

110TH CONGRESS
1ST SESSION

S. 2066

To establish nutrition and physical education standards for schools.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2007

Mr. OBAMA introduced the following bill; which was read twice and referred
to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To establish nutrition and physical education standards for
schools.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Back to School: Im-
5 proving Standards for Nutrition and Physical Education
6 in Schools Act of 2007”.

7 **SEC. 2. FINDINGS.**

8 (1) National data show that 1 out of every 3
9 children and youth, or about 25,000,000 children
10 and youth, in the United States are overweight or
11 obese. There is clear evidence that this epidemic of

1 excess weight and obesity is due to excessive dietary
2 intake and sedentary activity.

3 (2) The foods served in the school lunch pro-
4 gram established under the Richard B. Russell Na-
5 tional School Lunch Act and the school breakfast
6 program established by section 4 of the Child Nutri-
7 tion Act of 1966 are required to meet Federal nutri-
8 tion guidelines and comply with the Dietary Guide-
9 lines for Americans. Competitive foods and bev-
10 erages, purchased by children and youth outside of
11 the federally reimbursed school lunch and breakfast
12 programs, are only required to meet limited nutri-
13 tion standards pertaining to “foods of minimal nu-
14 tritional value”.

15 (3) The Secretary of Agriculture defined the
16 term “foods of minimal nutritional value” for com-
17 petitive foods and beverages in 1979. This definition
18 is not consistent with current scientific evidence re-
19 garding nutrition.

20 (4) In response to a request by Congress, the
21 Institute of Medicine of the National Academy of
22 Sciences developed science-based nutrition standards
23 for competitive foods and beverages offered during
24 the school day, based on the Dietary Guidelines for
25 Americans.

1 (5) Because all foods and beverages available
2 on a school campus provide significant calories, they
3 should be required to meet those science-based nutri-
4 tion standards.

5 (6) Currently, government, scientific, and public
6 health agencies recommend guidelines suggesting
7 that school-age children and youth engage in at least
8 60 minutes of moderate to vigorous physical activity,
9 that is developmentally appropriate and that involves
10 a variety of activities, on most of the 7 days of the
11 week. However, more than $\frac{1}{3}$ of children and youth
12 do not meet the recommended guidelines for physical
13 activity. The percentages of children that meet the
14 recommended guidelines are 5 to 10 percentage
15 points lower among ethnic minorities than among
16 whites.

17 (7) The Centers for Disease Control and Pre-
18 vention reported that only 8 percent of elementary
19 schools, 6.4 percent of middle and junior high
20 schools, and 5.8 percent of senior high schools of-
21 fered daily physical education during the school
22 year. Daily student participation in high school
23 physical education classes dropped from 42 percent
24 in 1991 to 28 percent in 2003.

1 (8)(A) Key methods of improving the physical
2 activity of children and youth are—

3 (i) ensuring that classes meet national
4 standards for physical education that have been
5 embraced by States and local educational agen-
6 cies; and

7 (ii) ensuring that teachers are adequately
8 trained to implement those standards.

9 (B) The National Association for Sport and
10 Physical Education and the Centers for Disease
11 Control and Prevention support the use of the Na-
12 tional Standards for Physical Education as a frame-
13 work that can be used to design, implement, and
14 evaluate quality physical education curricula.

15 (9) Physical education classes for children and
16 youth are not consistently required to meet those na-
17 tional standards. Forty-three States allow classroom
18 teachers, without any training in physical education,
19 to teach physical education.

20 (10) Children should participate in physical
21 education classes based on standards grounded in
22 science, to ensure quality programs. Adequate and
23 well-trained teachers are needed to ensure the imple-
24 mentation of those quality programs.

1 **SEC. 3. ESTABLISHING AND IMPLEMENTING NUTRITION**
 2 **STANDARDS FOR SCHOOL FOODS.**

3 (a) **DEFINITION OF NUTRITION STANDARDS.**—In
 4 this section:

5 (1) **ESTABLISHED NUTRITION STANDARDS.**—

6 The term “established nutrition standards” means
 7 the nutrition standards for competitive foods and
 8 beverages in schools described in the report of the
 9 Institute of Medicine entitled “Nutrition Standards
 10 for Foods in Schools: Leading the Way toward
 11 Healthier Youth” and dated April 25, 2007.

12 (2) **NUTRITION STANDARDS.**—The term “nutri-
 13 tion standards” means the nutrition standards for
 14 competitive foods and beverages in schools.

15 (3) **SCHOOL.**—The term “school” means a
 16 school that participates in the reimbursable school
 17 meal programs under—

18 (A) the Richard B. Russell National School
 19 Lunch Act (42 U.S.C. 1751 et seq.); or

20 (B) the Child Nutrition Act of 1966 (42
 21 U.S.C. 1771 et seq.).

22 (4) **UPDATED NUTRITION STANDARDS.**—The
 23 term “updated nutrition standards” means the nu-
 24 trition standards used as the basis for regulations
 25 promulgated under subsection (b)(4).

26 (b) **FOODS OF MINIMAL NUTRITIONAL VALUE.**—

1 (1) PROPOSED REGULATIONS BASED ON ESTAB-
2 LISHED NUTRITION STANDARDS.—

3 (A) IN GENERAL.—Not later than 180
4 days after the date of enactment of this Act,
5 the Secretary of Agriculture shall promulgate
6 proposed regulations to revise the definition of
7 “foods of minimal nutritional value” that is
8 used to carry out this Act, the Richard B. Rus-
9 sell National School Lunch Act, and the Child
10 Nutrition Act of 1966, to be consistent with the
11 established nutrition standards, in accordance
12 with recommendations contained in the report
13 described in subsection (a).

14 (B) APPLICATION.—The revised definition
15 of “foods of minimal nutritional value” shall
16 apply to all foods and beverages sold—

17 (i) independent of the reimbursable
18 school meal programs carried out under
19 the Richard B. Russell National School
20 Lunch Act (42 U.S.C. 1751 et seq.) and
21 the Child Nutrition Act of 1966 (42
22 U.S.C. 1771 et seq.);

23 (ii) on the school campus; and

24 (iii) at any time during the school
25 day.

1 (2) IMPLEMENTATION OF REGULATIONS BASED
2 ON ESTABLISHED NUTRITION STANDARDS.—

3 (A) EFFECTIVE DATE.—

4 (i) IN GENERAL.—Except as provided
5 in clause (ii), the final regulations to revise
6 the definition as described in paragraph
7 (1) shall take effect at the beginning of the
8 school year following the date on which the
9 regulations are finalized.

10 (ii) EXCEPTION.—If the regulations
11 are finalized on a date that is not more
12 than 60 days before the beginning of the
13 school year, the regulations shall take ef-
14 fect at the beginning of the following
15 school year.

16 (B) FAILURE TO PROMULGATE.—If the
17 Secretary of Agriculture has not promulgated
18 final regulations as of the date that is 1 year
19 after the date of enactment of this Act, the pro-
20 posed regulations shall be considered to be final
21 regulations.

22 (3) RECOMMENDATIONS FOR REVISED NUTRI-
23 TION STANDARDS.—

24 (A) STUDY.—Not later than 2 years after
25 the date of enactment of this Act, and not less

1 than every 5 years thereafter, the Secretary of
2 Health and Human Services in collaboration
3 with the Secretary of Agriculture shall enter
4 into an arrangement with the Institute of Medi-
5 cine under which the Institute shall conduct a
6 study to develop recommendations regarding
7 necessary updates for nutrition standards to en-
8 sure that—

9 (i) the most current scientific knowl-
10 edge (as of the date of the study) is in-
11 cluded in information used to establish the
12 nutrition standards; and

13 (ii) the nutrition standards are con-
14 sistent with the current Dietary Guidelines
15 for Americans (as of the date of the
16 study), with specifications for different age
17 groups and other segments of the popu-
18 lation as recommended by the Institute of
19 Medicine.

20 (B) REPORT.—The Institute of Medicine
21 shall prepare and submit a report containing
22 the recommendations described in subparagraph
23 (A), under each arrangement described in sub-
24 section (a), to the Secretary of Health and
25 Human Services, the Secretary of Agriculture,

1 appropriate committees of Congress, and the
2 general public.

3 (4) REGULATIONS BASED ON UPDATED NUTRI-
4 TION STANDARDS.—Not later than 3 months after
5 receiving a report under paragraph (3), the Sec-
6 retary of Agriculture shall promulgate regulations to
7 revise the definition described in paragraph (1)(A),
8 taking into consideration the recommendations for
9 nutrition standards contained in the report. The re-
10 vised definition shall apply to all foods and bev-
11 erages described in paragraph (1)(B).

12 (5) USE.—The Secretary of Health and Human
13 Services and the Secretary of Agriculture shall take
14 into consideration the established nutrition stand-
15 ards or updated nutrition standards, as appropriate,
16 during the proposal and issuance of any regulation
17 for any Federal program that provides or subsidizes
18 foods or beverages.

19 (c) TASK FORCE TO ESTABLISH A USER FRIENDLY
20 IDENTIFICATION SYSTEM FOR FOODS AND BEVERAGES
21 THAT MEET NUTRITION STANDARDS.—

22 (1) IN GENERAL.—Not later than 12 months
23 after the date of enactment of this Act, the Sec-
24 retary of Health and Human Services (referred to in
25 this subsection as the “Secretary”), after consulta-

tion with the Secretary of Agriculture, shall establish the Nutrition Standards in Schools Task Force (referred to in this subsection as the “Task Force”) to assist in establishing a user friendly identification system for identifying foods and beverages that meet the established nutrition standards or updated nutrition standards, as appropriate.

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Task Force shall be composed of—

(i) a representative of the Department of Health and Human Services;

(ii) a representative of the Department of Agriculture;

(iii) a representative of the Department of Education;

(iv) a representative of the food and beverage industry, appointed by the Secretary;

(v) a representative of public school administrators and food service operators, appointed by the Secretary;

(vi) a representative of parent organizations, appointed by the Secretary;

1 (vii) a representative of public health
 2 and nutrition advocacy organizations, ap-
 3 pointed by the Secretary; and

4 (viii) other members as determined
 5 appropriate by the Secretary.

6 (B) PERIOD OF APPOINTMENT; VACAN-
 7 CIES.—Members shall be appointed for the life
 8 of the Task Force. Any vacancy in the Task
 9 Force shall not affect its powers, but shall be
 10 filled in the same manner as the original ap-
 11 pointment.

12 (C) CHAIRPERSON.—The Secretary or the
 13 Secretary's designee shall serve as the chair-
 14 person of the Task Force.

15 (3) DUTIES.—The Task Force shall—

16 (A) make recommendations to the Sec-
 17 retary concerning guidelines for the user friend-
 18 ly identification system described in paragraph
 19 (1);

20 (B) after the Secretary issues guidelines
 21 for such a system, coordinate and facilitate the
 22 development of the system;

23 (C) report the guidelines for such a system
 24 to representatives from—

- 1 (i) education and child development
- 2 groups;
- 3 (ii) parents and parent organizations;
- 4 (iii) school boards and local education
- 5 agencies;
- 6 (iv) State agencies;
- 7 (v) Federal agencies;
- 8 (vi) public health organizations;
- 9 (vii) nutrition advocacy organizations;
- 10 and
- 11 (viii) food and beverage producers and
- 12 vendors;

13 (D) recommend to the Secretary an evalua-
 14 tion plan for monitoring the implementation of
 15 the system.

16 (4) PERSONNEL.—

17 (A) TRAVEL EXPENSES.—The members of
 18 the Task Force shall not receive compensation
 19 for the performance of services for the Task
 20 Force, but shall be allowed travel expenses, in-
 21 cluding per diem in lieu of subsistence, at rates
 22 authorized for employees of agencies under sub-
 23 chapter I of chapter 57 of title 5, United States
 24 Code, while away from their homes or regular
 25 places of business in the performance of serv-

ices for the Task Force. Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept the voluntary and uncompensated services of members of the Task Force.

(B) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PERMANENT COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Task Force.

(d) TRAINING SCHOOL FOOD SERVICE PERSONNEL TO IMPLEMENT NUTRITION STANDARDS.—

(1) GRANTS.—The Secretary of Agriculture (referred to in this subsection as the “Secretary”) shall make grants to eligible entities to train food service and other appropriate school personnel to provide the personnel with the knowledge and skills necessary to implement the established nutrition standards or updated nutrition standards, as appropriate.

(2) ELIGIBILITY.—To be eligible to receive a grant under this subsection, an entity shall—

1 (A) be a State educational agency, high-
2 need local educational agency, or Indian tribe;
3 and

4 (B) submit an application to the Secretary
5 at such time, in such manner, and containing
6 such information as the Secretary may require.

7 (3) PRIORITY.—In making grants under this
8 subsection, the Secretary shall give priority to eligi-
9 ble entities that serve underserved populations, in-
10 cluding racial and ethnic minority populations and
11 low-income populations.

12 (4) USE OF FUNDS.—An entity that receives a
13 grant under this subsection shall use the amounts
14 received through the grant to train personnel de-
15 scribed in paragraph (1) to implement the nutrition
16 standards described in paragraph (1) in schools.

17 (5) TECHNICAL ASSISTANCE.—The Director of
18 the Centers for Disease Control and Prevention shall
19 provide each entity that receives a grant under this
20 subsection with technical support—

21 (A) to facilitate the implementation of the
22 nutrition standards described in paragraph (1);
23 and

24 (B) to the maximum extent practicable, to
25 ensure healthy eating behaviors among children.

1 (6) EVALUATION.—Not later than 2 years after
2 the date on which a grant is awarded to an eligible
3 entity under this subsection, the entity shall submit
4 to the Director of the Centers for Disease Control
5 and Prevention a report that describes and contains
6 an evaluation of the activities carried out with funds
7 received through the grant.

8 (7) DEFINITIONS.—In this subsection:

9 (A) INDIAN TRIBE.—The term “Indian
10 tribe” has the meaning given the term in sec-
11 tion 2 of the Tribally Controlled College or Uni-
12 versity Assistance Act of 1978 (25 U.S.C.
13 1801).

14 (B) LOCAL EDUCATIONAL AGENCY; STATE
15 EDUCATIONAL AGENCY.—The terms “local edu-
16 cational agency” and “State educational agen-
17 cy” have the meanings given the terms in sec-
18 tion 9101 of the Elementary and Secondary
19 Education Act of 1965 (20 U.S.C. 7801).

20 (8) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated such sums
22 as are necessary to carry out this subsection.

1 **SEC. 4. ESTABLISHING AND IMPLEMENTING PHYSICAL**
2 **EDUCATION STANDARDS IN SCHOOLS.**

3 (a) DEFINITIONS.—In this section, the terms “Indian
4 tribe”, “local educational agency”, and “State educational
5 agency” have the meanings given the terms in section
6 3(d)(7).

7 (b) PHYSICAL EDUCATION STANDARDS IN
8 SCHOOLS.—The Secretary of Health and Human Services,
9 acting through the Director of the Centers for Disease
10 Control and Prevention (referred to in this section as the
11 “Secretary”), in collaboration with the Secretary of Edu-
12 cation, shall ensure that local educational agencies that
13 receive Federal funds establish and implement policies to
14 ensure that students participate in physical education pro-
15 grams that meet standards for physical activity issued by
16 the Secretary, based on standards recommended by the
17 National Association for Sport and Physical Education.

18 (c) GRANTS FOR TRAINING.—

19 (1) GRANTS.—The Secretary shall award
20 grants on a competitive basis to eligible entities to
21 support activities that provide teacher training, and
22 provide the support needed, to implement physical
23 education programs that meet the standards de-
24 scribed in subsection (b).

25 (2) ELIGIBILITY.—To be eligible to receive a
26 grant under this subsection, an entity shall be a

1 State educational agency, high-need local educational
2 agency, or Indian tribe.

3 (3) APPLICATIONS.—To be eligible to receive a
4 grant under this subsection, an entity shall submit
5 an application to the Secretary at such time, in such
6 manner, and containing such agreements, assur-
7 ances, and other information as the Secretary may
8 require.

9 (4) PRIORITY.—In awarding grants under this
10 subsection, the Secretary shall give priority to eligi-
11 ble entities submitting applications proposing to pro-
12 vide training and support for programs for students
13 from populations at high risk for sedentary activity,
14 including racial and ethnic minority populations and
15 low-income populations.

16 (5) USE OF FUNDS.—An entity that receives a
17 grant under this subsection shall use the amounts
18 received through the grant to provide the training
19 and support described in paragraph (1).

20 (6) EVALUATION.—Not later than 3 years after
21 the date on which a grant is awarded to an eligible
22 entity under this subsection, the entity shall submit
23 to the Secretary a report that describes the activities
24 carried out with funds received through the grant
25 and the effectiveness of such activities in ensuring

1 students meet the standards described in subsection
 2 (b).

3 (d) CAROL M. WHITE PHYSICAL EDUCATION PRO-
 4 GRAM.—

5 (1) REQUIRED STANDARDS.—Section 5503 of
 6 the Elementary and Secondary Education Act of
 7 1965 (20 U.S.C. 7216b) is amended—

8 (A) in subsection (a), by striking “grants”
 9 and inserting “grants and contracts”; and

10 (B) in subsection (b)—

11 (i) by redesignating paragraphs (1)
 12 through (6) as subparagraphs (A) through
 13 (F); and

14 (ii) by striking “subpart may provide”
 15 and inserting “subpart—

16 “(1) shall, not later than 2 years after the date
 17 of enactment of the Back to School: Improving
 18 Standards for Nutrition and Physical Education in
 19 Schools Act of 2007, meet standards for physical ac-
 20 tivity, as issued by the Secretary of Health and
 21 Human Services, based on standards recommended
 22 by the National Association for Sport and Physical
 23 Education; and

24 “(2) may provide”.

1 (2) EVALUATION.—Section 5505 of such Act
2 (20 U.S.C. 7261d) is amended—

3 (A) in subsection (b), by striking “grant”
4 and inserting “grant or contract”; and

5 (B) by adding at the end the following:

6 “(c) EVALUATION.—Not later than 2 years after the
7 date on which a grant or contract is awarded to an eligible
8 entity under this subpart, the entity shall submit to the
9 Secretary a report that describes the activities carried out
10 with the funds received through the grant or contract and
11 the effectiveness of such activities in meeting the stand-
12 ards described in section 5503(b)(1).”.

13 (3) PRIORITY.—Section 5506(b) of such Act
14 (20 U.S.C. 7261e(b)) is amended—

15 (A) in the subsection header, by striking
16 “PROPORTIONALITY.—” and inserting
17 “AWARDS.—” ;

18 (B) by inserting before “To the extent”
19 the following:

20 “(1) PROPORTIONALITY.—”;

21 (C) by striking “grants” and inserting
22 “grants and contracts”; and

23 (D) by adding at the end the following:

24 “(2) PRIORITY.—In awarding grants and con-
25 tracts under this subpart, the Secretary shall give

1 priority to eligible entities submitting applications
2 proposing to carry out programs for students from
3 populations at high risk for sedentary activity, in-
4 cluding racial and ethnic minority populations and
5 low-income populations.”.

○