



Volume 22 (2025) | ISSN 1932-1821 (print) 1932-1996 (online)
 DOI 10.5195/taxreview.2025.258 | <http://taxreview.law.pitt.edu>

CASH TRANSFERS: WHAT PANDEMIC ERA SCHOOL LUNCH PROGRAMS CAN TEACH US ABOUT TAX

Jennifer Bird-Pollan



This work is licensed under a Creative Commons Attribution-NonCommercial-No Derivative Works 3.0 United States License.

Pitt | Open
Library
Publishing

This journal is published by [Pitt Open Library Publishing](http://open.library.pitt.edu).

CASH TRANSFERS: WHAT PANDEMIC ERA SCHOOL LUNCH PROGRAMS CAN TEACH US ABOUT TAX

*Jennifer Bird-Pollan**

When schools across the United States shut down in March 2020, not only did millions of children lose access to their classrooms, school playgrounds, and the physical site of their education, but many also lost an important source of their nutrition. The school lunch program, funded at the federal level by the United States Department of Agriculture (USDA), is responsible for distributing daily breakfast and lunch to nearly thirty million children.¹ On an annual basis, this translates to nearly three billion free meals² and fourteen billion dollars in food subsidies for children enrolled in public schools.³ Unlike in the United States, in many European countries, public schools are expected to provide all meals to students while they are at school. For instance, in Finland, Sweden, and Estonia, all school meals are provided at no cost to all students.⁴ In Latvia and Lithuania all students at the

* Alan S. Schenk Endowed Chair in Tax Law, Wayne State University Law School. The author wishes to thank participants in the Law, Society, and Taxation Collaborative Research Network and participants in the Association of Midcareer Tax Professors Conference for their helpful feedback on this work. She also wishes to thank Holly Couch, Matthew Hayes, and Scott Kunde for excellent research assistance, and the editors of the *Pittsburgh Tax Review* for their work during the publication process.

¹ U.S. DEP'T OF AGRIC., PROGRAM INFORMATION REPORT (KEYDATA) 8 (2024), <https://fns-prod.azureedge.us/sites/default/files/data-files/keydata-june-2024.pdf> (estimating 29,610,346 participants in the National School Lunch Program during the fiscal year 2024).

² *Id.* at 9 (estimating 2,759,914,686 free lunches served by the National School Lunch program during the fiscal year 2024).

³ *Id.* at 11 (estimating total costs of the National School Lunch Program at \$14,288,493,693 for the fiscal year 2024).

⁴ Servet Yanatma, *School Meals in Europe: Which Countries Provide Free Food for Students?*, EURO NEWS (Dec. 21, 2023, 11:52 AM), <https://www.euronews.com/business/2023/09/04/school-meals-in-europe-which-countries-provide-free-food-for-students> ("Finland, Sweden and Estonia are the three EU member states providing universal free meals for all age groups.").

elementary school level receive free meals at school.⁵ In nearly all other European Union (EU) countries, a significant number of students receive school meals at either no cost or a significantly reduced cost, in many instances with no reference to the economic status of the child's family.⁶ By contrast, in the United States, in most instances where a public school provides breakfast or lunch to enrolled children, the evaluation of whether or not a child will be expected to pay for that meal is done with reference to the financial situation of the child's parents.⁷ As a result, the students who lost access to free school meals during the COVID-19 pandemic school closures were primarily the neediest students in the country, thereby adding yet another crisis to these children's families. While most schools in the United States stayed closed from March 2020 through the end of the 2019–20 school year, many stayed closed for in-person education well into or through the 2020–21 academic year, and, in some instances, students continued to learn from home into the 2021–22 school year as well.⁸ As a result, the question of how to handle the school lunch program and this essential source of nutrition for needy children became an important one for many school districts throughout the country.

This Essay walks through the history of the National School Lunch Program, explaining its origin and identifying some of its historic challenges, and then turns to an explanation of how the USDA handled the specific challenges of school closures during the COVID-19 pandemic. I then turn to a case study of the Fayette County Public School district (FCPS) and its approach to school lunch during and after the pandemic. FCPS's use of

⁵ *Id.* (“Latvia and Lithuania provide free meals to some grade levels. One full meal per day is given for first to fourth grade students, and in some municipalities, for older students. In 2020, Lithuania began to provide free meals for pre-primary and first-grade pupils.”).

⁶ EU Countries providing free or reduced-price lunch to a significant number of schoolchildren include Cyprus, Czechia, Germany, Hungary, Luxembourg, Malta, Portugal, Slovakia, Slovenia and Spain. In addition, several municipalities in Austria, Belgium, Bulgaria, Greece, France, Croatia, Ireland, Italy, Poland, and Romania provide meals to students enrolled in public schools. *Id.* Outside the EU, the United Kingdom also has a country-wide free lunch program.

⁷ For a discussion of the United States' National School Lunch Program and the eligibility criteria, see *infra* Part I.

⁸ BORIS GRANOVSKIY & RITA R. ZOTA, CONG. RSCH. SERV., R46883, REMOTE LEARNING FOR K-12 SCHOOLS DURING THE COVID-19 PANDEMIC, at 23 (2021) (“In a May 2021 interview, Secretary of Education Miguel Cardona said that he expects all public elementary and secondary schools to fully reopen five days a week at the start of the 2021–2022 school year. . . . [However,] [d]espite the CDC's guidance and ED's focus on the safe reopening of schools for the 2021–2022 school year, many school districts are still considering whether to employ the continued use of online learning in some way.”).

electronic benefits instead of the direct provision of food during the pandemic and the significant expansion of universal lunch both in FCPS and in school districts across the country are representative experiments in making benefits widely available without reference to need. In the final section of this Essay I will turn to a discussion of how this innovative approach to public benefits can teach us something useful for anti-poverty measures on a larger scale. Since some of the most successful, but also most controversial, anti-poverty measures involve cash transfers to needy families, studying a successful approach to the school lunch program during and after the pandemic, including the need-blind approach to universalizing those benefits, may provide useful insight into the best way to structure such measures going forward.

I. HISTORY OF THE NATIONAL SCHOOL LUNCH PROGRAM IN THE UNITED STATES

While feeding children at school in the United States dates back to the mid-19th century, in the early decades food was provided by nonprofits dedicated to combatting poverty or protecting children, rather than by government organizations.⁹ At the beginning of the twentieth century, school districts in Philadelphia and Boston started providing lunches to children attending schools, with a particular focus on feeding the children of impoverished families.¹⁰ The widespread recognition of the harms of poverty and the economic inequality rampant in the United States in both urban and rural settings motivated many school lunch programs in cities and school districts across the country.¹¹ In the 1930s the federal government began subsidizing school lunch programs, although in the early years these subsidies mainly took the form of food purchased by the federal government from struggling farmers and transferred to schools to be served in their

⁹ GORDAN W. GUNDERSON, THE NATIONAL SCHOOL LUNCH PROGRAM 5 (1971), <https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLP-program-history.pdf> (“[S]chool feeding in the United States underwent the same evolution as in Europe, beginning with sporadic food services undertaken by private societies and associations interested in child welfare and education.”).

¹⁰ *Id.*

¹¹ *Id.* at 7–11.

cafeterias.¹² The first legislation passed at the federal level insuring consistent funding for school lunch programs across the country came in 1946, with the “National School Lunch Act.”¹³ The new bill guaranteed subsidies to schools preparing lunches on site, and also regulated the nutritional content of school lunches. For schools that complied with the terms of the legislation, reimbursement from the federal government for the costs of providing the lunches was made at a fixed percentage.¹⁴

Until the early 1960s, the federal government distributed the subsidies under this legislation equally to all schools offering lunch to their students.¹⁵ However, starting in 1962, the federal government started to recognize that the cost of providing lunch at school was not the same across all parts of the country. Instead, schools primarily attended by children at the lower end of the economic scale would have significantly higher costs associated with the provision of school lunch, since at those schools, the students could less afford to pay anything for the lunches.¹⁶ As a result, amendments to the National School Lunch Act began allocating funding to states differentially, based on the average per capita income of the state’s residents.¹⁷ The new amendments, as well as the additional funding which began to be provided in 1966, made federal reimbursement available to states that provided free or reduced-price school lunch to needy children.¹⁸

But even as the federal money available to subsidize school lunch was increasing, skeptics remained. According to a junior high school principal, “We think this is the responsibility of parents and child. We do not check them to see if a student eats. As a whole, we are doing it as a service rather than a need.”¹⁹ However, in a surprising turn of events, President Richard Nixon made feeding needy schoolchildren a matter of importance early in his

¹² *Id.* at 12.

¹³ *Id.* at 1.

¹⁴ *Id.* at 19.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 19–20.

¹⁸ *Id.* at 21.

¹⁹ *Id.* at 24.

presidency, and the USDA issued regulations in 1970 expanding the reach of the National School Lunch Program, as well as establishing universal guidelines about what category of students should qualify for the benefit. These regulations also began requiring state matching funds for all federal dollars spent in the state under the National School Lunch Program.²⁰

While the initial years of funding for the National School Lunch Program resulted in schools providing free or reduced-price lunch to about seven million schoolchildren,²¹ by 2024 the program made free or reduced-price lunch available to almost fifty million children, with the benefits actually being used by about twenty-nine million children.²² This is an impressive reach, and represents a true accomplishment for a set of ideals that was originally implemented by nonprofit organizations intent on combatting child poverty and increasing access to a meaningful educational opportunity for the children of society's poorest families. Even leaving aside what the school lunch program accomplished during the pandemic (discussed below), the National School Lunch Program is an evident success.

II. SCHOOL LUNCH, TITLE I, AND THE COMMUNITY ELIGIBILITY PROVISION

My children have attended the Fayette County Public Schools since we moved to Lexington, Kentucky in 2010.²³ While Lexington and the co-extensive Fayette County are relatively wealthy areas when compared with other towns and counties in Kentucky, like many other school districts across

²⁰ *Id.* at 32.

²¹ U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1 (2024), <https://www.fns.usda.gov/nslp/factsheet>.

²² U.S. DEP'T OF AGRIC., *supra* note 1 (reporting 95,780 outlets operating; 49,991,215 enrollees; and 29,610,346 participants).

²³ Each school district makes its own determination about how to identify children eligible for free or reduced price school lunch through the funding provided by the federal government. While many districts will make choices that are different from those made by the Fayette County Public Schools, Lexington is a fairly representative midsize city, and examining the choices made by this district can be useful for understanding what is possible and what is preferable. This is why I chose the Fayette County Public Schools as a case study for this Essay.

the country, FCPS serves kids from a wide variety of economic situations.²⁴ And, like many other American school districts, the public schools in Fayette County tend to be relatively segregated by income level.²⁵ Most schools in Fayette County are assigned on the basis of the student's home address, with students typically attending the elementary, middle, and high schools that are closest to their homes.²⁶ While some of the Fayette County Public School magnet programs are strategically located in schools that otherwise serve some of the poorest neighborhoods in town,²⁷ it is still generally the case that the wealthier families in town send their kids to certain schools while poorer families send their kids to others.

A bit of background, now on the economic make-up of the schools in the Fayette County School District, and the identification of schools as Title I or Community Eligibility Provision Schools. Because families with different income levels are typically assigned to different schools (a consequence of neighborhood choice, etc.), many schools in the Fayette County School District are identified as "Title I Schools."²⁸ The federal

²⁴ *Current Title I Schools*, FAYETTE CNTY. PUB. SCHS., <https://www.fcps.net/leaders-support/departments-offices/title-i-office/current-title-i-schools> (last visited Mar. 26, 2025).

²⁵ *See id.* (illustrating that in Fayette County, twenty-six of the thirty-seven elementary schools and seven of the twelve middle schools are categorized as Title I schools). While the significant majority of public schools in the FCPS system are categorized as "Title I Schools," based on the percentage of enrolled children who live at or below 130% of the federal poverty level, the elementary schools, which are all enrolled on the basis of the home address of the student, still have a number of non-Title I schools, meaning that families in those individual elementary school neighborhood districts are, on average, higher-income than families living in the elementary school neighborhoods of the Title I schools.

²⁶ This practice is relatively common in the United States. While it has the advantage of letting children attend school in relatively close proximity to their homes, it also has the effect of clustering poorer kids and richer kids together in different schools. *Enrollment in FCPS*, FAYETTE CNTY. PUB. SCHS., <https://www.fcps.net/school-resources/registration-enrollment> (last visited Mar. 26, 2025) ("FCPS enrolls students at the school where they are zoned based on residential address. Once we receive all the required documents, your school will confirm your child's enrollment.").

²⁷ *Magnet Schools & Programs*, FAYETTE CNTY. PUB. SCHS., <https://www.fcps.net/school-resources/magnet-schools-programs> (last visited Mar. 26, 2025). Note that the percentage of schools that house magnet programs is dramatically higher among the middle and high schools than it is among the elementary schools, which further contributes to the segregation by income level at the elementary level, as compared to the high school levels (which helps to explain why nearly all of the high schools are Title I schools, while a much smaller percentage of the elementary schools qualify as Title I schools).

²⁸ The term "Title I" refers to "Title I, Part A (Title I) of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESEA)," which "provides supplemental financial assistance to school districts for children from low-income families. Its purpose is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational

government gives some discretion to states and school districts to determine what will make a school eligible for designation as a Title I school, however the federal government does require that the district prioritize the allocation of Title I funds to schools where “75% or more of the students are eligible for free/reduced school lunch.”²⁹ Once all such schools are identified and Title I funds are allocated to those schools, Fayette County goes on to identify additional Title I schools in each category of elementary, middle, and high school on the basis of the percentage of students in the school who are eligible for free or reduced school lunch.³⁰ Once a school has been identified as a Title I school, the district works with the school to implement a variety of programmatic supports to assist in the education and development of students in that school. For purposes of this Essay, however, the most important characteristic of a Title I school is that when over 50% of the students enrolled in a school in Lexington, Kentucky come from families who live at or below 130% of the poverty line, the school participates in the “Community Eligibility Provision” (CEP) of the National School Lunch Program, in which all students enrolled in that school, regardless of the economic status of their parents, become eligible for free school breakfast and lunch.³¹ In the Fayette County Public Schools, twenty-nine of thirty-seven elementary schools are CEP schools, eleven of twelve middle schools are CEP schools, and all six high schools are CEP schools.³² As a result, in

achievement gaps by allocating federal funds for education programs and services.” *Fast Facts*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/fastfacts/display.asp?id=158> (last visited Mar. 26, 2025).

²⁹ *Qualifying Process*, FAYETTE CNTY. PUB. SCHS., <https://www.fcps.net/leaders-support/departments-offices/title-i-office/qualifying-process> (last visited Mar. 26, 2025).

³⁰ *Id.*

³¹ The USDA administers funding for the school lunch program in the United States. Over the years, the federally mandated minimum percentage of enrolled students who must be below the family income limits in order for the school to be eligible for the Community Eligibility Provision, or “CEP” has gone down from fifty percent, to forty percent, to its current level of only twenty-five percent, as of October 26, 2023. *CEP Final Rule Summary*, FOOD RSCH. & ACTION CTR. (Sept. 26, 2023), <https://www.fns.usda.gov/cn/cep-final-rule-summary>. While this sets the minimum threshold at the federal level for CEP eligibility, districts must use their own data to determine which schools in their district to identify as CEP schools.

³² *Meal Assistance Programs*, <https://www.fcps.net/leaders-support/departments-offices/child-nutrition/meal-assistance-programs> (last visited May 4, 2025).

total, a little over 90% of Fayette County Public School students are eligible to receive free breakfast and lunch every day that school is in session.³³

As I hope this information has helped to demonstrate, free school lunch is an important part of the regular nutritional intake of many kids in Fayette County. In addition to *all* of the children in a school designated as a CEP school, any child enrolled in a non-CEP school whose family income status qualifies them for free lunch will also receive their lunch at school without paying. As a result, in particular for the families least able to afford the costs of feeding their kids, the lunch and breakfast provided at no cost by the school are critically important. And, when looked at as a total number across a school district, it turns out that a relatively large portion of school-age children are likely to be receiving most of their nutritional calories in any particular week through the free school lunch program.

III. FREE SCHOOL LUNCH AND SOCIAL STIGMA

Before turning to a more detailed examination of the approach taken by the Fayette County School District to the school lunch question during the COVID-19 pandemic, I will first turn to a brief exploration of the challenges presented by the idea of “free school lunch” as it has been handled in the United States thus far. One important thing to note is that the question of what should be included for students in a school day and what should not be included is itself an important and non-obvious question. In most public schools the students receive complimentary use of the textbooks they need for their classes. I have not yet heard of a school that charges students for toilet paper or soap. Some schools provide pencils, erasers, and paper, but in other schools, parents are expected to ensure their children have their own “school supplies” at the beginning of the year and are also asked to contribute to the classroom supply of things like whiteboard markers, tissue boxes, and even extra pencils and paper, for the children whose parents cannot afford

³³ Of the 42,282 students enrolled in Fayette County Public Schools in January 2025, only 5,457 of them attended non-CEP schools. However, of those non-CEP students, another 1,572 submitted applications for free or reduced-price school lunch during the 2024–2025 school year. As a result, in total, 38,397 of the 42,282 students enrolled in Fayette County Public Schools (90.8%) during the 2024–2025 school year were offered free or reduced-price breakfast and lunch. FAYETTE CNTY. PUB. SCHS., 2024–25 MONTHLY FREE/REDUCED ELIGIBILITY [*sic*] REPORT (Jan. 6, 2025), https://resources.finalsite.net/images/v1738703659/fcpsnet/iyzqck94kocumblee0zj/2025_January.pdf.

them. Other schools have moved to a communal model, where no students bring their own supplies—instead all parents contribute to a communal pool of supplies, and children take what they need from the pool.³⁴ This is all to say, at some point a school makes a determination about what expectations it has regarding what the student will bring with them from home, and what the school will provide. No student is expected to bring their own desk or chair, but for years, students have been expected to bring their own food with them, or to pay for the provision of lunch by the school. For more than a hundred years, school cafeterias have provided lunch to students, but in the early years students were generally expected to pay for the lunch they would receive.³⁵ Only in the 1930s did the federal government begin subsidizing the provision of school lunch to students, with a special emphasis on providing food at reduced cost or no cost to students living in poverty. But even in that era, students who came from families who could afford to pay for lunch were expected to pay for the lunch provided by the school cafeteria.

Because students who eat at the school cafeteria typically do so for a fee, school lunch becomes another area of public life where individuals can incur debt. More specifically, elementary school children can become indebted to their school cafeterias if they take lunch without having sufficient funds to pay for the food. The concept of “school lunch debt” has become more significant than one might imagine, given the nominally small cost of school lunch.³⁶ Schools have become grimly creative in developing ways of preventing and punishing school lunch debt. In one example, an elementary school announced that any child with school lunch debt would not be allowed to attend an upcoming school dance.³⁷ Other schools will not serve a hot lunch to a student with school lunch debt, instead giving the student only a

³⁴ Sarah Bregel, *Should Parents Have to Buy Shared School Supplies for the Entire Class?*, PARENTS (Aug. 14, 2024), <https://www.parents.com/parents-divided-over-buying-classroom-school-supplies-8695236>.

³⁵ Early school lunch programs were developed and operated by state governments. GUNDERSON, *supra* note 9 (“By 1937, 15 states had passed laws authorizing local school boards to operate lunchrooms . . . authoriz[ing] the serving of meals at cost, usually the cost of the food only.”).

³⁶ Jessica Terrell, *Why Unpaid U.S. School Lunch Debt Can Prompt a Call to Child Welfare Services*, GUARDIAN (Sept. 19, 2024, 1:00 PM), <https://www.theguardian.com/us-news/2024/sep/19/unpaid-school-lunch-debt-child-welfare-services>.

³⁷ *Id.*

cold sandwich if the student has unpaid school lunch debt.³⁸ Because such moves have been met with significant public outrage, most districts have moved away from these efforts, although it remains a real dilemma for school districts across the country. Public schools are chronically underfunded in many parts of the United States. They are constantly asked to do more with less, and for every unpaid school lunch bill, the school must make up the financial cost elsewhere. Even with this additional financial burden, most schools are choosing to find a way not to pass the burden of the unpaid lunch bill on to the affected child.

Moves like this one away from “school lunch shaming” are designed to reduce the stigma associated with a child’s not having enough—not having the right binder, the right pencil, the right kind of notebook. Other schools address this problem with respect to clothing by requiring students to wear a school uniform, even in public schools.³⁹ The decision not to insist that students with unpaid school lunch bills must be publicly confronted with their “debt” in the form of a cold sandwich while their friends get hot chicken fingers follows in the same vein. Similar concerns about stigma will be part of a later conversation⁴⁰ in this Essay about the role of Electronic Benefits Transfer cards and their use in grocery stores. But for now, the general consensus seems clearly opposed to shaming children for their unpaid lunch debts. But what about the stigma attached to the use of free or reduced lunch benefits themselves? Children are highly attuned to what such benefits mean, even from a relatively young age. When a classmate has a special card to pay for lunch instead of the dollar bills used by their classmates, students recognize that classmate as different, and not in a good way. This singling out of students whose family economic status qualifies them for free lunch has motivated a change in the free lunch policies of several states. Rather

³⁸ Gaby Del Valle, *A School District Was Accused of “Lunch-Shaming” Policies. It’s a National Problem*, VOX (May 10, 2019, 10:05 AM), <https://www.vox.com/the-goods/2019/5/9/18563324/lunch-shaming-rhode-island-warwick-policies> (“[P]ublic school students in Warwick, Rhode Island, with unpaid lunch balances would no longer receive hot food, the district announced on Sunday. Instead, those students would receive sunflower butter and jelly sandwiches until their debts were paid.”).

³⁹ Lara Bullens, *France to Introduce School Uniforms in Bid to Reduce Bullying and Inequality*, FRANCE 24 (Aug. 1, 2024, 8:07 AM), <https://www.france24.com/en/europe/20240108-france-to-introduce-school-uniforms-in-bid-to-reduce-bullying-and-inequality> (explaining the implementation of school uniforms in French schools compared to that of other schools in the U.K. and Europe).

⁴⁰ See *infra* Part V.

than requiring that eligible students identify themselves in the lunch line, all students in the state are eligible for free lunch, regardless of family economic status. For instance, Minnesota recently passed legislation using state funding to cover the costs of breakfast and lunch for all students attending schools that participate in the National School Lunch Program.⁴¹ Under the terms of this program, all public school children in the state of Minnesota receive both breakfast and lunch at their school at no cost to them.⁴² A clear motivation of the push to provide free school lunch to all children, regardless of economic status, was the intention to eliminate the stigma associated with “free lunch.” Advocates for the Minnesota law argue that “free school meals are not just helping families across the economic spectrum save money, they are also an equalizer in the lunchroom.”⁴³ However, others worry that the cost associated with providing school lunch to families who could, in fact, afford to pay for their children’s lunches is a cost the state cannot continue to bear.⁴⁴ In Minnesota, the annual cost of the free school lunch program is estimated to increase from \$81 million to \$95 million over the next few years.⁴⁵

This concern about the cost of school lunch for children who come from middle income and wealthy families calls for a return to my earlier question—what services should we expect schools to provide as part of the program offered to all students, and what services should be, so to say, *a la carte*? After all, public school enrollment is currently offered to all students regardless of their families’ economic situation. We do not require that higher income parents pay a fee for their child’s enrollment in public school. Now, to be sure, PTA programs will request contributions from families, and pressure to contribute may be greater on wealthier families. The school itself may hope (or even expect) that higher income families will contribute

⁴¹ See generally MINN. DEP’T OF EDUC., FREE SCHOOL MEALS PROGRAM FREQUENTLY ASKED QUESTIONS (FAQ) (2024), https://education.mn.gov/mdeprod/idcplg?IdcService=GET_FILE&dDocName=PROD081146&RevisionSelectionMethod=latestReleased&Rendition=primary.

⁴² *Id.*

⁴³ Elizabeth Shockman, *Minnesota’s Push for Free School Meals Proves Popular, but Costs Are Climbing*, MINN. PUB. RADIO NEWS (Dec. 20, 2023, 4:00 AM), <https://www.mprnews.org/story/2023/12/20/minnesotas-push-for-free-school-meals-proves-popular-but-costs-are-climbing>.

⁴⁴ *Id.* (“The state’s move ‘gave free lunch to all the wealthy families,’ [State Rep. Kristin Robbins (R)] added. ‘That’s a place I think we need to look at. Is that really a priority?’”).

⁴⁵ *Id.*

financially to the school's coffers. But those contributions would be considered deductible charitable contributions, not required tuition payments. In other words, we have come to expect that all students in a particular region may participate in the public school without a tuition charge, even if their parents *could* afford to pay tuition, perhaps even several times over. So why should school lunch be treated differently? Is this just a remnant of an earlier time, before universal school enrollment was the norm? Does this hearken back to the time of one room schoolhouses with no lunchroom, and no ability to feed the children who came to school every day? Or does it say something about assumptions regarding the “stay at home mom,” dutifully preparing her children's lunches for their consumption at school, in addition to the snack she will have ready for them when they get home? Whatever the historical source of this approach to school lunch and the rights of students enrolled in school to eat while they are there, it may well be time to reconsider this approach.

IV. SCHOOL LUNCH DURING THE COVID-19 PANDEMIC

It is beyond dispute that the COVID-19 pandemic wreaked havoc around the world, with a range of effects from the mild disruption of normal workplace operations to the death of millions of individuals.⁴⁶ However, in the early weeks of the pandemic, one of the most immediate effects of COVID-19 for most Americans was the closing of schools. In March 2020, nearly every single school in the United States closed, and the vast majority of those schools remained closed for in-person instruction through the end of the 2019–20 school year.⁴⁷ “Zoom school” became the norm, with classes meeting for live Zoom instruction, students doing remote work, and parents of elementary school age students losing their minds trying to balance forcing their five year olds to sit in front of their computers while still keeping up with their own work responsibilities. Not to mention the widespread fears

⁴⁶ *Trends in United States COVID-19 Deaths, Emergency Department (ED) Visits, and Test Positivity by Geographic Area*, CTR. FOR DISEASE CONTROL & PREVENTION (Mar. 26, 2025), https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_select_00 (tracking of deaths across the United States, where those deaths have been attributed to COVID-19).

⁴⁷ *Map: Where Were Schools Required to Be Open for the 2020–21 School Year?*, EDUCATIONWEEK (June 14, 2021), <https://www.edweek.org/leadership/map-where-are-schools-closed/2020/07>.

about COVID, its long-term health consequences, and the elusive search for a vaccine. When the next school year was scheduled to begin in August 2020, COVID numbers had increased again, and the majority of school districts across the country opted to remain remote for the beginning of the school year. These months and months of school closures caused significant educational problems, the effects of which are still being felt five years later.⁴⁸ But this Essay turns now to a different challenge introduced by school closures.

Returning to the site of our case study in this Essay, the Fayette County Public Schools remained closed for in-person instruction from March 13, 2020 until March 15, 2021.⁴⁹ In other words, for over one entire calendar year, students in Fayette County Public Schools did not attend in-person school. Remembering again that over 90% of public-school children in Fayette County are eligible for no-cost school lunch provided by their schools, these year-long school closures posed dramatic risks for the breakfast and lunch options available to a significant majority of public-school students.

Recognizing that when schools were closed for in-person learning the school lunch program could not operate as it was designed to do (preparing and serving meals directly to K-12 children while they are at school), Congress and the USDA acted quickly to permit states to adjust their practices regarding school lunch benefits. On March 18, 2020, Congress passed the “Families First Coronavirus Act.”⁵⁰ Among other things, the bill authorized the Secretary of Agriculture to approve state distribution plans regarding nutrition assistance that deviated from the normal distribution plans.⁵¹ These plans could either make cash transfers to the families of eligible children or could transfer food to those families. Each state was

⁴⁸ Sarah Mervosh et al., *What the Data Says About Pandemic School Closures, Four Years Later*, N.Y. TIMES (Mar. 18, 2024, 12:25 PM), <https://www.nytimes.com/2024/03/18/upshot/pandemic-school-closures-data.html> (explaining that data continue to come out regarding the long-term learning loss associated with pandemic-related school closures).

⁴⁹ *FCPS Announces Return to In-Person Schedule*, LEX 18 (Feb. 23, 2021, 8:40 PM), <https://www.lex18.com/news/back-to-school/fcps-announces-return-to-in-person-schedule>.

⁵⁰ Families First Coronavirus Response Act, Pub. L. No. 116-27, 134 Stat. 178 (2020).

⁵¹ *Id.*

thereby authorized to make its own determination of how best to use this new discretion within its own borders. Kentucky, a traditionally conservative state that had nonetheless elected a Democrat as Governor in the November 2019 election, opted to make cash transfers under the discretion it was granted by the USDA.⁵² By contrast, in Florida, where schools remained closed for a much shorter period, the Agriculture Commissioner opted to transfer food directly to children and their families, rather than transferring financial benefits through the so-called “P-EBT” (Pandemic Electronic Benefits Transfer).⁵³ While this was still, of course, a way of feeding children, requiring families to come to the physical locations of the distribution centers to pick up food packages and determining for the families what food they would receive gave the families of Florida students significantly less control over their children’s nutrition than Kentucky families received. Further, adding the time burden of requiring parents to travel to the closed schools to pick up food, while then exposing themselves to COVID-related health risks while the federal government was still recommending that all people isolate to the extent possible put Florida families in a difficult position. By contrast, the parents of Kentucky school children received P-EBT cards in the mail, which they could then use to shop in local grocery stores, including using online ordering with delivery or curbside pickup, to reduce the amount of time they had to spend out of the house.

For the remainder of the 2019–20 school year P-EBT cards were available to the families of children enrolled in Kentucky public schools who were eligible for free or reduced price school lunch, either because of their families’ economic status, or because they were enrolled in a CEP school, meaning all children who attended that school were, by reason of their enrollment in the school, eligible for free or reduced price school lunch. However, in order to receive a P-EBT card during the remainder of the 2019–

⁵² See U.S. DEP’T OF AGRIC., PANDEMIC ELECTRONIC BENEFITS TRANSFER PROGRAM (P-EBT): APPROVAL OF KENTUCKY STATE PLAN (May 19, 2020), <https://fns-prod.azureedge.us/sites/default/files/resource-files/KY-SNAP-COVID-PEBT-Approval%20Letter.pdf>.

⁵³ Garry Smits, *Coronavirus: Florida Receives Federal Waivers to Serve Meals at Closed Public Schools*, JACKSONVILLE (Mar. 14, 2020, 10:16 AM), <https://www.jacksonville.com/story/news/local/2020/03/14/coronavirus-florida-receives-federal-waivers-to-serve-meals-at-closed-public-schools/112246706/>; *Florida Activates Children’s Meals Website for COVID-19 School Closures*, WJHG (Mar. 15, 2020, 3:08 PM), <https://www.wjhg.com/content/news/Florida-activates-childrens-meals-website-for-COVID-19-school-closures-568814561.html>.

20 school year, eligible families needed to complete an application requesting a card. While there was a significant public awareness campaign launched by a variety of public service and nonprofit organizations across the state, it remained the case that uptake of these P-EBT cards was relatively low among families who were not otherwise familiar with EBT or the government provision of social services.⁵⁴ Families who already received public assistance in the form of EBT cards received the P-EBT benefit as an additional amount loaded onto the EBT card they already had.⁵⁵ For families who participated in Medicaid or another public assistance program, but who did not have an EBT card already, the state automatically generated a new EBT card, loaded the card with the family's P-EBT benefits, and mailed it to their homes.⁵⁶ For the third group of eligible families, those who did not receive any public assistance when they became eligible for P-EBT assistance, the family needed to complete an application online through Kentucky's state "Benefind" website. Once the state determined that the family was, in fact, eligible for a P-EBT card, the card would be mailed to the family's home.⁵⁷

Here I would like to share my personal experience related to this first round of P-EBT funding in Kentucky. Because our child's school was a CEP school, our family became eligible for a P-EBT card in March 2020. As someone who believes in the shared sacrifice and shared benefit approach to the tax and transfer system, I dutifully completed the online form and received our P-EBT card in the mail in April, loaded with the first round of benefits. Over the next several months the card was reloaded several times, as the public schools remained closed, and our child was eligible for additional P-EBT benefits. I had never before received an EBT card and was therefore unfamiliar with its use. However, I spent some time with the

⁵⁴ Much of the public awareness effort was aimed not just at ensuring that families who were eligible to claim this benefit received the funds for their own purposes, but also on emphasizing how using the benefits in places like farmers' markets or farm stands provided an important subsidy to local farmers, who were suffering significantly under the constraints of the pandemic. In this way, claiming one's P-EBT benefits was framed not as a selfish act—claiming "welfare benefits" that could have gone to another—but instead as a way of claiming federal money and using it to support local Kentucky farmers—something everyone could get behind.

⁵⁵ Alicia Whatley, *Pandemic-EBT: What It Is and How to Apply*, KY. YOUTH ADVOCS. (May 28, 2020), <https://kyyouth.org/pandemic-ebt-what-it-is-and-how-to-apply/>.

⁵⁶ *Id.*

⁵⁷ *Id.*

instructions I received along with the card, and also went to the state's website in order to determine where I could use the card and what I could spend it on. Having determined that all of the stores that served as our primary source of groceries (Costco, Trader Joe's, and Whole Foods) were, in fact, stores that accepted EBT cards, I brought the card out to use on my next trip to Costco. The first few times that I used the card in our usual stores I had experiences that were new to me, but which are presumably not unfamiliar to regular users of EBT cards. In each of these first few instances, when a very small number of Lexington families otherwise ineligible for public benefits had claimed their P-EBT benefits, the cashiers in the stores where I shopped were unfamiliar with the cards and needed to call over a supervisor to help with completing the order. I experienced these interactions as calling attention to the fact that I was using "food stamps," and unwittingly felt a sense of shame and regret during the checkout process. I felt keenly aware of the groceries I was purchasing—did we really need that steak? Was it fair to purchase the brand name dish soap when we were using government money? In the end, my interest in participating in this public program along with my desire to keep shopping for what our family needed and wanted (especially in the midst of all the other things causing such distress in those months during 2020), kept me going to these stores and using these cards. But what was especially noteworthy to me was the way in which these experiences evolved over the subsequent months.

Because all public schools in Kentucky remained closed as of the beginning of the 2020–21 school year, the state government was faced with the challenge (and opportunity) of thinking through what to do with school lunch and the P-EBT program in light of the news that it could well be a long time until schools reopened. While the March, April, and May 2020 P-EBT program had had some level of success, there was real concern that many eligible families had not received their benefits because of the hurdle of requiring an application through the website. And while public awareness campaigns had had some level of success, it remained evident that thousands of eligible families had not claimed their cards in those early months of the pandemic.⁵⁸ In order to combat this problem and try to increase the uptake of

⁵⁸ See generally John Charlton, *What Happened to the Second Round of P-EBT Cards Promised to Kentucky Families?*, FOCUS (Nov. 19, 2020, 10:45 PM), <https://www.whas11.com/article/news/investigations/focus/pandemic-ebt-kentucky-investigation/417-729a46c5-ce2e-4c68-97b3-970b82d5b27b>.

this important benefit, Kentucky decided to amend its approach. Instead of requiring applications from families who were not otherwise beneficiaries of SNAP or other public assistance programs, beginning in fall 2020, Kentucky mailed P-EBT cards directly to all eligible families.⁵⁹ Some confusion resulted, and there were even reports of outraged parents, expressing anger at the insult of having received a public assistance card, presumably believing this suggested that the state saw them as people who needed the help. In response to these complaints, the state made an effort to both explain that all eligible children's families received the card, and that the majority of kids who were eligible for the cards were eligible not because of their family's economic status, but because they attended a CEP school.⁶⁰ The state also tried to emphasize the message that, if a family did not feel that they needed the support provided by the P-EBT card, they could either destroy it, or better yet, use the funds to purchase food which could be donated to a food pantry.⁶¹ In this way, advocates argued, the federal dollars would be reinvested in Kentucky farms and businesses, and the benefits of the food subsidy could be passed on to those who needed it.⁶² For the most part, families seemed convinced, and, anecdotally, use of the P-EBT cards in fall 2020 and spring 2021 was robust.

Returning to my personal experience of these phenomena, when fall 2020 rolled around and a huge number of Lexington families began receiving P-EBT cards, my experience at the checkout counter of my local Whole Foods started to change. Remember, the vast majority of children enrolled in a public school in Lexington, Kentucky attend a CEP school, and are therefore eligible for free or reduced price school lunch.⁶³ Suddenly, the cashiers at the fancy grocery stores in Lexington were wholly familiar with

⁵⁹ Billy Kobin, *Confused About a Pandemic EBT Card for Your Kentucky Student? Here's What to Know*, COURIER J. (June 22, 2022, 2:41 PM), <https://www.courier-journal.com/story/news/education/2020/11/18/confused-pandemic-ebt-card-kentucky-students-school-coronavirus-meals-what-to-know/6338316002/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Mike Fussell, *Food Banks, Grocers Praise Extension of Federal Pandemic Benefit*, WAVE (Mar. 17, 2021, 6:19 PM), <https://www.wave3.com/2021/03/17/food-banks-grocers-praise-extension-federal-pandemic-benefit/> ("It's not just the grocery stores, but it supports the whole supply chain From the farmers that produce the food to all the way through the distributors, the truck drivers and the folks in the stores.").

⁶³ See generally *Qualifying Process*, *supra* note 29.

the P-EBT cards, as the parents of children across the district came for their Saturday shopping, buying organic produce with their P-EBT cards. Parents using these cards did not exhibit shame or embarrassment at the checkout desk, and as the cashiers became more familiar with how the cards worked, there were fewer and fewer instances of attention being called to the transaction, since the cashier could handle the purchase alone—no supervisor required. Now, to be sure, the cards have a distinctive appearance—plain white with a solid black stripe. I could see when others around me were using their P-EBT cards at checkout, and they could also presumably see when I was using mine. But the experience of being just one of the crowd, rather than being singled out for using my public benefit card, was a very different experience, and a marked improvement.

In other words, as the uptake of this public benefit expanded, and the number of people across socio-economic strata who used the benefit increased, the more people became accustomed to seeing its use, making it no longer a noteworthy event when someone pulled out a P-EBT card to use at Costco. This also meant that it was no longer immediately obvious which user of the benefit had access to it because of their particular economic situation, and which had access because their child attended a CEP school. As a result, any potential stigma associated with the use of the benefit was significantly abated. While the P-EBT cards were not universally understood or appreciated, most families were happy to have the extra financial support in the midst of the pandemic, when having children at home full time meant that expenses were higher than usual. Even those who did not want to use the money themselves were usually happy to buy food to donate to food pantries. Across the board, the P-EBT program seemed widely popular, user-friendly, and generally speaking, a resounding success.

V. P-EBT, “PUBLIC ASSISTANCE,” AND THE POWER OF RHETORIC

The Kentucky Cabinet for Health and Family Services (the “CHFS”) was the administrative agency primarily responsible for administering P-EBT in Kentucky. The CHFS published an FAQ page about P-EBT in March 2021, and included this exchange:

Is the P-EBT a public assistance program? No. The P-EBT helps reimburse families facing unexpected new expense of meals at home for a student

who normally would have received free/reduced-price meals at school through the NSLP.⁶⁴

So why was the CHFS so eager to insist that P-EBT was *not* a public assistance program? Is this part of combatting stigma in this program, and attempting to increase the number of participants willing to partake of the benefit? Is “public assistance” such a dirty concept that even when we are talking about a benefit paid for by the federal government and administered by the state, we look for any way at all to deny the connection, so that participants can hold their heads high while using their P-EBT cards?

This phenomenon regarding what to call the program, and the twisting of ideas on their heads in order to reassure participants that they are *not* receiving public assistance is truly fascinating. What is “public assistance” after all? Receiving a free education in a public school is apparently not “public assistance,” but receiving SNAP benefits outside of the special situation created by the pandemic *is* apparently public assistance. P-EBT seems to float somewhere in the middle. Many children were eligible for P-EBT because of the school they attended, not because of their families’ economic status. On the other hand, a significant minority of P-EBT eligible children received that benefit because, even though they attended a non-CEP school, their family’s financial situation made them eligible for free or reduced-price school lunch. But, nonetheless, the state went out of its way to clarify that this program was not public assistance, and so therefore (this is my interpretation of the messaging) families should feel comfortable accepting the benefit. And the amazing thing is that, for the most part, this seemed to work! Just as taxpayers all over the country eagerly received their “economic impact payments” in 2020 and 2021, families of schoolchildren in Fayette County happily brought their P-EBT cards with them to pay for their organic groceries at Whole Foods.⁶⁵

⁶⁴ Kentucky Pandemic Electronic Benefit Transfer (P-EBT) Frequently Asked Questions, KY. CABINET FOR HEALTH & HUM. SERVS., <https://www.chfs.ky.gov/agencies/dchs/Documents/pebtfqa.pdf> (last visited Mar. 26, 2025).

⁶⁵ Jason DeParle, *Stimulus Checks Substantially Reduced Hardship, Study Shows*, N.Y. TIMES (July 18, 2021), <https://www.nytimes.com/2021/06/02/us/politics/stimulus-checks-economic-hardship.html> (explaining that, because eligibility for economic impact payments “extend[ed] to families with incomes of up to \$150,000, the stimulus checks could reach nearly 300 million Americans. While that greatly increased the cost, [Professor Luke] Shaefer said it reduced the resentment that could accompany aid to the chronically needy and noted that hardships have expanded up the income ladder.”).

Making transfers like these more universal has the striking advantage of decreasing stigma, increasing benefit uptake, and generally achieving the goals for which the particular benefit was designed in the first place. Lawmakers seeking to ensure that those most in need of a benefit will be likely to receive it, as well as those seeking to minimize the stigma and stratification imposed on society by the significant amounts of economic inequality present in the United States today would do well to learn from this phenomenon. By making a financial benefit that was specifically targeted at feeding children more widely available, the state of Kentucky ensured that more families would take advantage of the benefit. In addition, the local effects of the federal spending were multiplied as families brought federal money to their local grocery stores and farmers' markets.

VI. THE UNIVERSAL SCHOOL LUNCH EXPERIMENT

As the worst of the COVID-19 pandemic seemed to recede, several states attempted to parlay what they had learned through their school lunch experiments into longer term benefits. In some instances, this was an acceleration of changes that had already started to take place, but the successes of the P-EBT programs worked to convince more people that these were moves in the right direction. While several major U.S. cities already had school districts that offered universal school lunch, in summer 2021 California became the first state to guarantee the benefit on a state-wide basis, passing legislation insuring all children attending public schools within the state would receive both breakfast and lunch at no charge while they were at school.⁶⁶ The \$650 million program was designed to “reduce absenteeism and nurse visits while improving learning,” according to the program’s advocates.⁶⁷ While you might think it is not a surprise for California to adopt such legislation, the phenomenon is not limited to so-called “blue states.” Eight states now have legislation ensuring free lunch for all public school

⁶⁶ Jocelyn Gecker, *California Launches Largest Free School Lunch Program in the U.S.*, AP NEWS (July 19, 2021, 2:21 PM), <https://apnews.com/article/business-health-government-and-politics-education-california-b959171f408b549eb46376998c02ac2c> (“When classrooms in California reopen for the fall term, all 6.2 million public school students will have the option to eat school meals for free, regardless of their family’s income.”).

⁶⁷ Soumya Karlamangla, *What to Know About California’s Free School Lunch Program*, N.Y. TIMES (Nov. 4, 2021), <https://www.nytimes.com/2021/10/01/us/california-free-lunch.html>.

children, and dozens more have legislative proposals along those lines.⁶⁸ In addition, since the start of the COVID-19 pandemic, the number of schools applying for CEP status under the federal school lunch program has skyrocketed, so that now over 40% of public schools have this categorization, ensuring that *all* students enrolled in those schools are offered free breakfast and lunch.⁶⁹ Clearly, the momentum is growing, demonstrating robust interest in ensuring that students enrolled in public schools can reliably access healthy food while at school. Feeding children need not be a politically charged issue, and many states across the United States are demonstrating that. The current political climate makes the future of universal school lunch at the federal level uncertain, to say the least. However, even in moments where there is less federal support for such programs, states can take the initiative to feed their own students.

VII. CONCLUSION

For decades policy analysts have debated how best to implement policies aimed at combatting poverty and otherwise addressing socio-economic inequality, both in the United States and around the world. While many programs provide specific benefits such as health care or access to job training,⁷⁰ other popular programs involve direct transfers of cash to the program's intended beneficiaries.⁷¹ As just one example of this movement, the P-EBT cards that were distributed to nearly every family with a child enrolled in the Fayette County Public Schools during the COVID-19 pandemic provided an opportunity to observe how individuals unused to receiving public benefits reacted to the receipt of a cash equivalent amount designed to help them in a moment of financial hardship. As a tool designed

⁶⁸ *Momentum Is Building for Healthy School Meals for All*, FOOD RSCH. & ACTION CTR., <https://frac.org/healthy-school-meals-for-all> (last visited Mar. 26, 2025).

⁶⁹ Susan Shain, *How Free School Meals Went Mainstream*, N.Y. TIMES (May 21, 2024), <https://www.nytimes.com/2024/05/21/headway/how-free-school-meals-went-mainstream.html>.

⁷⁰ *Work and Public Benefits*, CTR. FOR L. & SOC. POL'Y, <https://www.clasp.org/work-and-public-benefits/> (last visited Mar. 26, 2025).

⁷¹ Nancy Stedman, *Cash Transfer Programs Are Growing More Common in the U.S. as Studies Show They Improve People's Health*, UNIV. PENN. (Aug. 30, 2023), <https://ldi.upenn.edu/our-work/research-updates/cash-transfer-programs-are-growing-more-common-in-the-u-s-as-studies-show-they-improve-peoples-health/>.

to minimize stigma and increase uptake of a benefit by those who need it most, the P-EBT program is a model of creative and successful public benefit administration. Even the move from requiring an application to sending cards automatically to all eligible Kentucky families represents a response to a challenge that happened in real time and corrected a problem faced by the program. While not all public benefit programs could be designed in a way that aligns with the Kentucky P-EBT program, the successes of this program argue for deeper consideration of tools like a universal basic income.⁷² Making a benefit available on the same terms to all members of society, like free school lunch for all enrolled students, regardless of family economic status, and like the P-EBT cards brought along by the designer stroller set for the Saturday grocery shop at Whole Foods, ensures that the use of the benefit does not become a source of stigma or separation for those who partake in it. As legislators and state agencies consider how best to protect the most vulnerable among us, they would do well to reflect on the success of Kentucky's P-EBT card program and the subsequent growing number of universal school lunch programs as they do so.

⁷² For an excellent discussion of the benefits of using universal basic income as a tool to combat poverty and economic inequality, *see generally* Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625 (2020).