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Put Your Money Where Their Mouths Are: A Case for State-Based Investment in Anti-Shaming Policies for School Lunch Programs

Shayna Roth*

ABSTRACT

Despite its goals for feeding hungry students, the federal government's National School Lunch Program falls short due to a lack of guidance and resources. One consequence of these circumstances is shaming practices where schools use fear, punishment, and socioeconomic segregation tactics to mitigate meal price deficits. The federal government and several state governments attempt, and sometimes succeed, to enact legislation to improve school lunch programs, but efforts are few and far between. This Note draws on effective state laws to advocate for increased legislative action on school meals across all states, specifically addressing and prohibiting shaming practices. Eliminating this barrier to school meals will mitigate socioeconomic stratification in learning environments and better prepare students to engage intellectually with educational opportunities.

Keywords: school meals, school lunch, child hunger, National School Lunch Program, anti-shaming, Build Back Better Act, Healthy Meals Healthy Kids Act, free lunch, food insecurity

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INTRODUCTION

The National School Lunch Program (NSLP) launched in 1946 as part of President Truman's post-war welfare policy push.¹ At its core, the program sought to give students access to basic resources to help them achieve their full educational potential.² These ideas, however, did not pan out in practice.³ The evolution of the NSLP illustrates legislative frustration, political conflict, budgetary shortage, and misalignment of strategy and execution. The United States Department of Agriculture (USDA), the federal agency overseeing the federal Food and Nutrition Service and its programs, has made several efforts to create national standards for school meals but has provided neither specific guidance nor sufficient funds for schools to meet those standards. Successful school lunch service relies on several factors, including adequate nutritional value, sufficient time in a lunch period, subsidized costs for low-income students, proper kitchen equipment, outreach and enrollment, and program evaluation. While the USDA expects this ideal from schools, it provides minimal detailed information for doing so and little support. As a result, actual NSLP execution varies greatly between states and school districts.

This Note focuses on one byproduct of the program's deficiencies: lunch shaming in response to meal debt. Lunch shaming is the stigmatization of students who receive free or reduced-price meals (as opposed to those paying full price), or who fall behind on paying the balance for their lunch accounts, regardless of financial assistance. Shaming may occur institutionally or socially. Institutionally, school policies may force students to wear wristbands, sit at different tables, or receive lower-quality meals because of their free or reduced-price meal status. Socially, shaming often stems from the school policies, such as peer-to-peer bullying based on this segregation. Regardless of the source, shaming negatively impacts students' educational experiences.

Schools employ shaming practices in an attempt to induce payment or minimize the potential deficit incurred. Many shaming practices developed in response to meal debt accrued from students receiving free or reduced-price meals. "Meal debt" is the deficit in

¹ *National School Lunch Program: Feeding the Future with Healthy School Lunches*, U.S. DEP'T. OF AGRIC., FOOD & NUTRITION SERV., <https://www.fns.usda.gov/nslp#:~:text=Feeding%20the%20Future%20with%20Healthy%20School%20Lunches&text=It%20provides%20nutritionally%20balanced%2C%20low,President%20Harry%20Truman%20in%201946> (last visited Oct. 17, 2022); SUSAN LEVINE, *SCHOOL LUNCH POLITICS: THE SURPRISING HISTORY OF AMERICA'S FAVORITE WELFARE PROGRAM* 71–88 (2010).

² The program also sought to regulate domestic agriculture in the post-war era and used schools as dumping grounds for surplus products. LEVINE, *supra* note 1, at 71–88.

³ LEVINE *supra* note 1, at 89–104.

school lunch programs that occurs when federal reimbursement and student payments do not cover the school's spending per lunch. Students are generally served meals based on a credit system, which their families may not pay into because they are unable to or because of a school's failed collection efforts. Therefore, more meals are served than are paid for, and schools seek ways to recover losses against the deficit.

Several states recognized problematic repercussions from using shame as a response to meal debt and recently developed laws to fight shaming practices around student hunger. Unfortunately, most states neglect the issue, using what can only be understood as a "que sera sera" approach. Legislative action requires time, effort, and funds that may be difficult to allocate. However, prioritizing children's nutritional and emotional health is worth the effort; experts and the public alike recognize the benefits of proper education and nutrition for both individual children and the national future at large.⁴

This Note describes the status of school lunch program guidelines on shaming practices, reviews anti-shaming initiatives, and provides recommendations for improvement through state legislation. Each Part explores a different component of school lunch service and its regulations to collectively form realistic action items.⁵ Part I offers a brief history of the NSLP and its foundational value in federal welfare programming. Part II compares federal and state NSLP legislation and explains why state legislation is a preferable route for combating shaming practices. Part III further explains shaming practices, how they emerged in the national school lunch context, and the anti-shaming initiatives some states independently enacted to combat the harms. Lastly, Part IV provides recommendations for state legislatures, policymakers, advocates, and NSLP stakeholders to better their school lunch programs through anti-shaming policies.

I. HISTORY AND GOALS OF THE NATIONAL SCHOOL LUNCH PROGRAM

Congress created the NSLP in 1946, "as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food."⁶ This policy declaration reflects a desire to protect both (1) children's well-being and (2) domestic agriculture production. Hitting both objectives with one program may have seemed like a win-win opportunity, but as the school lunch program evolved, the need for a more narrowly catered strategy for nourishing children, independent of other economic needs, emerged.⁷ Bundling these objectives shallowly addressed both issues but denied

⁴ See generally STEVEN G. LIVINGSTON, *STUDENT'S GUIDE TO LANDMARK CONGRESSIONAL LAWS ON SOCIAL SECURITY AND WELFARE* (2002) (exploring the policy and socioeconomic implications involved in legislation targeted at protecting children, families, and impoverished groups).

⁵ "Systems thinking," which analyzes many prongs of a single issue, can lead to sustainable, meaningful change. Here, each section responds to a vital prong in anti-shaming legislation (program foundation, legislative capability, targeted behavior, and new opportunities) to assemble a comprehensive solution proposal. See, e.g., DUNCAN GREEN, *HOW CHANGE HAPPENS* 9–16 (2016).

⁶ Richard B. Russell National School Lunch Act, ch. 281, Pub. L. No. 79-396, 60 Stat. 230 (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j).

⁷ LIVINGSTON, *supra* note 4, at 71 ("Congress created the National School Lunch Program as "a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other foods"); LEVINE, *supra* note 1, at

opportunities for child nutrition to be properly (re)evaluated, analyzed, and improved. Without a comprehensive understanding of its systemic elements, the school lunch program failed to progress as intended.

The NSLP is no longer a tool for post-war agricultural regulation, but it maintains its original format. The federal government provides funds and nutritional guidelines for public schools throughout the nation.⁸ States and school districts determine the extent of their participation and individuals may choose to opt-in to their school's NSLP lunch program.⁹ If a school district is unable to provide lunch to eligible students, they are encouraged to contract with another school and will qualify for the same reimbursement rates.¹⁰ In theory, the NSLP ensures that children receive a healthy meal during the school day. Individual participation may be limited by schools' transparency and facilitation of the application process, but all students are entitled to, at minimum, apply, and at maximum, receive a free meal(s) depending on their personal and school-wide socioeconomic eligibility.

Child nutrition is imperative for educational success.¹¹ In 2020, the School Nutrition Association (SNA), a 75-year-old nonprofit organization "recognized as the authority on school nutrition,"¹² released a position paper underscoring school meals' significance on students' academic achievement and general health.¹³ The paper claims that "school meals are as critical to learning as teachers and textbooks."¹⁴ At the time of enactment, NSLP legislators focused on the "rehabilitati[ve]" abilities of school lunches

74 (a school lunch program was believed to be an "insurance policy in the event post-war agricultural prices began to fall," with such "draft legislation that would permanently authorize a national school lunch program as an outlet for surplus farm products"); *id.* at 93 ("The National School Lunch Program's political support stemmed as much from its central place in the Department of Agriculture's domestic agenda as from its claims regarding children's health.").

⁸ See, e.g., U.S. DEP'T. OF AGRIC., FOOD & NUTRITION SERV., THE NATIONAL SCHOOL LUNCH PROGRAM (Nov. 2017), <https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLPFactSheet.pdf>.

⁹ *Id.*

¹⁰ U.S. DEP'T. OF AGRIC., FOOD & NUTRITION SERV., MEALS SERVED TO STUDENTS PLACED IN SCHOOLS NOT PARTICIPATING IN THE NATIONAL SCHOOL LUNCH PROGRAM (Nov. 1, 2002), <https://fns-prod.azureedge.us/sites/default/files/resource-files/2002-11-1.pdf>.

¹¹ Jennifer LeBarre, Exec. Dir. of Student Nutrition Servs., S.F. Unified Sch. Dist., Address at the National Anti-Hunger Policy Conference: The Road to School Meals for All: Learning From California and Maine to Advance and Implement State Policy (Mar. 16, 2022) (referencing Maslow's hierarchy of needs to demonstrate how students cannot reach their intellectual potential if their basic needs, such as being fed, are not met first); Michael L. Anderson, Justin Gallagher, & Elizabeth Ramirez Ritchie, *How the Quality of School Lunch Affects Students' Academic Performance*, BROOKINGS: BROWN CTR. CHALKBOARD (May 3, 2017), <https://www.brookings.edu/blog/brown-center-chalkboard/2017/05/03/how-the-quality-of-school-lunch-affects-students-academic-performance/> ("A lengthy medical literature examines the link between diet and cognitive development, and diet and cognitive function" and describes their study attempting to show "direct evidence on how nutrition impacts educational achievement.").

¹² *About Us*, SCH. NUTRITION ASS'N, <https://schoolnutrition.org/about-us> (last visited Oct. 24, 2022).

¹³ SCH. NUTRITION ASS'N, 2020 POSITION PAPER (2020), <https://schoolnutrition.org/wp-content/uploads/2022/06/2020-Position-Paper.pdf> [hereinafter 2020 POSITION PAPER].

¹⁴ *Id.*; see also Luis Guardia, *USDA Makes Way for New School Nutrition Standards*, FOOD RSCH. & ACTION CTR. (Feb. 4, 2022), <https://frac.org/news/newschoolnutritionstandardsfeb2022#:~:text=In%20fall%202022%2C%20USDA%20will,the%202024%E2%80%932025%20school%20year> (mentioning increased test scores); Anderson, Gallagher, & Ramirez Ritchie, *supra* note 11; LIVINGSTON, *supra* note 4 at 180 ("Malnutrition during the first years of life irreversibly impairs both physical and mental development.").

on children, particularly those from impoverished homes, by acknowledging that a well-fed tummy could lead to a well-fed, learning-capable mind.¹⁵ That is, providing poor children with proper nutrition helps their intellectual engagement and skill acquisition in the classroom, which are two essential elements for entering the workforce and breaking out of poverty.¹⁶ The skills-based and self-sufficiency focus of the original school lunch program largely aligned with other welfare policies of the mid-1900s, such as disability rights, Social Security Act expansions, and the establishment of Medicaid and Medicare.¹⁷ These public assistance programs aimed to function as springboards into independent life.¹⁸

However, the NSLP's design was far from flawless. As with all welfare programming, legislators sought to regulate at arm's length. They demonstrated an intent to address a social need while protecting themselves and their privileged constituents from the risks welfare programs carry. Social welfare programs are associated with widespread skepticism for allocating labor and financial resources toward programs perceived as vulnerable to fraudulent and illegal behaviors by benefit recipients.¹⁹ Many taxpayers and legislators feared that individuals in need of financial assistance were unable to care for themselves and would inevitably misuse public funds. This skepticism indicates an early foundation for shaming practices, which will be discussed in more detail in Part II. This approach to welfare conceptually conflicts with the purpose of welfare programming and imposes unfair assumptions onto those in need.²⁰

Unsurprisingly, the taxpayers' and legislators' skepticism of funding, coupled with issues stemming from vague government guidelines and execution, prevented well-meaning intentions from taking effect in schools. The NSLP delivered an idyllic goal to appease the public's demand for assistance but lacked practical action items, execution information, and enforcement measures. The law promised to assist states "through grants-in-aid and other means" without defining what those other means were or how to obtain them.²¹ Furthermore, despite updated legislation in 1994 and 2004, which laid out more specific dietary guidelines and wellness policies, respectively, school districts nationwide continue(d) to fall short of the nutrition, service quality, and quantity benchmarks necessary to meet students' needs.²² In short, schools struggle to carry out the program without clearer guidance and available funding from the governmental body

¹⁵ LIVINGSTON, *supra* note 4, at 106.

¹⁶ *Id.* at 106–07.

¹⁷ *Id.* at 106–09.

¹⁸ *Id.*

¹⁹ *Id.* at 127–31.

²⁰ Eric Schnurer, *Just How Wrong Is Conventional Wisdom About Government Fraud?*, ATLANTIC: POLS. (Aug. 15, 2013), <https://www.theatlantic.com/politics/archive/2013/08/just-how-wrong-is-conventional-wisdom-about-government-fraud/278690/>.

²¹ Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, § 2, 60 Stat. 230, 230 (1946) (codified as amended in scattered sections of at 42 U.S.C.).

²² KATHERINE RALSTON, CONSTANCE NEWMAN, ANNETTE CLAUSON, JOANNE GUTHRIE, & JEAN BUZBY, U.S. DEP'T. OF AGRIC., ECON. RSCH. SERV., *THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND, TRENDS, AND ISSUES* 6 (July 2008), [https://www.ers.usda.gov/webdocs/publications/46043/12051_err61_1_.pdf?v=0#:~:text=The%20National%20School%20Lunch%20Program%20\(NSLP\)%20was%20established%20under%20the,and%20other%20foods.%E2%80%9D%20The%20NSLP](https://www.ers.usda.gov/webdocs/publications/46043/12051_err61_1_.pdf?v=0#:~:text=The%20National%20School%20Lunch%20Program%20(NSLP)%20was%20established%20under%20the,and%20other%20foods.%E2%80%9D%20The%20NSLP;); Ilana L. Linder, "Hangry" for School Lunch Guidance, 48 J.L. & EDUC. 215, 215 (2019).

mandating it. An effective welfare program requires a robust strategy beyond dollar bills thrown its way.²³

At its core, the federal government funds the NSLP. However, the funding needed to execute this program in every school in the United States exceeds the amount allotted by the federal government. Consequently, individual states, districts, and schools are often cornered into filling the financial gaps for their lunch program needs.²⁴ Lunch program budgets account for the food served, salaries for employees preparing and distributing the food, and kitchen equipment, among other components. NSLP funding comes earmarked for certain purposes, so it cannot be used at the school districts' discretion to cover these costs.²⁵ A child may receive a free lunch (and maybe breakfast) through the NSLP if they (1) are from a family below a certain income threshold or (2) attend a school qualified under the Community Eligibility Provision (CEP). That is, eligibility may be based on individual or schoolwide socioeconomic status, respectively. 67ed-price meals. Others may not apply due to a lack of information or qualify for any financial assistance at all, despite experiencing food insecurity to some extent.²⁶

In the 2019-20 school year, 24.5 million students participated in the lunch program, of which 17.7 million received free meals and 1.2 million received reduced-price meals (the rest paid full price).²⁷ In the 2018-19 school year, before the COVID-19 pandemic shifted economic factors and physical school accessibility, over 28 million students received lunch through the NSLP on any given day.²⁸ In that year, 19.9 million students

²³ LIVINGSTON, *supra* note 4, at 103–05 (describing how Social Security efforts did not become automatically successful once a larger budget was allocated, and a greater budget may have impeded the effort by “politiciz[ing] the program.” This led to issues distinguishing the “deserving poor,” who were worthy of government support, from individuals who were allegedly relying on federal monies to support objectionable lifestyles.).

²⁴ FOOD RSCH. & ACTION CTR., CHILD NUTRITION REAUTHORIZATION: SCHOOL MEALS DEBT 1 (Jan. 2020), <https://frac.org/wp-content/uploads/cnr-addressing-school-meals-debt.pdf>.

²⁵ See generally Richard B. Russell National School Lunch Act §§ 3–4, 7–8, 12, 22 (explicitly stating acceptable use(s) of funds); Zachary B. Wolf, *The Government Already Knows How to End School Lunch Shaming*, CNN (May 12, 2019, 4:08 PM), <https://www.cnn.com/2019/05/12/politics/school-lunch-shaming-children-debt/index.html> (“[D]istricts cannot use federal school nutrition funds to pay down students’ lunch debt, according to USDA guidance.”).

²⁶ This disconnect between lunch program qualifications and socioeconomic status also comes up in the context of program enrollment barriers; many food-insecure students do not receive support because they have not applied to the program. Students and families may not apply for lunch programs because they do not know about the program, out of fear of deportation if their undocumented status is discovered through a federal assistance program, etc. See also LeBarre, *supra* note 11 (“40% of food insecure children are not eligible for free meals”); *Child Nutrition Programs Income Eligibility Guidelines (2022-2023)*, U.S. DEP’T. OF AGRIC., FOOD & NUTRITION SERV. (Feb. 17, 2022), <https://www.fns.usda.gov/cn/fr-021622> (Household income-based eligibility varies by household size and federal poverty guidelines each year; generally, an annual income equal to or less than 185% of the federal poverty line qualifies a family for reduced-price lunch and an annual income equal to or less than 130% of the federal poverty line qualifies a family for free lunch. A family of four in the 2022-2023 school year qualifies for reduced-priced meals if their annual income equals or is less than \$51,338 and for free meals if their annual income equals or is less than \$36,075 (numbers vary slightly for non-continental states Alaska and Hawaii but are comparable). Therefore, families who make more than \$51,338 annually but still experience food insecurity are not eligible for any school lunch assistance. *Id.*

²⁷ FOOD RSCH. & ACTION CTR., THE REACH OF BREAKFAST AND LUNCH: A LOOK AT PANDEMIC AND PRE-PANDEMIC PARTICIPATION 5 (Feb. 2022), <https://frac.org/wp-content/uploads/SchoolMealsReport2022.pdf> [hereinafter THE REACH OF BREAKFAST AND LUNCH].

²⁸ *Id.*; Hayley E. Lakin, *Analysis of The National School Lunch Program*, 18 PRAXIS 31, 31 (2018).

received a free meal, 1.6 million received a reduced-priced meal, and 7.1 million paid in full.²⁹ The impacts of COVID-19 and school closures, temporary eligibility waivers for free meals, and community efforts to feed anyone hungry confound data for the 2020-21 school year. Yet, participation remained colossal at nearly 19.8 million students on an average day, of which almost 19.6 million received a fully free lunch.³⁰ The overwhelming majority of NSLP beneficiaries are students who qualify for, receive, and rely on free meals.

Numerous factors, demanding various financial and human resources, block optimal NSLP participation. These include, but are not limited to, confusion about eligibility, the volume of paperwork necessary to enroll, stigma around welfare program participation, lunch period duration (whether a child has enough time to be served and eat enough food), and other national crises beyond schools' control (i.e., building closures during the COVID-19 pandemic, supply chain shortages, staffing challenges, etc.).³¹ Several school districts, state administrators, and scholars call on the federal government for guidance on best NSLP practices, including financial models for student payment plans, food inventory and orders, nutrition information, kitchen equipment and management, and outreach and enrollment tools. A more standardized approach may support public schools already bogged down with other funding troubles. Congress and the USDA have significantly more funding and programming resources at their fingertips than any public school.

Many school administrators voice complaints about the lack of USDA guidance, claiming it causes “inequity and inconsistency” among students and schools.³² Education professionals claim streamlined regulations are more cost-effective, and clearer policies would allow school nutrition professionals to focus time and resources on improving service practices, such as addressing lunch shaming.³³ A brief window of visibility into shaming practices opened in 2017 when several state legislatures and Congress raised bills on the topic.³⁴ Very little action followed those proposals, though. The next Part explores federal and state governments' potential for reform.

II. FEDERAL AND STATE GUIDANCE

As described above, the federal government provided a skeleton, at best, for what the NSLP should look like in cafeterias where meals are prepared for students with varying financial needs to refuel each afternoon.³⁵ The USDA's nationwide guidance is bogged down by political battles, funding concerns, and legislators' inability to address

²⁹ THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 5.

³⁰ *Id.* at 3, 5, 8.

³¹ 2020 POSITION PAPER, *supra* note 13; THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8.

³² Lindner, *supra* note 22, at 215–16; 2020 POSITION PAPER, *supra* note 13; THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 7 (explaining how and why “waivers have been a tremendous help for all schools. The simplified documentation (all free) and point of service procedures have helped school sites operate more efficiently in difficult/extreme times”). In general, clear guidance on how documentation can be presented and who the points of contact are for enrollment procedures are effective ways to eliminate some of the barriers to entry. However, seeking this information out may be confusing and/or shameful for individuals/families. *Id.* at 6, 8–9.

³³ Linder, *supra* note 22, at 215–16.

³⁴ See *infra* Appendix; see *infra* notes 75, 77–78, 87.

³⁵ Breakfasts and after school snack programs are not included in the scope of this paper.

particular needs of every school district under the same laws.³⁶ The latter is not necessarily their fault. While elected federal officials could be better informed and advocate for their constituents' needs on this topic, regulating the unique demands of tens of thousands of school districts is nearly impossible to accomplish through a single umbrella bill.³⁷ The USDA asserts, "rather than adopt a Federal policy, [we] determined a local approach would work best for schools," and provides a full slide deck presentation, "Local Meal Charge Policy," on their website as a template for school districts to use in their own communities.³⁸ So, for more proximate action, we turn to the States.

States currently hold lots of power to execute NSLP programming because the federal government punts the execution details to them without heavy guidance or limitations. A push toward state responsibility is not new; in the early 1970s, Congress created a subdivision of the food stamp program specifically for Women, Infants, and Children (WIC).³⁹ This assistance program, like the NLSP, "called for federal funding" but planned for "the actual program [to] be run by the states."⁴⁰ The decentralized execution created chaos and inefficiencies across the various methods that states employed.⁴¹ Both WIC and NSLP programming suffer from inconsistent distributions of federal resources, oftentimes raising questions of discrimination or civil rights violations in racially segregated southern districts or particularly poor schools within wealthier districts.⁴²

While making states assume this responsibility may seem unfair, it carries tremendous possibility for creative and responsive action. State legislatures are positioned to address the unique needs of school districts under their jurisdiction.⁴³ States often enact and enforce education and nutrition-related legislation more efficiently than the federal government by allocating funds toward initiatives they deem valuable for their constituents' welfare more quickly and pointedly.⁴⁴ This, largely credited to state

³⁶ At the 2022 National Anti-Hunger Policy Conference, several government officials spoke about approaching anti-hunger initiatives from an interdisciplinary approach. *E.g.*, @fracttweets, TWITTER (Mar. 15, 2022, 10:46 AM), <https://twitter.com/fracttweets/status/1503759590093111301> ("To make sure Americans can put food on the table, we need the entire federal government at the table") (citing statement of Susan Rice, Director of the Domestic Policy Council of the United States); @foodbanknews2, TWITTER (Mar. 15, 2022, 11:22 AM), <https://twitter.com/FoodBankNews2/status/1503768687089975298> ("#hungerpc22 is showcasing FIVE cabinet secretaries, hitting home the point that addressing nutrition and food insecurity will require an ALL-government effort.").

³⁷ Maya Riser-Kositsky, *Education Statistics: Facts About American Schools*, EDUC. WEEK (Jan. 17, 2023), <https://www.edweek.org/leadership/education-statistics-facts-about-american-schools/2019/01> ("There are 13,452 regular school districts in the U.S. (2018–19[.]).").

³⁸ U.S. DEP'T OF AGRIC., LOCAL CHARGE POLICY TRAINING TEMPLATE: TECHNICAL ASSISTANCE & GUIDANCE (Nov. 7, 2018).

³⁹ LIVINGSTON, *supra* note 4, at 179–85.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² LEVINE, *supra* note 1, at 91.

⁴³ See Lakin, *supra* note 28, at 33; Anna Korsen, Advoc. Dir., Full Plates Full Potential, Presentation at the National Anti-Hunger Policy Conference: The Road to School Meals for All: Learning From California and Maine to Advance and Implement State Policy (Mar. 16, 2022) (explaining how people are generally most comfortable reaching out to their school boards with concerns about this sensitive issue, how school boards convey feedback directly to their contacts in the state government, and how this approachability aspect is important to maintain).

⁴⁴ See Lakin, *supra* note 28, at 33–34.

governments' closer proximity to school districts, situates states to develop an extensive understanding of school-specific needs and policies.⁴⁵ Moreover, states are better situated to act quickly, and time is of the essence in circumstances impacting children's health and intellectual development.⁴⁶

Further, because state-level programming is smaller scale than federal-level programming, its enforcement and adjustability are typically quicker. As demonstrated in the next Part, several states have taken initiative to enact school lunch program laws, and if successful, may provide a framework for broader, more durable national legislation in the future. At the very least, the state laws can provide data for what did and did not work and what is worth or not worth transferring to a larger scale. These local NSLP policies are steppingstones to national policies.⁴⁷

III. SHAMING AS A RESPONSE TO LUNCH DEBT

Shaming practices take many different shapes and forms, depending on the circumstances they are employed in. Schools use shaming practices for financial purposes, to meticulously keep track of who is paying how much for which meal(s); organizational purposes, to facilitate serving different kinds of meals to students paying different amounts; and behavioral reasons, as a tactic for leveraging social embarrassment or fear to induce payments. Clearly, shaming practices do not align with the student-welfare oriented policy goals of the NLSP. This Part will explore how shaming practices came to be, the various types of meal shaming practices, and how these practices are harmful for students.

A. Emergence of Shaming Practices

Lunch shaming is a practice in which schools, students, and administrators treat students with subsidized meals or meal debt differently than students without. Shaming practices emerged for a variety of logistical, organizational, and stigmatizing purposes as schools developed their lunch programs and sought to recover meal debt. Government officials and agencies are aware of this mistreatment, exhibited by fact sheets and presentation slides available on their websites addressing meal shaming practices.⁴⁸ This

⁴⁵ See, e.g., SARAH WU, FED UP WITH LUNCH (2011).

⁴⁶ Korsen, *supra* note 43 (“We really need to emphasize the urgency of the situation . . . there are hungry children right now.”).

⁴⁷ Colin Schwartz & Margo G. Wootan, *How a Public Health Goal Became a National Law*, 54 NUTRITION TODAY 67, 70 (2019); LIVINGSTON, *supra* note 4, at 210 (“The National Governors’ association drafted a program based on these state models”); Luis Guardia, President, Food Rsch. & Action Ctr., Remarks at the Opening Plenary Session at the National Anti-Hunger Policy Conference (Mar. 15, 2022) (praising states who have taken action toward larger national goals: “As we press for these national policies, we are inspired to see some states, such as Maine and California, lead the nation by making healthy #schoolmeals4all a permanent part of the school day”); see also Lindsey Turner, Julien Leider, Elizabeth Piekartz-Porter, Marlene B. Schwartz, Caitlin Merlo, Nancy Brener, & Jamie F. Chriqui, *State Laws are Associated with School Lunch Duration and Promotion Practices*, 118 J. ACAD. NUTRITION & DIETETICS 455, 461 (2018) (demonstrating how state laws pertaining to other aspects of the NSLP have proven effective).

⁴⁸ See *Unpaid Meal Charges*, U.S. DEPT. OF AGRIC., FOOD & NUTRITION SERV. (Nov. 7, 2018), <https://www.fns.usda.gov/cn/unpaid-meal-charges>.

acknowledgment is only as useful as the change it triggers, and, so far, little government action has followed.

The USDA acknowledges that “lunch shaming occurs in some schools” and has “consistently discouraged these tactics.”⁴⁹ It published a worksheet intended to “provide[] strategies schools can use to prevent lunch shaming through their communication methods.”⁵⁰ Communication strategies are particularly useful for channeling finance-related conversations to parents rather than to students, so children are not subject to embarrassment in school. The worksheet discourages physical identification and separation of students with meal debt and gently reminds educators that written notes or phone calls home to parents are more appropriate methods of communication for this sensitive issue.⁵¹ Other materials from the USDA’s resource bank similarly acknowledge the struggles schools face recovering meal debt, but provide flimsy, abstract advice for overcoming them.⁵² For example, one of the first assertions in a packet titled “Overcoming the Unpaid Meal Challenge” states, in bold, that “no later than July 1, 2017, all school food authorities (SFAs) operating the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) must have a written unpaid meal charge policy.”⁵³ While requiring a written policy is a useful step, its existence alone will not alleviate the issues it addresses. Policy development requires, among other things, empirical data, professionals’ time, and votes. Policy enactment and enforcement are two entirely separate processes, neither of which are operable if schools simply “have a written unpaid meal charge policy” in place without the other infrastructure to hold it up.

While this acknowledgment is important, and communication strategies have potential to mitigate shaming, this is a tone-deaf response to a highly complex challenge. A hard-to-find source sheet is, at best, a bandage solution to a problem more deeply rooted in unsupportive USDA policy. Changing how schools communicate about lunch debt relieves neither the debt nor the shame a family unable to pay might experience. States and school districts need resources and guidance to prevent lunch debt from accruing at all so there is no basis for shaming practices to stand on.

B. Financial “Rationale” for Shaming

When students with partially subsidized or non-subsidized meal accounts do not pay back the balance owed on their meals served, school districts face debt. In response, individual schools and school districts have developed their own methods to fill the gap. Unfortunately, without statutory guidance from Congress or policy guidance from the USDA, shaming emerged as a technique underlying payback initiatives. In addition to the logistically problematic and health-concerning consequences of shaming practices is the

⁴⁹ U.S. DEPT. OF AGRIC., PREVENTING LUNCH SHAMING: COMMUNICATION STRATEGIES (2018).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., OVERCOMING THE UNPAID MEAL CHALLENGE: PROVEN STRATEGIES FROM OUR NATION’S SCHOOLS (May 2017), <https://fns-prod.azureedge.us/sites/default/files/cn/SP29-2017a2.pdf>. Importantly, these resources are buried in webpages and were very difficult to find in my targeted research. Not only are the materials unhelpful, but also largely invisible.

⁵³ *Id.* at 5.

devastating truth that educators, administrators, and legislators are undermining the positive growth environments for children they are supposed to create.⁵⁴

Food is expensive, an issue exacerbated by corporations' financial appetite in competitive industrial markets, which drives up school lunch prices and reduces ingredient availability.⁵⁵ In *Fed Up with Lunch*, Sarah Wu describes how her time working at Kraft foods taught her about the increasing costs schools face as a result of corporate pressures their contracted food service providers face.⁵⁶ She explains how food consumption can be graphed as a straight line, meaning that children generally do not eat more today than they ate yesterday. However, the companies that contract with schools must show sales growth and thus impose overproduction, overpricing, smaller quantity packages, and other production-changing tactics to reach these market goals.⁵⁷

The sheer volume of products schools order keeps food supply companies interested in their business, even though broken-down meal costs may seem trivial. Wu explains the cost of a meal at the school she worked at (after leaving Kraft) was worth about \$2.74 for federal reimbursement purposes, but the aggregate amount for all students added up to millions of dollars.⁵⁸ Schools are incentivized to contract with monster food companies because of the quality and quantity cost-effectiveness they can provide (as opposed to knock-offs or smaller brands).⁵⁹ Companies want to contract with schools to get brand recognition and hopefully initiate loyalty with millions of children at their most influential time of development.⁶⁰ These are just a few of the factors contributing to schools' NSLP expenses, which increase pressure on schools to change their efforts to offset costs.

Two of the main critiques of the NSLP shaming practices are (1) the delivery of meals and (2) the stigma resulting from it.⁶¹ Schools fall short in these ways because "districts serving the poorest students lack the additional resources to be able to cover the costs of unpaid meal debt and therefore have a greater incentive to utilize whatever practices necessary, including shaming behaviors" to ensure they recover funds.⁶² To resolve this issue, legislation must address the funding conflict.

C. Organizational "Rationale" and Practices for Shaming

Shaming practices manifest differently amongst different communities. Specific shaming practices often adjust for the demographics of the student body, demographics

⁵⁴ Lakin, *supra* note 28, at 34 ("[T]he elimination of possible error or stress is important because children's environment, including interaction with parents and school systems, needs to be as safe and stress free as possible"); *see also* McLaurin v. Okla. State Regents for Higher Educ., 339 U.S. 637, 641 (1950) (holding that physical separation "impair[s] and inhibit[s]" students from their "ability to study, to engage in discussions and exchange views with other students"); Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954) (holding that students are deprived of intangible aspects of public education when physically segregated from others).

⁵⁵ Wu, *supra* note 45, at 74–81.

⁵⁶ *Id.*

⁵⁷ *Id.* at 72–75.

⁵⁸ *Id.* at 75.

⁵⁹ *Id.* at 72–79.

⁶⁰ *Id.* at 76 (also mentioning that "school districts sign school food contracts with for-profit companies for millions of dollars").

⁶¹ Lakin, *supra* note 28, at 33.

⁶² Linder, *supra* note 22, at 232.

of the faculty and staff who manage NSLP execution, food distribution, debt collection processes at a given school or district, and amount of resources allocated toward these initiatives. Unfortunately, many schools' shaming practices resemble one another because, as schools figured out how to separate paying and nonpaying students to ease their food distribution and debt collection methods, other schools followed suit.⁶³ This physical separation, and consequential shaming, often occurs as a byproduct of these organizational efforts.

One kind of organizational shaming occurs generally in "mixed" schools, where the CEP does not apply.⁶⁴ That is, some students qualify for free or reduced-price lunches, and others do not, creating a mixture of categorical differences among students. Therefore, the stigma in mixed schools arises from the mere fact that they are mixed. When every student qualifies for a free lunch, socioeconomic status is less visible, and students may not feel stigmatized for taking advantage of free lunch if many others do too.

Another kind of organizational shaming arises from school-based policies for students with various paying abilities. Schools may distinguish their free lunch or reduced-price lunch qualifying students from each other and those expected to pay full price in a variety of ways, including, but not limited to, (a) serving different foods to each group (sometimes referred to as a "stigma sandwich"⁶⁵), (b) separating the cafeteria so each group is siloed into eating with others in their group, or (c) requiring students in free and reduced-price lunch groups to wear a wristband identifying their status. School administrators enjoy discretion for enacting other actions toward this goal as well. These practices are adopted to prevent debt accrual and ease organizational logistics. In turn, they segregate young children based on their families' socioeconomic status, lay a foundation for stigmatization, and attach embarrassment to eating lunch.

D. Behavioral Shaming Practices

Shaming practices go beyond physical separation at lunch tables. Students with unpaid balances for reduced-price or full-price meals may also be subject to behavioral shaming. School districts employ many of the same tactics in this case as in organizational shaming, such as serving different foods and visibly marking students with wristbands or stamps. However, additional measures are taken to shame indebted students, such as requiring students to do chores to offset costs (such as cleaning the cafeteria or other areas of the school), throwing away their meals, cutting off access to certain school resources, and blocking graduation ability.⁶⁶ One school in Pennsylvania

⁶³ Anna Karnaze, *You Are Where You Eat: Discrimination in the National School Lunch Program*, 113 NW. U. L. REV. 629, 657–60 (2018).

⁶⁴ For more information about the Community Eligibility Provision (CEP), see THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8–9.

⁶⁵ Janet Poppendieck, Senior Fac. Fellow, C.U.N.Y. Urb. Food Pol'y Inst., Presentation at the National Anti-Hunger Policy Conference (Mar. 15, 2022). Dr. Poppendieck, in addition to her title as a Senior Faculty Fellow at the C.U.N.Y. Urban Food Policy Institute, is a Professor Emerita of Sociology at Hunter College in New York.

⁶⁶ Wolf, *supra* note 25; Joshua Bote, *California Plans to End "Lunch Shaming" with a New Bill That Guarantees Meals for All Students*, USA TODAY (Oct. 14, 2019, 2:24 PM), <https://www.usatoday.com/story/news/nation/2019/10/14/california-signs-bill-end-lunch-shaming-meals->

sent home letters threatening parents with child neglect claims and foster care evaluation in Dependency Court if they did not pay the school meal balance.⁶⁷ Although this letter was later revoked (recognizing “the foster care system should not be [used] to ‘terrorize’ people into paying their lunch debt”), the situation highlighted the school’s debt load, the extent to which schools employ fear tactics to induce school lunch payments, and the widespread confusion and inconsistencies surrounding payment and enforcement policies.⁶⁸

E. Shaming Practices are Harmful to Students’ Nutritious and Academic Success

Shaming practices, particularly as they manifest in physical separations in lunchrooms based on a family’s ability to pay, are harmful in many ways. First, shaming practices impact students socially. Social workers found that nearly 20% of high school students were more likely to eat school lunch(es) if their peers did,⁶⁹ and a school in Maine saw a 300% increase in NSLP participation when it offered universal free meals.⁷⁰ This data shows a flaw in NSLP delivery because many students would rather not eat lunch than be labeled as poor. Further, this data indicates that the need for effective lunch programs is likely broader than we, as a society, believe it to be. When free meals are offered, hidden needs are revealed, and children are more likely to take advantage of the program when the shame around it is removed.⁷¹

IV. USING LEGISLATION TO COMBAT LUNCH SHAMING

Lunch shaming calls for legislative action to prevent the inappropriate treatment of students. Without shaming practices burdening meal accessibility, students will receive greater nutritional value from the NSLP, social value from integration with peers, and academic value from cognitive preparedness. The harms are too significant to write off as an unintended consequence. Fortunately, several states have already codified their opposition to lunch shaming practices. Though the USDA acknowledges that federal

all-students/3972897002/ (“The phenomenon of ‘lunch shaming’ students nationwide, which has included taking away meals on students’ birthdays, firing cafeteria employees and threatening to send students to foster care – has drawn ire from parents, fellow students and business owners in recent months.”).

⁶⁷ Derrick Bryson Taylor, *Children Face Foster Care Over School Meal Debt, District Warns*, N.Y. TIMES (July 20, 2019),

<https://www.nytimes.com/2019/07/20/us/school-lunch-bills-overdue-payment.html> (describing how a school district in Pennsylvania sent letters home with students, and such letters made illegitimate claims about sending parents to Dependency Court for “neglecting your child’s right to food . . . [and] the result may be your child being removed from your home and placed in foster care.” The confusion around the letter’s validity and subsequent revocation added to parents’ uncertainty and fear about their child’s safety).

⁶⁸ *Id.*

⁶⁹ Lakin, *supra* note 28, at 33; *see also* LeBarre, *supra* note 11.

⁷⁰ Heather Whitaker, Alt. Educ. Tchr., Gotham Middle Sch., Presentation at the National Anti-Hunger Policy Conference: The Road to School Meals for All: Learning from California and Maine to Advance and Implement State Policy, (Mar. 16, 2022). “Eat school lunch” may refer to a free, reduced-price, or full-priced meal; the stigma here is around participation in the NSLP at all, rather than the individuals’ ability to pay. Widespread refusal to participate results in a clearer distinction of children needing free lunch (and thus arises the potential for shaming, etc.).

⁷¹ *Id.*

legislation responding to lunch shaming has generally proven hard to pass, the issue has recently garnered more attention in the proposed Build Back Better Act (BBB) and Healthy Meals, Healthy Kids Act (HMHK) provisions.⁷² Subparts A and B discuss state-level progress, proposals, and areas for potential federal action, respectively.

A. *State-Level Response(s) to NSLP Shaming Data*

In 2019, CNN reported on the widespread use of shaming tactics and how states were starting to take legislative action.⁷³ CNN's coverage emphasized both the newness of the anti-shaming battle and the space for school districts and states to step up where federal legislation lags.⁷⁴ In addition, a few NSLP anti-shaming bills have crossed Congresspeople's desks in the past few years, most recently in 2017 and 2019.⁷⁵ The bills are so far unaddressed after initial introductions in the Senate and House. The proposed regulations illustrate the food service problems, but the failure to pass the bills into law illustrates the unreliability and untimeliness of a federal solution.

Some state governments initiated their own legislation in recent years, making huge strides toward increasing action on this issue.⁷⁶ State laws addressing shaming practices demonstrate the need for policy development to (1) prohibit shaming practices by law, (2) assist families enrolling in the meal program, (3) provide appropriate methods for good-faith debt collection efforts, and (4) actively promote anti-stigmatizing practices. These states have not excused or ignored meal debt. Instead, they simply presented frameworks for properly responding to it without punishing children for financial matters beyond their control. For the purposes of this Note, the statutory text and legislative enactments are analyzed independently from the sanctions and enforcement methods they may require. The Appendix provides a breakdown of active state legislation on this topic.⁷⁷

New Mexico has one of the most comprehensive statutes combatting these shaming practices. Their law, the "Hunger-Free Students' Bill of Rights Act," tackles several troublesome points exhibited in the attached Appendix.⁷⁸ First, it attacks enrollment barriers, requiring explicit instructions to provide a free, printed meal application to all students. For schools using electronic forms, it requires an explanation for using the

⁷² The Build Back Better Act, which will be discussed in further detail in Subpart B, was not passed into law. The child nutrition provisions within it remain alive in Congress's ongoing negotiations and in the newly proposed Healthy Meals, Healthy Kids Act. *See* H.R. 8450, 117th Cong. (2022); LOCAL CHARGE POLICY TRAINING TEMPLATE, *supra* note 3838; PREVENTING LUNCH SHAMING, *supra* note 49.

⁷³ Wolf, *supra* note 25.

⁷⁴ *Id.*

⁷⁵ Anti-Lunch Shaming Act of 2017, S. 1064, 115th Cong. (2017); Anti-Lunch Shaming Act of 2017, H.R. 2401, 115th Cong. (2017); Anti-Lunch Shaming Act of 2019, S. 1119, 116th Cong. (2019); Anti-Lunch Shaming Act of 2019, H.R. 2311, 116th Cong. (2019).

⁷⁶ *See* State legislation details, *infra* Appendix.

⁷⁷ 105 ILL. COMP. STAT. ANN. 123/1 (West 2018); 2017 Or. Laws 1849; 24 PA. STAT. AND CONS. STAT. ANN. § 13-1337 (West 2022); 702 KY. ADMIN. REGS. 6:050 (2022); N.Y. COMP. CODES R. & REGS. tit. 8 § 114.5 (2022); N.M. STAT. ANN. § 22-13C-1 (2022); 2022 Va. Legis. Serv. 686 (West); VA. CODE ANN. § 22.1-79.7 (West 2022); WASH. REV. CODE ANN. § 28A.235.270 (West 2018).

⁷⁸ N.M. STAT. ANN. §§ 22-13C-1 to C-7 (2017). This Note was selected for publication and edited prior to March 2023. New Mexico passed a universal free meals law on March 27, 2023; although this will largely eliminate shaming practices, their earlier law addressing them remains a significant model for other state and federal lawmakers. *See* Healthy Hunger-Free Students' Bill of Rights Act, 2023 N.M. Laws ch. 30.

digital platform, instructions for requesting a free printed form, and the option to receive all this information in “a language that parents and guardians understand.”⁷⁹

Additionally, “[i]f a school becomes aware that a student who has not submitted a meal application is eligible for free or reduced-fee meals, the school shall complete and file an application for the student.”⁸⁰ Further, a school liaison must coordinate with the Department to ensure homeless students receive free meals and to regularly update the student–teacher accountability reporting system with service information.⁸¹ The explicit nature of these instructions promotes thorough and accessible enrollment practices, provides guidance for alternative needs, creates a system for accountability, and grounds their authority in law.

Second, New Mexico’s Act requires serving a USDA-approved meal to all students who request one, regardless of paying ability, and prohibits throwing away a meal “because of the student’s inability to pay for the meal or because money is owed for earlier meals.”⁸² If there is an outstanding balance for five or more meals, the protocol is to (1) check if the student is CEP eligible, and if not, (2) have a teacher, lunch program coordinator, or school counselor make at least two attempts to reach a parent or guardian, and if that is still unsuccessful, (3) have a high-level school administrator contact the parent or guardian.⁸³ This protocol creates a step-by-step framework that does not involve children in the debt collection conversation or punitive consequences. Keeping debt collection efforts to communication with parents or guardians, rather than actions toward children, will help mitigate social shaming in schools.

Third, the New Mexico law dedicates an entire section to address stigmatization and discrimination practices directly. It prohibits a school from “publicly identify[ing] or stigmatiz[ing] a student who cannot pay for a meal or who owes a meal debt by, for example, requiring that a student wear a wristband or hand stamp” or “requir[ing] a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals.”⁸⁴ This language expressly prohibits shaming practices at their core. New Mexico models best practices by addressing and codifying several policy concerns for lunch programs, as shown in the Appendix. Their bill is behavior-focused, though, and does not provide a resource for offsetting the potential debt accrual.⁸⁵

⁷⁹ N.M. STAT. ANN. §§ 22-13C-3(A). Providing applications to all students is also a technique for eliminating the shame and stigma surrounding open enrollment policies where families must seek out an application. *See also* LeBarre, *supra* note 11.

⁸⁰ N.M. STAT. ANN. §§ 22-13C-3(B).

⁸¹ *Id.* § 3(D).

⁸² *Id.* § 4(A).

⁸³ *Id.* § 4(B). School districts vary on administrator involvement, and often ask cafeteria employees, teachers, school social workers or counselors, lunch coordinators, etc. to make the initial parent contact. The explicit directive for a school administrator to initiate contact with parents is likely a nod toward involving authority figures as standard protocol if the situation remains unaddressed and elevated.

⁸⁴ *Id.* § 5(A); Jessamine Pilcher & Olivia Ash, *An Analysis of Lunch Shaming in Indiana and Proposed Solutions: Advanced Field Research 603D* 65 (Ind. U. Robert H. McKinney Sch. of L. Rsch. Paper, Paper No. 8, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3251031 (“Just because a student understands consequences does not put her in a position to remedy a problem she has not caused nor has a means to fix.”).

⁸⁵ Pilcher & Ash, *supra* note 84, at 55. The New Mexico bill provides many practical limitations but does not secure alternate sources of funding should these debt collection methods fail.

California, a longstanding leader in the hunger relief space, passed a bill in 2017 addressing shaming practices *and* updated it two years later, in 2019.⁸⁶ Virginia also both enacted and amended a bill within two years.⁸⁷ These changes demonstrate a benefit of state-based legislation, where enacting and adjusting the programs within a few years is feasible, compared to federal guidance that takes decades to advocate for, draft, debate, enact, and roll out. California’s law “ensure[s] that a pupil whose parent or guardian has unpaid school meal fees is not shamed, treated differently, or served a meal that differs from what a pupil whose parent or guardian does not have unpaid school meal fees would receive under that local educational agency’s policy.”⁸⁸ Under separate legislation and a specially allocated budget surplus, through an initiative led by state Speaker Nancy Skinner and Superintendent Tony Thurmond, California started expanding school lunch offerings to all students.⁸⁹ This initiative has recently been recognized for its model impact on effective school meal programs.⁹⁰ Coupled together, these California laws address both the shaming practices and schools’ financial needs to provide meals for students.⁹¹

Maine not only directly attacked shaming practices via state law, but also expanded its lunch program to be free for all students in 2021 through a Meals for Students fund, an initiative led by state Senate President Troy Jackson and state House Speaker Ryan Fecteau.⁹² The state initially allocated \$10 million to the fund and has an ongoing effort to secure consistent funding long term.⁹³ Both California and Maine enacted such sweeping and impactful legislation based on partnerships with “a broad coalition of partners and stakeholders,” anchored by California’s Association of Food Banks and Maine’s Full Plates Full Potential organization, respectively.⁹⁴ These kinds of

⁸⁶ S.B. 265, 2019–2020 Assemb., Reg. Sess. (Cal. 2019).

⁸⁷ VA. CODE ANN. § 22.1-79.7 (West 2022).

⁸⁸ S.B. 265. The idea behind the revision was the same as it initially was in 2017, and the language was changed to avoid loopholes because “some schools are still maintaining policies that discriminate against children, denying children as young as 5 a meal or serving them an alternative meal because they didn’t have lunch money that day. As a result, too many children are left hungry and with negative feelings about their learning environment.” *Pupil Meals: Child Hunger Prevention and Fair Treatment Act of 2017: Summary on S.B. 265 Before the S. Comm. On Educ.*, 2019–2020 Cal. Assemb., Reg. Sess. 4 (Apr. 3, 2019) (statement of State Sen. Robert Hertzberg).

⁸⁹ Victoria Namkung, “*The Kids Are Just Happier*”: *Could California’s Universal School Meal Program Start a Trend?*, GUARDIAN (Sep. 26, 2022, 6:00 AM) <https://www.theguardian.com/environment/2022/sep/26/free-school-meals-california-universal>.

⁹⁰ *Id.*; THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8.

⁹¹ While this may be an effective way to indirectly eliminate shaming, the financial resources and logistical demands required to provide universal free meals are likely not practical options for most states to adopt.

⁹² THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8; Emily Duggan, *With Free Meals Available for All Students in Maine, Officials Say There Are Still Hurdles to Offering Better Food*, CENT. ME. (Sept. 30, 2022), <https://www.centralmaine.com/2022/09/30/with-free-meals-available-for-all-students-in-maine-officials-say-there-are-still-hurdles-to-offering-better-food/> (“Using its Meals for Students fund, the state pays the difference between the cost of each lunch or breakfast and the federal reimbursement rate of \$0.68 per meal.”).

⁹³ THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8.

⁹⁴ *Id.*

collaborations are highly effective, according to the Food Research and Action Center (FRAC), the leading anti-hunger advocacy organization in the United States.⁹⁵

Indiana is an example of a state starting to make strides, with the “Student Meals and Lunch Shaming” bill proposal in January 2018.⁹⁶ Although the bill “died in committee,”⁹⁷ its language is nearly identical to that of the New Mexico bill, with an added exception for direct communication with a child about unpaid meal debt if they are emancipated.⁹⁸ The construction of this bill is an excellent example of the transferability of legislative language—states and Congress do not need to reinvent the wheel.⁹⁹ Oregon, Washington, and New York also used similar language, modeled after Indiana and New Mexico’s bills, to combat the common issues in their 2017, 2018, and 2019 statutes, respectively.¹⁰⁰ The success of these later bills is due, in part, to the contributions from the Indiana legislature and advocates’ language development.

School meal coordinators, advocates, and social workers involved with the NSLP emphasize how these state actions serve as templates for federal law as well.¹⁰¹ These professionals, privy to the practical application of law to lunchrooms, encourage state legislators to maximize federal disbursements to reduce state costs, work with other state agencies to gather and report relevant data, and structure funds to ensure continuity.¹⁰² Despite its shortcomings, the current federal legislation provides funds and flexibility for states to improve their school lunch programs in the meantime.

⁹⁵ *What We Do*, FOOD RSCH. & ACTION CTR, <https://frac.org/about/what-we-do> (last visited Oct. 1, 2022); Guardia, *supra* note 14 (“FRAC also is pleased that USDA announced a new initiative designed to solicit stakeholder input to help inform the new updated evidence-based school nutrition standards. FRAC will lead efforts to bring the voices of parents, children, and community leaders into this information-gathering process.”).

⁹⁶ S.B. 314, 2018 Gen. Assemb., Reg. Sess. (Ind. 2018).

⁹⁷ *Id.*

⁹⁸ *Id.* ch. 3, § 2.

⁹⁹ Korsen, *supra* note 43 (explaining and offering template testimony on how professionals at leading advocacy organizations can help prepare for legislative hearings and walk through speaking points to prepare).

¹⁰⁰ OR. REV. STAT. ANN. § 327.537 (2017); WASH. REV. CODE ANN. § 28A.235.270 (2018); N.Y. COMP. CODES R. & REG. tit. 8, § 114.5 (2019). The Washington bill has a unique provision about “requiring the school to fill out the form for the student if the student has not provided the form for the school,” but some of this information may not be known by or available to the school given its personal nature. Pilcher & Ash, *supra* note 84, at 56–57. In addition to this handful of states working on anti-shaming legislation, there are currently nine states pursuing legislative campaigns for universal free meals: Minnesota, Wisconsin, Vermont, Massachusetts, Colorado, Maryland, New York, Arizona, New Hampshire. This does not directly address shaming practices but will likely minimize or eliminate them if the three-category system structure is broken down and all meals are the same for all students. Korsen, *supra* note 43.

¹⁰¹ Korsen, *supra* note 43.

¹⁰² *Id.* As with any other corporate or personal fund, government and charitable purpose funds have highly complex structures. For example, those with specialized knowledge about state meal funds recommend using “entitlement funds” rather than “capped appropriation funds” for longevity in order to base grants on eligibility rather than a single pot of money that will eventually run out. This is one of many specialization fund options for states to utilize to adapt to their needs and goals. *Id.*

B. Using the Build Back Better Act's Proposed Child Nutrition Provisions to Inform Anti-Shaming Policies

In their analysis of lunch shaming and proposed solutions for Indiana, Pilcher and Ash astutely describe lunch shaming as a “two-prong problem,” requiring legislators to address stigmatizing tactics as well as alternative funding sources for schools.¹⁰³ The state laws described above largely address these issues separately, but the 2021 Build Back Better provisions opened an opportunity to conquer both simultaneously. The legislative language for the proposed child nutrition provisions indicated that new funds would be available for school lunch programming due to the heroic persistence of advocates securing their spot in one of the largest federal bills under consideration.¹⁰⁴

While the BBB did not pass into law in 2021, several aspects of it stayed in conversation, negotiation, and rewritten bills.¹⁰⁵ Many BBB provisions reappeared in the Inflation Reduction Act, passing quickly through both Congressional houses and ratified on August 16, 2022,¹⁰⁶ but lawmakers pulled out the child nutrition provisions to give them a stage of their own. The prior BBB child nutrition provisions were fortified from their original state and reintroduced in the Healthy Meals, Healthy Kids Act (HMHK) on July 20, 2022.¹⁰⁷ This new bill includes many of the anti-shaming concepts found in state laws, in addition to the baseline improvements in BBB. As with all federal legislation, speed is slow and variables are abundant. Federal law carries significant power, though, and stronger nationwide standards have the potential to meaningfully impact NSLP programming. At the very least, a federal law can provide a foundation for states to build upon (financially or programmatically) through their closer proximity to school districts and quicker ability to make responsive law.

1. The Original Build Back Better Framework

The provisions in the BBB bill proposed (1) expanding CEP qualification both through lowering the eligibility threshold to include more schools and increasing the multiplier for the amount of funding offered per student so the program is more financially feasible for the school (this is an uncapped budget for an as-qualified basis), (2) allowing states to implement CEP statewide (right now, it is up to school districts), (3) extending funding for summer meals for those who qualify during the school year to avoid hunger when school is not in session, (4) providing \$30 million for cafeteria kitchen equipment grants, and (5) providing \$250 million for grants toward “Healthy School Meal Incentive” projects.¹⁰⁸ These proposals have the potential to impact millions of children's education and health. They are also loaded with complex language and

¹⁰³ Pilcher & Ash, *supra* note 84, at 55.

¹⁰⁴ THE REACH OF BREAKFAST AND LUNCH, *supra* note 27, at 8 (“The House-passed Build Back Better Act (H.R. 5376) would make historic investments in school meals.”).

¹⁰⁵ Sean Sullivan & Seung Min Kim, *Biden Still Touts Build Back Better, But What Does That Mean?*, WASH. POST (Feb. 18, 2022, 9:37 AM), <https://www.washingtonpost.com/politics/2022/02/18/biden-build-back-better-where/>.

¹⁰⁶ Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. (2022).

¹⁰⁷ Healthy Meals, Healthy Kids Act, H.R. 8450, 117th Cong. (2022).

¹⁰⁸ *Id.*

objectives, so let us walk through how these provisions may address shaming specifically.

The first two points pertaining to CEP qualification may minimize the inherent shame from program participation alone, as well as eliminate a need for organizational and proactive measures in schools where not all children receive free meals. These provisions acknowledge many American families' economic hardships and provide support for students who, under current federal eligibility standards, do not qualify for free meals but still need help paying for them. These provisions also push forward the concept of "universal free lunch." The School Nutrition Association endorses this kind of shift, calling to eliminate pricing categories and promote universal free lunches.¹⁰⁹ They claim that "allowing these vulnerable children to receive free school meals will ensure consistent access to the nutrition they need to succeed, while reducing growing unpaid student meal debt and easing administrative burdens."¹¹⁰ These CEP-related provisions may mitigate stigmatization and shaming practices by erasing the rigid categorization of student meal qualification, but they require a separate, and much more expansive, version of state-based legislation than anti-shaming practices do.

The third and fourth points, pertaining to summer meal availability and kitchen equipment, are relatively straightforward in their purposes; thus, their intended impact is also separate from anti-shaming legislation. However, the fifth point, providing grants for "Healthy School Meal Incentive" projects, holds the most potential for both combatting shaming practices and promoting anti-shaming initiatives. That is, this provision attacks the "avoid these bad behaviors" and "here are alternative ways to do better" missions simultaneously. For the below reasons, this Note recognizes great potential for the use of BBB's fifth point as a legal basis on which to ground new statewide policies.

The text of this provision (§ 24003) states that, "in addition to amounts otherwise available," \$250 million is allocated toward "Healthy Food Incentives Demonstration." This includes:

Grants and monetary incentives to carry out 1 or more of the following: (A) improving the nutritional quality of meals and snacks served under a child nutrition program, (B) enhancing the nutrition and wellness environment of institutions participating in a child nutrition program, including by reducing the availability of less healthy foods during the school day, (C) increasing the procurement of fresh, local, regional, and culturally appropriate foods and foods produced by underserved or limited resource farmers, as defined by the Secretary of Agriculture, to be served as part of a child nutrition program, and (D) funding a statewide nutrition education coordinator (i) to

¹⁰⁹ 2020 POSITION PAPER, *supra* note 13. Many states are trying to move toward a universal free meals approach for this reason, coupled with the bumpy transition away from widespread meal waivers during the COVID-19 pandemic now expiring in 2023. See FOOD RSCH. & ACTION CTR., CHILD NUTRITION REAUTHORIZATION: SUPPORT THE UNIVERSAL SCHOOL MEALS PROGRAM ACT OF 2021 (May 2021), <https://frac.org/wp-content/uploads/cnr-support-the-universal-school-meals-program-act-2019-1.pdf>; Libby Stanford, *Some States Want to Lock in Universal Free School Meals as Federal Waivers End*, *EDU. WEEK* (May 31, 2022), <https://www.edweek.org/policy-politics/some-states-want-to-lock-in-universal-free-school-meals-as-federal-waivers-end/2022/05>.

¹¹⁰ 2020 POSITION PAPER, *supra* note 13.

support individual school food authority nutrition efforts; and (ii) to facilitate collaboration with other nutrition education efforts in the State.¹¹¹

Grant recipients may acquire funds needed to provide an equitably nutritious lunch to each student, regardless of paying ability. They also have creative freedom to work on other nutrition-based initiatives to ensure every student can get lunch without imposing debt on the school, and they may potentially hire a coordinator to do so full-time. California and Maine’s models for collaborative efforts to re-budget and raise funds are also manageable options, but they must specifically align with the anti-shaming values to be most effective.

The lack of guidance historically offered by the government for enacting these programs shapes this provision as a blank canvas for initiatives, so long as they convincingly promote nutrition during school lunch time. This Note attempts neither to define nor deep dive into the nutritional parameters and practices of the actual food served in school cafeterias. Rather, this Note advocates that eliminating shaming tactics will increase the nutritional value many students derive from the program.

2. How the Healthy Meals, Healthy Kids Act Amplifies the Build Back Better Proposals

HMHK largely recycles BBB efforts to expand eligibility and provide additional funds to address specific needs identified by school meal administrators. Legislators used the opportunity for a standalone bill to include 191 pages worth of additional food assistance law, including proposed provisions for unpaid school meal fees, WIC supplements, the Child and Adult Care Food Program, Summer Nutrition Program, summer electronic benefit transfer program (today’s version of food stamps, masked as a debit card that can electronically be loaded by the government with funds each month), tribes and freely associated state assistance, and food and nutrition education and standards, and sustainability efforts.¹¹² This Note will focus on the “unpaid school meal fees” provisions; this is simply a polite way to phrase “meal debt,” the basis for meal shaming practices and therefore the important element to strike out.

Section 801(b), “Reducing Stigma Associated with Unpaid School Meal Fees,” goes straight to the punchline for in-school action, explicitly stating “overt identification [is] prohibited.”¹¹³ Even more specifically,

A local educational agency or school food authority may not, based on the status of a covered child as a covered child—(i) physically segregate or otherwise discriminate against such covered child; (ii) overtly identify such covered child (I) through the use of special tokens or tickets; or (II) by an announcement or a published list of names; or (III) identify or stigmatize such covered child by any other means.¹¹⁴

¹¹¹ Inflation Reduction Act, H.R. 5376, 117th Cong. § 24003 (2021).

¹¹² FOOD RSCH. & ACTION CTR., THE HEALTHY MEALS, HEALTHY KIDS ACT: FRAC’S COMPLETE SUMMARY (July 2022) <https://frac.org/wp-content/uploads/FRAC-CNR-Summary-July-2022-FINAL.pdf>.

¹¹³ Healthy Meals, Healthy Kids Act, H.R. 8450, 117th Cong. § 801 (2022).

¹¹⁴ *Id.*

The bill addresses collection methods outside of school, including provisions requiring educational agencies and schools to attempt to certify for free school meals any child “who is a member of a household that owes a week or more of unpaid school meal fees.”¹¹⁵ If a child cannot be certified for free meals through this process, educational agencies and schools must provide the child’s parent or guardian with an application for free or reduce-priced school meals, applicable descriptive material, and “written and oral communications to encourage submission of the application.”¹¹⁶ Legal paperwork is confusing, welfare program parameters can be complex, and many parents are hesitant to provide their personal information to government agencies for a multitude of reasons. Making applications accessible, understandable, and less scary will help many students get the free lunches they are entitled to.¹¹⁷

Lastly, similarly to the New Mexico bill, appropriate collection methods for unpaid school meal fees are laid out as well.¹¹⁸ Under HMHK, schools may not directly communicate with a child regarding unpaid school meal fees, withhold educational opportunities “including grades and participation in extracurricular activities,” or in any way stigmatize a child for having an unpaid balance.¹¹⁹ Significantly, HMHK establishes a National Advisory Council on Unpaid Meal Debt in Child Nutrition Programs tasked with investigating shaming practices and providing recommendations to the Food and Nutrition Service to ensure students are not stigmatized and school administrators “maintain fiscal solvency . . . to ensure the long-term viability of school meal programs.”¹²⁰

On paper, HMHK appears to cover all the bases and relieves anti-shaming practices entirely. This optimism is not misplaced; these provisions are encouraging on many fronts. However, the timeliness and smoothness of Congress’s law passage processes will continue to frustrate this opportunity. As of March 2023, HMHK accumulated forty congressional sponsors from sixteen states, the District of Columbia, and the Northern

¹¹⁵ *Id.* § 102.

¹¹⁶ *Id.* § 801.

¹¹⁷ *See, e.g.,* Ethan Ehrenhaft, *Howard County Schools and Families Grapple with End to Universal Free Meals Program*, BALT. SUN (Sept. 13, 2022, 7:48 AM), https://www.baltimoresun.com/maryland/howard/cng-ho-howard-schools-universal-free-meals-end-20220913-p2uhjwbfkjdzlh3aptksxljdwystory.html?utm_source=ourcommunitynow&utm_medium=web#ed=rss_www.baltimoresun.com/arcio/rss/category/maryland/howard (Julia Gross, an anti-hunger program associate at Maryland Hunger Solutions, discussing how the end of COVID-19 meal waivers will lead to “more families struggling with food insecurity and more school systems struggling to collect those [free or reduced-price meal eligibility] forms,”); Eryka Forquer, *School Lunches No Longer Free For All Students, Schools Alert Families*, ARIZ. CENT. (Sept. 16, 2022, 6:00 AM), <https://www.azcentral.com/story/news/local/arizona-education/2022/09/16/arizona-school-lunches-no-longer-free-all-students/7935483001> (explaining the many avenues schools are taking to distribute student meal applications and program outreach, with districts promoting change on “social media, flyers, newsletters and school websites” and some schools including the “application in all students’ back-to-school packets” because they were “highly concerned” that families would not know how or what information to enroll).

¹¹⁸ H.R. 8450 § 801.

¹¹⁹ *Id.*

¹²⁰ *Id.* § 802.

Mariana Islands.¹²¹ If HMK can draw on the BBB groundwork and Inflation Reduction Act momentum to become law, federal and state execution and enforcement practices will take even more time to (1) get in motion, (2) evaluate execution efficacy, and (3) adjust for improved outcomes. Regardless of HMK's potential passage, states remain best situated to act quickly, narrowly, and strategically to get anti-shaming provisions into law.

CONCLUSION

To those who argue federal funds are better spent elsewhere, educators remind us there is no other part of the school day that children are expected to pay for. Nor is there any other part of the school day where students are separated based on their family's socioeconomic status.¹²² Children do not pay for their school bus transportation, classroom materials, teacher salaries, sports equipment, or after-school program supplies. Food is a basic need, and "if we want to do anything else with students, we need to be feeding them first and providing a safe and supportive environment at school."¹²³ An environment cannot threaten punishment or stigma, as meal shaming does, and still be considered "safe and supportive."

NSLP experts assert hunger relief as a bipartisan issue, claiming "feeding kids resonate[s] with most people" and "these kids are relying on the adults in charge to take care of them, and we have to make the best choices for them."¹²⁴ Maine's Senate President, Troy Jackson, remarked that the monumental bill his state passed against lunch shaming practices "will be one of the bills I will probably be most proud about when it's all said and done years from now."¹²⁵ Senator Jackson's statement acknowledges how impactful anti-shaming laws are; they do not just get food on plates, but they get plates in front of students and provide the fuel needed to participate fully in school.

Approaching anti-shaming in NSLP from a systems approach, where each elemental and stakeholder relationship is considered for optimal functioning of the whole, allows us to observe, attack, and enforce realistic and sustainable programming. The CEP expansion and creative healthy food initiative provisions can and must be used to do just that. For so long, schools have asked where to find money to improve the school lunch programs. Now, with endless gratitude for advocates, policymakers, social scientists, and legislators, we have the potential to secure funds and shift the question to how funds can be most effectively utilized to realize the goals they were intended to satisfy, on both federal and state levels. Providing students with access to nutritious meals in a safe environment is one of these goals, and abolishing shaming practices will further it. If used strategically, newly available funding can support school lunch programs by omitting meal debt—the core justification for shaming tactics. Let us put our money

¹²¹ *Cosponsors: H.R. 8450—117th Cong. (2021-2022)*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/8450/cosponsors> (last visited March 14, 2023).

¹²² Whitaker, *supra* note 70.

¹²³ *Id.*

¹²⁴ LeBarre, *supra* note 11.

¹²⁵ Troy Jackson, Me. S. President, Remarks at the Presentation at the National Anti-Hunger Policy Conference: The Road to School Meals for All: Learning From California and Maine to Advance and Implement State Policy (Mar. 16, 2022) (joining the conference session featuring Korsen, Whitaker, and LeBarre to show administrative support).

where their mouths are and use this intel to feed the educational, health, and developmental needs of children nationwide.

APPENDIX

State Year enacted	Illinois 2018	Kentucky 2018	New Mexico 2017	New York 2019	Oregon 2017	Pennsylvania 2020	Virginia 2021	Washington 2018
Prohibiting public identification	✓ (broad interpretation, prohibiting “any” stigmatizing action)		✓ (providing some examples but no explicit limits)	✓	✓	✓ (including some description but no specificity of limitations)		✓ (no specificity on what this entails)
Prohibiting chores in exchange for meals			✓	✓	✓	✓	✓	✓
Prohibiting throwing out meals	✓		✓	✓	✓	✓	✓	✓
Allowing communications with parent/guardian only			✓		✓	✓ (for students in grades K-8 only; explicit permission to communicate directly with students in grades 9-12)	✓	✓ (for students under the age of 15)
Prohibiting wristband/handstamp	✓		✓	✓	✓	Implied in “public identification” provision but not mentioned specifically	✓	
Allowing meal denial only with written directive parent/guardian			✓	✓	✓	✓		
Prohibiting alternative meal service					✓	✓		
Other	Prohibiting segregated seating	Prohibiting segregation or discrimination based on ability to pay full cost only	Detailed outreach and enrollment procedures	Training school professionals to properly implement policies Prohibits discussing outstanding meal debt in the presence of other students Use of a school liaison to assist students with specific needs (i.e., homeless)			Prohibiting lawsuit against parents to recover debt; [amendment added in 2022] Prohibiting denial of extracurricular participation because of meal debt	

States’ legislation on anti-shaming practices for school meal programs, as of March 2023