

2020

Mitigating the Adverse Effects of Food Insecurity in New York City through the School Lunch Program

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Morgan Greene, *Mitigating the Adverse Effects of Food Insecurity in New York City through the School Lunch Program*, 47 Fordham Urb. L.J. 1081 (2020).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol47/iss4/10>

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MITIGATING THE ADVERSE EFFECTS OF FOOD INSECURITY IN NEW YORK CITY THROUGH THE SCHOOL LUNCH PROGRAM

*Morgan Greene**

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INTRODUCTION

“You have to eat and keep going. Eating is a small, good thing in a time like this[.]”¹

In *Cathedral*, Raymond Carver’s collection of short stories, Carver tells the story of a mother and father struggling with the passing of their young son.² At the end of the story, they find themselves comforted by a baker’s warm cinnamon rolls and kind advice.³ “Eating,” the baker says, is a “small, good thing in a time like this[.]”⁴

Food is much more than a means of survival; food conveys messages about one’s “social status, ethnicity, and wealth.”⁵ Claude Levi-Strauss, a leading cultural anthropologist in the early twentieth century, asserted the difference between humans and other animals is that humans process their food before they eat it.⁶ Not necessarily emotionally, rather, he explored the idea that humans take food from

1. Raymond Carver, *A Small, Good Thing*, in *CATHEDRAL* 59 (1983).

2. *Id.*

3. *Id.*

4. *Id.*

5. Anne Murcott, *The Cultural Significance of Food and Eating*, 41 *PROC. NUTRITION SOC’Y.* 203, 203 (1981).

6. Melissa Mortazavi, *Consuming Identities: Law, School Lunches, and What It Means to Be American*, 24 *CORNELL J.L. & PUB. POL’Y* 1, 15 (2014).

nature that would otherwise have decomposed, cook it, and eat it.⁷ He notes that “cooking is a language through which society unconsciously reveals its structure.”⁸ It is easy to find examples of this unique role that food plays in people’s lives. For example, in the tent camps on the border of Mexico and Texas, weary asylum seekers have come together to cook meals as a means not only of pure physical survival, but also of spiritual survival.⁹ “Cooking is caring for families . . . an expression of human dignity to sustain spirits while living through a brutal humanitarian crisis that worsens by the day.”¹⁰ In the most trying moments of our lives, people turn to food to nourish their bodies and their spirits.

Unfortunately, for over a million New Yorkers, access to food is “limited or uncertain.”¹¹ For these people, daily meals, let alone nutritious meals, are not a guarantee. Some New Yorkers cannot reliably feed themselves every day. Others struggle to maintain a healthy diet while working multiple jobs. Still more suffer from health complications brought on by the heavily-processed, nutrient-sparse food most readily available to them.

When addressing the problem of food insecurity and its related health complications, local governments need to attack the problem from several different directions. Achieving complete food security requires supporting communities in a myriad of ways. For example, expanding the Supplemental Nutrition Assistance Program (SNAP) benefits or having universal free school lunch. In addition to expanding access to food, governments should remember the cultural importance of food in people’s lives. Nutrition education that focuses

7. *Id.* at 17 n.85.

8. Sara Davis, *What Can Claude Lévi-Strauss Teach Us about Food Today?*, SMART SET (Aug. 18, 2013), <https://www.thesmartset.com/article07181301/> [<https://perma.cc/EA96-9JTY>].

9. Michelle García, *In the Midst of a Border Crisis, Cooking Is about More Than Survival*, BON APPÉTIT (Feb. 13, 2020), <https://www.bonappetit.com/story/cooking-at-border> [<https://perma.cc/5J69-F9UP>].

10. *Id.*

11. *Definitions of Food Security*, U.S. DEP’T AGRIC., ECON. RES. SERV. (Sept. 4, 2019), <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security/> [<https://perma.cc/2KXA-D76G>] (defining a food-insecure household as one which has “limited or uncertain access to adequate food”); HUNGER FREE AM., *THE AFFORDABILITY CRISIS AND HUNGER: SOARING COSTS FOR HOUSING AND OTHER BASICS OF LIVING LEAVE LESS FOR FOOD 3* (2019) [hereinafter *THE AFFORDABILITY CRISIS AND HUNGER*], <https://www.hungerfreeamerica.org/sites/default/files/atoms/files/2019%20NY%20Hunger%20Report.pdf> [<https://perma.cc/XK3J-M39W>] (stating that “one in eight of city residents still struggled against hunger”).

on Americanized and Eurocentric food does not teach people how to eat balanced diets within their culture. This creates a disconnect between the nutrition education children receive at schools and the food they eat at home.

This Note argues that one method to alleviate food insecurity in New York City is to implement significant changes to the school lunch program. It advocates for a modification of the ways in which the New York City Department of Education (DOE) — the city agency that oversees the school lunch program — spends its annual procurement budget. First, the DOE should allocate a larger portion of its annual budget towards local and regional produce, meat, and dairy products. Out of its \$200 million annual budget for school lunch programs and services, the DOE spent about 13% in 2018¹² and about 11.5% in 2019 on local products.¹³ Spending more money on local and regional food will help increase the nutritional benefits of school lunches.

Second, the DOE should make changes to the school lunch menus to include a more diverse array of options from a variety of cultures. School food, and thus school nutrition education, is extremely Eurocentric. When nutrition education does not account for different cultures, there is no connection between the food children may be eating at home and the “healthy” food they are served in school. One of the benefits of investing in school lunches is the potential for children to carry good habits throughout the rest of their lives. If schools, however, try to teach children the only or the best way to eat healthily is by providing mainstream, Eurocentric health food options, they ultimately alienate a large section of the population. School food must become more nutritious, but school lunches and the related nutrition education also need to be more inclusive of various cultures.

Part I of this Note provides an overview of the problem of food insecurity in New York City. It also looks at changes New York City has made to the school lunch program since 2010. In addition to providing a background of New York City’s school food landscape,

12. N.Y.C. FOOD POLICY, CITY OF NEW YORK, FOOD METRICS REPORT: 2018 16 (2018) [hereinafter N.Y.C. FOOD METRICS REPORT 2018], <https://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2018-Food-Metrics-Report.pdf> [https://perma.cc/KS2V-DQ8B].

13. N.Y.C. FOOD POLICY, CITY OF NEW YORK, FOOD METRICS REPORT: 2019 16 (2019) [hereinafter N.Y.C. FOOD METRICS REPORT 2019], <https://www1.nyc.gov/assets/foodpolicy/downloads/pdf/Food-Policy-Report-2019.pdf> [https://perma.cc/5829-EGMZ].

Part I discusses the history of the National School Lunch Program and what it looks like today. Specifically, it discusses the Obama-era legislation, notably the Healthy, Hunger-Free Kids Act of 2010 and the Trump Administration's recent rollbacks of the high nutrition standards set by the Act.

Part II of this Note details the current debates around school food in New York City. This Part discusses the advantages and disadvantages of the DOE purchasing more local and regional foods. It also discusses the resistance to changing school lunch menus, and outlines the reasons why dietitians and scholars believe school lunch menus need to be diversified. This debate is critical because the current state of nutrition in school lunch could be significantly improved by allocating funds towards purchasing more local foods and diversifying lunch menus.

Part III of this Note argues that one effective method to change the current school food landscape is through New York City's DOE. The DOE has the largest budget of any New York City agency,¹⁴ with its 2019–2020 budget totaling \$34 billion.¹⁵ The DOE spends around \$200 million each year on food, with only 13% of its annual budget going towards local produce and dairy.¹⁶ Considering New York City's proximity to a variety of regional dairy, meat, and produce, these numbers could reasonably be higher. This investment will allow the DOE to feed New York City children more nutritious school meals.

Furthermore, by encouraging the addition of more culturally diverse recipes into school lunches, it will not only create a more welcoming school food environment but also encourage life-long healthy eating habits in a more relatable way. Although the New York City school lunch program has made great progress in the past ten years, there is still room for improvement. Feeding children in schools is only part of the solution. If New York City uses its DOE budget to invest in cost-cutting, short term solutions, it is not intelligently investing in the future of the city.¹⁷ Many of the children

14. N.Y.C. OFFICE OF THE COMPTROLLER, FY 2019 AGENCY WATCH LIST: DEPARTMENT OF EDUCATION (2018), https://comptroller.nyc.gov/wp-content/uploads/documents/Watch-List_DOE.pdf [<https://perma.cc/NMN4-5QRW>].

15. *Funding Our Schools*, N.Y.C. DEP'T EDUC., <https://www.schools.nyc.gov/about-us/funding/funding-our-schools> [<https://perma.cc/V9JT-4ST5>] (last visited Apr. 9, 2019).

16. *See infra* Section I.D.

17. Investing in cheaper food sources may seem like a great cost-cutting mechanism, but it is important to remember the long-term healthcare costs associated

who are currently under the DOE's care will become the adults living in New York City communities. By investing in these communities and teaching children culturally-relevant nutrition skills, New York City will progress towards total food security.

I. FOOD INSECURITY IN NEW YORK CITY AND THE SCHOOL LUNCH PROGRAM

Part I of this Note provides background information about food insecurity and the school lunch program, both nationally and in New York City. Section I.A defines food insecurity and looks at both the prevalence of food insecurity and the negative health consequences that pervade food-insecure households. It also discusses how governments nationally and in New York City began to treat food deserts as the predominant cause of food insecurity. Further, this Section discusses new research that rejects this thesis and suggests that food insecurity is a symptom of broken social structures. Section I.B briefly discusses the roots of the National School Lunch Program dating back to the early 1900s. Section I.B also takes a look at how the program has changed since the implementation of the Healthy, Hunger-Free Kids Act in 2010. Section I.C discusses New York City's food justice initiatives since 2010 and talks about Local Laws 50 and 52 from 2011, which encourage New York City's government to purchase local food as well as set reporting requirements. Section I.C also discusses how New York City has changed the school lunch program since 2010. In addition, Section I.C discusses the New York City Council's plan to achieve food equity in New York City. Lastly, Section I.D discusses the significant role the New York City DOE can play in improving the school lunch program and, in turn, alleviating some of the negative impacts of food insecurity.

A. Food Insecurity in New York City

Food insecurity is a more significant problem in New York City than many might expect. Food insecurity's negative health impacts do not necessarily manifest in a large population of visibly

with diet-related diseases. "Health-care costs from diagnosed Type 2 diabetes total a staggering \$327 billion a year — a cost we all share." Anna Lappé & Jose Olivia, *What If School Lunch Programs Promoted Public Health, Good Jobs, and the Environment?*, NATION (May 25, 2018), <https://www.thenation.com/article/a-big-win-for-good-food/> [<https://perma.cc/N9TW-XM52>]; see also Rachele Ramirez, Note, *Pass the Change Please: Stymieing America's Childhood Health Crisis with Local Foods in Schools*, 5 DUKE F. FOR L. & SOC. CHANGE 129, 132–33 (2012–2013).

malnourished people walking through the city streets. Although food insecurity can result in weight loss,¹⁸ it can also lead to overweight, yet malnourished people. This is a result of food-insecure people eating meals that are high in calories but devoid of nutritional value. Thus, when working towards food security in New York City, it is essential to consider the true underlying causes of the problem.

Since the 1990s, governments have focused on eradicating food deserts as a solution to food insecurity. The theory was that if people in lower-income communities have better access to large grocery stores with a large selection of nutritious food, they will eat healthier, more nutrient-packed meals. The solution, however, is more complicated. Recent studies have begun to move away from the food desert theory and instead have focused on the complicated tapestry of social and economic inequality that causes food insecurity and its subsequent health problems.

i. The Prevalence of Food Insecurity and Its Health Impacts

To recognize the impact that improving the school lunch program can have on food-insecure households requires a general understanding of food insecurity and its effects. The United States Department of Agriculture (USDA) has defined food insecurity as “a household-level economic and social condition of limited or uncertain access to adequate food.”¹⁹ Another way to think of food-insecurity is to define it as a lack of food *security* — meaning, a lack of “access by all people at all times to enough food for an active, healthy life.”²⁰

A significant portion of New York City’s population faces food insecurity. Across all boroughs, 12.2% of New York City residents are food insecure,²¹ as compared with 11.1% of households nationally.²² In the Bronx, the percentage is much higher — about 23.1% of the borough’s residents are food insecure. Further, a large number of New York City’s children are food insecure: 16.2% of

18. ALISHA COLEMAN-JENSEN ET AL., U.S. DEP’T AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2018 5 (2019) (47% of food-insecure people nationally have reported losing weight because they did not have enough money to purchase food).

19. *Definitions of Food Security*, *supra* note 11.

20. COLEMAN-JENSEN ET AL., *supra* note 18, at 2.

21. THE AFFORDABILITY CRISIS AND HUNGER, *supra* note 11, at 10.

22. COLEMAN-JENSEN ET AL., *supra* note 18, at 7.

children in New York City, and 30.5% of children in the Bronx are food insecure,²³ compared with 17% of children nationally.²⁴

Out of the food-insecure homes nationally, 97% of them reported that the food they bought for their families “did not last and they did not have money to get more.”²⁵ Even when people in food-insecure households can buy enough food to last until their next source of income arrives, 96% of them have reported that they were not able to eat balanced meals.²⁶

People who are food insecure are more likely to experience the negative health consequences of poor nutrition.²⁷ One obvious consequence of poor nutrition in a community is higher rates of diet-related diseases, such as obesity and malnourishment.²⁸ Furthermore, studies have shown that food insecurity is related to increased risks of hospitalization, general poor health, asthma, cognitive problems, and other conditions.²⁹ Even in households that are only marginally food-insecure, there is a higher likelihood its residents are in fair or poor health.³⁰ The connection between food insecurity and poor health is clearly documented in both national and local statistical analyses.

Food insecurity is specifically dangerous to the health and general well-being of children.³¹ Not only are food-insecure children more likely to suffer physical health impacts, such as lower physical function and more frequent colds, but are also more likely to suffer emotional, developmental, and educational impacts.³² Children who

23. THE AFFORDABILITY CRISIS AND HUNGER, *supra* note 11, at 11; *see also* HUNGER FREE AM., THE UNEATEN BIG APPLE: HUNGER’S HIGH COST IN NEW YORK CITY 2 (2018), https://www.hungerfreeamerica.org/sites/default/files/atoms/files/NYC%20and%20NYS%20Hunger%20Report%202018_0.pdf [http://perma.cc/5KPP-7G3L].

24. *Child Food Insecurity*, FEEDING AM. 1 (2019), https://www.feedingamerica.org/sites/default/files/2019-05/2017-map-the-meal-gap-child-food-insecurity_0.pdf [https://perma.cc/W3HS-FKTH].

25. COLEMAN-JENSEN ET AL., *supra* note 18, at 5.

26. *Id.*

27. Craig Gundersen & James P. Ziliak, *Food Insecurity and Health Outcomes*, 34:11 HEALTH AFF. 1830, 1830 (2015).

28. Nathan A. Rosenberg & Nevin Cohen, *Let Them Eat Kale*, 45 FORDHAM URB. L.J. 1091, 1105–06 (2018).

29. *See generally* Gundersen & Ziliak, *supra* note 27, at 1832.

30. *Id.* at 1833.

31. *Child Food Insecurity*, *supra* note 24.

32. HUNGER FREE AM., FROM WELL-FED TO WELL-READ: HOW THE FEDERAL CHILD NUTRITION REAUTHORIZATION BILL CAN SLASH CHILD HUNGER, REDUCE POVERTY, AND BOOST EDUCATION 13 (2019) [hereinafter FROM WELL-FED TO WELL-READ], <https://www.hungervolunteer.org/sites/default/files/atoms/files/>

are not receiving the nutrition they need are more likely to battle with anxiety, depression, and behavioral problems.³³ Further, food-insecure children in grades six through eleven have lower scores in math and are more likely to repeat a grade.³⁴

The statistics particularly support the impact of food insecurity on children in the United States as a whole and major cities like New York City. Nationally, 18.5% of children ages 2–19 are obese,³⁵ and about 32% of adolescents are either overweight or obese.³⁶ In New York City, 40% of school-age children in kindergarten through eighth grade are overweight or obese.³⁷ Low-income neighborhoods are more heavily populated by highly processed food options and fast-food restaurants³⁸ that are “calorically dense and nutritionally sparse.”³⁹ This contributes to a population of overfed, yet undernourished people.⁴⁰ Creating meaningful change and working towards combatting the negative impacts of food insecurity requires systemic changes to the current food system.⁴¹

From%20Well-Fed%20to%20Well-Read%202019.pdf [https://perma.cc/2PYR-Q2AW].

33. *Id.*

34. *Id.*

35. *Childhood Obesity Facts*, CTNS FOR DISEASE CONTROL & PREVENTION (June 24, 2019), <https://www.cdc.gov/obesity/data/childhood.html> [https://perma.cc/A583-GQ6D].

36. *How Many People Are Affected By/At Risk for Obesity & Overweight?*, EUNICE KENNEDY SHRIVER NAT'L INST. CHILD HEALTH & HUM. DEV., <https://www.nichd.nih.gov/health/topics/obesity/conditioninfo/risk> [https://perma.cc/J7TX-6QKD] (last visited Feb. 24, 2020).

37. Press Release, N.Y.C. Dep't of Health, Health Department Announces Pediatric Obesity Campaign Targeting Pediatricians and Family Practitioners (Feb. 6, 2019), <https://www1.nyc.gov/site/doh/about/press/pr2019/pediatric-obesity-outreach-campaign.page> [https://perma.cc/836W-DTNE].

38. Olivia Limone & Nadia Sanchez, *Mapping Food Deserts (And Swamps) in Manhattan and the Bronx*, MEDIUM (Dec. 16, 2019), <https://medium.com/@olivialimone/mapping-food-deserts-and-swamps-in-manhattan-and-the-bronx-46c6d8fc0804> [https://perma.cc/4LN5-YK94].

39. Mortazavi, *supra* note 6, at 11.

40. Julie Beck, *More Than Half of What Americans Eat Is 'Ultra-Processed'*, ATLANTIC (Mar. 10, 2016), <https://www.theatlantic.com/health/archive/2016/03/more-than-half-of-what-americans-eat-is-ultra-processed/472791/> [https://perma.cc/3W79-E437].

41. *See generally* Rosenberg & Cohen, *supra* note 28.

ii. Food Deserts' Limited Role in Food Insecurity

For years, advocacy groups have been concerned with eradicating hunger and malnourishment in the United States.⁴² However, in the early 1990s — after the exodus of large supermarkets from urban areas in the 1970s and 1980s⁴³ — activists and policy makers began to target their efforts toward improving low-income communities' access to nutritious food.⁴⁴ The conversation around food insecurity thus became a conversation about “food deserts.”⁴⁵ These are areas “with limited access to affordable and nutritious food, particularly such [areas] of predominantly lower-income neighborhoods and communities.”⁴⁶

As governments and advocacy groups began to focus on food deserts as the root cause of food insecurity, governments began to implement market-based solutions. For example, there was a national movement to bring large supermarkets back into urban and low-income areas.⁴⁷ New York City followed suit with the rest of the country, encouraging large grocery stores to re-enter the urban market.⁴⁸ For example, a Pathmark opened in East Harlem at 125th Street and Lexington Avenue in 1997 in order to increase access to healthy food.⁴⁹

However, recent research shows that the fight against food deserts has not had its desired effect.⁵⁰ Food insecurity, malnourishment, and obesity are still widespread in many communities. Even though the influx of supermarkets has led to greater “access” to healthy foods,

42. *Id.* at 1097.

43. Marilyn Lavin, *Supermarket Access and Consumer Well-Being: The Case of Pathmark in Harlem*, 33 INT'L J. RETAIL & DISTRIBUTION MGMT. 388, 388 (2005) (from 1970–1988, Manhattan and Brooklyn lost around half of their large grocery stores).

44. Rosenberg & Cohen, *supra* note 28, at 1097.

45. *Id.*

46. GARRETT M. BROAD, *MORE THAN JUST FOOD: FOOD JUSTICE AND COMMUNITY CHANGE* 33 (U.C. Press 2016).

47. *See* Rosenberg & Cohen, *supra* note 28, at 1098. Market-based solutions to food insecurity include a movement towards increasing the number of supermarkets available in low-income areas.

48. *See id.* at 1112–13; N.Y.C. FOOD POLICY CTR. AT HUNTER COLL., *BEYOND PATHMARK: ASSURING ACCESS TO HEALTHY AFFORDABLE FOOD IN EAST HARLEM* (2015) [hereinafter *Beyond Pathmark*], <https://nycfoodpolicy.org/wp-content/uploads/2015/11/Beyond-Pathmark-Community-Report-12.10.15.pdf> [<https://perma.cc/W839-3M4C>].

49. Rosenberg & Cohen, *supra* note 28, at 1112–13; *Beyond Pathmark*, *supra* note 48.

50. Rosenberg & Cohen, *supra* note 28, at 1120, 1107.

the additional choices a large supermarket offers have not shifted people's purchasing habits.⁵¹

Several pieces of recent scholarship across disciplines have begun to demonstrate this point. For example, a recent study focused on “the economic mechanisms that drive nutritional inequality” suggests that the focus on eliminating food deserts by bringing supermarkets back into low-income neighborhoods has not had much of an effect on healthy eating in those areas.⁵² Further, the study predicts that an increase in educational opportunities and availability of nutrition information could reduce the nutritional inequality between different socioeconomic classes.⁵³ Additionally, legal scholars have argued that resolving food insecurity requires significant social and structural changes.⁵⁴ They emphasize the need for a holistic plan, which should include increasing the minimum wage, strengthening labor laws, protecting SNAP, and providing free school lunch in public schools.⁵⁵ Without a system that encourages a more equitable distribution of wealth, they argue, food insecurity will continue to pervade low-income communities in the United States.⁵⁶

These structural changes are significant because although all low-income people experience food insecurity, a person's race can affect the likelihood that they are food-insecure.⁵⁷ Although 17% of children in America live in food-insecure households, 27% of Black children and 23% of Hispanic children live in food-insecure households.⁵⁸ Black and Hispanic families are more likely to feel the effects of food insecurity because of the economic and social disadvantages they face.⁵⁹

Therefore, when searching for a meaningful resolution to food insecurity in New York City, it is significant to note that the city has

51. *Id.*; Hunt Allcott et al., *Food Deserts and the Causes of Nutritional Inequality*, 134 Q.J. ECON. 1793, 1812 (2019) (This study shows that there is “no detectable increase in healthy purchases after supermarket entry”).

52. *Id.* at 1794 (This study attributes “nutritional inequality” as “why the wealthy eat more healthfully than the poor in the United States”).

53. *Id.* at 1797, 1835.

54. See Rosenberg & Cohen, *supra* note 28, at 1116–20.

55. *Id.*

56. *Id.* at 1120.

57. COREY JOHNSON, N.Y.C. COUNCIL SPEAKER, GROWING FOOD EQUITY IN NEW YORK CITY: A CITY COUNCIL AGENDA 4 (2019), <http://council.nyc.gov/data/wp-content/uploads/sites/73/2019/08/growing-food-equity-1.pdf> [<https://perma.cc/VD9H-P4QA>] (“This inequity has deep and historical roots in government policy, including in U.S. federal food and farm policies.”).

58. FROM WELL-FED TO WELL-READ, *supra* note 32, at 7.

59. *Id.*

an incredibly diverse population. Across all five boroughs, the ethnic breakdown of New York City's population is 42.8% White, 24.3% Black or African American, 29.1% Hispanic or Latino, and 13.9% Asian.⁶⁰ Queens County alone is the most diverse county in America.⁶¹ New York City public schools are no exception. During the 2017–2018 school year, 41% of students were Hispanic, 26% were Black, 16% were Asian, 15% were White, and 3% were students with multiple ethnicities.⁶² These statistics show a diverse population of students from a variety of backgrounds, which should be considered when working towards total food security in New York City.

B. The National School Lunch Program

The National School Lunch Program was created in 1946 as a way to encourage the health of American children and to encourage the use of agricultural commodities.⁶³ Through the years, this program has been modified as more information about health and nutrition became available.⁶⁴ In 2010, Congress made significant changes to the National School Lunch Program in order to combat the growing obesity epidemic in America and, in part, to address food insecurity.⁶⁵

This Section begins with a brief history of the National School Lunch Program, including its roots in the Great Depression and the New Deal. It then describes the most recent significant changes to the National School Lunch Program, namely the passage of the Healthy, Hunger-Free Kids Act of 2010 and the rules which were subsequently promulgated. Moreover, this Section details the Trump Administration's recent changes to nutrition standards set by the Obama Administration.

60. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> [https://perma.cc/S6HJ-BMVE] (last visited Apr. 9, 2020).

61. Selim Algar, *Queens Is Crowned Nation's Most Diverse Large County*, N.Y. POST (July 4, 2019), <https://nypost.com/2019/07/04/queens-is-crowned-nations-most-diverse-large-county/> [https://perma.cc/RF47-CR5V].

62. *School Diversity in NYC*, N.Y.C. COUNCIL, <https://council.nyc.gov/data/school-diversity-in-nyc/#tech-appendix> [https://perma.cc/6KGL-57W6] (last visited Apr. 3, 2020).

63. Emelyn Rude, *An Abbreviated History of School Lunch in America*, TIME MAG. (Sept. 19, 2016), <https://time.com/4496771/school-lunch-history/> [https://perma.cc/TR29-25PD].

64. *Id.*

65. *Id.*

i. History of the National School Lunch Program

The concept of serving lunch in schools in the United States dates back to the late 1890s and early 1900s.⁶⁶ During that time, individual cities' welfare organizations served meals to children during the school day.⁶⁷ The school lunch program as we know it today has roots in the Great Depression and President Roosevelt's New Deal.⁶⁸ The federal government began to purchase agricultural surplus and use it both to employ cafeteria workers and feed students.⁶⁹ However, the National School Lunch Program was not officially instituted until 1946 when Congress passed the National School Lunch Act.⁷⁰ The Act stated that it is "the policy of Congress, 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"⁷¹ Implementing this on the tails of World War II, the government chose to use the National School Lunch Program as a way to build a unified national identity.⁷² This "American" school lunch menu avoided spicy foods and foods with strong flavors — through these choices, the government designated ethnic foods and the children who ate them as an "other."⁷³ A *New York Times* article from 1950 provides a record of the type of school lunch that the Agricultural Department's guidelines recommended:

It consists of the following: Half pint whole milk. Two ounces lean meat, poultry, fish or cheese, or one egg, or a half cup cooked dry beans or peas or four tablespoons peanut butter. Three-fourths cup of vegetable or fruit and one or more portions of bread with two tablespoons butter or fortified margarine. One of the cold lunches that will be served to children in the city's schools this fall consists of a hard-cooked egg, a whole wheat bread and butter sandwich, a sandwich of white bread, butter and marmalade, tomato wedges, ice cream and a half pint of milk. A hot meal includes soya, macaroni and vegetable soup, a sandwich of sliced American cheese with

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751 (2018).

71. *Id.*

72. Reina Gattuso, *American School Lunch Is Becoming More Diverse, like It Was in the 1910s*, ATLAS OBSCURA (Mar. 21, 2019), <https://www.atlasobscura.com/articles/first-school-lunch> [<https://perma.cc/GUR7-Z9JC>].

73. *Id.*

mustard nut butter on whole wheat bread, an orange and a half pint of milk.⁷⁴

Although a typical school lunch is more diverse now, we still see many of these “American” staples in cafeterias.⁷⁵ More than 70 years later, our school lunch menus are still predominantly “American” even though the country is more diverse than it ever has been.⁷⁶

ii. The National School Lunch Program since 2010

The National School Lunch Program has transformed significantly since it began in 1946. In 2010, as a reaction to the growing child obesity epidemic in the United States, President Obama signed the Healthy, Hunger-Free Kids Act into law.⁷⁷ This Act made significant changes to the National School Lunch Program in hopes of making school lunch, and the children eating it, healthier.⁷⁸ The Act served two main purposes.⁷⁹ First, it was passed as a reauthorization of child nutrition programs, including the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Summer Food Service Program, the State Administrative Expense Program, and the WIC Farmers’ Market Nutrition Program. Second, this Act amended

74. *A Good Lunch, Not Necessarily a Hot One Is Real Need of Nation’s School Youth*, N.Y. TIMES (Aug. 28, 1950), <https://timesmachine.nytimes.com/timesmachine/1950/08/28/91633845.html?pageNumber=14>.

75. *Free Lunch Meals*, N.Y.C. DEP’T EDUC., <https://www.schools.nyc.gov/school-life/food/menus/school-lunch-meals> (last visited Nov. 4, 2019) (citing to the N.Y.C. high school lunch menu — cheese sandwich, milk, nut butter and jelly sandwich, etc.).

76. *New York from the 1940s to Now*, CTR. FOR URB. RES., <https://www.gc.cuny.edu/Page-Elements/Academics-Research-Centers-Initiatives/Centers-and-Institutes/Center-for-Urban-Research/CUNY-Mapping-Service/Projects/New-York-from-the-1940s-to-now> [<https://perma.cc/SE4E-9JZ5>] (last visited Apr. 9, 2020) (“New York’s population in 1940 was overwhelmingly white: fewer than 500,000 non-whites in a city of more than 7.4 million (less than 7% of the population). And though the foreign-born population was a major component of many neighborhoods (there were more than 2 million ‘foreign-born whites’ citywide in 1940), the term ‘foreign-born’ in the 1943 document typically means Italian, Irish, German, Scandinavian or Finnish, or Polish, for example.”).

77. Press Release, The White House, Office of the Press Sec’y, President Obama Signs Healthy, Hunger-Free Kids Act of 2010 into Law (Dec. 13, 2010), <https://obamawhitehouse.archives.gov/the-press-office/2010/12/13/president-obama-signs-healthy-hunger-free-kids-act-2010-law> [<https://perma.cc/RQ8R-UB46>]; see also Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. § 1751 tit. II (2010) (Title II is listed as “Reducing Childhood Obesity and Improving the Diets of Children”).

78. 42 U.S.C. § 1751.

79. S. REP. NO. 111-178, at 1–2 (2010).

the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program, all of which are permanent law and as such do not need to be reauthorized.⁸⁰

During a congressional session in the Senate, several senators expressed the significance of providing children with nutritious meals during the school day.⁸¹ Further, the congressional record reflects a concern over the number of children in the United States who faced food insecurity, and a desire to remedy this, in part, through the National School Lunch Program.⁸²

The rules ultimately promulgated under this Act regulated which foods could be served to children across the country.⁸³ The rules required milk served in schools to be either low-fat (in which case it had to be unflavored) or nonfat (in which case it could be either flavored or unflavored), removing full-fat milk from lunch menus.⁸⁴ Additionally, each grain product served in schools was required to contain at least 50% whole grains.⁸⁵ Furthermore, the Healthy, Hunger-Free Kids Act required a reduction in sodium levels, giving schools ten years to achieve this goal.⁸⁶ The Obama Administration created these stringent standards in hopes of addressing the growing obesity epidemic in America.⁸⁷

Initially, the changes to the National School Lunch Program were met with significant resistance.⁸⁸ There were concerns that rather than adapt to eating healthier lunch options, children would simply throw their meals away.⁸⁹ And, indeed, in the beginning many

80. *See generally* 42 U.S.C. § 1751.

81. 156 CONG. REC. S6849 (daily ed. Aug. 5, 2010) (statement of Sen. Brown). Senator Brown stated, “Study after study indicates that access to healthy, nutritious foods is critical, obviously, to our children’s health and their ability to learn.” *Id.*

82. *Id.*; *see* 156 CONG. REC. S6832 (daily ed. Aug. 5, 2010) (statement of Sen. Leahy).

83. National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, 78 Fed. Reg. 39067, 39068 (June 28, 2013).

84. *Id.* at 39069.

85. *Id.*

86. *Id.* Schools were required to achieve a certain reduction in sodium by 2014 and then an even more significant reduction by 2019.

87. *Id.*

88. Vivian Yee, *No Appetite for Good-For-You School Lunches*, N.Y. TIMES (Oct. 5, 2012), <https://www.nytimes.com/2012/10/06/nyregion/healthier-school-lunches-face-student-rejection.html> [<https://perma.cc/Q7C9-2GF7>].

89. *Id.*

children threw away their lunches in protest.⁹⁰ Despite protests from students, the changes remained in place until 2018, and nearly all schools were able to comply with the new restrictions, including meeting the first of the sodium-reduction targets.⁹¹ Despite this success, recent regulations have made the Obama-era standards more lenient.

When the Trump Administration came to power, Sonny Purdue, the new Secretary of the Department of Agriculture, began to roll back the ambitious standards set by the Obama Administration.⁹² The newest, most current regulations allow schools to sell low-fat flavored milk, require only half of the total grains served in a week to be whole grain, and slow down the timeline that requires schools to reduce the amount of sodium in their lunches.⁹³ Schools now have an additional seven years to reduce sodium levels in school lunches.⁹⁴ These changes have occurred despite national success in meeting the required targets of the Healthy, Hunger-Free Kids Act.⁹⁵

C. New York City's Food Justice Initiatives

Since at least 2010, notwithstanding federal regulation, New York City has made modifications, to its school lunch program, that have gone above and beyond the federal requirements for school lunch.⁹⁶ Currently, the city council is implementing a city-wide food plan to continue making positive changes going forward.⁹⁷ In an August 2019 report, the city council outlined a plan to achieve increased

90. *Id.*

91. Julia Belluz, *The Trump Administration's Tone-Deaf School Lunch Move*, VOX (Dec. 10, 2018, 12:21 PM), <https://www.vox.com/science-and-health/2017/5/2/15508182/school-lunches-usda-sonny-perdue-usda> [<https://perma.cc/5F8P-BG2U>].

92. Diana R. H. Winters, *Food Law at the Outset of the Trump Administration*, 65 UCLA L. REV. DISCOURSE 28, 41 (2017).

93. Child Nutrition Program Flexibilities for Milk, Whole Grains, and Sodium Requirements, 83 Fed. Reg. 63775 (Dec. 12, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-12-12/pdf/2018-26762.pdf> [<https://perma.cc/5P53-TWM5>].

94. *Id.*

95. See Gaby Del Valle, *Federally Funded School Lunches Are about to Get a Lot Less Healthy*, VOX (Jan. 10, 2019, 1:20 PM), <https://www.vox.com/the-goods/2019/1/10/18177099/school-lunch-sonny-perdue-health-hunger-free-kids> [<https://perma.cc/CUC3-7ZWJ>] (“Virtually all school districts met the first sodium reduction targets[.]” (internal quotations omitted)).

96. See *infra* Section I.C.ii.

97. See *infra* Section I.C.iii.

food-security in New York City.⁹⁸ The report mentions the need to continue improving the nutritional quality of school lunches, but it did not emphasize the role that the significant purchasing power of the DOE could play in improving school lunch.⁹⁹ Before considering how the DOE could improve school lunch, this Section contemplates the food justice initiatives New York City has undertaken since 2010.

The first part of this Section discusses Local Laws 50 and 52, both of which were implemented in 2011. These laws encourage New York City agencies to purchase more local food and report on their progress towards achieving this goal. These laws have indirectly impacted school food by increasing the amount of locally sourced food purchased by the DOE. This Section goes on to detail the City's changes that directly impact the school lunch program. This includes initiatives such as Free School Lunch for All, Meatless Mondays, New York Thursdays, and the GreenThumb program, in addition to the recent proposed ban on chocolate milk.

i. Local Laws 50 and 52 of 2011

The most concrete legislative food justice initiative that has an impact on school lunch policy in New York City involves Local Laws 50 and 52. In 2011, New York City Council passed Local Law 50, which “encourage[s] agencies to make *best efforts* to purchase New York state food[.]”¹⁰⁰ The City's New York State Food Purchasing Guidelines say that city agencies:

[M]ay grant a ‘price preference’ for New York State food, e.g., agencies may determine that it is appropriate to award a particular contract to a bidder offering New York State food products whose price falls within 10% of the lowest responsive, responsible bidder's price, where that low bidder does not offer New York State food products.¹⁰¹

The guidelines also encourage the purchase of New York State food products in the following ways:

98. See generally JOHNSON, *supra* note 57 (The city council report outlines a general plan the city council hopes to implement moving forward, but is not, in itself, a legally binding document).

99. See *id.* at 11.

100. N.Y.C. ADMIN. CODE § 6-130 (McKinney 2011) (emphasis added) (“The city chief procurement officer shall encourage agencies to make best efforts to purchase New York state food in ways including, but not limited to . . .”).

101. *New York State Food Purchasing Guidelines*, NYC MAYOR'S OFF. CONT. SERVS. (Apr. 17, 2015), <https://www1.nyc.gov/assets/mocs/downloads/pdf/epp/New%20York%20State%20Food%20Purchasing%20Guidelines%203.pdf> [<https://perma.cc/DL3M-L2N2>].

1. Allowing the purchasing agency to mandate that a specific product, such as apples, comes from New York State.¹⁰²
2. Creating a dual-class bidding system. This requires that the first class of bidders submit a bundle of goods including 30% New York State food products. The second class of bidders do not have to have to offer any certain percentage of New York State goods. The agency may then select the low bidder in the first class or the low bidder in the second class.¹⁰³
3. Allowing agencies to “craft solicitations that consider the freshness and perishability of the food being purchased, such as the number of days from harvest to delivery.”¹⁰⁴
4. Allowing “[s]ervice providers responding to such solicitations [to] be evaluated with regard to their experience, organizational capability and/or approach to ensuring the appropriate use of New York State food products in their programs.”¹⁰⁵

Each year Local Law 50 requires the Chief Procurement Officer to submit a report — detailing the efforts in the previous fiscal year to implement the Food Procurement Guidelines — to the mayor and the speaker of the city council, as well as publish it on the Mayor’s Office of Contract Services website.¹⁰⁶ The clauses of Local Law 50, therefore, aimed to provide the city council with concrete tools to encourage the purchase of local and regional food for school lunches.

Local Law 50 was supplemented by the addition of Local Law 52 of 2011, which created additional reporting requirements for the city. The city council passed Local Law 52, a Food Metrics law, which requires the city to report on a variety of food-related topics.¹⁰⁷ This report details the efforts New York City has made and plans to make in its fight against food insecurity.¹⁰⁸ The report is required to include “the total dollar amount of expenditures by the department of education on milk and other food products that are subject to the United States department of agriculture country of origin labeling requirements” and “the location . . . of each community garden located on city-owned property.”¹⁰⁹ In its most recent Fiscal Year

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Food Policy Standards*, N.Y.C. MAYOR’S OFF. CONT. SERVS., <https://www1.nyc.gov/site/mocs/legal-forms/food-policy-standards.page> [<https://perma.cc/CN76-RWBM>] (last visited Apr. 9, 2020).

107. New York City, N.Y., Local Law No. 52 Int. No. 615-A (2011).

108. See N.Y.C. FOOD METRICS REPORT 2018, *supra* note 12, at 8.

109. New York City, N.Y., Local Law No. 52 Int. No. 615-A (2011).

Report, the Mayor's Office of Food Policy discusses food insecurity in New York City, improving food procurement policies, increasing access and awareness to healthy foods, and supporting a sustainable food system.¹¹⁰ Thus, both Local Laws 50 and 52 are crucial pieces of legislation for monitoring and improving New York City's progress towards alleviating food insecurity.

ii. Changes to New York City's School Lunch Program

In addition to these legislative changes, the city government has instituted significant changes to the New York City school lunch program since 2010. New York City has implemented policies including Free School Lunch for All, Meatless Mondays, New York Thursdays, and the GreenThumb program. In addition to those changes, New York City has proposed a ban on chocolate milk in city public schools, and there has been a recent push to implement scratch-cooking in school cafeterias.¹¹¹ These changes to the program, along with the legislative changes under Local Laws 50 and 52, have allowed New York City to change the food hundreds of thousands of public school children eat.

In 2014, the city council passed a resolution that allows all students in New York City public schools to receive free school lunch.¹¹² This resolution makes a significant impact on low-income households, as their children are receiving a large portion of their nutritional needs during the day, and parents can save on the cost of that meal.¹¹³ In the 2019–2020 school year, the “Meatless Monday” initiative, which provides a vegetarian breakfast and lunch menu weekly on Mondays,¹¹⁴ expanded from its previous pilot in 15 Brooklyn public schools¹¹⁵ to all New York City public schools.¹¹⁶ On Thursdays in

110. *See generally* N.Y.C. FOOD METRICS REPORT 2019, *supra* note 13.

111. *Testimony to NYC Council Committee on Education: Scratch-Cooking Implementation Bill*, N.Y.C. FOOD POL'Y CTR. HUNTER C. (Sept. 18, 2019), <https://www.nycfoodpolicy.org/testimony-to-new-york-city-council-committee-on-education-scratch-cooking-implementation-bill/> [<https://perma.cc/JJ6R-93V7>].

112. New York City Council, Res. No. 72, File no. 0072-2014 (2014).

113. Rosenberg & Cohen, *supra* note 28, at 1119.

114. Doug Criss, *New York Public Schools to Have 'Meatless Mondays' Starting This Fall*, CNN (Mar. 12, 2019, 11:59 AM), <https://www.cnn.com/2019/03/12/us/new-york-meatless-mondays-trnd/index.html> [<https://perma.cc/AH6B-44KY>].

115. Bridget Shirvell, *New York City Public Schools Test the Meatless Monday Waters*, EDIBLE MANHATTAN (July 13, 2018), <https://www.ediblemanhattan.com/foodshed-2/meatless-monday-nyc-public-schools/> [<https://perma.cc/5MTD-C25X>].

116. Criss, *supra* note 114.

New York City public schools, the DOE “celebrate[s] all the locally grown or produced foods on [their] menus.”¹¹⁷ The GreenThumb program, which New York City’s Department of Parks and Recreation runs, is the largest community garden program in the country.¹¹⁸ Additionally, the New York City Council has proposed looking into the possibility of kitchen renovations in schools that would allow public school cafeteria workers to cook from scratch.¹¹⁹ Individual schools in New York City are already pressing forward on their own with scratch-cooking initiatives, but it is far from the norm.¹²⁰ These changes have successfully transformed the lunch menu for many New York school children by expanding their food options and introducing them to more fresh and environmentally-conscious meals.

Not all of New York City’s school lunch initiatives have been well-received by the community. For example, New York City proposed a ban on chocolate milk in schools because of the high sugar content.¹²¹ This ban has received considerable backlash from parents,¹²² as well as the dairy industry.¹²³ Both expressed concern that children will not drink unflavored milk and, in turn, will miss out on nutrients that are essential to their growth.¹²⁴ In fact, the dairy farmers in Upstate New York who would be most directly affected by this ban asked local congressional members to write a letter to Mayor

117. Some items listed on the DOE’s online menu for New York Thursdays include, “New York Cookie Treat,” “Fresh New York Apples,” and “Salad Bar New York Local.” *Food Programs*, N.Y.C. DEP’T EDUC., <https://www.schools.nyc.gov/school-life/food/food-programs> [<https://perma.cc/TB9F-XAH8>] (last visited Feb. 26, 2020).

118. Through this program, over half of New York City school buildings have a garden, and 735 schools have registered garden projects. N.Y.C. FOOD METRICS REPORT 2018, *supra* note 12, at 28.

119. JOHNSON, *supra* note 57, at 4.

120. Amy Thomas, *In the Bronx, an Elite Chef Is Trying to Engineer a Better School Lunch*, N.Y. TIMES (May 14, 2019), <https://www.nytimes.com/2019/05/14/dining/brigaid-school-lunch-bronx.html> [<https://perma.cc/K4DU-WY88>].

121. Erica Chayes Wida, *New York City Proposal to Ban Chocolate Milk from School Sparks Debate*, TODAY (Sept. 18, 2019), <https://www.today.com/food/new-york-city-proposal-ban-chocolate-milk-schools-sparks-debate-t162790> [<https://perma.cc/SD4J-8UUJ>].

122. *See infra* Section II.B.i.

123. Selim Algar, *New York City Schools Want to Ban Chocolate Milk*, N.Y. POST (Sept. 15, 2019), <https://nypost.com/2019/09/15/new-york-city-schools-want-to-ban-chocolate-milk/> [<https://perma.cc/U3EX-9KCG>].

124. *Id.*

de Blasio in opposition to this ban.¹²⁵ Although this letter discussed the potential negative impact on children’s health, there was also concern about the dairy farmers’ financial stability if milk consumption were to decline dramatically.¹²⁶ Despite not receiving full support of every healthy-lunch initiative, the city council has continued to search for the best ways to create a healthier community.

iii. New York City Council’s Plan for Food Equity

More recently, the New York City Council has written a report which recognizes the need for a comprehensive plan to achieve food security in New York City. In August 2019, the city council released this report entitled “Growing Food Equity in New York City.”¹²⁷ The report recognizes the cultural significance of food, as well as the current state of food inequality in New York City.¹²⁸ Furthermore, the report contains suggestions for policy changes in several different food-related categories: food governance, hunger, food waste, healthy school food and nutrition education, equitable access to healthy food, and urban agriculture.¹²⁹ The city council’s report notes that it is working towards a future where “[e]very person regardless of their income, race, gender, education, age, birthplace, or neighborhood [has] equitable access to healthy food.”¹³⁰ In the section of the report dedicated to “healthy school food and nutrition education,” the city council proposes modifications to school cafeteria layouts and a campaign to increase awareness of the summer meals program.¹³¹ Additionally, the city council set out to study and create “an implementation plan to ensure that every school child has access to scratch cooked, healthy, delicious, and culturally-appropriate menu items.”¹³²

In addition to discussing steps the city council plans to take in the coming years, the report considers whether to codify legislation that would implement a Good Food Purchasing Program. A Good Food Purchasing Program — which the Good Food Purchasing Center

125. *Id.*

126. *Id.*

127. JOHNSON, *supra* note 57.

128. *Id.* at 4.

129. *Id.* at 8–13.

130. *Id.* at 56.

131. *Id.* at 11.

132. *Id.* at 11. While the City Council Report mentions increasing the diversity of food offerings, this is mentioned only in one line of the over 50-page report).

would implement — creates a framework that allows cities to more intelligently use their purchasing power, focusing on five core values: local economies, environmental sustainability, valued workforce, animal welfare, and nutrition.¹³³ The Center for Good Food Purchasing has begun to evaluate New York City to determine how a Good Food Purchasing Program could best fit into the existing structure of New York City.¹³⁴ If implemented, the New York City school lunch program would likely source more food locally, reduce New York City’s carbon footprint, and overall create more nutritious school food.¹³⁵ Although the city council’s report on food equity provides a comprehensive outline for the future of New York City’s food landscape, it lacks an emphasis on the importance of creating not only nutritious but also diverse school meals.¹³⁶ The DOE, however, has the resources to improve both the nutritional quality and diversity of school food.

D. The Role of the New York City Department of Education

Perhaps the most powerful agency involved within the school lunch policy is the New York DOE, an agency with the power to influence menu items through its policies and its massive budget. The DOE is in charge of New York City’s school lunch program. With 2018 and 2019 procurement budgets of around \$200 million and of around 950,000 meals serviced daily, the DOE has “the largest school food service program in the United States.”¹³⁷ Out of the \$200 million the DOE spent on food in 2018, the agency spent \$26.7 million on locally or regionally grown produce, milk, and yogurt, or around 13% of its annual budget.¹³⁸ In 2019, the DOE spent slightly less on local milk, produce, and yogurt, with \$23 million going towards such products.¹³⁹ These expenditures account for about 11.5% of the DOE’s annual budget and represent a 1.5% decrease in spending on local products from the previous fiscal year.

133. *The Program*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/program-overview> [https://perma.cc/UH2F-U7PC] (last visited Nov. 26, 2019).

134. *Portfolios: New York*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodcities.org/portfolio/new-york/> [https://perma.cc/HB8Y-YNNA] (last visited Nov. 26, 2019).

135. See *infra* Section II.A.ii.

136. JOHNSON, *supra* note 57.

137. N.Y.C. FOOD METRICS REPORT 2018, *supra* note 12, at 16.

138. *Id.*

139. N.Y.C. FOOD METRICS REPORT 2019, *supra* note 13, at 16.

There are, of course, many hurdles both the DOE and New York City face when adjusting school food offerings. These hurdles include political consequences for changes, budgetary constraints, difficulty attracting a knowledgeable staff, and appealing to a particularly tricky consumer demographic — young children and teenagers.¹⁴⁰ However, despite the challenges, it is not impossible. Both individual schools and large school districts throughout the country have worked towards creative solutions to circumvent many of these problems.¹⁴¹

II. DIFFERING IDEAS ON HOW TO ADJUST SCHOOL LUNCH MOVING FORWARD

Section II.A outlines the current debate over increasing the amount of local food purchased by the DOE each year. Section II.A.i evaluates how purchasing more local food would impact the already strained budget of New York City. Section II.A.ii provides concrete examples of cities that have increased the amount of local food they serve in their school lunch programs without increasing costs. Further, Section II.B discusses the debate over making significant changes to school lunch menu items. Section II.B.i addresses the concern that children are typically picky eaters and will not welcome a more diverse lunch menu. Section II.B.ii provides examples of school districts that have made significant changes to the type of food served in schools with much success. When considering making modifications to something as sensitive as a child's nutrition, it is essential to consider both the potential benefits and drawbacks of implementing the changes.

A. Increasing the Amount of Local Food Purchased by the Department of Education

This Section begins by detailing the various definitions of “local food” which are present in both New York City's and the Federal Government's legislation. It is important to understand that while “local food” has more than one meaning, it generally indicates food that is sourced from a certain geographic region or from within a certain mileage of the city or state procuring the food. When considering purchasing more local food and moving away from pre-packaged food or food bought by large conglomerates, there is a

140. Susan Levine & Jenny Rogers, *What's for Lunch?*, WASH. POST (Oct. 28, 2019), <https://www.washingtonpost.com/graphics/2019/food/school-lunches-in-america/> [<https://perma.cc/6HP2-T4RX>].

141. See *infra* Sections II.A, II.B.ii.

concern about an increase in cost. This Section outlines the concern that the DOE would need to increase its budget in order to purchase more local food for the New York City school lunch program. Los Angeles and Oakland are examples of cities that have increased the amount of local food served in schools without raising costs. In fact, Oakland managed to lower its overall food procurement costs. It is significant to look at the costs of local food when considering making modifications to the New York City school lunch program, as the DOE only has finite resources.

i. Evaluating the Potential Increased Costs of Purchasing Local Food

When discussing increasing the amount of local food a city should purchase, it is imperative to understand what exactly “local” means. Used colloquially, describing food as “local” may mean from a farm only a couple of miles away. However, local has a more expansive, although disputed, definition when used in legislation. The USDA has defined “local food” as “the direct or intermediated marketing of food to consumers that is produced and distributed in a limited geographic area” and has stated that “[t]here is no pre-determined distance to define what consumers consider ‘local,’ but a set number of miles from a center point or state/local boundaries is often used.”¹⁴² The New York City government already encourages its agencies to purchase food locally, using Local Laws 50 and 52 to foster the procurement of New York State products.¹⁴³ Under Local Law 52, the city council has defined “local” as “agriculturally produced and harvested within New York state.” Expanding beyond “local” food, Local Law 52 considers food to be a regional product if it “were grown, agriculturally produced and harvested within the states of Connecticut, Delaware, Maine, Maryland, Massachusetts,

142. *Local Foods*, U.S. DEP’T AGRIC., https://www.nal.usda.gov/aglaw/local-foods#quicktabs-aglaw_pathfinder=1 [https://perma.cc/W2SY-4SKJ] (last visited Apr. 9, 2020); see also STEVE MARTINEZ ET AL., U.S. DEP’T OF AGRIC., LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES (2010), https://www.ers.usda.gov/webdocs/publications/46393/7054_err97_1_1.pdf?v=0 [https://perma.cc/8P32-LR52] (“There is no consensus on a definition of ‘local’ or ‘local food systems’ in terms of the geographic distance between production and consumption. But defining ‘local’ based on marketing arrangements, such as farmers selling directly to consumers at regional farmers’ markets or to schools, is well recognized.”).

143. See *supra* Section I.C.i.

New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia or West Virginia[.]”¹⁴⁴

One concern about making significant changes to how New York City sources foods served in school cafeterias is the increased costs associated with buying more local and regional foods.¹⁴⁵ When faced with food insecurity, it seems logical to work towards making food more cost-effective for communities.¹⁴⁶ Moving towards a food economy based on cheap, overly processed foods, however, has only deepened the nutritional challenges for food-insecure households.¹⁴⁷ When we look to food served in schools, much of the same logic applies. On the surface, purchasing cheaper food for school lunches works because it keeps budget costs down while still providing substantial meals to the children.¹⁴⁸ These changes also appeal to many taxpayers who want to ensure the government is spending their money economically.¹⁴⁹

According to the Center for Good Food Purchasing, the benefits of buying more local food arguably outweigh the costs, even if school districts need to expand their budgets.¹⁵⁰ Sourcing food locally provides both nutritional advantages and environmental benefits. Buying foods from local or regional sources, instead of sources that are further away, reduces the carbon footprint of the purchase.¹⁵¹ Furthermore, the overall nutritional value of the food served will increase if it is purchased locally.¹⁵² This is not because lettuce purchased within 100 miles of a particular location is inherently more nutritious than lettuce purchased further away.¹⁵³ Rather, when the

144. New York City, N.Y., Local Law No. 52 Int. No. 615-A (2011).

145. *Institutional Commitment*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/program-overview/#institutional-commitment> [<https://perma.cc/A9AT-MNDF>] (last visited Nov. 26, 2019).

146. Bob Quinn & Liz Carlisle, *Eating Organic Can Help Reduce the High Cost of Cheap Food*, S.F. CHRON. (May 9, 2019), <https://www.sfchronicle.com/opinion/openforum/article/Open-Forum-Eating-organic-can-help-reduce-the-13830691.php?psid=5G7xg> [<https://perma.cc/QD9J-TZUN>].

147. *Id.*

148. Lappé & Oliva, *supra* note 17.

149. *Id.*

150. *Institutional Commitment*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/program-overview/#institutional-commitment> [<https://perma.cc/A9AT-MNDF>] (last visited Nov. 26, 2019).

151. *Id.*

152. Tara Parker-Pope, *Boosting Health with Local Food*, N.Y. TIMES (June 6, 2008, 9:27 AM), <https://well.blogs.nytimes.com/2008/06/06/boosting-health-with-local-food/> [<https://perma.cc/WYY9-AXB5>].

153. *Id.*

focus turns to purchasing food locally, the food tends to be less processed, and people eat more fruits and vegetables.¹⁵⁴

Yet another positive impact of buying food locally is that these purchases usually provide an influx of money to local economies, for example, by supporting farmers markets.¹⁵⁵ Although New York City itself does not have an agricultural economy, the surrounding farm-based economies in New York State and New Jersey would likely benefit, as those economies connect with the city through urban farmers markets.¹⁵⁶ Additionally, purchasing local foods allows businesses within the city to profit; these businesses could help import and distribute the food that schools may use in their menus. Furthermore, although purchasing locally can initially be more expensive, it is important to keep in mind the health-care costs associated with diet-related illnesses.¹⁵⁷ These health-related costs, which the entire country bears, are in the trillions of dollars.¹⁵⁸ Working towards increasing the overall health of communities has the potential to lower that health-related cost. One way to encourage healthy eating is to provide nutrient-filled local food in schools.¹⁵⁹

ii. Cities That Have Modified Their Food Procurement Models

Food insecurity is not unique to New York City, and other cities across the country have begun utilizing their local school districts' purchasing power to make a change. The Center for Good Food Purchasing has implemented its program in several cities without

154. *Id.*

155. *Id.*

156. *Id.*

157. "Health-care costs related to obesity in this country topped \$1.72 trillion dollars in 2018." Andrea Strong, *The Dark Side of Chocolate Milk*, N.Y.C. FOOD POL'Y CTR. HUNTER C. (Sept. 17, 2019), <https://www.nycfoodpolicy.org/the-dark-side-of-chocolate-milk-in-nyc-schools/> [<https://perma.cc/R9Y3-F57B>]; see also Lappé & Oliva, *supra* note 17 ("Cheap food isn't always so cheap. Consider the costs in the United States of the illnesses and deaths linked to unhealthy food [blights that fall mostly on low-income communities and communities of color, where millions live either without access to good food or in food environments with too much unhealthy food]. Health-care costs from diagnosed Type 2 diabetes total a staggering \$327 billion a year — a cost we all share.").

158. "Health-care costs related to obesity in this country topped \$1.72 trillion dollars in 2018." Strong, *supra* note 157; see also Lappé & Oliva, *supra* note 17.

159. See Lappé & Oliva, *supra* note 17 (noting that "In Oakland, for instance, the school district's choice to buy better and, yes, more expensive meat — increasing the amount of 100 percent grass-fed beef and antibiotic-free chicken purchases, for instance — was coupled with a reduction in meat purchases. The result? The more expensive choice was actually cost neutral and the customers — those finicky kids — reported high rates of satisfaction").

significant cost increases.¹⁶⁰ In some cases, the Center for Good Food Purchasing has increased the nutritional value of food while remaining cost neutral.¹⁶¹ Buying cheaper, more heavily processed foods may seem more economical on its face. However, using the programs developed in coordination with the Center for Good Food Purchasing, Los Angeles and Oakland have moved towards buying locally grown products and have made significant improvements to the nutritional value of their school lunches.¹⁶²

In 2012, Los Angeles, California, became the first city to implement a Good Food Purchasing Policy through its school districts. As the longest-running Good Food Purchasing Program, Los Angeles's program can teach other cities a significant amount from its successes and failures over the past eight years. Initially, Los Angeles found that local and organic products tended to be more expensive; however, over the seven years it has been in the schools, the Los Angeles school districts have been able to purchase higher quality foods without increasing costs.¹⁶³ In addition to moving towards buying antibiotic-free chicken, Los Angeles has been able to move from "purchasing just 9 percent of its food locally to 50–60 percent — a shift that put \$12 million into the local economy and helped create about 150 jobs."¹⁶⁴ The Los Angeles program, although the longest running, is not the Center for Good Food Purchasing's only success story.

Oakland, California, has also implemented a Good Food Purchasing Policy through its school district. By making changes to

160. *Portfolios: Los Angeles*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodcities.org/portfolio/los-angeles/?portfolioCats=32> [https://perma.cc/3FW2-J5T4] (last visited Nov. 26, 2019); *Portfolios: Oakland*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodcities.org/portfolio/oakland/?portfolioCats=32> [https://perma.cc/ZU7E-HR8Q] (last visited Nov. 26, 2019).

161. See *supra* Sections II.A.i.1–2.

162. See *infra* Section II.A.i-ii.

163. *FAQs*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/faq/> [https://perma.cc/Y4XK-K585] (last visited Nov. 20, 2019) ("Some food products may be more expensive, but there are many creative strategies that institutions employ to offset potential cost increases, such as shifting toward local producers to reduce travel and storage cost of perishables or redesigning menus to reduce relatively more expensive meat purchases and redirect to produce and alternative proteins.").

164. Luke Tsai, *With the Adoption of a New Food Procurement Policy, OUSD's School Lunch Gets a Grade*, EAST BAY EXPRESS (Oct. 24, 2016), <https://www.eastbayexpress.com/WhatTheFork/archives/2016/10/24/with-the-adoption-of-a-new-food-procurement-policy-ousds-school-lunch-program-gets-a-grade> [https://perma.cc/RH8K-YNJH].

the food served in its schools, Oakland's Unified School District has used its \$9 million food procurement budget to increase the nutritional value of its school food.¹⁶⁵ The Oakland Unified School District serves around 20,000 lunches each day, with 68% of the students receiving free or reduced-price meals.¹⁶⁶ One significant change the Oakland Unified School District made to these meals was “replacing a share of its meat and cheese purchases with plant-based proteins.”¹⁶⁷ This change not only saved the school district money — as meat is expensive — but it also “improved students’ access to healthful food.”¹⁶⁸ The reduction in meat purchases has led to an overall savings of \$42,000 over two years “by decreasing the amount spent per meal by one percent.”¹⁶⁹ In addition to reducing the amount of meat purchased, the Oakland Unified School District chose to buy better, more expensive meat when it did buy meat.¹⁷⁰ The Good Food Purchasing Programs in Los Angeles and Oakland demonstrate that creating a healthier school lunch program does not have to result in an increase in a city’s overall food procurement budget.

B. Diversification of School Food Offerings

New York City’s school lunch provides essential nutritional benefits for its school-age children. It is critical to take into account the reality of children’s ability to adapt when considering making significant changes to the school lunch menus. There is a concern that if school lunch menus begin to include too many unfamiliar options, children will simply not eat their lunch, thus missing out on critical calories and nutrients. However, there is the reality that New York City’s population is incredibly diverse, and the school lunch menu should reflect that diversity. The school lunch menu should not consider some students’ comfort more important than others’. Further, there is the argument that children are willing to adapt and try different foods; it will just take time and some trial and error.

165. *Portfolios: Oakland*, *supra* note 160.

166. *Id.*

167. KARI HAMERSCHLAG & JULIAN KRAUS-POLK, FRIENDS OF THE EARTH, SHRINKING THE CARBON AND WATER FOOTPRINT OF SCHOOL FOOD: A RECIPE FOR COMBATING CLIMATE CHANGE 6 (2017), https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wpcontent/uploads/2017/webiva_fs_2/FOE_FoodPrintReport_7F.pdf [<https://perma.cc/F3RE-UPDT>].

168. *Id.* at 3.

169. *Id.* at 8.

170. Lappé & Olivia, *supra* note 17 (Oakland increased the amount of 100% grass-fed beef it purchased while reducing the overall amount of meat purchased).

Both sides of this debate provide compelling points and raise valid concerns about the potential impacts of either leaving the school lunch menu as is or adding more diverse offerings.

i. If New York City Makes School Lunch Unrecognizable, Children Will Not Eat

Changes to school lunch menus produce strong reactions — both positive and negative — in the affected communities.¹⁷¹ For example, although many are in support of Meatless Mondays, others in the community feel it is not the school’s role to dictate whether or not children eat meat.¹⁷² Although no one is a proponent of having unhealthy lunches, everyone has different understandings of what it means to eat healthily. These concerns over changing school lunch menus are not new, as shown by the controversy over the Obama Administration’s school lunch regulations. After Congress passed the Obama-era Healthy, Hunger-Free Kids Act of 2010, anecdotal accounts of food waste in school cafeterias bombarded the news cycle.¹⁷³ However, the only solution to food waste is not to throw nutritional values out the door. Bathgate Elementary School in Mission Viejo, California, for example, has introduced “sharing stations” into their school cafeterias.¹⁷⁴ These let students “turn in certain lunch items if they decide they’re full or to take something out if they’re still hungry.”¹⁷⁵ Furthermore, almost a decade later, empirical studies have shown that school lunches are better than ever, and plate waste is not any worse than it was before the Healthy, Hunger-Free Kids Act.¹⁷⁶

The DOE has recently begun to consider a ban on chocolate milk in schools,¹⁷⁷ and this ban provides a clear example of the flexibility

171. Levine & Rogers, *supra* note 140 (“For as long as public schools have been feeding kids lunch, grown-ups have been arguing about it. Everything from what goes on the plate to who should pay the bill to whether ketchup is a vegetable has prompted heated debate.”).

172. Rebecca C. Lewis, *Are Meatless Mondays Healthy?*, CITY & ST. N.Y. (Sept. 26, 2019), <https://www.cityandstateny.com/articles/policy/education/are-meatless-mondays-healthy.html> [https://perma.cc/T46R-GURT].

173. Marlene B. Schwartz, et al., *New School Meal Regulations Increase Fruit Consumption and Do Not Increase Total Plate Waste*, 11 CHILDHOOD OBESITY 242, 242 (2015); *see also* Yee, *supra* note 88 (detailing some of the negative reactions to the healthier food and smaller portion sizes).

174. Levine & Rogers, *supra* note 140.

175. *Id.*

176. *Id.*

177. Wida, *supra* note 121.

from person to person of the term “healthy food.”¹⁷⁸ Advocates of the chocolate milk ban argue that chocolate milk has too much added sugar, and if it were not an option, children would eventually switch over to drinking regular milk.¹⁷⁹ Additionally, proponents of the ban suggest children could get their daily calcium requirements from other sources, such as leafy green vegetables or calcium-fortified foods.¹⁸⁰ These proponents also say that milk — and dairy more generally — is given too much significance in school lunches considering the wide array of dairy alternatives available today.¹⁸¹ Critics of the ban argue that their children will not receive enough calcium from other sources. Furthermore, they argue that, although chocolate milk has high amounts of added sugar, it is important for children to meet their daily calcium requirements and it is not going to hurt them to have one glass of chocolate milk each day.¹⁸²

ii. Children Will Adapt to a Diverse Menu

Healthy food has been given a narrow definition in the United States,¹⁸³ leading to misconceptions about what “health food” is, especially in non-White communities.¹⁸⁴ New York City’s current school lunch menu is a perfect example of how the United States’ nutritional education is lacking in diversity.¹⁸⁵ For example, daily

178. *Id.*

179. *Id.* (“In the U.S., children eat three times as much added sugar as they should each day, according to the American Heart Association [(AHA)]. To limit that number, the AHA issued a recommendation in 2016 suggesting kids should consume no more than six teaspoons of added sugar a day.”).

180. Frances Largeman-Roth, *7 Surprising Foods That Have More Calcium Than a Glass of Milk*, TODAY (June 19, 2017), <https://www.today.com/food/foods-more-calcium-glass-milk-t110786> [<https://perma.cc/A7TL-BSHH>] (listing foods that have more calcium than milk).

181. Mortazavi, *supra* note 6, at 22–23 (“Some argue that the USDA created ‘nutrition’ based norms that pivot around a food that many minorities cannot eat — dairy — despite valid nondairy alternatives. These guidelines do not require other calcium rich food such as collard greens, broccoli, kale, or beans in school meals and thus fail to teach children the value of such dairy alternatives.”).

182. Wida, *supra* note 121.

183. Tamara Melton, *Our Idea of Healthy Eating Excludes Other Cultures, and That’s a Problem*, SELF (July 31, 2018), <https://www.self.com/story/our-idea-of-healthy-eating-excludes-other-cultures-and-thats-a-problem> [<https://perma.cc/7PQN-PF26>].

184. *Expanding Healthy*, CORBIN HILL FOOD PROJECT (Aug. 27, 2019), <http://corbinhill-foodproject.org/newsletters/2019/8/27/expanding-healthy> [<https://perma.cc/GH3C-N33B>].

185. *Free Lunch Meals*, *supra* note 75.

offerings include peanut butter or turkey sandwiches.¹⁸⁶ Lunch specials, which rotate daily, include pizza, chicken tenders, and hamburgers, among others.¹⁸⁷ However, school lunches in the United States were not always this way. In the early 1900s, well before the creation of the National School Lunch Program in 1946, lunch offerings in New York City schools aimed to reflect the diversity of its students.¹⁸⁸ Italian students were given *minestra* and pasta, Jewish students were offered vegetarian and kosher meals, and Irish children were given hearty soups.¹⁸⁹ Rather than forcing an arbitrary “American” identity on these children, the schools recognized the students’ cultural diversity in the cafeteria.

Recently, dieticians have begun to recognize the need for a more inclusive message on health,¹⁹⁰ and a call for a more diverse nutritional education has started to circulate within school districts.¹⁹¹ Dieticians have suggested that “health professionals embrace diversity” and make an effort not only to learn about other cultures’ foods but also to tailor diet advice towards a client’s culture.¹⁹² As school districts across the country answer this call by adapting their menus, children are often responding positively to the change.¹⁹³ The key to improving nutrition in school lunch is creating menus that appeal to the student-consumer.¹⁹⁴

To achieve a more consumer-friendly school lunch, many school districts allow students to sample different potential menu items before they are permanently added — this has seen much success.¹⁹⁵ For example, at Sorensen Magnet School of the Arts and Humanities in Idaho, Roberta Bainard, the kitchen manager, found that students are “more open to trying new things.”¹⁹⁶ This is not to say children are not picky about what they eat, rather that when given the

186. *Id.*

187. *Id.*

188. Gattuso, *supra* note 72.

189. *Id.*

190. *Expanding Healthy*, *supra* note 184.

191. Allison Milch & Alisha Gains, *Enriching School Lunches with Greater Nutritional and Cultural Values*, HEALTHY FOOD CHOICES SCHS. (June 12, 2019), <https://healthy-food-choices-in-schools.extension.org/enriching-school-lunches-with-greater-nutritional-and-cultural-values/> [https://perma.cc/64TM-6YVJ].

192. Melton, *supra* note 183.

193. *See generally* Levine & Rogers, *supra* note 140.

194. *Id.*

195. *Id.*

196. *Id.*

opportunity to adapt to the changes, they react well.¹⁹⁷ Furthermore, at Doby Elementary School south of Tampa, Florida, for example, the school district provides surveys to students to keep track of which foods are doing well and which are not.¹⁹⁸ Each Tuesday, known at Doby Elementary as “Try It Tuesdays,” the children are exposed to a sampling of something new that may be added to the menu.¹⁹⁹ As this district expands its offerings, its fairly diverse student body expresses a variety of reactions to the menu items,²⁰⁰ but ultimately the children are eating a wider assortment of healthier foods because of the school’s dedication to improving school lunch.²⁰¹

Experience also shows that another important step towards improving school food’s nutrition is creating a kitchen environment where staff can cook more food from scratch and hiring staff who have those capabilities.²⁰² Food cooked from scratch — rather than using pre-prepared or pre-packaged food — is healthier and tastier for the kids, both of which are essential goals to reach when making changes to school food.²⁰³ The Alexandria City School District in Virginia, which hired Chef Isaiah Ruffin as its first executive chef, has begun to change around its school food program.²⁰⁴ Ruffin plans to make both surface level and structural changes to improve the food.²⁰⁵ Some of these changes include altering staff job titles from “school nutrition assistant” to “cafeteria chef” or “kitchen manager,” and “securing more ingredients from local farmers, diversifying the menu and reducing kitchen waste.”²⁰⁶ Diversifying school lunch menus is not as readily achievable without the implementing

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* (Out of the 832 students at Doby Elementary School, 48% are White, 25% are Hispanic, and 18% are Black. According to the district’s nutrition service leader, MaryKate Harrison, “Roasted cauliflower was a surprise hit last year, while Swiss chard and bok choy tanked”).

201. *Id.*

202. Hannah Natanson, *‘You’re Chefs! This Is a Kitchen!’ It’s Also a School Cafeteria. That Doesn’t Mean the Food Has to Be Bland or Frozen.*, WASH. POST (Jan. 2, 2020), https://www.washingtonpost.com/local/education/youre-chefs-this-is-a-kitchen-its-also-a-school-cafeteria-that-doesnt-mean-the-food-has-to-be-bland-or-frozen/2020/01/02/23aa9aca-1deb-11ea-87f7-f2e91143c60d_story.html [https://perma.cc/CK5X-NMPJ].

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

structural changes such as those made by the Alexandria City School District.

III. THE NEW YORK CITY DEPARTMENT OF EDUCATION CAN USE ITS PROCUREMENT BUDGET TO PROVIDE BETTER, MORE NUTRITIOUS FOOD TO STUDENTS

Part III of this Note argues that the New York City DOE is well-positioned to mitigate the negative health impacts of food insecurity. Section III.A argues that the DOE should be at the forefront of this change because (1) it has the largest procurement budget of any other school district in the country and of any other agency in New York City, and (2) it directly impacts the lives of children every day through the New York City school system. Section III.B argues that the DOE should use its procurement budget to purchase more local foods to increase the nutritional value of lunches served to students. Section III.C argues that in addition to sourcing foods locally, the DOE should modify its daily lunch offerings to include a wider array of choices. New York City is an extremely diverse place and, thus, it does not make sense that the school lunch menu does not reflect that diversity. Section III.D argues that New York City can use other cities as models moving forward. Creative budgeting, investment in kitchen infrastructure, and hiring qualified staff will all contribute to successfully modifying the school lunch program. Increasing the nutritional value and diversifying the lunch menu are significant actions because they have the potential to (1) increase the nutritional value of lunches children are eating, thus working towards food security, and (2) provide culturally-appropriate nutrition education which has the potential to stick with children into adulthood.

A. Why the Department of Education Should Be at the Forefront of Change

The New York City DOE is particularly well-positioned to make a difference in the long-term health problems related to food insecurity.²⁰⁷ With its large procurement budget and influence on the daily lives of children in New York City, the DOE has both the means and the power necessary to generate significant change.²⁰⁸ As New York City continues to improve its food policy, the government

207. *See supra* Section I.D.

208. *Id.*

would be remiss if it did not take full advantage of the DOE, especially now that every student attending public school receives free lunch.²⁰⁹ As it changes its school lunch policies, New York City needs to consider the diverse population that attends its schools to include more diverse menu items.²¹⁰ If the DOE adjusts its procurement budget priorities accordingly, the agency can provide both nutritious food and life-long healthy eating habits to its students.

B. The Department of Education Should Invest in More Local Food

The New York City DOE has the power to shift the way it spends its annual \$200 million procurement budget and impact the nutritional quality of school lunches.²¹¹ New York City can serve more nutritious lunches to its students by purchasing more local food.²¹² Overall, the nutritional value of local food is significantly higher than that of food purchased elsewhere.²¹³ New York City's DOE is uniquely well-positioned to make significant impacts on its citizens' health for several reasons. First, with its universal free school lunch policy, the DOE has made school lunch accessible to all children in New York City.²¹⁴ This policy allows New York City to reach many more children than school districts who still charge their students for lunch.²¹⁵ Second, the sheer size of New York City's school lunch program provides an excellent platform for making a change.²¹⁶ The DOE serves about 950,000 meals every day, meaning they are impacting hundreds of millions of lunches each year, more than any other district in the United States.²¹⁷

The impact the DOE can make on children's nutrition is far from theoretical. Los Angeles and Oakland — cities with significantly smaller procurement budgets than New York City — have both shifted their schools' spending.²¹⁸ These cities have implemented programs that invest in more local meat, produce, and dairy

209. *See supra* Section I.C.ii.

210. Mortazavi, *supra* note 6, at 16 (“Thus, any lawyer or policymaker seeking to construct food related programs must have an awareness that ‘cultural values embedded in food rules is an important step towards challenging the unscrutinized value system that support social hierarchy.’”).

211. *See supra* Sections II.a.i–ii.

212. *Id.*

213. *See* Parker-Pope, *supra* note 152.

214. *See supra* Section I.C.ii.

215. *Id.*

216. *See supra* Section I.D.

217. *Id.*

218. *See supra* Section II.A.

products.²¹⁹ When forming its policies, the New York City DOE can — and has begun to — emulate Los Angeles and Oakland by employing a similar plan to purchase food from more local sources.²²⁰ There are valid arguments that recognize the limited budget of the DOE; however, other cities have purchased more local food and managed to either remain cost neutral or — as seen in the case of Oakland — actually lower the total procurement budget.²²¹ Not only would these policies allow for the addition of more local foods, but also they would open the door for more culturally diverse lunch options in schools.

C. Inclusion of Culturally Diverse Foods Should Be at the Forefront of Changes to School Lunch

To create a better food system in New York City schools, the city must consider its diverse population²²² and work towards making the public palate reflect that diversity. Currently, the mainstream American cultural ideals of healthy eating involve certain well-known foods. These Eurocentric foods are not traditionally used in the recipes of other cultures, excluding many students from enjoying culturally-appropriate meals.²²³ The perpetuation of the idea that one can only achieve a “healthy” lifestyle through eating a Eurocentric diet, or that health is a one-size-fits-all idea, is counterproductive.²²⁴ Therefore, not only are students not being served familiar foods in their lunches but also their lunches are lacking in culturally-appropriate nutrition education.²²⁵

Although New York City has made great strides towards serving healthier school lunches over the past ten years,²²⁶ its food law policy has failed to address the significance of a culturally diverse lunch menu.²²⁷ The New York City government has stated that it supports

219. *See supra* Sections II.A.i-ii.

220. *See supra* Section I.C.iii.

221. *See supra* Sections II.A.i-ii.

222. *See supra* Section I.A.

223. *See* Melton, *supra* note 183; *see also* *Expanding Healthy*, *supra* note 184 (“In the United States, we have a problem with our understanding of healthy eating: it is too narrow. We only view mainstream, ‘trendy,’ White American or Eurocentric foods as healthy.”).

224. *See* Melton, *supra* note 183.

225. *Supra* Section II.B.ii.

226. *See supra* Part I.

227. *See* Mortazavi, *supra* note 6, at 4 (“[W]hile legislative discussion of relevant nutritional goals in the school lunch program has broadened and improved, discussion of political, social, and cultural foals has lagged.”); *id.* at 4 n.11 (“The study

creating culturally-appropriate school food menus, but they have yet to put it into action.²²⁸ A typical high school lunch menu in New York City lists healthy options such as roasted zucchini, chicken caesar salad, broccoli, green beans, and turkey burgers.²²⁹ Although there are some more diverse offerings like sweet plantains, rice and beans, and Golden Krust Jamaican beef patties, these are not daily offerings, and they far from dominate the average lunch menu.²³⁰ This lack of diversity on the average lunch menu is problematic in schools attended by such a culturally and racially diverse student body.

The problem with serving diverse options as afterthoughts once or twice a week is that children from various backgrounds are learning that foods that may be more familiar to them are more of a treat and less of a healthy lunch staple.²³¹ For example, a student may absorb the message that roti or kimchi is not healthy to consume on a daily basis, despite their proven health benefits.²³² Instead of serving eclectic options once or twice a week, daily lunch menus should reflect the diversity of the schools' student bodies.²³³ As governments search for solutions to food insecurity and its related health problems, it is also crucial to consider the cultural message that school food can send to its students.²³⁴

The meals served in school are more than just another meal for many children in the New York City public school system. These meals can often contain a large portion of a child's daily caloric intake.²³⁵ Even more than that, school food — and food more generally — is central in “creating not only individual identity, but cultural, ethnic, and racial identities.”²³⁶ When nutrition education focuses on foods that are typically “American” or Eurocentric, students of diverse backgrounds are excluded from this essential

of food in the legal context has traditionally been limited in scope. For example, ‘food law’ casebooks currently on the market focus almost exclusively on the powers of the Food and Drug Administration and related regulations.”).

228. See *infra* Section II.C.iii.

229. See *Free Lunch Meals*, *supra* note 75.

230. *Id.*

231. See Melton, *supra* note 183.

232. *Id.*

233. See Mortazavi, *supra* note 6, at 21.

234. *Id.* at 22–26.

235. Rosenberg & Cohen, *supra* note 28, at 1119.

236. See Mortazavi, *supra* note 6, at 16.

education.²³⁷ Conflicting messages about healthy food are amplified in schools because of the power schools have and the impressionable nature of the schoolchildren.²³⁸ When school lunch programs do not include “foods from diverse cultural backgrounds, school lunches erroneously teach American children that American identity is homogenous,”²³⁹ a concerning fact in a city with such a diverse population.²⁴⁰

A fear exists that when school lunch offerings are diversified, becoming unrecognizable to some — but more recognizable to others — children will throw out their lunches, and with it, a large amount of the DOE’s budget.²⁴¹ However, data shows that when schools serve different foods, children will eat them if encouraged by schools to try new things and given some time to adjust to the changes.²⁴² Further, when children from different cultures see school menu items that are more familiar to them, they are excited and feel more comfortable.²⁴³ Although dieticians have begun to recognize the problem with a Eurocentric, homogenous approach to nutrition,²⁴⁴ discussions around school lunch are still focused on nutritional value rather than expanding the conversation to include the cultural and social value of food.²⁴⁵ If New York City wants to provide genuine access to proper nutrition, the city must ensure the information the school system provides is appropriate for a variety of cultures.²⁴⁶

D. Achieving a More Nutritious, Diverse Lunch Menu

As New York City continues to improve its school food, the school administration system should take notes from other school districts around the country. Los Angeles and Oakland provide excellent

237. See Melton, *supra* note 183 (“When healthy eating is presented through a Eurocentric lens the implication is that other cultures’ foods are not as healthy.”).

238. See Mortazavi, *supra* note 6, at 11.

239. *Id.* at 25.

240. See *supra* Section I.A.

241. See Schwartz, et al., *supra* note 173, at 242; see also Yee, *supra* note 88.

242. See *supra* Section II.B.ii.

243. Natanson, *supra* note 202.

244. See Melton, *supra* note 183; Mortazavi, *supra* note 6, at 4 n.11.

245. Mortazavi, *supra* note 6, at 4 (“To date, legislators and federal administrators have not adequately considered the pressing cultural and social ramifications of food choices in federal entitlement programs despite their large-scale implementation and social impact.”).

246. Deborah N. Archer & Tamara C. Belinfanti, *We Built It and They Did Not Come: Using New Governance Theory in the Fight for Food Justice in Low-Income Communities of Color*, 15 SEATTLE J. FOR SOC. JUST. 307, 312 (2016) (“We also observe that *true* access should include both *physical* access . . . and *cultural* access.”).

examples of how school food can be improved by making modifications to menus and purchasing food from local sources.²⁴⁷ The New York City school system needs to find the most effective way to introduce more local food and more diverse recipes into its current lunch menus.²⁴⁸

As evidenced by the changes implemented in the Los Angeles and Oakland school districts, it is possible to create healthier, more diverse lunch menus without overextending the DOE's budget.²⁴⁹ Specifically, New York City schools would benefit greatly from the addition of a "Try It Tuesday," which was successfully introduced by Doby Elementary.²⁵⁰ Giving children the opportunity to taste menu items before they are permanently added to the school lunch menus will lead to less waste.²⁵¹ If students do not appreciate a new food item or recipe — like the bok choy at Doby Elementary School — the kitchen staff can ensure that menu item never makes it into the children's main courses.²⁵²

The New York City DOE can also change the mechanisms for providing food to students to integrate more nutritious food into its menu. Another critical part of integrating more nutritious, local food and more diverse recipes into school lunch menus is hiring experienced staff.²⁵³ Without dedicated, well-trained staff, there is little hope that school food will become more diverse. Creating a more culturally diverse menu that is still appetizing to the majority of children requires actual chefs, as well as staff who are dedicated to the likely slow process of introducing new foods to New York City schools. Thus, hiring an executive chef or hiring more cafeteria workers who have cooking experience, as well as giving them appropriate kitchen equipment, is essential in making long-lasting, positive changes to school food in New York City.²⁵⁴

As New York City considers its next steps towards achieving food security, it should work towards making school lunches more nutritious and more diverse. The addition of more locally-sourced foods and more culturally diverse menu items will assist the city in its goal to achieve total food equity.

247. *See supra* Section II.A.ii.

248. *See supra* Section II.B.ii.

249. *See id.*

250. *See id.*

251. Levine & Rogers, *supra* note 140.

252. *Id.*

253. *See supra* Section II.B.ii.

254. *Id.*

CONCLUSION

Food touches every aspect of people's lives. It is more than a means of survival; it is a way for people to connect with each other, with their cultures. Unfortunately, many of New York City's residents are food-insecure and access to sufficient food every day is not a guarantee. Further, often much of the food most readily available to people in food-insecure households have little nutritional value.

As New York City works to alleviate food insecurity, it is important to remember the systemic injustices that have contributed to the problem, the resolution of which requires a multi-faceted plan. Any such plan must include economic empowerment of low-income communities, meaningful access to healthy foods, and livable wages.²⁵⁵

The New York City DOE is well-positioned to be a part of the solution. They have the ability to set a lunch policy that will affect over 900,000 New York City children each day.²⁵⁶ By utilizing its purchasing power to buy more local and regional foods, the DOE can significantly impact the nutritional value of school lunch. By serving a more culturally diverse menu to students, the DOE can teach New York City children about eating healthily in a way that will connect with the diverse student body.

When working towards food equity in New York City, shifting the way the DOE spends its annual procurement budget is a "small, good thing" the city can do to make a difference.

255. See Rosenberg & Cohen, *supra* note 28, at 1116–17.

256. N.Y.C. FOOD METRICS REPORT 2019, *supra* note 13, at 16.