Mexican American and black children who are obese live in households with an income below 130% of the poverty income ratio,<sup>47</sup> or \$2,389 per month for a family of four.<sup>48</sup> At least some of the factors contributing

PREVENTION, <http://www.cdc.gov/chronicdisease/resources/publications/aag/obesity.htm> (last visited Apr. 20, 2013).

35. *Id.*

36. *Id.*

37. Diana Holden, *Fact Check: The Cost of Obesity*, CNN, Feb. 9, 2010, <http://www.cnn.com/2010/HEALTH/02/09/fact.check.obesity/index.html>.

38. *Id.*

39. *F as in Fat*, *supra* note 10 (stating that in 2008 the average medical expenditures among people with diagnosed diabetes were 2.3 times higher than what expenditures would be in the absence of diabetes).

40. See *Why Low-Income and Food Insecure People are Vulnerable to Overweight and Obesity*, FOOD RES. ACTION CENTER, <http://frac.org/initiatives/hunger-and-obesity/why-are-low-income-and-food-insecure-people-vulnerable-to-obesity/> (last visited Mar. 30, 2013).

41. Cynthia L. Ogden, et al., *Obesity and Socioeconomic Status in Children and Adolescents: United States, 2005-2008*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/data/databriefs/db51.htm> (last visited Mar. 30, 2013).

42. Mark Nord, *Food Insecurity in Households with Children: Prevalence, Severity, and Household Characteristics, Economic Research Service Report Summary*, U.S. DEP’T OF AGRIC., iii (Sept. 2009), available at <http://www.ers.usda.gov/publications/eib-economic-information-bulletin/eib56.aspx>.

43. *Id.* at 7.

44. Ogden et al., *supra* note 41.

45. Nord, *supra* note 42, at 7-8.

46. *Id.* at 14.

47. *Id.* at 2, fig. 2.

48. *FY 2011 Income Eligibility Standards*, U.S. DEP’T OF AGRIC., [http://www.fns.usda.gov/snap/government/FY11\\_Income\\_Standards.htm](http://www.fns.usda.gov/snap/government/FY11_Income_Standards.htm) (last visited Mar. 30, 2013).

to childhood type 2 diabetes are the same factors that lead children from low-income families to eat nutrient-poor, highly-processed, low-cost foods.<sup>49</sup>

### III. GETTING THE PICTURE: ASSESSING HOW THE LAW SHAPES, LIMITS, AND SUPPORTS EFFORTS TO BRING LOCAL FOODS INTO SCHOOLS

The idea of bringing local foods into schools is not new.<sup>50</sup> Largely initiated by concerned citizens, efforts to put local foods into schools have been starting up across the country in order to “not only positively affect children’s dietary habits and improve the quality of school meals, but also support local agriculture.”<sup>51</sup> Legislators and agencies have built a framework of statutes and regulations that provide funding for food in schools.<sup>52</sup> However, these same laws and agencies can act as barriers that keep local foods out of schools, particularly by regulating funding, procurement, subsidies, and entitlement foods.

#### A. Funding

##### 1. Overview of Funding

###### a. National School Lunch Program

Congress passed the National School Lunch Program (“NSLP”)<sup>53</sup> in the wake of the Great Depression intending to provide malnourished children with the protein and nutrient-rich foods necessary for normal development. And it was, by several accounts, successful.<sup>54</sup> At the time, states were attempting to address the needs of families by providing children with regular meals, but were struggling to provide stability to these programs, and school administrators were hesitant to fully support meal programs without more stable funding.<sup>55</sup> The NSLP added structure and guidance to school lunch programs across the country, providing information such as federal and state spending procedures and baselines for nutritional requirements.<sup>56</sup> Today, 36.1 million children eat at least one meal a day through the NSLP.<sup>57</sup>

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49. Sam Dolnick, *The Obesity-Hunger Paradox*, N.Y. TIMES, Mar. 12, 2010, <http://www.nytimes.com/2010/03/14/nyregion/14hunger.html> (“Hunger and obesity are often flip sides to the same malnutrition coin . . . [h]unger is certainly almost an exclusive symptom of poverty. And extra obesity is one of the symptoms of poverty.”).

50. See, e.g., ANUPAMA JOSHI & MOIRA BEERY, URBAN & ENVTL. POLICY INST., *A GROWING MOVEMENT: A DECADE OF FARM TO SCHOOL IN CALIFORNIA 1* (2007), available at [http://scholar.oxy.edu/cgi/viewcontent.cgi?article=1381&context=uep\\_faculty](http://scholar.oxy.edu/cgi/viewcontent.cgi?article=1381&context=uep_faculty).

51. *Id.*

52. *Id.*

53. 42 U.S.C. § 1751 (2010).

54. Gordon W. Gunderson, *National School Lunch Program Background and Development*, U.S. DEP’T OF AGRIC. (Jan. 29, 2003), available at [http://www.fns.usda.gov/cnd/lunch/AboutLunch/ProgramHistory\\_4.htm](http://www.fns.usda.gov/cnd/lunch/AboutLunch/ProgramHistory_4.htm).

55. See JOSHI & BEERY, *supra* note 50.

56. See Gunderson, *supra* note 54.

57. *National School Lunch Program*, FOOD RES. & ACTION CENTER, <http://frac.org/federal-foodnutrition-programs/school-breakfast-and-lunch/national-school-lunch-program/> (last visited Mar. 30, 2013).

### b. Child Nutrition Program

In light of ample evidence that the NSLP was successful by the 1960's, Congress expanded it with the Child Nutrition Act of 1966, which created the Child Nutrition Program ("CNP").<sup>58</sup> The CNP bolstered the Special Milk Program, included a new School Breakfast Program, and provided funds that specifically went to purchasing equipment and staff training.<sup>59</sup>

### c. Fresh Fruit and Vegetable Program

In 2002, Congress responded to the growing need for children to have access to more fresh fruits and vegetables at school. The Farm Security and Rural Investment Act of 2002, commonly known as the Farm Bill,<sup>60</sup> included a six million dollar pilot program that was limited to twenty-five schools in four states and seven schools in one Indian Tribal Organization.<sup>61</sup> This program became what is known today as the Fresh Fruit and Vegetable Program ("FFVP").<sup>62</sup> The 2008 Farm Bill<sup>63</sup> expanded the FFVP's funding to \$150 million in the 2011-2012 fiscal year, making it available to over 4,640 selected schools nationwide.<sup>64</sup> Currently, the FFVP provides children in participating schools with a variety of free fresh fruits and vegetables throughout the day,<sup>65</sup> separate and distinct from the meals provided through other child nutrition programs.<sup>66</sup> The statute requires that schools serving the highest percentages of low-income students be given priority for participating in the FFVP.<sup>67</sup>

The goals of the FFVP are to help schools provide healthier environments to children by providing fresh fruits and vegetables and to increase the variety and number of fruits and vegetables that children eat.<sup>68</sup> The 2008 Farm Bill requires the Secretary of Agriculture to encourage schools participating in the FFVP to purchase unprocessed locally grown and locally raised agricultural products.<sup>69</sup> The Food and Nutrition Service of the USDA ("FNS") encourages schools participating in the FFVP to develop partnerships at the state and local levels that will help initiate and sustain these programs.<sup>70</sup>

58. 42 U.S.C. § 1786 (2010).

59. 42 U.S.C. § 1771 (2010).

60. RENEE JOHNSON, CONG. RESEARCH SERV., CRS REPORT FOR CONGRESS: WHAT IS THE "FARM BILL"? (2008), available at <http://fpc.state.gov/documents/organization/104270.pdf>.

61. Fresh Fruit and Vegetable Program, 77 Fed. Reg. 10,983 (Feb. 24, 2012) (to be codified at 7 C.F.R. pts. 211 & 235).

62. Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, 118 Stat. 729 (2004).

63. Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008).

64. See Fresh Fruit and Vegetable Program, 77 Fed. Reg. at 10,987.

65. USDA FARM TO SCHOOL TEAM, 2010 SUMMARY REPORT 2 (2011), available at [http://www.fns.usda.gov/cnd/F2S/pdf/2010\\_summary-report.pdf](http://www.fns.usda.gov/cnd/F2S/pdf/2010_summary-report.pdf).

66. See Fresh Fruit and Vegetable Program, 77 Fed. Reg. at 10,985.

67. *Id.* at 10,983.

68. See USDA FARM TO SCHOOL TEAM, *supra* note 65.

69. See Food, Conservation, and Energy Act § 4302.

70. See USDA FARM TO SCHOOL TEAM, *supra* note 65.

d. Department of Defense Fresh Fruit and Vegetable Program

The Department of Defense FFVP (“DoD Fresh”) is a very similar program to the FFVP under the CNP.<sup>71</sup> It is the result of a 1995 administrative agreement between the U.S. Department of Defense, Defense Supply Center Philadelphia (“DSCP”), the Food and Nutrition Service, and the Agricultural Marketing Service.<sup>72</sup> Through DoD Fresh, states are allowed to use commodity entitlement funds to purchase fresh fruits and vegetables, some of which are locally grown, from the DSCP, which then delivers the food directly to schools when providers make deliveries to military installations.<sup>73</sup> In 2012, the program was projected to include \$74.8 million in school food purchases.<sup>74</sup>

e. Start-Up Funding for Local Foods

Congress has expressed that providing local foods to schools is an important project for the CNP.<sup>75</sup> The 2002 Farm Bill amended Section 9 of the National School Lunch Act (“NSLA”), adding the requirement that the Secretary of Agriculture must “encourage institutions participating in the [national] school lunch program under this Act and the school breakfast programs to purchase locally produced foods to the maximum extent practicable.”<sup>76</sup> Congress allocated \$400,000 for the program in 2002 to help schools mitigate the costs of setting up a local food program—including costs of equipment, materials, and storage facilities.<sup>77</sup>

2. *Current Funding and Program Abilities Are Too Limited to Reach Most At-Risk Children*

The majority of children in the United States do not eat the amount of fresh fruits and vegetables that the FNS recommends for children.<sup>78</sup> The FNS recognizes that the programs discussed above are not robust enough to reach all of the schools in the United States with at least fifty percent of the enrolled students eligible for free or reduced price school meals.<sup>79</sup> Yet, these are the schools most in need of increases in fresh fruits and vegetables because they likely serve the highest concentrations of low-income students. However, despite these schools being priorities for programs like the FFVP,<sup>80</sup> the program’s goals cannot be met at current funding levels.

While the FFVP encourages schools to build local partnerships to implement and maintain the program, the FNS does not intend to fund schools

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71. *Department of Defense Fresh Fruit and Vegetable Program*, U.S. DEP’T OF AGRIC., [http://www.fns.usda.gov/fdd/programs/dod/DOD\\_FreshFruitandVegetableProgram2011.pdf](http://www.fns.usda.gov/fdd/programs/dod/DOD_FreshFruitandVegetableProgram2011.pdf) (last visited Mar. 30, 2013).

72. *Id.*

73. *Id.*

74. *Id.*

75. Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002).

76. *Id.* at § 4303 (codified as amended at 42 U.S.C. § 1758(j)(1)(A) (2006)).

77. *See id.* (codified as amended at § 1758(j)(2)(A)).

78. Fresh Fruit and Vegetable Program, 77 Fed. Reg. 10,982 (Feb. 24, 2012) (to be codified at 7 C.F.R. pts. 211 & 235).

79. *Id.* at 10,983.

80. *Id.*



that may have particularly high costs associated with starting a program that focuses on providing fresh fruits and vegetables to children.<sup>81</sup> The FNS has proposed that no more than fifteen percent of the FFVP funding be used for non-food costs, which may not be reasonable for a school that is just starting a local food program.<sup>82</sup> The funds are not intended to go to anything other than food for children, but this could be prohibitive for low-income schools, where staff may not have the handling skills and facilities may not have the equipment or capacity for large quantities of fresh fruits and vegetables. Schools in low-income communities may have disproportionately high costs associated with staff training, processing utensils, and storage that are otherwise not affordable, without being able to use more of these FFVP and DoD funds to get the program off the ground.

Also, the current FFVP and DoD programs require schools to specify preferred providers of “unprocessed agricultural products” while balancing the USDA’s requirement that they not unnecessarily limit competition with these preferences.<sup>83</sup> This can prove difficult to maintain in practice.<sup>84</sup> Although the NSLP now directs the Secretary of Agriculture to encourage school food authorities to buy unprocessed, locally grown and raised foods as much as possible, the costs associated with purchasing locally may be prohibitively expensive for some schools.<sup>85</sup>

The DoD Fresh program in particular seems to have problems with communication and cooperation, which are exacerbated by the fact that, unlike the FFVP, DoD Fresh is an agreement between administrative agencies and is therefore not governed by a specific federal statute. School districts wishing to incorporate a local preference have expressed frustration that certain distributors are either unable or unwilling to label or guarantee that the produce the district received was what the district would consider “local.”<sup>86</sup>

### 3. Solutions for Funding: Pushing for More

There are several solutions that are either already in the works or should be considered as responses to these limitations. Congress authorized funding for startup grants under the Healthy, Hunger-Free Kids Act of 2010, which requires the Secretary of the Treasury to transfer \$5,000,000 per year to the Secretary of Agriculture from any “funds in the Treasury not otherwise appropriated,”

81. *Id.*

82. *Id.* at 10,896.

83. *FAQs - Procurement*, U.S. DEP’T OF AGRIC., [http://www.fns.usda.gov/cnd/f2s/faqs\\_procurement.htm#14](http://www.fns.usda.gov/cnd/f2s/faqs_procurement.htm#14) (last visited Apr. 10, 2013).

84. USDA FARM TO SCHOOL TEAM, *supra* note 65 (“[Some districts] appeared to struggle to understand and, therefore, meet the requirements [of procurement laws].”).

85. See 7 C.F.R. pts. 210, 215, 220, 225, 226 (2011) (“The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act to direct that the Secretary of Agriculture encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products.”); 7 C.F.R. § 210.2 (2009) (“School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program.”).

86. *Id.*

beginning October 1, 2012 until the end of the fiscal year in 2015.<sup>87</sup> These funds, which the USDA will divvy up to qualifying applicants, will provide competitive grants of up to \$100,000 per entity per year for “training, supporting operations, planning, purchasing equipment, developing school gardens, developing partnerships, and implementing farm to school activities.”<sup>88</sup>

Encouraging better communication and cooperation between schools and distributors for DoD Fresh program will enable schools to specify local foods as a priority. A proposed rule that specifically requires DoD Fresh distributors to accommodate schools’ local preferences to the maximum extent possible would help alleviate the frustrations that currently exist.

Finally, the Farm Bill of 2012 is being discussed at length in Congress now.<sup>89</sup> Provisions could be shaped to include more funding for programs like the FFVP and to create other start-up funds that will help schools and local food producers implement local food programs at schools.<sup>90</sup>

## D. Procurement

### 1. Overview of Procurement

Under the NSLP, state agencies and school food authorities must comply with the Child Nutrition Act and must implement the applicable Circulars of the Office of Management and Budget regarding the procurement of all goods and services with nonprofit school food service account funds.<sup>91</sup> Schools may follow other requirements under state and local laws, so long as those requirements meet the minimum federal requirements.<sup>92</sup> Since school procurement is regulated at the federal, state, and local levels, the requirements are complex.<sup>93</sup>

Procurement, in the school food context, refers to the method by which schools or other institutions purchase goods or services in accordance with federal, state, and local laws, which generally impose requirements to ensure fair competition in the purchasing process.<sup>94</sup> For federal purposes, a school may use an informal procurement process for procurements of \$100,000 or less, which allows a school food authority to contact potential providers directly if it contacts at least three different providers.<sup>95</sup> This method would allow schools to negotiate

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87. See Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183, 3238 (2010).

88. Healthy Food Initiatives, Local Production and Nutrition: Hearing on 2012 Farm Bill Before the S. Comm. on Agric., Nutrition, and Forestry, 112th Cong. 5 (2012) (statement of Hon. Thomas Vilsack, Sec’y of Agric.) (“Schools, state and local agencies, Indian tribal organizations, agricultural producers, and nonprofit organizations are eligible to receive the Farm to School grant to improve access to local foods in schools.”).

89. Press Release, Tamara Hinton House Comm. on Agric., AG Comm. Moves Forward with Farm B. Process and Announces DC Hearings (Apr. 18, 2012).

90. *Id.*

91. 7 C.F.R. § 210.21(a) (2009).

92. See generally 7 C.F.R. § 210.21 (2009).

93. See *Procurement Methods*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/cnd/f2s/Procurement.htm> (last visited Apr. 10, 2013).

94. See 7 C.F.R. pts. 210, 215, & 220 (2007).

95. *FAQs - Procurement*, *supra* note 83.

with local farmers fairly easily.<sup>96</sup> However, if a school food authority seeks to make a procurement of over \$100,000, it must use a formal process of public advertising and various options designed to encourage competition such as sealed bidding, competitive proposals, and negotiating.<sup>97</sup> Since schools may not split up purchases to artificially allow for more informal procurement processes, the rules tend to favor formal procurement.<sup>98</sup>

## 2. Procurement Laws Create Substantial Barriers for Local Farmers

Procurement is a clear limitation for local foods in schools. Curbing anti-competitive laws and initiatives has many positive consequences, particularly with regard to small farmers wanting to do business in other states. Currently, small, local farmers are likely to be forced to compete with large corporations that own farms, which can ship cheaper food that is not necessarily more nutritious. For instance, large, corporate-owned farmers can ship food from farther away when items are out of season and can provide more processed items that require less work from the school. Public schools bear the risk of balancing the USDA's encouragement to buy local, unprocessed foods with the USDA's requirement that all procurements be competitive.<sup>99</sup> Thus, large, competitive providers are more likely to win a school's bids due to the USDA's indeterminate line between acceptable local purchases and purchases that "unnecessarily restrict[] free and open competition" creates an incentive for schools to be conservative with procurements.<sup>100</sup> For the sake of cost-saving and avoiding problems with the USDA, the easiest solution is to purchase from low bidders, which are often not local, sustainably producing farmers.

As the FNS points out in much of its literature,<sup>101</sup> all procurement, even that of local foods, "must be conducted in a manner that provides maximum open and free competition."<sup>102</sup> This goal assumes that all farmers are on a level playing field to begin with, even though there are certain farms that have a leg up on others because of the ability to do business in multiple states. What may be fair from a business standpoint—meaning rote competition between whoever submits a bid—is not necessarily best when considering the value of doing business locally, the quality of food, or the health of the community and farmers surrounding the school. The FNS describes noncompetitive practices as, for example, "collusion between farmers."<sup>103</sup> However, in a local community, this sort of cooperating and partnering might be a welcome way to establish

96. *Id.*

97. *Id.*

98. *Id.*

99. See USDA Memo, Procurement Geographic Preference Q&As, 2 (Feb. 1, 2011), available at [http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP18-2011\\_os.pdf](http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP18-2011_os.pdf) (declining to define the geographic areas that would be considered local, but requiring purchasing institutions to "define local in a manner that unnecessarily restricts free and open competition").

100. See *id.*

101. See, e.g., U.S. DEP'T OF AGRICULTURE, EAT SMART - FARM FRESH! A GUIDE TO BUYING AND SERVING LOCALLY-GROWN PRODUCE IN SCHOOL MEALS 17 (2005), available at <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3101426&acct=wdmgeninfo>.

102. *Id.*

103. *Id.*

mutually beneficial relationships. FNS regulations on local procurement are intended to prevent food providers from manipulating bid prices and misusing school funding for food,<sup>104</sup> but they have not necessarily been successful in achieving these ends.

### 3. Solutions for Procurement

With the passage of the 2008 Farm Bill, Congress took another important step towards supporting local foods in schools by expressly permitting institutions that receive funds under the Child Nutrition Act to use a “geographic preference”<sup>105</sup> when procuring “unprocessed agricultural products, both locally grown and locally raised.”<sup>106</sup> The USDA clarified the provision in February of 2011, indicating that school food authorities and other institutions receiving the funds may specify a geographic area when purchasing foods, even if state law requires otherwise.<sup>107</sup> Consequently, the 2008 Farm Bill provides an important protection to participating institutions that choose to buy locally from challenges under the Dormant Commerce Clause.<sup>108</sup>

Another way that state or local governments—including schools using state or local government funds—can use local preferences without offending the Dormant Commerce Clause is by acting as “market participants.”<sup>109</sup> Instead of acting as regulators by creating mandates, states can act as market participants by inviting bids or proposals for large, formal procurements, or by contacting at least three potential providers for small, informal procurements.<sup>110</sup> These procedures ensure that schools conduct procurement “in a manner that maximizes full and open competition.”<sup>111</sup> If the procurement is above a certain dollar amount, it must be made using a formal process.<sup>112</sup> This process includes

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104. *Id.*

105. The “geographic preference” regulations under the Child Nutrition Program include: 7 C.F.R. § 210.21(g) (2011) (National School Lunch Program); 7 C.F.R. § 215.14a (2011) (Special Milk Program For Children); 7 C.F.R. § 220.16(f) (2011) (School Breakfast Program); 7 C.F.R. § 225.17(e) (2011) (Summer Food Service Program); 7 C.F.R. § 226.22(n) (2011) (Child and Adult Care Food Program).

106. 42 U.S.C. § 1758(j)(3); see Benefits of Farm-to-School Projects: Healthy Eating and Physical Activity for School Children: Field Hearing Before the S. Comm. on Agric., Nutrition, and Forestry, 111th Cong. 59 (2009) (statement of Cindy Long, Director, Child Nutrition Div., USDA) (testifying to the benefits of and assistance provided to schools using geographic preference in procuring local food for their child nutrition programs). The Director also explained what unprocessed agricultural products are, which include agricultural products that “retain their inherent character.” This includes ground beef, frozen bags of vegetables, and individually-portioned bags of vegetables, but not canned local vegetables.

107. Memorandum from U.S. Dep’t of Agric. on Procurement Geographic Preference to Regional and State Directors of Nutrition Programs (Feb. 1, 2011).

108. Although their procurements “must be conducted in a manner that maximizes full and open competition.” *Id.* at 6.

109. *White v. Mass. Council of Constr. Emp’rs*, 460 U.S. 204, 209–10 (1983) (“In making the determination whether a state is acting as a market participant or regulator, a court must examine whether the state or local government has imposed restrictions that ‘reach beyond the immediate parties with which the government transacts business.’”).

110. See Memorandum from U.S. Dep’t of Agric., *supra* note 107.

111. *Id.*

112. The level is determined by whichever level, federal, state, or local, is the most restrictive. *Id.*

using a scoring evaluation of either sealed or unsealed bidding in response to a publicly announced invitation for bid or request for proposal.<sup>113</sup> A school food authority may give local bidders extra points for meeting a geographic preference.<sup>114</sup> Below a certain dollar amount there may be an informal procurement.<sup>115</sup> This has significantly fewer requirements—a school food authority must contact at least three potential sources and evaluate the bidders' responses according to the school's written specifications and the price.<sup>116</sup>

While this process allows a school food authority to focus more on local bidders, making small purchases can be a challenge. To make small procurements, schools may not intentionally split orders to fall below the small procurement level.<sup>117</sup> However, a school food authority may specify particular requests that can make procurements smaller.<sup>118</sup> For example, a school may not split a procurement of meals arbitrarily in two, just to get it below the formal procurement threshold, but the school may specify that it needs apples and lettuce, as two separate procurements.<sup>119</sup> If the amount of the procurement falls below the large threshold, then the school food authority may use the informal procurement procedure and contact a local provider.<sup>120</sup>

## E. Subsidies and Entitlement Foods

### 1. Overview of Subsidies and Entitlement Foods

The goals of the NSLP are “to safeguard the health and well-being of all the nation's school children . . . and to encourage the domestic consumption of the nation's agricultural commodities.”<sup>121</sup>

In fact, the USDA gives cash subsidies and surplus commodities to schools that comply with federal nutritional guidelines and provide free and reduced meals to low-income children through the NSLP.<sup>122</sup> Because cash subsidies are limited, schools often purchase very cheap “entitlement” foods to stretch their already tight funds to provide meals at school.<sup>123</sup> During the fiscal year 2011-2012, entitlement foods were sold at 22.25 cents per meal.<sup>124</sup> Schools depend heavily on these foods, which comprise 15-20% of all federal school lunch

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Donald T. Cramer, Annotation, *Construction and Application of National School Lunch Act* (42 U.S.C.A. §§ 1751 *et seq.*) and *Child Nutrition Act of 1966* (42 U.S.C.A. §§ 1771 *et seq.*), 14 A.L.R. Fed. 634, 636-37 (1973).

122. *National School Lunch Program, Program Fact Sheet*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/cnd/lunch/> (last visited Apr. 10, 2013).

123. NAT'L ALLIANCE FOR NUTRITION & ACTIVITY, *USDA FOODS: COMMODITIES IN THE NATIONAL SCHOOL LUNCH PROGRAM 3*, available at [www.cspinet.org/new/pdf/commodities\\_fact\\_sheet.pdf](http://www.cspinet.org/new/pdf/commodities_fact_sheet.pdf) (last visited Apr. 10, 2013).

124. *National School Lunch Program*, *supra* note 122, at 2.

spending.<sup>125</sup> Schools may also get “bonus” foods, which comprise crops or commodities that are in agricultural surplus.<sup>126</sup> The USDA purchases both entitlement and bonus foods according to “prior year purchases, likely school needs, expectations of available funds, and any anticipated surplus or other market conditions [such as prices] in the coming year.”<sup>127</sup>

## 2. *Dumping Commodities into Child Nutrition Programs Is Part of the Problem*

Congress enacted the NSLA to ensure that the nutritional needs of children are met and to stabilize prices in the agricultural market. This dual nature has created problems such as limited nutrition in entitlement foods and idiosyncratic categorizations of foods that satisfy the nutritional requirements for school meals. These issues are the result of the unfortunate historical mingling of food subsidies, administrative capture by certain industries,<sup>128</sup> and the battle for federal advertising funds.<sup>129</sup>

Subsidies and entitlement foods that are provided by the USDA at much cheaper rates have a large impact on the kinds of foods that schools procure.<sup>130</sup> Child nutrition and national agriculture markets are at a crossroads. With a system that melds market interests in selling the cheapest, most abundant foods and schools’ food needs, entitlement and bonus foods will remain the same starchy, nutrition-poor foods that are over-abundant in the United States today. The low-income children most at risk for health problems associated with obesity and diabetes will continue to fall through the cracks of programs like FFVP and DoD Fresh, because these programs require schools to provide labor and equipment, and they drain schools’ entitlement funds.<sup>131</sup> Additionally, subsidies maintain stable and artificially low prices on commodity foods like corn, potatoes, and meats, which do not reflect the nutritional needs of adults, much less of children. Many children have diets that are heavy in meats and starches, with insufficient fresh fruits and vegetables, particularly because of the costs associated with these foods.

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125. NAT’L ALLIANCE FOR NUTRITION & ACTIVITY, *supra* note 123, at 3.

126. *Id.*

127. Food & Nutrition Serv., *White Paper, USDA Foods in the National School Lunch Program*, U.S. DEP’T OF AGRIC., [www.fns.usda.gov/fdd/foods/healthy/WhitePaper.pdf](http://www.fns.usda.gov/fdd/foods/healthy/WhitePaper.pdf) (last visited, April 20, 2013).

128. KATHERINE RALSTON ET AL., U.S. DEP’T OF AGRIC., *THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND, TRENDS, AND ISSUES 1* (2008); J. Amy Dillard, *Sloppy Joe, Slop, Sloppy Joe: How USDA Commodities Dumping Ruined the National School Lunch Program*, 87 OR. L. REV. 221, 223 (2009).

129. See Agricultural Marketing Adjustment Act, 7 U.S.C. § 608(6)(I) (2006); *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 494 (1997) (Souter, J., dissenting).

First, the Act authorizes paid advertising programs in marketing orders for over 25 listed fruit, nuts, vegetables, and eggs, but not for any other agricultural commodity. The list includes onion but not garlic, tomatoes but not cucumbers, Tokay grapes but not for any other grapes and so on. The selection is puzzling.

*Id.* (citations omitted).

130. Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and The Farm Bill*, 68 WASH. & LEE L. REV. 1699, 1704 (2011) (citations omitted).

131. See *Department of Defense Fresh Fruit and Vegetable Program*, *supra* note 71.

### 3. Solutions for Entitlement Foods

As the federal government has considered the various aspects, more emphasis has been given to the importance of local foods. In a recent hearing before the Senate Committee on Agriculture, Nutrition, and Forestry, the Secretary of Agriculture, Thomas Vilsack, made it clear that local food and farmers are very much at the center of the Department of Agriculture's plan to address childhood health in the future.<sup>132</sup>

In his testimony, the Secretary highlighted the USDA's intent to support markets that are already shifting toward serving local producers, recognizing that such entrepreneurial efforts hold great potential as tools to combat food deserts and other deficiencies in access to fresh foods.<sup>133</sup> The shift holds great promise in allowing low-income schools to avoid purchasing entitlement foods by building partnerships that provide resources and expertise from entrepreneurs and farmers.<sup>134</sup>

An important response to the problem of overly abundant, nutrition-poor entitlement foods has been to scrutinize the nutritional standards that schools should meet with every meal. Over the last ten years, the federal government's attention to foods in schools has shifted from the status quo of the previous decades to new approaches that are crafted with a close eye to helping children eat healthier foods. The USDA asked the Institute of Medicine of the National Academies ("the Institute") to evaluate the meals provided through the National School Lunch Program and School Breakfast Program in order to determine new measures that could make school meals "more consistent with the current understandings about the diet and health of the children of the United States."<sup>135</sup>

In its 2010 report, the Institute recommended ways to craft school meals that will "better meet the nutritional needs of children, foster healthy eating habits, and safeguard children's health."<sup>136</sup> Additionally, the Senate Committee on Agriculture, Nutrition, and Forestry has held hearings on child nutrition, some of which have focused on farm to school programs as a way to help schools implement the changes that the Institute has suggested.<sup>137</sup>

However, in addition to redefining the standards and nutrition goals for schools, the USDA needs to take a clearer stance on entitlement and bonus foods

132. See Healthy Food Initiatives, Local Production and Nutrition, *supra* note 88.

133. *Id.*

134. *Id.* at 9.

What all these efforts have in common is that they are creating economic opportunities for farmers and ranchers as just one part of a vibrant and diverse agricultural economy. USDA's efforts to support local and regional food systems are spurring job growth, providing access to healthy food, and keeping more farmers on their land and more wealth in rural communities.

*Id.*

135. INST. OF MEDICINE OF THE NAT'L ACADEMIES, NUTRITION STANDARDS AND MEAL REQUIREMENTS FOR NATIONAL SCHOOL LUNCH AND BREAKFAST PROGRAMS: PHASE I. PROPOSED APPROACH FOR RECOMMENDING REVISIONS 1 (Virginia A. Stallings & Christine L. Taylor eds., 2008), available at [http://www.nap.edu/catalog.php?record\\_id=12512](http://www.nap.edu/catalog.php?record_id=12512).

136. INST. OF MEDICINE OF THE NAT'L ACADEMIES, SCHOOL MEALS: BUILDING BLOCKS FOR HEALTHY CHILDREN (Virginia A. Stallings et al., eds., 2010), available at [http://www.nap.edu/catalog.php?record\\_id=12751#toc](http://www.nap.edu/catalog.php?record_id=12751#toc).

137. See Healthy Food Initiatives, Local Production and Nutrition, *supra* note 88.

in favor of children's health. The USDA cannot simply depend on the surpluses and prices in a particular season when deciding which foods children should eat the most at school. Nor can it point to the DoD Fresh and FFVP as filling the need for local, nutritionally-rich fresh fruits and vegetables. As discussed above, those programs do not have sufficient capacity to provide food to the schools that are most in need.<sup>138</sup> The USDA should allocate more funds to incentivize local farmers to grow fruits and vegetables and encourage partnerships between farmers and schools through the Child Nutrition Program and elsewhere.

The current health crisis makes it clear that children need more than the cheapest option on the market. However, it may be impossible for the USDA to divorce itself from its agricultural interests – after all, it is charged with ensuring the health of the country's agricultural markets. In this sense, it seems necessary for Congress to shift more of these programs to another agency, such as the Department of Education, or to an arm of the USDA that is more segregated from the interests of national agriculture markets and devoted to addressing the needs of children. As the wedge between national agricultural interests and child health becomes more pronounced and less manageable for a single agency, it becomes less sensible to allow the Child Nutrition Program to remain under the USDA's care.

#### **IV. PUTTING THE PIECES TOGETHER: GRASSROOTS APPROACHES TO OFFERING LOCAL FOODS IN SCHOOLS**

Looking ahead, an approach to building partnerships between local food producers and schools in low-income and minority communities should take into account the limitations that these communities face. The examples below provide a sense of the kinds of socially-minded approaches that may be necessary in low-income communities.

##### **A. The National Farm to School Network**

In addition to the efforts of the federal government, other groups have taken a major role in mounting a nationwide campaign to address school nutrition via local foods. One such group has been the National Farm to School Network, an instrumental tool for schools and local organizations who seek support through grant funding, research, and expertise.<sup>139</sup> In 2007, the Community Food Security Coalition ("CFSC"), supported by grants from The UPS Foundation and the Compton Foundation, conducted four major case studies on farm to school distribution systems across the United States.<sup>140</sup> The results of their work offers helpful insight for groups that are in the early stages of setting up a local food program in a school. The study focuses on the work of The Appalachian Sustainable Agriculture Project in western North Carolina, Farm to Table in rural New Mexico, City Harvest in New York City, and The Center for Food & Justice

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138. Fresh Fruit and Vegetable Program, 77 Fed. Reg. 10,983 (Feb. 24, 2012) (to be codified at 7 C.F.R. pts. 211 & 235).

139. KRISTEN MARKLEY ET AL., COMMUNITY FOOD SECURITY COALITION, DELIVERING MORE: SCALING UP FARM TO SCHOOL PROGRAMS 4 (2010).

140. *Id.*



in Southern California.<sup>141</sup> Each partner in the coalition is also an active member of the National Farm to School Network, which focuses on supporting community-based food systems, strengthening family farms, and improving student health by reducing childhood obesity.<sup>142</sup>

In North Carolina and the southeastern United States, the primary presence of the National Farm to School Network is at Growing Minds, a project of The Appalachian Sustainable Agriculture Project (“ASAP”).<sup>143</sup> The way that the program started is perhaps instructive for nascent efforts elsewhere. Growing Minds began as a response to concerns from local farmers in Yancey County who were losing their livelihood as tobacco-growers.<sup>144</sup> In an area where farmers’ markets and large produce purchasers are limited, rural western North Carolina posed a particular challenge to farmers who were seeking a new market for local foods. At the same time, Yancey County schools were struggling with high lettuce prices and other food costs.<sup>145</sup>

The staff at ASAP saw both needs and decided to try to address both problems with a single solution. In 2003, Harold and Sandra Davis, two former tobacco farmers, received a \$5,000 grant to expand their hydroponic system from the ASAP Transition Program, designed to help local farmers transition to new crops and keep their farms.<sup>146</sup> Also in 2003, the North Carolina Department of Agriculture made special grant funds available to schools for purchasing local foods.<sup>147</sup> The Davises began producing enough lettuce to feed the Yancey County school system, and thus began a mutually-beneficial relationship that has persisted for almost ten years.<sup>148</sup> Recognizing an opportunity to build on the momentum that the new relationships offered, ASAP and the Community Food Security Coalition applied to the USDA/Risk Management Agency for a grant that would fund a regional Farm to School workshop.<sup>149</sup> The workshop was instrumental in cementing the relationships that have sustained the program, bringing together Child Nutrition Directors from several school systems, farmers, extension agents, parents, and other stakeholders to talk about individual needs, limitations, and goals in bringing local foods into schools.<sup>150</sup> Growing Minds and the Farm to School program has expanded to include many other farmers who sell local produce to schools in several Western North Carolina counties, including schools in rural areas and Asheville City schools.<sup>151</sup>

Perhaps one of the most important lessons of ASAP and Growing Minds is that from the beginning the program was intended to meet the needs of the

141. *Id.* at 5.

142. *Id.*

143. *See id.* at 10.

144. *Id.*

145. ANUPAMA JOSHI ET AL., NATIONAL FARM TO SCHOOL PROGRAM, GOING LOCAL: PATHS TO SUCCESS FOR FARM TO SCHOOL PROGRAMS 20 (Feb. 1, 2007), available at [http://www.farmtoschool.org/files/publications\\_95.pdf](http://www.farmtoschool.org/files/publications_95.pdf).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *See id.*

151. *Id.* at 21.

people who formed the partnership.<sup>152</sup> Growing Minds was not just about local food in schools—it was the result of people recognizing needs for their children and their community and coming together to talk about it.<sup>153</sup> Through listening, discussing, and finding ways to efficiently meet those needs, the farmers and schools involved in Growing Minds have been able to use the skills and resources that were already available to benefit everyone. What these communities found was that they already had many resources, in the expertise of the farmers, in the school's ability to reach children, in the procurement funds that they had, and in the parents and administrators who wanted to engage in the discussion.

### **B. Where Do We Go from Here, and What About Low-Income Communities?**

Despite local food cultures being alive and well in certain parts of the country, the challenge remains for low-income communities. Bringing local foods into schools without an organization like ASAP, without a widespread agricultural culture, and with very tight budgets, is a difficult task.

For urban, low-income communities who are most in need of more nutritious and fresh foods, some of the structures of Growing Minds and ASAP do not translate because they come from a rural, agriculture-heavy area of North Carolina. In particular, low-income communities may need to do more work at the grassroots to build interest and awareness about obesity and nutrition issues.

In Milwaukee, Wisconsin, Will Allen, a former basketball player and farmer, saw families without fresh food and children struggling to engage in school. His response was to use his farming skills in the urban context to help families gain access to fresh foods by growing them.<sup>154</sup>

For Allen, the goal is not only to give students good food to eat, but also to use the community's untapped human resources to build young leaders, teach life skills, help low-income families learn about the importance of fresh foods and health, and educate farmers about various pertinent issues.<sup>155</sup> Allen's approach recognized that in order to build the support for local foods that the community needed, Growing Minds had to focus on building integrated, community-wide systems, as urban areas lack sufficient infrastructure to support isolated efforts for local foods.<sup>156</sup>

An urban farm, like a farm to school program or school gardening program, requires effort from administrators and precious resources. The success of these efforts will depend on the level of community support they have, which requires more than just putting a farmer and a school together at a table in a low-income, urban community. In Milwaukee, it meant that Growing Minds needed to develop a community food center, at which people engaged each other in conversation regularly. This process required training, hands-on demonstrations,

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152. *See id.*

153. *See id.*

154. *About Us*, GROWING POWER, [http://www.growingpower.org/about\\_us.htm](http://www.growingpower.org/about_us.htm) (last visited Apr. 10, 2013).

155. *Id.*

156. *Id.*

outreach, technical assistance, and a farmer with good people skills.<sup>157</sup> Growing Mind's success in urban Milwaukee is in part due to its recognition that it needed to start by community organizing. For schools in areas where people know little about local foods and have little time to consider the health crisis that their own children are struggling with, a discussion about bringing local foods in schools is a discussion about community organizing.

## V. CONCLUSION

For low-income, urban communities, local foods are both needed and harder to come by, but the evidence indicates that inaction is becoming less acceptable with every passing school year. Due to the variety of issues facing low-income communities, the strategies and goals for bringing local foods into schools in low-income communities will be unique, depending on the skills and resources that are available. There are several ways that laws and policies can improve to better support local foods in schools, and given enough support, administrative agencies and policymakers seem to be receptive to making those moves in the future. The most important catalyst is discussion. Identifying needs and resources together will provide an essential springboard for reaching a mutually beneficial solution for schools, farms, agencies, and communities.

The question that should be the centerpiece of the discussion is this: what brings each person to the table to talk about childhood health and local foods? For the mother who spoke passionately of her gardening work with children in her son's elementary school, it was motherhood, a concern for health, and a sense of social justice. For others, it may be an interest in improving student nutrition and education. For others still, the need may be to expand the local food market to provide for the local farm. All of these are important interests, and as communities like Asheville and Milwaukee continue to work together, healthy solutions that serve U.S. children, schools, farmers, and low-income communities can become more than just ideas that most schools cannot realize. They can become important staples in the healthy lives of children and their families.

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157. *See id.*