Legal and Practical Considerations

in the Operation of Federal School Nutrition Programs

Federal school nutrition programs are increasingly seen as a critical component in national efforts to reduce childhood obesity. At the same time, school officials are faced with a complex system of legal requirements and practical challenges to getting nutritious food on children’s trays.*

How Do Schools Obtain Food Used in School Nutrition Programs?

Schools generally obtain the food used in their school nutrition programs in two ways: (1) by purchasing food (often referred to as procurement) and (2) by participating in the United States Department of Agriculture’s USDA Foods Program.

What Are the Main Federal School Nutrition Programs?

The following federal school nutrition programs provide support for meals and snacks served before, during, and after the school day, as well as continuing support for meals when school is not in session.¹

- National School Lunch Program
- School Breakfast Program
- Afterschool Snack Program
- Summer Food Service Program and Seamless Summer Option
- Special Milk Program for Children
- Fresh Fruit and Vegetable Program
Who Administers Federal School Nutrition Programs?

School nutrition programs are administered by public agencies at the federal, state, and local level. These agencies work with private parties that sell food, supplies, and services to local school nutrition programs in order to put food on children's trays.

Federal agencies

The Food and Nutrition Service at the United States Department of Agriculture (USDA) administers school nutrition programs at the federal level, provides technical assistance and clarification on regulations, and reimburses schools for the administrative costs of these programs and each meal served. The USDA partners with the United States Department of Defense (DoD) to distribute fresh fruits and vegetables to schools through the DoD Fresh Fruit and Vegetable Program (DoD Fresh). The United States Food and Drug Administration (FDA) develops food safety standards and produces the Model FDA Food Code, which states use as guidance for state-level food safety and licensing requirements.

State agencies

In each state, a designated state agency (typically the department of education) oversees the statewide operation of the local school nutrition programs, provides training and technical assistance to local school food authorities, and ensures compliance of programs with legal requirements. Depending on the state, the department of health or department of agriculture is responsible for state-level food safety and licensing requirements, which impact school nutrition programs. These agencies may also work with the department of education and local government agencies to support school efforts to serve safe and healthy food to students.

Local authorities

A local educational agency is the public board of education or other public or private nonprofit authority created under state law to provide administrative control or other services for public or private nonprofit elementary schools or secondary schools within a state. Local educational agencies, called a school district in most states, provide the school structure in which school nutrition programs exist.

Federal school nutrition programs are operated at the local level by school food authorities (SFA). An SFA is the governing body responsible for the local administration of federal school nutrition programs in one or more schools. An SFA has the legal authority to operate the federal school nutrition program.

How Do SFAs Operate School Nutrition Programs?

Most SFAs (81%) have self-operated food service programs in which the SFA operates the entire food service program, including purchasing food according to federal and state procurement standards. SFAs may conduct their food purchasing independently (direct purchasing) or together with other SFAs, buying cooperatives, or group purchasing organizations (collective purchasing). An SFA may contract with many different types of food suppliers, including local, regional, or national food producers (i.e., farmers, ranchers), manufacturers, or distribution companies. The remaining 19% of SFAs contract with food service management companies to manage their food service operations.

What Legal Requirements Impact How Schools Purchase Food?

Schools must follow both federal and state procurement standards when purchasing food used in federal school nutrition programs. One of the goals...
of government procurement standards is to create an open and competitive environment so that taxpayers will generally pay the lowest price possible. Federal procurement standards require the use of either competitive sealed bids or competitive proposals for purchases estimated to exceed $150,000. For the procurement of food, services or supplies falling beneath the small purchase threshold of $150,000, SFAs may use a more informal procurement method known as the small purchase method. The 2008 Farm Bill added an additional component to federal procurement standards called geographic preference, which allows FSAs to award preference points to local food suppliers offering unprocessed food grown or raised within the local area defined by the school.

While some state laws may have less restrictive purchasing requirements for governmental entities than federal standards, SFAs must follow the most restrictive to ensure compliance with both state and federal laws. State laws can also provide additional tools that SFAs can use to lower costs by purchasing food collectively through joint powers authorities and state purchasing cooperatives.

**PROCUREMENT STANDARDS**

The term procurement standard refers specifically to the standards schools are legally required to meet when purchasing food or services for use in school nutrition programs. Schools must follow both federal and state procurement standards.

**Sources:** 7 C.F.R. § 3016.36 (2012); 42 U.S.C. § 1760(n) (2006).

**How Does the USDA Foods Program Support School Nutrition Programs?**

The USDA Foods program is a food distribution program that distributes domestic agricultural products to schools for use in school nutrition programs. Schools must pay for any processing and delivery associated with these foods, but not the food received. Participating local school nutrition programs receive a certain amount of food from the USDA Foods Program based on the number of school lunches served (known as an entitlement), plus additional bonus commodities periodically offered to states on a fair share basis. In 2009-2010, USDA Foods provided 15-20% of the food in each school lunch (including processed foods containing USDA Food ingredients), making the program an important source of food for federal school nutrition programs. A partnership between USDA and the Department of Defense also allows SFAs to use their USDA Foods entitlement to obtain fresh produce through DoD Fresh.

**What Other Legal Requirements Must School Nutrition Programs Meet?**

School food authorities must ensure that federal school nutrition programs meet other federal, state, and local laws, including:

- Nutrition Standards
- Food Safety Standards
- Food Licensing Requirements

**How Can Schools Utilize Purchasing Practices to Improve Nutritional Quality of School Meals?**

Schools can, and are, adopting innovative purchasing practices to improve nutrition. Opportunities exist to expand farm to school programming through federal and state grant funding. Emerging pilot programs may provide new ways for schools to use USDA Foods to obtain local foods, while USDA, state agencies, and SFAs are continuing to improve the nutritional profile of USDA Foods.
purchasing can help SFAs maximize buying power and affordably provide a high quality and variety of food to students. School wellness policies, required in all local educational agencies, provide an opportunity for public health and other school stakeholders to provide input on the type of school food environment they would like to see implemented in the district.38

While much has been done to support school efforts to improve the nutritional quality of food in federal school nutrition programs, more can still be done to improve access to healthy food in schools. Creating a healthier school food environment requires reexamining how schools get food, investing in new strategies, and developing partnerships that can increase a school’s ability to purchase high quality foods at the best price. As the purpose and scope of federal school nutrition programs continues to expand, policy and practice changes will be needed in order to achieve the complementary goals of nourishing healthy children and supporting healthy agriculture.

* For more detailed discussion of these topics, see Mary Winston Marrow and Jennifer E. Pelletier, Feeding America’s Schoolchildren: Navigating the Complicated Legal Terrain of Federal School Nutrition Programs (2013) at http://publichealthlawcenter.org. This fact sheet and accompanying report focus on food served as part of federal school nutrition programs. Food served outside of these programs, also called “competitive school food” is not specifically discussed as there are different legal and policy issues impacting this type of school food.
Endnotes


8 See National School Lunch Program, supra note 4.


12 See Taylor & David supra, note 11; Food & Nutrition Serv., supra note 11.


17 See id.


Legal and Practical Considerations


Special Procurement Provision, 7 C.F.R. § 3016.60 (2012); Applicability, 7 C.F.R. § 3016.4(b) (2012).


Provision of donated foods in NSLP, 7 C.F.R. § 250.56 (2012).


See regulations supra note 22, at § 210, § 220, § 225.


33 See specific state requirements. (For Minnesota requirements see, Minn. Stat. 28A.15 (2006); Minn. Constr. art. 13, § 7; Minn. Dep’t of Agric., Minn. Dep’t of Health, Univ. of Minn. Extension. Serving Locally Grown Produce in Food Facilities (June 2010), http://www.extension.umn.edu/farm-to-school/toolkit/sourcing-food/docs/produce-factsheet.pdf. Food licensing requirements may differ between states.


37 See USDA Foods, supra note 29.