

MEMORANDUM

From: Harvard Law School Food Law & Policy Clinic
To: Tennessee Department of Environmental Conservation
Date: May 2019
Re: Share tables in schools

Introduction

Get Food Smart Tennessee (GFSTN) is a statewide initiative, led by the Tennessee Department of Environment and Conservation (TDEC), with the mission of reducing food waste. The program was founded in 2017 with support from Representative Kevin Brooks, and the Tennessee Governor's Office, with the mission of reducing food waste.¹ Through this initiative, businesses, schools, and other entities can earn recognition for taking actions to address food waste.² One of the actions recommended by the initiative for schools is setting up share tables.³ This memo will give a brief introduction to share tables in schools and an overview of the federal policy regarding share tables, followed by an explanation of relevant state regulations and guidance in Tennessee. It will then summarize the approaches that other states have taken to promote the use of share tables and to provide guidance for their implementation. Finally, the memo will conclude by describing some concerns that may arise from parents, school food service workers, or other stakeholders and providing examples of how states and school districts have addressed these concerns.

Background on Share Tables

The concept of "share tables" has recently gained support as a way to reduce both food waste and hunger in schools.⁴ Share tables are tables where students can leave food they do not wish to eat, so that it may be eaten by other children; served again at another meal at the school, such as breakfast or afternoon snack; or donated to a food recovery organization.⁵ Some schools donate food left on the share tables at the end of the day to food pantries and homeless feeding programs,⁶ or incorporate the food into backpack programs, which send food home with children whose families are in need.⁷ Share

¹ *About*, GET FOOD SMART TN, <http://getfoodsmarttn.com/content/page/about> (last visited May 30, 2019).

² *Recognize*, GET FOOD SMART TN, <http://getfoodsmarttn.com/content/page/recognize> (last visited May 30, 2019).

³ *Act: Schools*, GET FOOD SMART TN, <http://getfoodsmarttn.com/content/page/act-schools/> (last visited May 30, 2019).

⁴ *E.g.*, *Food 'Share Tables' Gathering Steam in Schools, but There's a Catch*, WBUR (Mar. 14, 2017), <http://www.wbur.org/hereandnow/2017/03/14/food-share-tables>.

⁵ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep't of Agric., to Reg'l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

⁶ *E.g.*, Leslie Postal, *Elementary School 'Share Tables' Keep Unwanted Lunch Food out of Trash*, ORLANDO SENTINEL (Nov. 11, 2017, 6:00 AM), <http://www.orlandosentinel.com/features/education/school-zone/os-school-lunches-share-table-donations-waste-20171108-story.html>; Matthew Zabierek, *'Food Is Not Trash' — Wallingford's 'Share Table' Program Spreads to Other School Systems*, RECORD J. (Nov. 5, 2017, 6:00 PM), <http://www.myrecordjournal.com/News/Wallingford/Wallingford-News/Wallingford-volunteers-try-to-expand-share-tables.html>; Eryn Dion, *Share Tables a Hit at Local Schools*, PANAMA CITY NEWS HERALD (Dec. 5, 2017, 12:55 PM), <http://www.newsherald.com/news/20171205/share-tables-hit-at-local-schools>.

⁷ *E.g.*, Mariah Medina, *NEISD Fighting Child Hunger with 'Share Table'*, KSAT ABC 12 (Dec. 12, 2017, 12:18 PM), <https://www.ksat.com/news/neisd-fighting-child-hunger-with-share-table->; Leslie Postal, *Elementary School 'Share*

tables often enjoy support from custodial and food staff at schools, since more food is consumed and children throw out less food.⁸

Federal Policy Regarding Share Tables

The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) sets nutrition requirements and provides funding for school food in public and non-profit private schools through the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Fresh Fruit and Vegetable Program (FFVP).⁹ In the NSLP and SBP, participating schools provide free or reduced-price meals to eligible students and receive subsidies from the federal government to reimburse the cost of those meals.¹⁰ School meals must meet FNS's nutritional requirements to receive reimbursement.¹¹ Students are eligible for free or reduced price meals if they participate in a federal or state assistance program or if their household income is below a certain level.¹² The FNS administers these programs in coordination with state agencies.¹³ In Tennessee, the Department of Education coordinates with the USDA to run the NSLP, SBP, and FFVP.¹⁴

In 2016, FNS issued a memo encouraging the use of share tables in schools as an “innovative strategy” to decrease food waste and increase consumption of nutritious food in its programs, including the SBP and NSLP.¹⁵ The FNS guidance briefly describes share tables and the various ways that food on share tables may be reused, acknowledging that the nature of the reuse will depend on the school's

Tables' Keep Unwanted Lunch Food out of Trash, ORLANDO SENTINEL (Nov. 11, 2017, 6:00 AM), <http://www.orlandosentinel.com/features/education/school-zone/os-school-lunches-share-table-donations-waste-20171108-story.html>.

⁸ E.g., Eryn Dion, *Share Tables a Hit at Local Schools*, PANAMA CITY NEWS HERALD (Dec. 5, 2017, 12:55 PM), <http://www.newsherald.com/news/20171205/share-tables-hit-at-local-schools>; Leslie Postal, *Elementary School 'Share Tables' Keep Unwanted Lunch Food out of Trash*, ORLANDO SENTINEL (Nov. 11, 2017, 6:00 AM), <http://www.orlandosentinel.com/features/education/school-zone/os-school-lunches-share-table-donations-waste-20171108-story.html>

⁹ U.S. DEP'T OF AGRIC., THE FRESH FRUIT & VEGETABLE PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/FFVPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE SCHOOL BREAKFAST PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/sbp/SBPfactsheet.pdf>.

¹⁰ U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE SCHOOL BREAKFAST PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/sbp/SBPfactsheet.pdf>.

¹¹ U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE SCHOOL BREAKFAST PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/sbp/SBPfactsheet.pdf>; see Nutrition Standards in the National School Lunch and School Breakfast Programs 77 Fed. Reg. 4088 (Jan. 26, 2012) (codified at 7 C.F.R. pts. 210, 220), <https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf>.

¹² U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1–2 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>.

¹³ U.S. DEP'T OF AGRIC., THE FRESH FRUIT & VEGETABLE PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/FFVPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE NATIONAL SCHOOL LUNCH PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/cn/NSLPFactSheet.pdf>; U.S. DEP'T OF AGRIC., THE SCHOOL BREAKFAST PROGRAM 1 (2017), <https://fns-prod.azureedge.net/sites/default/files/sbp/SBPfactsheet.pdf>.

¹⁴ *School Meals Contacts*, U.S. DEP'T AGRIC. (Feb. 4, 2015), <https://www.fns.usda.gov/school-meals/school-meals-contacts>.

¹⁵ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep't of Agric., to Reg'l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

preferences.¹⁶ FNS noted that schools that re-serve food items left on the share table may claim reimbursement for the item at the second service as well,¹⁷ to avoid penalizing schools that do make efforts to reduce food waste. The memo also provides a checklist of “best practices” schools can follow to successfully establish share tables, including a list of foods that it recommends and does not recommend sharing.¹⁸ FNS emphasizes that use of share tables must comply with local and state health and food safety codes, in addition to federal FNS food safety requirements,¹⁹ and that state and local rules may be more restrictive.²⁰

While the USDA has expressed support for share tables, some school districts may still be hesitant to implement them, since they are not certain that share tables are allowed under state or local law. To that end, many states have developed guidance about how to implement share tables at their schools and have provided information on the relevant health laws and regulations. Tennessee has recently developed a guidance document on school share tables and can support schools in establishing share tables by disseminating and raising awareness about this guidance.

Tennessee State Policy on Share Tables

In Tennessee, two agencies are primarily responsible for regulating food safety: The Department of Health (TDH) regulates restaurants, while the Department of Agriculture (TDA) regulates retail food stores.²¹ The Tennessee Department of Education (TDE) oversees school nutrition, including the NSLP and SBP.²²

School cafeterias fall under the regulatory authority of TDH. School food operations must comply with TDH requirements for food service establishments, including the Tennessee Food Safety Act, and the Division of Environmental Health within TDH is responsible for ensuring that school facilities

¹⁶ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep’t of Agric., to Reg’l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs 1-2 (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

¹⁷ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep’t of Agric., to Reg’l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs 2 (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

¹⁸ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep’t of Agric., to Reg’l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs 4 (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

¹⁹ Schools must comply with 7 CFR 210.13, 220.7, 226.20(l), and 225.16(a) (2018). Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep’t of Agric., to Reg’l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs 2 (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

²⁰ Memorandum SP 41-2016, CACFP 13-2016, SFSP 15-2016 from Food & Nutrition Serv., U.S. Dep’t of Agric., to Reg’l Dirs., Special Nutrition Programs, and State Dirs., Child Nutrition Programs 2 (June 22, 2016), http://www.fns.usda.gov/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf.

²¹ U.S. FOOD & DRUG ADMIN., ADOPTION OF THE FDA FOOD CODE BY STATE AND TERRITORIAL AGENCIES RESPONSIBLE FOR THE OVERSIGHT OF RESTAURANTS AND RETAIL FOOD STORES 6, 7 (2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM577858.pdf>; *see also Food Service Establishments*, TENN. DEP’T. HEALTH, <https://www.tn.gov/health/health-program-areas/eh/eh-programs/eh-foodservice.html> (last visited Feb. 6, 2018); *Retail Food Establishments*, TENN. DEP’T. AGRIC., <https://www.tn.gov/agriculture/consumers/food-safety/ag-businesses-retail-food-establishments.html> (last visited Mar. 7, 2018).

²² *School Nutrition*, TENN. DEP’T. EDUC., <https://www.tn.gov/education/health-and-safety/school-nutrition.html> (last visited Aug. 24, 2018).

comply with food safety regulations and sanitation rules.²³ Local health departments may also share responsibility for school facility and school food operations inspections.²⁴ The Tennessee Food Safety Act does not speak directly to the issue of school share tables, nor does it discuss food donation more generally.²⁵ However, TDE has produced a document with guidance on food safety procedures for school share tables.²⁶ It is important to note that while this document reflects TDE's guidance, local health departments may have additional rules that schools in those jurisdictions must follow.

According to the TDE guidance, schools must develop a standard operating procedure (SOP) as part of their Hazard Analysis and Critical Control Points (HACCP) plan that addresses food safety procedures for the operation of share tables.²⁷ If the school is planning to donate food to school programs or to an outside nonprofit organization, it should include safety procedures for food donation in the SOP as well.²⁸

The TDE guidance states that school share tables must be supervised. Supervisors must make sure that food items are not compromised (such as by being opened) and ensure that cold foods are kept at the proper temperature.²⁹

The TDE guidance also outlines what foods may be donated and under what conditions. According to the guidance, the following foods can be both shared on share tables and re-served at later meals:

- Pre-packaged foods, such as packs of crackers or individually wrapped granola bars;
- Whole fruit with an inedible peel (such as a banana) or fruit with an edible peel that is properly wrapped (such as an apple wrapped in plastic);
- Shelf-stable beverages, such as juice boxes or milk boxes that do not require refrigeration.³⁰

The following foods may be shared on share tables but may not be re-served as a reimbursable meal; they must be discarded at the end of the day or donated to a nonprofit.

- Time/temperature control for safety (TCS) foods,³¹ such as string cheese, yogurt cups, or packaged carrots;

²³ *School Plant Inspections*, TENN. DEP'T. HEALTH, <https://www.tn.gov/health/health-program-areas/eh/eh-programs/eh-schoolplant.html> (last visited Nov. 12, 2018); *Food Service Establishments*, TENN. DEP'T HEALTH, <https://www.tn.gov/health/health-program-areas/eh/eh-programs/eh-foodservice.html> (last visited Nov. 12, 2018).

²⁴ *Services Offered by Local Health Departments*, TENN. DEP'T HEALTH, <https://www.tn.gov/health/health-program-areas/localdepartments/lrhd/local-services.html> (last visited Mar. 7, 2018); *see also Local and Regional Health Departments*, TENN. DEP'T HEALTH, <https://www.tn.gov/health/health-program-areas/localdepartments.html> (last visited Mar. 7, 2018).

²⁵ Some local health departments, such as Nashville's Metro Public Health Department, do have regulations or guidance that specifically discuss food safety for food donations. *See* METRO NASHVILLE HEALTH DEPARTMENT, GUIDELINES FOR DONATING FOOD & HANDLING SURPLUS FOOD, <https://www.nashville.gov/Portals/0/SiteContent/Health/PDFs/FoodProtection/20161202FoodDonationGuidelines.pdf> (LAST VISITED NOV. 12, 2018).

²⁶ TENN. DEP'T OF EDUC., SHARE TABLES (on file with the author).

²⁷ TENN. DEP'T OF EDUC., SHARE TABLES (on file with the author).

²⁸ TENN. DEP'T OF EDUC., SHARE TABLES (on file with the author).

²⁹ TENN. DEP'T OF EDUC., SHARE TABLES (on file with the author).

³⁰ TENN. DEP'T OF EDUC., SHARE TABLES (on file with the author).

³¹ TCS foods are those that "require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation." TENN. DEP'T HEALTH, FACT SHEET: TIME AS A PUBLIC HEALTH CONTROL, https://www.tn.gov/content/dam/tn/health/documents/Time_as_a_Public_Health_Control.pdf (last visited May 28, 2019).

- TCS beverages, such as milk cartons that require refrigeration.³²

In order to be shared on share tables, TCS food and beverages must be kept in a refrigerator or cooler, or a written procedure must be established to ensure that these foods are discarded after four hours.³³ If temperature is not controlled or no written procedure exists, then TCS foods may not be shared on share tables.³⁴ Additionally, TCS foods that are not pre-packaged may not be shared on share tables. Opened foods or foods that are not sealed also cannot be shared.³⁵

Guidance for Implementing Share Tables: Practices from Other States

A small number of states — including Michigan,³⁶ Indiana,³⁷ and Vermont³⁸ — provided share table guidelines before June 2016. After the USDA issued its guidance in June 2016, many more states began publishing recommendations regarding the implementation of share tables in their schools.³⁹ These publications were often in response to requests that the state’s relevant agency provide more information about share tables.⁴⁰ A handful of states have also implemented legislation intended to support the implementation of school share tables. This section will outline the trends in other states’ practices, focusing primarily on format and dissemination, in order to provide examples of approaches that Tennessee could take.

Legislation:

Since 2017, at least five states have passed laws related to share tables in schools. In 2017, New York⁴¹ and New Jersey⁴² passed laws instructing relevant state agencies to issue guidance on school share tables. In March, 2018, West Virginia similarly passed a bill requiring the creation of guidance and requiring county boards of education to develop programs to help schools implement share tables.⁴³ Given that TDE has already produced a guidance document on share tables, legislation requiring the creation of guidance likely would not be necessary in Tennessee.

³² TENN. DEP’T OF EDUC., SHARE TABLES (on file with the author).

³³ TENN. DEP’T OF EDUC., SHARE TABLES (on file with the author).

³⁴ TENN. DEP’T OF EDUC., SHARE TABLES (on file with the author).

³⁵ TENN. DEP’T OF EDUC., SHARE TABLES (on file with the author).

³⁶ Letter from Sandra Walker, Food Program Manager, Food & Dairy Div., Mich. Dep’t of Agric. & Rural Dev’t, to All Local Health Dep’ts (Sept. 7, 2012). This guidance was replaced in 2017 by an updated guidance document. Letter from Sean P. Dunleavy, Quality Assistance and Emergency Response Unit, Food and Dairy Division, Mich. Dep’t of Agric. & Rural Dev’t, to All Local Health Dep’ts (July 20, 2017), https://www.michigan.gov/documents/mde/Share_Table_Memo-Final_MDARD_ADA_compliant_610706_7.pdf

³⁷ Letter from Krista Click, Dir., Food Prot. Program, Ind. State Dep’t of Health, to All Local Health Dep’ts and Other Ind. Food Regulatory Agencies (Dec. 23, 2015), [http://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_\(2\).pdf](http://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_(2).pdf).

³⁸ VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP’T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf.

³⁹ See *History of School Food Rescue & Share Table Guidelines in the U.S.*, FOOD RESCUE, <http://www.foodrescue.net/school-food-waste-policy-history.html> (last visited Mar. 7, 2018).

⁴⁰ E.g., Cindy R. Callahan, N.C. Dep’t of Health & Human Servs., Position Statement on Donated Food (Dec. 15, 2016), <https://ehs.ncpublichealth.com/docs/position/DonatedFood-PositionStatement-Dec2016.pdf>.

⁴¹ N.Y. AGRIC. & MKTS. LAW § 16(5-c) (McKinney 2017) (eff. Mar. 12, 2018).

⁴² N.J. STAT. ANN. §13:1E-99.115 (West 2018).

⁴³ W. Va. Code, § 18-5D-5 (West 2018).

In September 2017, California’s legislature passed a bill that changed the health code to explicitly allow share tables. California’s health and safety code previously had a provision stating that untouched or unused food could not be re-served after it had been served to a customer, with the exception of unopened packaged foods or foods dispensed in a way that prevents contamination, such as bottled ketchup.⁴⁴ The 2017 bill created two exceptions to this rule specifically applicable to schools.⁴⁵ First, schools can re-serve food to students using share tables, and second, they may donate leftover food on the share table to a local food bank or nonprofit.⁴⁶ The statute also outlines what foods may and may not be left on the share table.⁴⁷ Finally, the statute instructed the Department of Education to update its education guidance to reflect these changes,⁴⁸ which the Department of Education did in February 2018.⁴⁹ Clearly establishing in legislation that share tables and school food donation are permissible can create clarity statewide and encourage the adoption of these practices.

In spring 2017, both Texas and Oklahoma passed laws clarifying procedures for schools to donate food to a nonprofit through a school affiliate, such as a teacher or administrator, who is designated as an affiliate of the nonprofit.⁵⁰ These laws address a provision of federal liability protection law that specifies that in order for food donors to receive liability protection, food must be donated to a nonprofit organization;⁵¹ by allowing schools to designate a school affiliate as a representative of a nonprofit organization, these state laws can ensure that schools are covered by federal liability protections when they donate food within the school. It is important to note that liability protections are distinct from regulations or guidance on food safety procedures for share tables: liability protections are ex post protections that food donors could use if someone were to get sick from consuming donated food and bring a case in court, while food safety regulations or guidance provide information about what procedures must be followed to donate food safely in the first place. However, the laws passed in both Oklahoma and Texas did outline the specific food products that can be donated by schools under these procedures.⁵² The Texas law also specifies that school districts can adopt policies to provide free meals and snacks to students who cannot afford to purchase school meals.⁵³ In Texas, the law has led schools to implement new share tables and backpack food donation programs to provide food to students and their families.⁵⁴

Guidance

⁴⁴ CAL. HEALTH & SAFETY CODE § 114079(a) (West 2017).

⁴⁵ S.B. 557, 2017 Cal. Legis., 2017–2018 Sess. (Cal. 2017).

⁴⁶ CAL. HEALTH & SAFETY CODE § 114079(c)(1) (West 2017).

⁴⁷ CAL. HEALTH & SAFETY CODE § 114079(c)(2) (West 2017).

⁴⁸ CAL. EDUC. CODE § 49581 (West 2017).

⁴⁹ See Nutrition Servs. Div. Mgmt. Bulletin, *Guidance on Donation of Leftover Food in CNPs*, No. CNP-02-2018, CAL. DEP’T OF EDUC. (Feb. 2018), <https://www.cde.ca.gov/ls/nu/sn/cnp022018.asp>; Nutrition Servs. Div. Mgmt. Bulletin, *The Use of Share Tables*, No. CNP-03-2018, CAL. DEP’T OF EDUC. (Feb. 2018), <https://www.cde.ca.gov/ls/nu/sn/mbcnp032018.asp>.

⁵⁰ TEX. EDUC. CODE ANN. § 33.907 (West 2018); 70 OKL. STAT. ANN. § 5-147.1 (West 2018).

⁵¹ 42 U.S.C.A. § 1791(c)(1); Aliyya Swaby, *Texas Public School Districts May Now Store, Not Trash, Leftover Food*, THE TEXAS TRIBUNE (Sept. 15, 2017), <https://www.texastribune.org/2017/09/15/regulations-food-leftover-safety/>.

⁵² TEX. EDUC. CODE ANN. § 33.907 (West 2018); 70 OKL. STAT. ANN. § 5-147.1 (West 2018).

⁵³ TEX. EDUC. CODE ANN. § 33.907 (West 2018).

⁵⁴ Mariah Medina, *NEISD Fighting Child Hunger with ‘Share Table,’* KSAT ABC 12 (Dec. 12, 2017, 12:18 PM), <https://www.ksat.com/news/neisd-fighting-child-hunger-with-share-table->.

At least fifteen states have also issued publicly available guidance on the topic of share tables. Unlike legislation, guidance is not passed through the state legislative process and is not legally binding. However, guidance can send a signal that a state supports the practice of share tables and can provide important information about how share tables will be regulated, especially where existing laws do not outline relevant food safety procedures for share tables or for food donation more generally.

Eight states — Alaska, California, Connecticut, Indiana, Michigan, North Carolina, Washington, and Wisconsin — have provided guidance on implementing share tables through a policy statement, such as a bulletin, letter, or policy memorandum.⁵⁵ Some of these guidance documents, such as those in Michigan and Indiana, were directed at informing local regulators about recommended procedures for school share tables.⁵⁶ Other guidance documents were directed at schools or food service workers.⁵⁷

Seven states — Arizona, Colorado, Iowa, Massachusetts, Ohio, Tennessee, and Vermont — have published guidance on school share tables in the form of fact sheets or similar short documents.⁵⁸ These fact sheets are generally published by the state departments of education, health, or environment and are often addressed directly to schools. For example, Vermont created a fact sheet that includes a checklist outlining procedures to follow when implementing share tables.⁵⁹ State agencies in Iowa created both a fact sheet and a Standard Operating Procedure with more specific instructions for different school employees, including teachers, administrators, and school food service workers.⁶⁰

Regardless of format, the content of publicly available state-level guidance varies widely. For example, some state bulletins to schools provide only general information about share tables and simply emphasize that schools need to comply with state and local safety codes, without explaining the substance of those regulations.⁶¹ Such guidance may not provide sufficient information to give schools confidence that they can implement share tables safely and in compliance with state and local law. In contrast, other documents provide clear instructions about what foods may and may not be offered on

⁵⁵ See appendix A for citations and links to guidance in each state.

⁵⁶ See, e.g., Letter from Sean P. Dunleavy, Quality Assistance and Emergency Response Unit, Food and Dairy Division, Mich. Dep't of Agric. & Rural Dev't, to All Local Health Dep'ts (July 20, 2017), https://www.michigan.gov/documents/mde/Share_Table_Memo-Final_MDARD_ADA_compliant_610706_7.pdf; Letter from Krista Click, Dir., Food Prot. Program, Ind. State Dep't of Health, to All Local Health Dep'ts and Other Ind. Food Regulatory Agencies (Dec. 23, 2015), [http://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_\(2\).pdf](http://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_(2).pdf).

⁵⁷ Letter from Jessica Sharkus, Dir., Sch. Nutrition Team, Wisc. Dep't of Pub. Instruction to Authorized Representatives and Food Service Directors of School Food Authorities (Oct. 11, 2016), <https://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/snt-mail-101116.pdf>.

⁵⁸ See appendix A for citations and links to guidance in each state.

⁵⁹ VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP'T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf.

⁶⁰ IOWA DEP'T OF EDUC., IOWA DEP'T OF INSPECTIONS & APPEALS, IOWA DEP'T OF NATURAL RES., AND IOWA STATE UNIVERSITY HUMAN SCIENCES EXTENSION & OUTREACH, SHARING TABLES AT SCHOOL FACT SHEET (June 2018), <https://educateiowa.gov/sites/files/ed/documents/Sharing%20Tables%20at%20School%20Fact%20Sheet.pdf>. The Standard Operating Procedure was under revision at time of publication but will be available here: <https://educateiowa.gov/pk-12/nutrition-programs/quick-links-nutrition/learning-tools-nutrition/food-waste-reduction-school>.

⁶¹ E.g., Letter from Jessica Sharkus, Dir., Sch. Nutrition Team, Wisc. Dep't of Pub. Instruction to Authorized Representatives and Food Service Directors of School Food Authorities (Oct. 11, 2016), <https://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/snt-mail-101116.pdf>.

the share table.⁶² Providing this level of information can help give schools certainty that their procedures are safe and compliant. However, some states have developed guidance that imposes significant restrictions on the types of foods that can be shared, including restrictions on foods that USDA recommends be allowed on share tables.⁶³ States that develop guidance on the specific types of foods that can be shared should seek to avoid unnecessarily broad restrictions. Guidance documents can also provide information about what steps school food service staff, administrators, and teachers should take to implement and monitor share tables,⁶⁴ who the state contact is for school nutrition information,⁶⁵ and relevant language in the food safety code.⁶⁶

In addition to publishing written guidance, state agencies can conduct outreach and host trainings or webinars on implementing share tables. For example, the Colorado Department of Education has created a “Share Table 101” Powerpoint and hosted webinar sessions for school nutrition professionals.⁶⁷

The guidance provided by the Tennessee Department of Education is a two-page document akin to a fact sheet, and it provides detailed information to school food authorities about what food may be distributed at school share tables, under what conditions, and under what supervision.⁶⁸ This document is an important step towards encouraging the safe implementation of share tables. However, it is not clear that this document is publicly available, as it is not posted on the TDE website. Better dissemination of this document, including through the Get Food Smart TN initiative, could raise awareness of the benefits of share tables and provide schools with the information they need to implement them. TDE could also explore developing trainings or webinars to educate school administrators about the benefits of, and procedures for, implementing share tables.

⁶² *E.g.*, CAL. HEALTH & SAFETY CODE § 114079(c)(2) (West 2017); MASS. DEP’T OF ELEMENTARY & SECONDARY EDUC., MASSACHUSETTS’ SCHOOL MEALS PROGRAMS SHARE TABLE GUIDANCE (2017), <https://thegreenteam.org/wp-content/uploads/2014/04/Share-Table-Guidance.pdf>; VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP’T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf.

⁶³ For example, Connecticut has released guidance stating that foods such as unopened milk cartons that are properly cooled or whole fruits wrapped in plastic are not permitted to be shared, even though USDA recommends that these foods be allowed on share tables. See Operational Memorandum No. 6-16 from John Frassinelli, Chief, Bur. of Health/Nutrition, Family Servs. and Adult Educ., Conn. Dep’t of Educ. to Sponsors of the School Child Nutrition Programs (Jan. 25, 2017), <http://portal.ct.gov/-/media/SDE/Nutrition/NSLP/Memos/OM2016/OM06-16.pdf>.

⁶⁴ IOWA DEP’T OF EDUC., STANDARD OPERATING PROCEDURE: FOOD DONATIONS AND SHARING TABLES IN SCHOOL MEALS PROGRAMS (2016), <https://www.educateiowa.gov/sites/files/ed/documents/Food%20Donations%20and%20Sharing%20Tables%20in%20Child%20Nutrition%20Programs%281%29.pdf>.

⁶⁵ VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP’T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf

⁶⁶ OHIO DEP’T OF AGRIC. & OHIO DEP’T OF HEALTH, GUIDANCE FOR SCHOOL SHARE TABLES (2017), http://www.foodrescue.net/uploads/4/3/2/6/43260919/ohio_department_of_health_and__department_of_agriculture_share_table_guidance__1_.pdf.

⁶⁷ See Melissa Pflugh Prescott, Colorado State University, and Kristi Rolfsen, Colorado Department of Education, Share Table 101 (Nov. 8, 2017), <https://www.cde.state.co.us/nutrition/sharettable101webinar>.

⁶⁸ TENN. DEP’T OF EDUC., SHARE TABLES (on file with the author).

Additionally, obtaining public buy-in from other state agencies involved in overseeing the safety of school food, such as the Tennessee Department of Health (TDH), could enhance credibility, increase the relevant food safety information included, and create opportunities for broader dissemination. In several other states, school share table guidance documents include the logos and contact information for the various state agencies with a role in regulating share tables. For example, Vermont's guidance document includes contact information for the Vermont Department of Health, the Agency of Natural Resources, and the Agency of Education.⁶⁹ Similarly, Ohio's guidance document includes the logos and contact information for the Department of Health and Department of Agriculture.⁷⁰ Tennessee's current guidance document includes only the logo for TDE and contact information for the Office of School Nutrition. Getting public support from other agencies such as TDH could send a clear signal that all involved state agencies support share tables and agree with the food safety practices outlined in the document. Additionally, TDH could also play an important role in disseminating the document and answering food safety-related questions. TDH could also assist local health departments in understanding how to address school share tables.

Potential Concerns Surrounding Share Tables and Practices in Other States

Parents, administrators, and school food service workers that are unfamiliar with share tables may raise concerns including concerns about liability, the possibility of students being stigmatized as poor if they take food off of the table, the nutritional content of the food left on the table, and allergy risks. This section will discuss some strategies that states and schools have used to deal with these challenges.

Liability

Some school administrators may be hesitant to implement share tables due to a fear that the school or its staff members could be held liable if a student were to become ill after eating food from the share table. Both federal and Tennessee state law provide liability protection for food donors.⁷¹ The federal Bill Emerson Good Samaritan Food Donation Act provides comprehensive liability protection for donors and nonprofit organizations that receive and distribute the food.⁷² States can offer additional protection but cannot provide less protection than the federal law. The Emerson Act provides protection where wholesome food is donated in good faith to a nonprofit organization who distributes the food to needy individuals for free.⁷³ The Act applies as long as the donor does not act with "gross negligence" or "intentional misconduct," meaning that one should not donate or facilitate the distribution of donated food that one knows is likely to be harmful or dangerous.⁷⁴ At the state level, Tennessee law also provides protection from civil and criminal liability.⁷⁵ Because the Tennessee law generally offers a lower

⁶⁹ VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP'T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf.

⁷⁰ OHIO DEP'T OF AGRIC. & OHIO DEP'T OF HEALTH, GUIDANCE FOR SCHOOL SHARE TABLES (2017), http://www.foodrescue.net/uploads/4/3/2/6/43260919/ohio_department_of_health_and__department_of_agriculture_share_table_guidance__1_.pdf.

⁷¹ 42 U.S.C.A. § 1791 (West 2018); TENN. CODE ANN. §§ 53-13-102, 103 (West 2018).

⁷² 42 U.S.C.A. § 1791 (West 2018).

⁷³ 42 U.S.C.A. § 1791 (West 2018).

⁷⁴ 42 U.S.C.A. § 1791(b)(7)–(8) (West 2018).

⁷⁵ TENN. CODE ANN. §§ 53-13-102, 103 (West 2018).

level of protection than the federal Emerson Act, the federal standard of liability protection will generally apply.⁷⁶

Under both the federal and state law, liability protection is available only when the food is donated to a nonprofit organization; food donated directly to individuals is not covered.⁷⁷ When providing food to students via a share table, schools are not donating to a nonprofit organization, so the Emerson Act and Tennessee state liability protections likely do not apply.⁷⁸ The Emerson Act and state liability protections do apply when schools donate surplus food from share tables to nonprofit food recovery organizations, provided the criteria in the above paragraph are met.⁷⁹

It is important to note that just because an activity is not covered by the Emerson Act or state liability protection law does not mean that it is impermissible or illegal. Instead, it means that if someone were to fall ill and sue, the school or school district would not be able to raise this particular defense in court. Issues like this have rarely gone to court; to our knowledge the Emerson Act has not been tested in court, and our research has not identified any court cases involving school share tables, demonstrating the relatively low level of risk. Further, schools generally have liability insurance that would cover situations where food is served to students at the school.

There are several actions that states can take to clearly provide liability protection in cases where food is donated directly to students or their families, including through share tables or backpack donation programs. Several states have passed liability protections that go beyond the federal Emerson Act and provide protection when food is donated directly to individuals.⁸⁰ Additionally, as described previously, Texas and Oklahoma have passed legislation allowing schools to donate food to a nonprofit through a school affiliate who is designated as a representative of the nonprofit;⁸¹ these laws allow schools to receive liability protection under the Emerson Act when donating food within the school rather than off-site to a nonprofit.

Stigma

Some parents may raise the concern that students who take food from the share table will feel stigmatized as poor. Stigma around school food more generally has long been a legitimate concern. Some students eligible for free or reduced lunch report that they prefer to go without lunch rather than be stigmatized as different or poor by their peers.⁸² Because share tables similarly allow students to take food from the tables for free, and some resources emphasize share tables as a tool for reducing hunger in schools, there may be concern that students who take food from share tables may similarly feel stigmatized. However, some school administrators have reported that share tables do not appear to produce this stigma, perhaps because anyone can take food from the share table, and because share tables serve many purposes beyond reducing hunger in schools.⁸³ For example, share tables allow picky

⁷⁶ HARV. FOOD LAW & POL'Y CLINIC, LEGAL FACT SHEET FOR FOOD DONATION IN TENNESSEE: LIABILITY PROTECTIONS (Nov. 2018), http://getfoodsmarttn.com/documents/uploads/FINAL__Liability_Protections_Fact_Sheet_TN_11.9.pdf.

⁷⁷ 42 U.S.C.A. § 1791 (West 2018); TENN. CODE ANN. §§ 53-13-102, 103 (West 2018).

⁷⁸ 42 U.S.C.A. § 1791 (West 2018).

⁷⁹ 42 U.S.C.A. § 1791 (West 2018).

⁸⁰ See, e.g., Ariz. Rev. Stat. Ann. § 36-916 (West 2018); N.H. Rev. Stat. § 508:15 (West 2018).

⁸¹ TEX. EDUC. CODE ANN. § 33.907 (West 2018).

⁸² See Carol Pogash, *Free Lunch Isn't Cool, so Some Students Go Hungry*, N.Y. TIMES (Mar. 1, 2008), <http://www.nytimes.com/2008/03/01/education/01lunch.html>.

⁸³ See, e.g., Eryn Dion, *Share Tables a Hit at Local Schools*, PANAMA CITY NEWS HERALD (Dec. 5, 2017, 12:55 PM), <http://www.newsherald.com/news/20171205/share-tables-hit-at-local-schools>.

eaters to swap foods they do not like for ones they do.⁸⁴ Additionally, because portion sizes may not match the needs of all students, share tables can help supplement meals for students who want additional food and reduce waste from students for whom the meal size is too large.⁸⁵ In communications with parents, schools can emphasize the range of benefits of share tables beyond reducing hunger in order to lessen concerns about stigma.

Allergens

Some parents and schools may also be concerned that the availability of food on share tables could increase the risk of allergen exposure for students with food allergies. Schools can address this concern by only allowing food purchased at the school cafeteria to be placed on the share table, so that staff are able to monitor any potential allergens.⁸⁶ In its presentation on share tables, the Colorado Department of Education recommends using signage to clearly identify foods with known allergens.⁸⁷ Schools could also create a designated area of the share table for foods with potential allergens. In their guidance and outreach, Tennessee state agencies can encourage the use of similar procedures to mitigate allergen risks.

Conclusion

School share tables are a promising strategy for ensuring that more food in schools is consumed rather than thrown out. USDA and Tennessee state agencies are supportive of share tables, and like many state agencies, TDE has recently developed guidance on implementing school share tables. State agencies in Tennessee can further support school share tables by raising awareness of the benefits of share tables and disseminating the existing guidance, including through the GFSTN platform. Other state policies, such as liability protections that clearly apply in cases where food is donated directly to students or their families, can also help support more widespread adoption of share tables. Additionally, schools can address concerns about stigma and allergens through messaging that emphasizes the many benefits of share tables and procedures that make foods with allergens easy to identify.

⁸⁴ Leslie Postal, *Elementary School 'Share Tables' Keep Unwanted Lunch Food out of Trash*, ORLANDO SENTINEL (Nov. 11, 2017, 6:00 AM), <http://www.orlandosentinel.com/features/education/school-zone/os-school-lunches-share-table-donations-waste-20171108-story.html>.

⁸⁵ Leslie Postal, *Elementary School 'Share Tables' Keep Unwanted Lunch Food out of Trash*, ORLANDO SENTINEL (Nov. 11, 2017, 6:00 AM), <http://www.orlandosentinel.com/features/education/school-zone/os-school-lunches-share-table-donations-waste-20171108-story.html>.

⁸⁶ See, e.g., Melissa Pflugh Prescott, Colorado State University, and Kristi Rolfsen, Colorado Department of Education, *Share Table 101* (Nov. 8, 2017), <https://www.cde.state.co.us/nutrition/sharetable101webinar>.

⁸⁷ Melissa Pflugh Prescott, Colorado State University, and Kristi Rolfsen, Colorado Department of Education, *Share Table 101* (Nov. 8, 2017), <https://www.cde.state.co.us/nutrition/sharetable101webinar>.

Appendix A: Share Table Guidance by State

State	Guidance document
Alaska	<p>Bulletin 2016–11 from Alicia Maryott, Summer Food Serv. Program Program Specialist, Alaska Dep't of Educ. & Early Dev't, to Summer Food Serv. Program Sponsors & Program Reviewers (July 7, 2016), https://education.alaska.gov/tls/cnp/SFSP/2016-11Bulletin/SFSP_Bulletin_2016-11.pdf.</p> <p>Food Recovery for Child Nutrition Programs in Alaska (Aug. 2017), https://dec.alaska.gov/media/9931/resources-food-guide-school-food-service-food-recovery.pdf.</p>
Arizona	<p>ARIZ. DEP'T OF EDUC., CONSIDERATIONS FOR USE OF SHARING TABLES (2016), https://cms.azed.gov/home/GetDocumentFile?id=59528c1c3217e10820723fbf.</p>
California	<p>Nutrition Servs. Div. Mgmt. Bulletin, <i>Guidance on Donation of Leftover Food in CNPs</i>, No. CNP-02-2018, CAL. DEP'T OF EDUC. (Feb. 2018), https://www.cde.ca.gov/ls/nu/sn/cnp022018.asp</p> <p>Nutrition Servs. Div. Mgmt. Bulletin, <i>The Use of Share Tables</i>, No. CNP-03-2018, CAL. DEP'T OF EDUC. (Feb. 2018), https://www.cde.ca.gov/ls/nu/sn/mbcnp032018.asp.</p>
Colorado	<p>COLORADO DEP'T OF EDUC., STANDARD OPERATING PROCEDURE: REDISTRIBUTION OF RETURNED FOOD/SHARE TABLES (July 21, 2016), https://www.cde.state.co.us/nutrition/foodsafetysopresistributionfoodsharetables.</p>
Connecticut	<p>Operational Memorandum No. 6-16 from John Frassinelli, Chief, Bur. of Health/Nutrition, Family Servs. and Adult Educ., Conn. Dep't of Educ. to Sponsors of the School Child Nutrition Programs (Jan. 25, 2017), http://portal.ct.gov/-/media/SDE/Nutrition/NSLP/Memos/OM2016/OM06-16.pdf.</p>
Indiana	<p>Letter from Krista Click, Dir., Food Prot. Program, Ind. State Dep't of Health, to All Local Health Dep'ts and Other Ind. Food Regulatory Agencies (Dec. 23, 2015), http://www.in.gov/isdh/files/School_Sharing_Table_and_Food_Recovery_12-23-2015_(2).pdf.</p>
Iowa	<p>IOWA DEP'T OF EDUC., STANDARD OPERATING PROCEDURE: FOOD DONATIONS AND SHARING TABLES IN SCHOOL MEALS PROGRAMS (2016) (under revision at time of publication, but will be available here: https://educateiowa.gov/pk-12/nutrition-programs/quick-links-nutrition/learning-tools-nutrition/food-waste-reduction-school)</p> <p>IOWA DEP'T OF EDUC., IOWA DEP'T OF INSPECTIONS & APPEALS, IOWA DEP'T OF NATURAL RES., AND IOWA STATE UNIVERSITY HUMAN SCIENCES EXTENSION & OUTREACH, SHARING TABLES AT SCHOOL FACT SHEET (June</p>

	2018), https://educateiowa.gov/sites/files/ed/documents/Sharing%20Tables%20at%20School%20Fact%20Sheet.pdf .
Massachusetts	MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., MASSACHUSETTS' SCHOOL MEALS PROGRAMS SHARE TABLE GUIDANCE (2017), https://thegreenteam.org/wp-content/uploads/2014/04/Share-Table-Guidance.pdf .
Michigan	Letter from Sean P. Dunleavy, Quality Assistance and Emergency Response Unit, Food and Dairy Division, Mich. Dep't of Agric. & Rural Dev't, to All Local Health Dep'ts (July 20, 2017), https://www.michigan.gov/documents/mde/Share_Table_Memo-Final_MDARD_ADA_compliant_610706_7.pdf .
North Carolina	Cindy R. Callahan, N.C. Dep't of Health & Human Servs., Position Statement on Donated Food (Dec. 15, 2016), https://ehs.ncpublichealth.com/docs/position/DonatedFood-PositionStatement-Dec2016.pdf .
Ohio	OHIO DEP'T OF AGRIC. & OHIO DEP'T OF HEALTH, GUIDANCE FOR SCHOOL SHARE TABLES (2017), http://www.foodrescue.net/uploads/4/3/2/6/43260919/ohio_department_of_health_and_department_of_agriculture_share_table_guidance_1.pdf .
Tennessee	TENN. DEP'T OF EDUC., SHARE TABLES (on file with author).
Vermont	VT. AGENCY OF EDUC., VT. AGENCY OF NAT. RES. & VT. DEP'T OF HEALTH, FOOD SHARING TABLES — GUIDANCE FOR SCHOOLS (2016), https://dec.vermont.gov/sites/dec/files/wmp/SolidWaste/Documents/Universal-Recycling/SharingTables_FactSheet_final.pdf .
Washington	WA. OFFICE OF SUPERINTENDENT OF PUB. INSTRUCTION, CNS UPDATE: USE OF SHARE TABLES IN CHILD NUTRITION PROGRAMS (2016), http://www.k12.wa.us/ChildNutrition/Programs/pubdocs/CNSUpdate-TheUseOfShareTablesInChildNutritionPrograms.pdf .
Wisconsin	Letter from Jessica Sharkus, Dir., Sch. Nutrition Team, Wisc. Dep't of Pub. Instruction to Authorized Representatives and Food Service Directors of School Food Authorities (Oct. 11, 2016), https://dpi.wi.gov/sites/default/files/imce/school-nutrition/pdf/snt-mail-101116.pdf .