

THE FARM-TO-SCHOOL MOVEMENT FROM GRASSROOTS TO TOP-DOWN:
THE LEGISLATION SUPPORTING IT AND HOW GOVERNMENT CAN CONTINUE TO
CULTIVATE ITS GROWTH
BY: EUNICE SOYUN YANG
MAY 2012

PREPARED AS AN ACADEMIC REQUIREMENT FOR THE AGRICULTURAL LAW COURSE
AT THE PENNSYLVANIA STATE UNIVERSITY'S DICKINSON SCHOOL OF LAW
SPRING SEMESTER 2012

The work product contained in this paper is entirely that of the student author.

I. Introduction

Parents, communities, and schools are becoming more and more concerned with what children are eating at school and how the food is getting onto the lunch tables. Some are concerned with the alarmingly fast rising obesity rates¹ and the disconnect that children have with knowing where their food comes from² and others are concerned with economic impacts to small to mid-size farmers and the negative environmental impacts of large corporate farms³ (of course, none of these concerns are mutually exclusive of each other). Some argue that food delivery systems and commodity programs that began with the intent of helping hungry Americans while also helping struggling farmers, are now getting to the point of doing more harm than good.⁴ Movements such as the organic⁵

-
- 1 *Childhood Obesity Facts*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/healthyyouth/obesity/facts.htm>. (last visited March 8, 2012). The CDC estimates that the rate of childhood obesity has more than tripled in the last thirty years, with approximately over one-third of all children and adolescents being overweight or obese in 2008.
 - 2 Jessica M. Bagdonis, C. Clare Hinrichs, and Kai A. Schafft. *The Emergence and Framing of Farm-to-School Initiatives: Civic Engagement, Health and Local Agriculture*. AGRICULTURE AND HUMAN VALUES. 26 (1-2): 107-119. (2009). The authors of this article looked at ways civic engagement, from within the school and without, could encourage the growth of FTS programs. They based their analyses on case studies of two Pennsylvania FTS programs, one rural and one urban. Though very different, both programs mainly focused on “(1) redressing poor food environments; (2) improving student nutrition, health and well-being; and (3) revitalizing rural community through support of local agriculture. However, specific concerns and emphases differed across the rural and urban cases, illustrating the significance of local context for such programs.”
 - 3 ORGANIC CONSUMERS ASSOCIATION, <http://www.organicconsumers.org/> (last visited April 25, 2012).
 - 4 Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*. 68 Wash. & Lee L. Rev. 1699 (2011). The author of this law review article argues that food subsidies and commodity programs do more harm than good. The food subsidies for corn and soy make many foods that are made with these products much cheaper to make and thus are much cheaper for individuals and institutions alike. These food options are usually less healthy and many times outright bad. As a result, consumers, especially children, are being nutritionally harmed even though the subsidy program was intended to help children.
 - 5 Like FTS programs, the organic foods movement began on the grassroots level and expanded across the country over time, growing with the support of legislation. There is now a legal definition of “organic” as found in 7 USCA § 6501, which sets forth standards under which food products can be labeled “organic”.

foods movement and the locavore⁶ movement were begun to address these concerns. One of the more recent movements to address the above concerns, the one this paper will discuss, is what is known as the “Farm-to-School” movement (hereinafter “FTS”).

FTS programs are not uniform throughout the country and vary depending upon the needs of schools and school districts at the local level, but most FTS programs have as their main goals: “serving healthy meals in school cafeterias, improving student nutrition, providing agriculture, health and nutrition education opportunities, and supporting local and regional farmers.”⁷ FTS activities began on an informal basis well before any legislation was enacted. There were a small number of programs, but schools all over the country began implementing FTS programs to serve their individual needs, on a grassroots level.⁸

There are as many different models and methods of implementing FTS programs as there are school districts in America. Federal and state legislation exists which provides funding for FTS programs and provides minimal requirements for institutions to receive funding, but there is no one uniform way to conduct an FTS program.

FTS programs and initiatives began as a grassroots movement and, as happens to

6 See Kelly Metzger Knerr, *Know Your Farmer, Know Your Food: Government Promotion of Local Food*. THE AGRICULTURAL LAW RESOURCE AND REFERENCE CENTER.

http://law.psu.edu/_file/aglaw/Know_Your_Farmer_Know_Your_Food_Kelli_Metzger.pdf (last visited on March 9, 2012), for a good overview and interesting discussion of the locavore movement. The locavore movement, generally speaking, describes the preference of a growing group of people who prefer to consume food products that have been grown and/or produced within a certain radius from their geographic location; the radius is usually around one hundred miles.

7 THE NATIONAL FARM TO SCHOOL NETWORK, <http://www.farmtoschool.org/> (last visited April 22, 2012). The National Farm to School Network is a non-profit organization dedicated to the promotion of FTS programs supporting “the work of local Farm to School programs all over the country by providing free training and technical assistance, information services, networking, and support for policy, media and marketing activities.”

8 *Id.*

many grassroots movements, legislation promoting FTS activities soon followed. The legislative supports specifically addressing FTS activities came along in the early 2000s. This paper will describe FTS programs and the series of federal and Pennsylvania state legislation that has been implemented up until now. Following the overview of the legislation, there will be an analysis of the benefits of and obstacles to implementing FTS programs. Lastly, possible solutions will be offered as a way to cultivate the growth of FTS programs. Since FTS is centered on food served in schools, particularly school lunches, it is appropriate to begin with a brief overview of how meals came to be served in schools.

II. National School Lunch Program

School lunch is as much a part of America's landscape as is McDonald's[©]. Nearly every weekday from September to June, millions of schoolchildren are provided with lunches by their schools.⁹ Although the school year is relatively short and children are typically in school for less than half of the calendar year,¹⁰ millions of children are provided with lunches while in school. Schools and school districts purchase millions of dollars worth of food and food services each year. In most states, the average number of school days per year is 175 to 180 with 900 to 1000 hours of instruction.¹¹ Even with such a few amount of instructional days, education can have a tremendous impact on health

9 Though less common, there are also school breakfast programs and other supplementary meal programs in schools. The supplementary meal programs include snacks for after school programs and supplementary meals provided to low-income students during school breaks. For purposes of this article, the focus will be on school lunches.

10 THE CENTER FOR PUBLIC EDUCATION, <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Time-in-school-How-does-the-US-compare>. (last visited March 9, 2012).

11 In Pennsylvania, the regulations require that children of compulsory school age spend at least 180 days in school, with a minimum of 900 hours of instruction. 22 Pa. Code §11.1, et seq.

and nutrition and nutrition, or lack thereof, can have a tremendous impact on education.

At the conception of public education, there was no one cohesive program to assist in delivering meals to schoolchildren.¹² Though the means and ways to ensure children had meals during school varied from place to place, the underlying idea was the same: feed the needy and also ensure that children would have the strength and energy to do well in school. Breakfasts and lunches were served by churches and advocacy groups for the poor.¹³ In some schools, mothers sent ingredients to school with their children so they could make hot lunches at school.¹⁴ There were a variety of methods that different groups employed to ensure that children would have meals while they were in school.

Eventually, in the early 20th century, several states enacted legislation to authorize school boards to operate cafeterias in the schools, but it soon became clear that states were unable to handle the financial burden of feeding hundreds of thousands of schoolchildren on a daily basis.¹⁵ The federal government stepped in and early federal aid came in the form of loans, which were dispersed to cities and towns across the country.¹⁶ Shortly thereafter, during the Great Depression, the food commodity program was enacted.¹⁷ Under this program, the United States Department of Agriculture (“USDA”)

12 Gordon W. Gunderson, *The National School Lunch Program Background and Development*. <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLP-Program%20History.pdf>. (last visited March 4, 2012).

13 *Id.*

14 *Id...*

15 *Id.*

16 *Id.*

17 Agricultural Adjustment Act, Pub. L. No. 74-320, 49 Stat. 774 (1935) (codified as amended at 7 U.S.C. § 612c (2002)).

was brought into the state lunch programs. The USDA bought surplus commodities that were unsold, such as corn, due to the Depression and diverted them to schools so they could feed lunches to needy children. The food commodity program started with just under 400 schools participating, then increased to over 14,000 schools within two years.¹⁸ The federal government also got involved in providing labor when the Works Progress Administration, later changed to Work Projects Administration, hired women in the early 1930s to be cooks and prepare menus and meals for schools.¹⁹

By the beginning of World War II, the number of participating schools increased to nearly 79,000. The lunch programs and food commodity programs were successful, especially because it cost little to nothing for the schools to provide lunches since the WPA paid for all the services.²⁰ The program continued to expand until the middle of World War II, when food was diverted to soldiers. The WPA dissolved in 1943 and shortly thereafter, Congress authorized cash subsidies to schools on a yearly basis so they could purchase food, but there was no permanent legislation to ensure children would have school-provided meals during the school day.²¹

Eventually, Congress realized this was an unsustainable and ineffective way to ensure schools had adequate funding for lunch programs, so it enacted the National School Lunch Act of 1946 (“NSLA”).²² The NSLA allotted funds for food, equipment,

18 *Supra* note 12.

19 *Supra* note 12.

20 *Supra* note 12.

21 *Supra* note 12.

22 Richard B. Russell National School Lunch Act, Pub. L. No. 79-396, 60 Stat. 231 (1946) (codified as amended at 42 U.S.C. §1751, et. seq. (2012)).

and facilities. It provided for, and continues to provide for, apportionments and additional reimbursements to states for the funds they spend on providing meals and snacks to students.²³ The NSLA also gave the Secretary of Agriculture the authority to enforce the provisions of the NSLA.²⁴ It outlined rudimentary nutrition guidelines and set prices for lunches. It was amended several times to meet the fiscal needs of states and schools and it is still the law today. It requires that public schools provide lunches to children, regardless of ability to pay, if public schools want to receive reimbursement from the federal government.²⁵

School-based meals had another dimension added with the Child Nutrition Act of 1966 (“CNA”).²⁶ One of the main purposes of the Act was to strengthen the authority of the Secretary of Agriculture in the arena of children's health and well-being. It provided more funds for certain commodities, such as milk, and allowed federal funding for the purchase of equipment necessary for schools to be able to provide meals to students. The CNA also started breakfast programs on a pilot basis in 1966 with a handful of schools

23 *Supra* note 22 at §§ 1752-53; 1756. See also National School Lunch Act, 7 C.F.R. § 210.4. Currently, school meal programs are run through school food services that are entirely separate from the rest of the school district budget. The budgets are dependent upon the reimbursements and free commodity foods they receive from the USDA.

24 The NSLA is now administered by the Food and Nutrition Service (“FNS”), a division of the USDA. <http://www.fns.usda.gov/fns/about.htm>. (last visited March 10, 2012). “The Food and Nutrition Service...administers the nutrition assistance programs of the U.S. Department of Agriculture. The mission of FNS is to provide children and needy families better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts...FNS also works to empower program participants with knowledge of the link between diet and health. FNS works in partnership with the States in all its programs. States determine most administrative details regarding distribution of food benefits and eligibility of participants, and FNS provides funding to cover most of the States' administrative costs.” The FNS also administers the Supplemental Nutrition Assistance Program, the program formerly known as “food stamps.”

25 *Supra* note 23.

26 42 U.S.C. § 1771, et seq.

and was authorized for a limited time. The school breakfast program was finally made permanent in the 1975 amendments to the CNA.

In Pennsylvania, school lunches did not get legislative support until a few years after the NSLA was enacted in 1946 when the Public School Code of 1949²⁷ was enacted. It allowed for the operation of cafeterias²⁸ and gave school officials the authority to provide food to needy children²⁹. Pennsylvania school lunch programs largely follow the federal legislation and regulations. The only piece of state legislation specifically addressing school lunches and nutritional standards was enacted in 2006, which will be discussed in the next section.

III. Legislation promoting Farm to School Activities

A. Federal legislation

Although the NSLA had been amended several times since it was first enacted in 1946, it was not until the early 2000s, after several years of FTS activities, that there was any official federal acknowledgment of the need to implement more FTS-type activities, such as providing more fresh fruits and vegetables in schools. FTS movements began as pilot programs in California in the late 1990s, according to the National Farm to School Network,³⁰ although there is some evidence that some schools had experimented with direct delivery of fresh produce to schools prior to this time.³¹ In 2000, the Center for

27 24 P.S. § 1-101, et seq.

28 24 P.S. § 5-504.

29 24 P.S. § 13-1335.

30 *Supra* note 7.

31 Dennis Shimkoski, 1980. *Schools Buy Farm Fresh Produce*. Food and Nutrition. 10 (1): 14-17. <http://www.nal.usda.gov/afsic/pubs/srb1102.shtml#F2SMisc> (last visited March 10, 2012). Only the abstract is available.

Food and Justice, a division of the Urban & Environmental Policy Institute at Occidental College, received a USDA Integrated Food and Farming Systems (“IFAFS”) grant to launch a National Farm to School Program.³² At about the same time, localized FTS programs began to appear in several states³³ and federal legislation was slowly evolving to support FTS programs.³⁴

It began in 2002, when Congress passed the Farm Security and Rural Investment Act of 2002, which is more commonly known as the Farm Bill of 2002.³⁵ As a part of this Act, Congress allocated \$6,000,000 for the creation of a pilot program called the “Nutrition Information and Awareness Pilot Program.”³⁶ The purpose of the program was “to increase fruit and vegetable consumption and ... to convey related health promotion messages.”³⁷ It was enacted in a handful of states and was not to exceed four years. Participating schools were required to make fresh fruits and vegetables available for free to all students throughout the school day.

Following the Farm Bill of 2002 was the Child Nutrition and WIC Reauthorization Act of 2004.³⁸ This legislation put a “renewed emphasis on obesity

32 *Supra* note 7.

33 *Supra* note 7. There is not yet a comprehensive history on FTS programs, but a perusal through the National Farm to School Network website will give the reader an idea of the basic chronology of state FTS programs and activities.

34 A concise overview of the key pieces of legislation can be found at:
http://www.fns.usda.gov/cnd/F2S/pdf/F2Sleg_history.pdf

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

36 *Id.* § 4403.

37 *Id.*

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

prevention through improved nutrition and greater exercise.”³⁹ It took the Nutrition Information and Awareness Pilot Program, renamed it the “Fresh Fruit and Vegetable Pilot” (FFVP) program, expanded it to include a total of fifty more schools, allocated an additional \$9,000,000 each school year and also mandated that the program be carried out each year, with no apparent end date. This act incorporated the FFVP into the National School Lunch Act, though it was not made a permanent part of the NSLA until later.⁴⁰

The Child Nutrition and WIC Reauthorization Act also aimed to prevent childhood obesity and reverse the rising rates of obesity by providing for a “Local Wellness Policy”⁴¹ and a “Team Nutrition Network.”⁴² The Local Wellness Policy mandated that each state⁴³ develop policies for nutrition education and policies that generally promote student welfare. The general purpose of the Team Nutrition Network⁴⁴ was “to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children.”⁴⁵ It also provided for technical

39 150 Cong. Rec. E1286-02 (statement of Rep. Chris Van Hollen).

40 42 USCA § 1769a.

41 *Supra* note 38 § 204 (codified as amended at 42 U.S.C.A. § 1758b (2012)).

42 *Supra* note 38 § 205 (codified as amended at 42 U.S.C.A. § 1788 (2012)).

43 Pennsylvania’s Local Wellness Policy page and instructions can be found at http://www.portal.state.pa.us/portal/server.pt/community/food_nutrition_services/7483/local_wellness_policy_information/748121 (last visited March, 2012).

44 The federal hub for the Team Nutrition Network can be located on the USDA’s Food and Nutrition Service website: <http://www.fns.usda.gov/tn/> (last visited March 10, 2012).

45 *Id.*

assistance to states developing comprehensive nutrition programs, coordinating with states to learn and share proven systems and techniques, and provided for grants to state agencies to develop a variety of projects. One of the specified projects was the development of “farm-to-cafeteria” activities, the purpose of which was to increase access to local foods.⁴⁶ This was the first time there was express legislative recognition and promotion of FTS-type activities.

Legislation progressed further when the Agriculture, Rural Development, Food and Drugs Administration, and Related Agencies Appropriations Act in 2006⁴⁷ provided for additional funding to further expand the FFVP. This pilot program was expanded to all 50 states by the Consolidated Appropriations Act of 2008.⁴⁸

The Food Conservation, and Energy Act of 2008, otherwise known as the Farm Bill of 2008⁴⁹ finally made the FFVP a permanent addition to the NSLA and no longer a pilot program.⁵⁰ This farm bill also attempted to expand the purchase of local, unprocessed agricultural products by schools by mandating the Secretary of Agriculture to encourage schools to purchase locally grown and raised agricultural products. It also allowed schools to use a geographic preference when procuring unprocessed agricultural products. Although federal legislation specifically allowed schools to indicate a geographic preference of unprocessed agricultural products in their request for proposals

46 *Supra* note 38.

47 Agriculture, Rural Development, Food and Drugs Administration, and Related Agencies Appropriations Act, Pub. L. No. 109–97, 119 Stat 2120 (2006).

48 Consolidated Appropriations Act, Pub. L. No. 110–161, 121 Stat. 1844 (2008).

49 Food Conservation, and Energy Act, Pub. L. No. 110-234, 122 Stats 923 (2008).

50 *Supra* note 40.

for food procurement, schools are still hesitant to do so, which will be discussed in section V.

The latest piece of federal legislation to support FTS activities, and the only piece of legislation that specifically supports and mentions by name “Farm-to-School” activities, is the Healthy Hunger-Free Kids Act.⁵¹ This act requires that, beginning October 1, 2012, the Secretary of Treasury transfer \$5,000,000 annually to the Secretary of Agriculture “out of any funds in the Treasury not otherwise appropriated.”⁵² The funds are to be used for technical assistance to states and for competitive matching FTS grants. The grants can be for “(i) training; (ii) supporting operations; (iii) planning; (iv) purchasing equipment; (v) developing school gardens; (vi) developing partnerships; and (vii) implementing farm to school programs....In making awards under this subsection, the Secretary shall, to the maximum extent practicable, ensure (i) geographical diversity; and (ii) equitable treatment of urban, rural, and tribal communities.”⁵³ The act provides for grants up to \$100,000 and has guaranteed appropriations to the Secretary of Agriculture through fiscal year 2015.⁵⁴

B. Pennsylvania legislation

There are just a handful of FTS programs that have been implemented in Pennsylvania.⁵⁵ Most of these programs have been in place for just a few years and their

51 Healthy Hunger-Free Kids Act, Pub. L. No. 111-296, 124 Stat. 3183 (2010) (codified at 42 U.S.C.A. § 1751, et. seq.).

52 Ashley Leyda, *From Farm to School Through the Statehouse: The Importance of State Legislation for Iowa's Farm to School Program*, 16 Drake J. Agric. L. 169 (2011).

53 *Supra* note 51.

54 *Supra* note 51.

55 *Supra* note 7.

efforts have been expanded largely through grants from local organizations.⁵⁶ One organization, The Food Trust, began a program in 2003 called “The Kindergarten Initiative.”⁵⁷ It promoted “healthy communities by teaching young children and their parents about food, farms and nutrition. The Kindergarten Initiative works with kindergarten students in the classroom, integrating nutrition concepts into the regular school curriculum as well as providing healthy fruit and vegetable snacks grown by local farmers” and continues to do so today.⁵⁸

In 2006, Pennsylvania enacted the Healthy Farms and Healthy Schools Act.⁵⁹ This act was modeled after The Food Trust's Kindergarten Initiative and is also similar to the Healthy Hunger-Free Kids Act. The Healthy Farms and Healthy Schools Act provides grants to kindergarten classes with the purpose of providing “(i) Nutrition education involving student participation which is integrated into regular subjects in the curriculum of primary and secondary education institutions. (ii) Focusing on locally grown foods provided from Pennsylvania farms. (iii) Equipping teachers and other educators to incorporate nutrition and agriculture education into their instruction. (iv) Providing for new direct marketing opportunities for Pennsylvania farmers. (v) Providing for family and community involvement, including parent, caregiver and community group participation in education activities. (vi) Visits to nearby farms for school children so they

56 *Supra* note 7.

57 *Supra* note 7.

58 *Kindergarten Initiative*, The Food Trust,
<http://www.thefoodtrust.org/php/programs/kindergarten.initiative.php> (last visited March 8, 2012).

59 3 P.S. § 2501 (2006), et seq.

may understand and learn more about the sources of their food.”⁶⁰ The grants are available to school districts, private schools, and charter schools, and provide for 75% of the amount necessary to implement such a program, capped at \$15,000.

IV. Survey of Farm-to-School programs

A. National Level⁶¹

To date, there is no formalization of FTS programs on a national level (or even on a state level). Although there is a national grassroots movement, as evidenced by the National Farm to School website, and new legislative recognition and encouragement of FTS programs, these programs still lack formalization and consistent structure across the country. Because of this lack of structure, it has been difficult for groups and agencies to collect data on FTS programs on a national level. There are a few studies that have been conducted on FTS programs, but the majority of the studies have been conducted on a small scale. Additionally, the outcome measures vary widely amongst the studies. Thus, it has been difficult to get a clear picture of how FTS programs operate nationally, how effective they are, and what can be done to improve current FTS programs and to implement FTS programs in more schools. Despite these difficulties, the USDA has compiled an executive summary of FTS programs⁶² based on evaluations of fifteen schools across the country and the National Farm to School and the Center for Food & Justice, Urban & Environmental Policy Institute at Occidental College⁶³ has begun

⁶⁰ *Supra* note 59.

⁶¹ U.S. Dep't of Agric., Food & Nutrition Service, *USDA Farm to School Team 2010 Summary Report*, http://www.fns.usda.gov/cnd/f2s/pdf/2010_summary-report.pdf (last visited March 18, 2012).

⁶² *Id.*

⁶³ Anupama Joshi MS, Andrea Misako Azuma MS, and Gail Feenstra EdDRD. *Do Farm-to-School*

attempts at collecting dependable data in order to evaluate FTS programs on a national scale.

The USDA's Farm to School team ("Team") evaluated fifteen districts in nine geographic regions across the country in an attempt to get a broad picture of FTS programs.⁶⁴ The Team focused on specific topic areas for evaluation: school food service infrastructure (in other words, kitchen space, equipment, meal preparation, etc.), farm to school implementation and promotion, procurement, farm to school education, food safety, impact and evaluation, local state, and federal policy, and farmers' perspective in selling to schools.⁶⁵ The Team found that FTS programs vary widely in implementation. The report highlighted a myriad of issues and barriers to implementing FTS programs, some of which will be discussed in the next section.

The common thread amongst the districts was that each district implemented FTS programs in their own way, based on their needs and capabilities.⁶⁶ Most districts in this report integrated procurement of local agricultural products into their FTS programs. It was also apparent that each district had difficulty in implementing their FTS programs.⁶⁷

Most districts were able to over come some of this difficulty by starting their programs

Programs Make a Difference? Findings and Future Research Needs. JOURNAL OF HUNGER & ENVIRONMENTAL NUTRITION. 3 (2-3): 229-246. (2008). Researchers of this article compiled a handful of studies of FTS programs across the country. Although the original sample contained well over a dozen studies, the methodologies used in many of the studies and the biases inherent in the studies resulted in the authors excluding them from review and analysis. This highlights another issue of FTS programs. It is difficult to research and evaluate FTS programs given a lack of consistent methodologies and biases of those conducting the research, which results in skewed and unbalanced data and conclusions.

⁶⁴ *Supra* note 61.

⁶⁵ *Supra* note 61.

⁶⁶ *Supra* note 61.

⁶⁷ *Supra* note 61.

with grant money, but not all districts were able to obtain grant money.⁶⁸ Another common thread amongst the districts was that implementing an FTS program required an increased level of communication within the district and the school itself, in addition to increasing the level of communication with their FTS partners, regardless of the type of entity the partners were.⁶⁹ The increased communication was necessary as no district had any formal structure or model on which to base their FTS activities. This increased level of communication slowed down food procurement and delivery, making the process more inefficient and adding to administrative costs. In addition to procurement activities, most districts added educational components to go hand-in-hand with local procurement of unprocessed agricultural products. The educational components ranged from hands-on activities, such as visiting local farms, to nutrition education in the classroom.⁷⁰

In the article published by the Center for Food & Justice, Urban & Environmental Policy Institute at Occidental College, the authors reviewed fifteen studies that have been conducted on FTS programs.⁷¹ The authors admitted that it was difficult to find qualitative and quantitative studies that showed an actual correlation between FTS program implementation and the benefits FTS programs purportedly produce. The goal of the study was not to evaluate how FTS programs are implemented, rather the study focused on whether FTS programs produced a benefit to schools and children.⁷² Most of

68 *Supra* note 61. Receipt of grant money is dependent upon whether there is enough funding and whether the particular program meets the requirements of the grant.

69 *Supra* note 61.

70 *Supra* note 61.

71 *Supra* note 63.

72 *Supra* note 63.

the studies reviewed showed that the hypothesis that FTS programs increase positive dietary behaviors was correct; but this correlation could have been attributed to a shift in attitudes about food across the country, greater parental involvement in what children eat, or a host of other factors.⁷³

B. Pennsylvania

In 2008, the Center for Rural Pennsylvania⁷⁴ sponsored a comprehensive study on FTS programs in Pennsylvania,⁷⁵ which was conducted by the Pennsylvania State University. The focus of this study was to survey FTS programs across the state of Pennsylvania to get an overview of how FTS programs are being utilized, “to determine the type and extent of FTS activity statewide, and provide information about demand for produce from schools so that farmers and other agricultural producers can better develop local marketing efforts.”⁷⁶

73 *Supra* note 63.

74 The Center for Rural Pennsylvania is a legislative agency of the Pennsylvania General Assembly. “The Center for Rural Pennsylvania is a bipartisan, bicameral legislative agency that serves as a resource for rural policy within the Pennsylvania General Assembly. The Center works with the legislature, educators, state and federal executive branch agencies, and national, statewide, regional and local organizations to maximize resources and strategies that can better serve Pennsylvania’s 3.4 million rural residents. The Center promotes and sustains the vitality of Pennsylvania’s rural and small communities by:

- sponsoring research projects to identify policy options for legislative and executive branch consideration and action;
- collecting data on trends and conditions to understand the diversity of rural Pennsylvania;
- publishing information and research results to inform and educate audiences about the diverse people and communities of rural Pennsylvania; and
- participating in local, state and national forums on rural issues to present and learn from best practices.” http://www.rural.palegislature.us/about_mission_statement.html.

75 C. Clare Hinrichs, and Kai A. Schafft. *Farm to School Programs in Pennsylvania*. Center for Rural Pennsylvania. (2008), http://www.rural.palegislature.us/farm_school_report08.pdf (last visited March 23, 2012)

76 *Id.*

The researchers surveyed nearly 400 school districts across Pennsylvania.⁷⁷ They found that most districts that responded to the survey implemented FTS activities in their procurement of products for school meals.⁷⁸ They also found that most districts also incorporated an educational component into their FTS activities.⁷⁹ Although most of the districts that responded did not label their FTS activities as such, it was evident to the researchers that the new ways in which districts were incorporating local agricultural products and/or including food and nutrition education was, in fact, an FTS activity.⁸⁰ The researchers found that each district or school implemented FTS activities differently based on the needs of the particular district or school.⁸¹

V. Benefits and Barriers

A. Benefits of FTS activities

Despite the growing body of studies available, to date there are no comprehensive studies that measure the qualitative and quantitative value and benefit of FTS programs on a national level. The studies that have been conducted, such as the USDA summary report and the study conducted by the Center for Food & Justice, Urban & Environmental Policy Institute at Occidental College summarized in the above section, investigate how FTS programs have been implemented, the perceptions of FTS programs,

⁷⁷ Pennsylvania has 500 school districts. The response rate of the survey was a little over 75%.

⁷⁸ *Supra* note 75. Approximately 61% of respondents said their FTS activity was in the form of procurement.

⁷⁹ *Supra* note 75. Approximately 77% of respondents said their activity was in the form of education.

⁸⁰ *Supra* note 75.

⁸¹ *Supra* note 75. For example, in Mifflin County, which is a rather small geographic location, the emphasis was placed on local agriculture whereas in Pittsburgh, the emphasis was placed on school gardens.

and the barriers to implementation (which will be discussed in the next subsection). In spite of the lack of comprehensive studies available, proponents believe that FTS programs can net great benefits to schools, students, farms, and communities as a whole.⁸² Proponents of FTS programs take several positions. They believe that FTS programs will help reverse the increasing rates of childhood obesity,⁸³ educate students about health and nutrition,⁸⁴ close the gap between food production and food consumption,⁸⁵ and provide economic benefits to local farmers by presenting another market for their products.⁸⁶

It is plain to see that American children are becoming more and more overweight, with many of them who are inching toward obesity or who are already obese.⁸⁷ Some argue that current agricultural and education policies are contributing to this obesity

82 *Supra* note 7. The National Farm to School Network website touts the following as benefits of implementing FTS programs:

- Strengthen children's and communities' knowledge about, and attitudes toward, agriculture, food, nutrition and the environment.
- Increase children's participation in the school meals program and consumption of fruits and vegetables, thereby improving childhood nutrition, reducing hunger, and preventing obesity and obesity-related diseases.
- Benefit school food budgets, after start-up, if planning and menu choices are made consistent with seasonal availability of fresh and minimally processed whole foods.
- Support economic development across numerous sectors and promote job creation.
- Increase market opportunities for farmers, fishers, ranchers, food processors and food manufacturers.
- Decrease the distance between producers and consumers, thus promoting food security while reducing emissions of greenhouse gases and reliance on oil.

83 *Supra* note 2.

84 *Supra* note 2.

85 *Supra* note 2.

86 *Supra* note 2.

87 *Supra* note 1.

epidemic⁸⁸ and argue for even more radical changes in law and policy to promote FTS activities. It can hardly be denied that including more fresh fruits and vegetables (and even organic, hormone-free meat) will positively contribute to children's health.⁸⁹ FTS programs, if implemented properly in more schools, have the potential to increase access to more fresh fruits and vegetables, which could help reverse the trends of childhood obesity.

Most FTS programs have educational components as part of the overall program.⁹⁰ Schools receiving grant money are usually required to incorporate an educational piece as a condition of receiving the grant money. The educational components are implemented in a variety of ways. Some schools choose to devote class-time to nutrition education, others take students to local farms for hands-on learning, still others combine nutrition education with field trips and physical education, and some schools simply hang food education posters throughout the building.⁹¹ The overt efforts of educating students about where their food comes from and teaching them healthy eating habits will naturally result in closing the gap between food production and food consumption. Additionally, local farmers should see the benefit from these programs as more food is being purchased from them directly by individual and institutional consumers, such as schools.

⁸⁸ *Supra* note 4.

⁸⁹ *Supra* note 4.

⁹⁰ *Supra* note 7.

⁹¹ *Supra* note 7.

B. Barriers

There is hope that the efforts of proponents of FTS activities will bear fruit in the near future. However, as beneficial as FTS activities are perceived to be⁹², there are still significant barriers to implementing FTS programs. The USDA summary report on FTS programs investigated a number of topic areas in FTS programs and highlighted numerous issues in each category that school districts need to overcome in order to successfully and efficiently implement FTS programs in their schools. Some of the relevant key issues highlighted were difficulties in implementing FTS programs with the current procurement models, lack of infrastructure to accommodate FTS programs, lack of availability of fruits and vegetables during the school year, and lack of policy and legislative support.⁹³ Other studies and law review articles point out similar barriers to successful implementation of FTS programs.

Procurement of school meals can be done informally or formally.⁹⁴ The purchase price threshold for using the formal procurement procedures is \$100,000.⁹⁵ Informal procedures require school districts to maintain competition and school districts must still choose the lowest-priced, most qualified vendor, but school districts are not required to

92 *Supra* note 71. As part of the study, the researchers asked the respondents what they believed the benefits of a FTS program were. “The benefits respondents most strongly identified with were supporting local farms, businesses, community and local economy, and enhancing the relationship between the school and the community. Interestingly, obesity and child overweight had notably less salience among food service directors with regard to FTS.”

93 *Supra* note 61. The USDA summary report also researched the following categories: Farm to School education, food safety, impact and evaluation, and farmers' perspective in selling to schools. The categories selected for discussion in this paper touch upon these other topic areas, therefore these topic areas will not be discussed in-depth as discrete subjects.

94 *Supra* note 61.

95 7 C.F.R. § 3016.36

use sealed bidding and competitive negotiations as they would need to for formal procurement procedures.⁹⁶ Informal procedures implicitly allow school districts to use geographic preferences as they are allowed to directly contact vendors and request that they submit a bid.⁹⁷ This means, for example, that should a school district desire to contract with a local farm for tomatoes, in an informal procurement process, the school district will be able to do so without the necessity of inquiring of other farms outside of the locale to ensure rigorous competition.

Recent change in the federal legislation has allowed school districts to also use a geographic preference in formal bids. Though formal bidding is a more rigorous process than informal bidding, the federal law now allows institutions to impose a geographic preference for local unprocessed agricultural products.⁹⁸ This means that, even in formal bids, a school district can specifically advertise that its preference is to purchase local agricultural products such as tomatoes and other unprocessed items. Even with this change in the legislation, schools are still reluctant to indicate a preference for local products.⁹⁹

The hesitancy arises from the confusion in the distinction between the federal law and the federal regulation. It is uncertain whether the discrepancy has been left intentionally or the regulation has yet to change to conform with the law. Regardless of the reason, the law allows school districts to impose a geographic preference for

⁹⁶ *Supra* note 61.

⁹⁷ *Supra* note 61.

⁹⁸ 42 U.S.C.A. § 1758.

⁹⁹ *Id.*

unprocessed agricultural products,¹⁰⁰ whereas the federal regulation requires that procurements must be conducted in a manner that prohibits “statutorily or administratively imposed in-State or local geographic preferences.”¹⁰¹ Though the regulation could be interpreted in a way that it would be reconciled with the statute,¹⁰² schools and school districts play it safe and will not choose to include a preference for local products in their Request for Proposals in their formal bidding processes.

Along the lines of the issue of procurement as a barrier to implementation of FTS programs, is the barrier of contracts with Food Service Management Companies (FSMC). Currently, it is cheaper to contract with FSMCs because they have the economic power to procure wholesale amounts of food at a cheaper price and then resell to school districts.¹⁰³ FSMCs are also able to apply for discounts and rebates due to their purchasing power and then pass the savings on to the school district.¹⁰⁴ FSMCs can provide not only the food itself, but also food services such meal preparation and distribution among all the schools in the district.

Many school districts depend on FSMC contracts for some of their schools

100*Supra* note 95.

101 7 C.F.R. § 3016.60. This prohibition on indicating a geographic preference can be evidenced by a sample procurement contract on the Pennsylvania Department of Education's website:
http://www.portal.state.pa.us/portal/server.pt/gateway/PTARGS_0_123720_864356_0_0_18/USDA%20Guidance%20for%20Contracting%20with%20Food%20Service%20Management%20Companies.pdf

102 Though it would be extremely unlikely to find a reasonable alternative interpretation of the portion of the statute, which prohibits “statutorily or administratively imposed in-State or local geographic preferences,” which would allow a school district to state a geographic preference in their Request for Proposals.

103 *Supra* note 61.

104 *Supra* note 61.

because not all schools are equipped to create meals from scratch. The lack of infrastructure in many schools also makes it difficult to keep fresh fruits and vegetables on hand.¹⁰⁵ Storage space is not always available nor are all schools equipped to handle fruit and vegetable delivery. Additionally, even for those schools that have the necessary infrastructure to handle deliveries and be able to prepare meals, or at least create a salad bar with the local produce, the seasonal and regional variations in the types of produce available can make it difficult to maintain a consistent FTS program.¹⁰⁶ Some schools specifically identify the seasonal and regional availability, or lack thereof, of fruits and vegetables as a hindrance to starting up and maintaining an FTS program in their schools.¹⁰⁷

Underlying all of these barriers is a lack of cohesive legislative and policy support for successful implementation of FTS programs. As mentioned above, there are several pieces of federal legislation mandating particular requirements for meals served in schools.¹⁰⁸ Though there are some consistencies in the various legislation, such as nutritional requirements and which children are eligible to receive free or reduced lunches, finding a way to ensure that a particular school district's FTS program complies

¹⁰⁵*Supra* note 61.

¹⁰⁶*Supra* note 63.

¹⁰⁷*Supra* note 75.

¹⁰⁸*Supra* note 22, 26. The NSLP and other school meal programs, such as the Child Breakfast Program, have extensive requirements for school districts to follow if they want to receive reimbursement from the federal government. In addition to having to ensure all meals meet the USDA dietary guidelines, schools must ensure that special meals are ready and available for students with special dietary needs, they must comply with the free or reduced meal program, meal preparation areas must meet food safety standards, and they must comply with numerous other rules and regulations. Most of these rules and regulations serve to benefit children while at school, but the administrative costs and demands can be overly burdensome. This likely contributes to school districts being hesitant to fully implement FTS programs in their schools.

with the legislative mandates can make it difficult for a school district to successfully implement FTS programs. Additionally, the existing differences between legislation and regulation, as mentioned above, causes further confusion and hesitation for school districts to want to start an FTS program.

A further legislative and regulatory hindrance is how FTS programs will fall under food safety rules.¹⁰⁹ There are a number of rules and guidelines at many levels of government from federal to municipal that govern food safety. Local farmers may be exempted from these rules if a certain percentage of their sales are made directly to consumers, rather than selling to a distributor.¹¹⁰ This exemption is a benefit to local farmers, but is an added administrative burden for school districts. Most school districts do not have the capacity to deal with multiple individual farmers, it is much more simple for districts to deal with one FSMC or other vendor who can deliver multiple products. Thus, the food safety rules preclude small farmers from contracting directly with schools, which hinders the development and promotion of FTS programs.

VI. Discussion and Possible Solutions

Though there is no hard evidence to illustrate the benefits of implementing an FTS program, it can hardly be argued that eating more fresh fruits and vegetables and eating less processed foods will benefit health.¹¹¹ It is also evident that school districts

¹⁰⁹ Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 Drake J. Agric. L. 9, 11 (2010). This law review article describes how food safety laws and federal and state procurement laws restrict school districts' abilities in procuring local food items for school meals. The article goes on to describe the efforts of a few states in overcoming these statutory and regulatory hurdles.

¹¹⁰ *Id.*

¹¹¹ *Supra* note 1.

would like to be able to implement FTS programs in their schools or expand existing programs.¹¹² There is a burgeoning local food movement that supports FTS programs.¹¹³ The local food movement is being pushed by consumers and farmers alike.¹¹⁴ Despite this desire to implement FTS programs, school districts face many challenges in integrating FTS programs as discussed in the previous subsection.

The situation is not entirely hopeless. As of now, there are only about 2,400 FTS programs in existence in the United States, but the number is sure to grow.¹¹⁵ All of the programs are administered either on an individual school basis or on the district level. Most of these programs were started as a grassroots initiative¹¹⁶ even before the enactment of current legislation that is actively trying to promote FTS programs. There is a lack of uniformity of FTS programs as there is no cohesive FTS program or program model across the country, even on a state level. Neither is there one cohesive definition of what an FTS program is. The lack of uniformity may, at first glance, be regarded as a problem, but it is more likely a natural outgrowth of regional variations and needs. Federal and state legislation is encouraging the growth and development of FTS programs, but there is more that can be done.

Most of the current legislation promoting FTS programs are in the form of grants.

112 *Supra* notes 61, 75.

113 Emily Parish, *Farm to School Programs*, in Small, Slow, and Local: Essays on Building a More Sustainable and Local Food System, 12 Vt. J. Envtl. L. 353 (2011).

114 *Id.*

115 *Supra* note 7.

116 *Supra* note 7. Many FTS programs were started by parents who were concerned about what their children were eating during the school day.

Thus far, this carrot approach has likely had a positive affect on growing the number of FTS programs, but it is unlikely that school districts will be motivated to change their food service infrastructure without more incentive. Successful implementation and full integration of FTS programs is costly and time consuming: school districts need to change the administrative structure to deal with more local vendors, districts need to ensure their schools are functionally equipped to handle local food deliveries by training personnel and renovating the buildings to include proper kitchen equipment, and there are a myriad of other concerns.¹¹⁷

Legislation should be introduced so that grant money is increased for school districts seeking to implement or expand FTS programs. Congress could allow for more than a one time grant of \$100,000.¹¹⁸ School districts need time to develop, implement, and study the FTS programs in order to be able to make changes to ensure that the program meets the needs of that particular school district. Similarly, reimbursement rates from the FNS for school meal programs could be increased for school districts involved in FTS programs. Congress could allow tax credits to FSMCs for incorporating local¹¹⁹ agricultural products.¹²⁰ Food safety legislation would have to change as well in order to allow the exemption for local farmers who would be selling their products to FSMCs.¹²¹

¹¹⁷*Supra* note 61.

¹¹⁸*Supra* note 51.

¹¹⁹ “Local” meaning local to the school district with which the FSMC is contracting.

¹²⁰ Allowing tax credits for FSMCs would enable FSMCs to remain competitive and also encourage FSMCs to contract with small, local farmers. These farmers would then also have a more consistent market for their products.

¹²¹ With current food safety laws, local farmers could only sell a small portion of their products to FSMCs and still be exempt. It is unlikely that an FSMC would contract with a local farmer if it could only get a small amount of produce from that farmer. Thus an FSMC would like need to contract with several

Food safety laws would also need to be updated to allow farmers to form collectives so they may be able to sell to schools directly.¹²² Congress could introduce special interest rates on loans for FSMCs and farmers who wish to expand their businesses to accommodate FTS programs. Additionally, FSMCs could be allowed to make their bids more attractive by including in their proposals the percentage of local products they use.

Federal regulation needs to be updated to reflect the current changes in federal legislation that allow school districts to make a geographic preference in creating their Requests for Proposals for procurement purposes. Although the legislation is explicit that schools are allowed to express a preference for local unprocessed agricultural products, the regulation is equally clear that schools are not allowed express a geographic preference. School districts tend to err on the side of caution and choose not to express a geographic preference for unprocessed agricultural products. This confusion can easily be cleared up by changing the regulation to reflect the legislation.

In Pennsylvania, the General Assembly¹²³ can expand the Healthy Farms and Healthy Schools Act. The Act can be expanded in a number of ways. Currently the Act only allows grants for FTS activities for kindergarten classes. The Act can be expanded to include all grades from kindergarten through twelfth grade, rather than include only

local farmers. The additional administrative overhead would likely outweigh any benefits and deter FSMCs from contracting with small, local farms.

¹²²*Supra* note 109. Food safety laws make it difficult for local farmers to sell their products by formation of a collective. Farmers selling directly to consumers are not required to implement traceability procedures on their agricultural products. However, should several small farmers join as a collective, they would be required to implement traceability procedures, which most small farmers are financially unequipped to do.

¹²³The General Assembly of Pennsylvania is the state legislature.

kindergarten.¹²⁴ The Act allows for only \$15,000 per year for the program.¹²⁵ This should be changed to allow for more funds to be granted at the initial stage of implementation and then a gradual decrease over the course of a few years.¹²⁶

Pennsylvania can also help school districts by enacting legislation that would allow the state to set up distribution warehouses in strategic parts of the state so that farmers would be able to deliver their products to one central location and have consistency in delivery of their products.¹²⁷ Farmers would then always be able to deliver their products and not have to deal with various school districts on an individual basis and school districts would be able to ensure that their schools are receiving a variety of agricultural products on a consistent basis.

Both the federal government and the Commonwealth of Pennsylvania should consider further expansion of FTS programs in terms of what types of food should be included for integration into school meal programs. The focus of current legislation is on providing access to local unprocessed fruits and vegetables. The focus should be expanded to include local meat and egg products to ensure children have better access to nutritionally balanced meals and that meat and egg producers can also partake in their local FTS programs.

¹²⁴*Supra* note 59, § 2504.

¹²⁵*Supra* note 59, § 2505. The grant amount is also limited by providing up to 75% of the costs necessary to implement the FTS activity. This limitation should not be disturbed as schools and school districts should be required to have some investment in their own programs in order to provide further incentive to ensure that their particular FTS program is implemented successfully.

¹²⁶ A study would need to be conducted in order to determine how much initial funding is needed to create an effective and sustainable FTS program.

¹²⁷*Supra* note 61.

VII. Conclusion

Farm-to-School programs vary widely from state to state and even from town to town. There is no one way that FTS programs have been implemented nor is there a “right” way to implement FTS programs. Each program is designed to meet the needs of the school and the surrounding area. The manner in which FTS programs are executed are varied, there are broad themes and categories that run through all of them: stemming the rising rate of childhood obesity, encouraging healthy eating, promoting local agricultural products, connecting local farmers with local markets, and helping the local economy grow.

Accomplishing these goals is a difficult and lofty task, but schools are an excellent place to start. Most children attend school and incorporating FTS programs will introduce the idea of healthy eating and connecting with the community at a young age. Currently, the growing body of legislation, both federal and state, supporting FTS activities is positive for children, farmers, schools, and society as a whole. Without these key pieces of legislation it undoubtedly would be difficult to ensure that FTS programs will be implemented in some form or another in schools across the country. But, as with the commodity donation program during the Great Depression, there is cause for concern that an increased amount of legislation in this area of agriculture law and education law may end up doing more harm than good.¹²⁸ It would be wise to keep an eye on developing legislation, in both the federal landscape and in Pennsylvania, to ensure that evolving legislation continues to result in net benefits to children, schools, and farmers.

FTS programs appear to parallel the history of the school lunch program. The

¹²⁸*Supra* note 4.

school lunch program began as individual efforts across the country. The school lunch efforts eventually expanded to the point where Congress stepped in to provide funding. The FTS programs are following the same path. Most of these programs started at the grassroots level. Now there is growing legislation supporting the work. With the proper legislation and continued efforts on the part of school districts and the surrounding community, FTS programs can be a successful part of the education system.