

110TH CONGRESS  
1ST SESSION

# S. 2066

To establish nutrition and physical education standards for schools.

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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

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## 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-

1       tion with the Secretary of Agriculture, shall establish  
2       the Nutrition Standards in Schools Task Force (re-  
3       ferred to in this subsection as the “Task Force”) to  
4       assist in establishing a user friendly identification  
5       system for identifying foods and beverages that meet  
6       the established nutrition standards or updated nutri-  
7       tion standards, as appropriate.

8               (2) MEMBERSHIP.—

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

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

13                       (ii) a representative of the Depart-  
14                       ment of Agriculture;

15                       (iii) a representative of the Depart-  
16                       ment of Education;

17                       (iv) a representative of the food and  
18                       beverage industry, appointed by the Sec-  
19                       retary;

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

23                       (vi) a representative of parent organi-  
24                       zations, 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-

1           ices for the Task Force. Notwithstanding sec-  
2           tion 1342 of title 31, United States Code, the  
3           Secretary may accept the voluntary and uncom-  
4           pensated services of members of the Task  
5           Force.

6           (B) DETAIL OF GOVERNMENT EMPLOY-  
7           EES.—Any Federal Government employee may  
8           be detailed to the Task Force without reim-  
9           bursement, and such detail shall be without  
10          interruption or loss of civil service status or  
11          privilege.

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

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

17           (1) GRANTS.—The Secretary of Agriculture (re-  
18           ferred to in this subsection as the “Secretary”) shall  
19           make grants to eligible entities to train food service  
20           and other appropriate school personnel to provide  
21           the personnel with the knowledge and skills nec-  
22           essary to implement the established nutrition stand-  
23           ards or updated nutrition standards, as appropriate.

24           (2) ELIGIBILITY.—To be eligible to receive a  
25           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.”.

○