

May 6, 2020

Via Electronic Mail

Dr. Eric Mackey
Alabama State Department of Education
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RE: Access to Meals for Alabama Children During the COVID-19 Pandemic

Dear Superintendent Mackey:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), counsel for thousands of Black schoolchildren in school desegregation lawsuits across Alabama, writes with concerns pertaining to all Alabama children in the aftermath of statewide school closures. An increasing number of school districts in Alabama have terminated their meal service program at a time when families need these meals the most. For many children, the breakfast and lunch provided by schools are the only meals that they can reliably expect to eat each day.

“For the 2019-2020 school year, Alabama had approximately 445,000 children eligible for free-and reduced-priced lunch, or about 62% of children in participating schools.”¹ As your office noted, “Because many of the 720,000 Alabama students impacted [by the COVID-19 school closures] live in areas of poverty, it is important that they receive a healthy, nutritious breakfast and lunch every weekday they are at home instead of school.”² Yet, “[a]ccording to information posted on the USDA’s website, nearly 300 of the 611 Alabama school-sponsored meals distribution sites that initially served meals immediately after school closures have shut down. Two dozen more will close by the end of the month.”³ That means that Alabama will have less than 300 meal distribution sites, compared to “1,400 public schools statewide that would ordinarily be serving student meals” if school closures had not been mandated.⁴ According to Laura Lester, Director of the Alabama Food Bank Association, ““This is not happening in every state. . . . Not to the extent that it is happening in Alabama.””⁵ The closure of roughly half of the school-sponsored distribution sites has the potential to deprive thousands of school-age children of a reliable nutritious meal for days to weeks at a time.

As the number of families facing job loss and financial hardship increases, so too does the need for nutritious meals for children. The economic impact of this pandemic on families has increased the strain on already stretched food banks and other similar community organizations. Those community organizations have called on school districts

to partner with them to meet the growing need.⁶ This partnership is critical now, but it is also essential during the transition from the school year to summer nutrition programs, which are administered by community organizations.⁷

We are also concerned that the suspension of school meal service is disproportionately harming Black students. Though Black children comprise only 32.85% of the student population in Alabama public schools, they make up 45.74% of the economically disadvantaged students statewide.⁸ Additionally, Black households in Alabama are three times more likely than white households (13.5% compared to 4%) to not have access to a car.⁹ It is therefore imperative for districts to also offer meal delivery for families who lack transportation.

LDF congratulates the Alabama Department of Human Resources (DHR) and your office on receiving initial approval from the U.S. Department of Agriculture for the Pandemic Electronic Benefits Transfer (“Pandemic EBT” or “P-EBT”) benefits program for eligible students. However, the program is not yet fully implemented and does not guarantee access to meals for all of the over 400,000 Alabama school children who rely on school meal service.¹⁰ We respectfully urge you to immediately require all school districts to provide prepared meals for schoolchildren who are eligible to receive a free or reduced price lunch, and extend this provision to all children in need of meals during this global crisis.

We send this letter with the understanding that the State of Alabama, and the Alabama State Department of Education in particular, are facing daunting challenges during this unprecedented public health crisis. However, in the midst of the COVID-19 pandemic, families and their school-aged children across Alabama are also experiencing incredible hardship, and we urge you to take immediate action to ensure, at a minimum, that Alabama’s children do not go hungry for lack of nutritious school meals. As some school campuses across the state prepare to reopen during the summer transition, we also request that your office provide necessary guidance to ensure the health and safety of all students and their families.

1. Pandemic EBT, To Be Implemented in May, Is Not Sufficient.

The Pandemic EBT program, though an important step forward, is insufficient to meet the nutritional needs of the increasing number of economically disadvantaged students in Alabama.¹¹ First, the limited amount of funds available through the P-EBT program does not fully assist families without reliable transportation or in food deserts to get to available grocery stores, or those with underlying health issues that put them at great risks to go to stores.

Second, there will undoubtedly be delays and other obstacles in identifying families who were previously eligible for free or reduced-price lunch, but who were not previously

eligible for the traditional Supplemental Nutrition Assistance Program (SNAP) or P-EBT programs. Each day it takes for these families to receive their letter of eligibility and then apply, qualify, and receive their card is another day that a child may go hungry. In addition, many families who do not have home internet access will be unable to complete online applications. For paper applications, it will be difficult for families with limited means to obtain required documentation, print documents and mail completed applications, especially with many institutions and services shuttered.

Third, there is an increasing number of families who did not previously qualify for free or reduced-price lunch, but who are now facing economic hardships, thus creating a new population of students who are in dire need of school meals for nutrition. Yet, the children in these families would not qualify for P-EBT benefits in the state's current data, and thus may be left out of this program. Determining which families have become newly eligible for the benefit poses another likely delay. The limitations of the Pandemic EBT program make the need for meal distribution at equitably located school sites across the state all the more necessary.

2. Alabama Schools' Federal Civil Rights Obligations

The NAACP LDF represents Black schoolchildren in numerous Alabama school districts that remain subject to federal school desegregation orders. Under these court orders, each of these districts have an affirmative duty to both end racial segregation and “eliminate its effects ‘root and branch,’” which requires striving to demonstrate a good faith commitment to complying with desegregation orders and federal anti-discrimination laws.¹² These orders have remained in place for decades because of the State's long history of inequitable and discriminatory treatment of students of color.¹³ Each failure or refusal of a school district to fulfill this duty continues the constitutional violation.¹⁴

Those school districts that are not subject to federal school desegregation have obligations under Titles IV and VI of the Civil Rights Act of 1964, which prohibit racial discrimination by public primary and secondary schools and federally funded institutions. Pursuant to regulations promulgated under these federal civil rights statutes, a “recipient [of federal funds], in determining the types of services . . . which will be provided under any such program . . . , may not . . . utilize . . . methods of administration which . . . have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.” 34 CFR § 100.3(b)(2). Thus, all school districts should not engage in practices that have “the effect” of disadvantaging students of color.

A federal district court has recognized the obligation of a school district under a federal desegregation order to meet the basic nutritional needs of its students in the wake of COVID-19 school closures. Statewide action is necessary to ensure that all schoolchildren in Alabama have continuous access to adequate nutrition in the face of COVID-19 school closures. Furthermore, given the vast number of splinter school districts

and artificial boundaries between districts¹⁵, for the purposes of feeding children, children cannot wait for individual litigation, when the systemwide solutions can come directly from the State.

3. Examples of the Termination and Reduction of School Meals at the District Level

Below are three representative examples of school districts in Alabama that have refused to provide school meals to their students, illustrating the current problems facing Alabama's Black schoolchildren.

Leeds City Schools

At the request of LDF on behalf Black students in Leeds City Schools, a United States District Court for the Northern District of Alabama ordered Leeds City Schools to resume providing meals for their students.¹⁶

Leeds City Schools provided daily meal distributions at Leeds Middle School from March 16 to April 2, 2020, in the wake of the COVID-19 school closures. On April 3, 2020, however, Leeds publicly announced that it was ending this meal program. Once the meal service ceased, local families were forced to rely on neighbors to collect food and deliver meals to those in need, many of whom also lacked transportation. On April 15, 2020, LDF filed an emergency motion on behalf of the plaintiff class of Black students requesting that the Court order Leeds to reinstitute the meal and food distribution services for its schoolchildren.¹⁷

The Court agreed with LDF and, pursuant to its order, Leeds resumed meal service on April 21, 2020. Per our request, Leeds announced this information in English and Spanish online and through phone calls to the homes of Leeds students. On the first day of the resumed meal service, Leeds distributed over 250 meals to families. Without this meal service, many of these students would not have access to adequate nutrition.

Lawrence County Schools

The Lawrence County School System suspended classes on March 17, 2020 and began to provide meals for pickup at all district elementary schools on March 18. As of April 2, 2020, Lawrence County Schools reported that they were providing approximately 10,000 meals per day to students. The site with the highest turnout for the meal service was Hazlewood Elementary School, which has a predominately Black student population in a predominately Black community. On April 10, however, meal service was suspended districtwide.

Upon learning that meal service had been suspended, LDF contacted the school district on behalf of our clients. During this call, we were informed that the district was

suspending its meal service not simply because of public health concerns, but because neighboring school districts had ceased their provision of meals, causing students from surrounding communities to rely on Lawrence County Schools to for their basic nutritional needs. The district shared that, in the weeks prior to suspending their meal service, they went from serving 500 meals on pick-up days to over 700 at one location. The need to address school nutrition across school districts highlights why the State must exercise leadership and coordinate with school districts to ensure children do not go hungry.

On April 27, 2020, Lawrence County Schools announced that it would resume its meal service on May 6. However, in the interim, children within Lawrence County Schools and throughout the surrounding areas had no access to school meals for over three weeks.

Limestone County Schools

Even where feeding programs have continued, decreases in services have severe consequences. On April 3, 2020, Limestone County Schools discontinued their meal service at all of their school campuses except for one—Mondays and Thursdays at Athens Elementary School in Athens, AL.¹⁸ Limestone County spans 559.8 square miles; consequently, some families would have to make very long journeys to receive meals for their children.¹⁹ This places an unnecessary burden on families with limited means and access to transportation, as well as those families with persons with disabilities that make it difficult to travel.²⁰

Recommendations

Recognizing that over 400,000 school children rely on school-based meals, it is imperative that your office require all school districts to provide or oversee the provision of ready-to-eat meals for all students in need, without requiring any advanced signups, documentation or the presence of children for pickup. Further, meals should be delivered to all students in need of food, but lacking transportation.

The provision of meals to schoolchildren in each school district in Alabama can be done safely and equitably.²¹ We, therefore, urge your office and each school district in the State to implement the following.

First, each school district must immediately commence or resume offering meals to the schoolchildren entitled to them. Even in places where a district employee has tested positive for COVID-19, there are any number of reasonable steps that a district can take to both provide meals and protect public health.²² Your office should make clear that it is mandatory for districts to promptly take steps to resume some form of equitable meal distribution and/or delivery services. If families must pick up meals, the sites must be equitably distributed throughout the district, without requiring that students be present, so that families with the most need may access them without an undue transportation burden.

Second, if a school district determines that it is no longer practicable or safe for staff to continue the meal distribution program directly through its own Child Nutrition Programs, that district should:

- a. Give adequate notice to the Alabama State Department of Education explaining its concern and seek approval to end its program prior to discontinuing the program;
- b. Take all practicable steps to contract with a third-party meal provider to immediately takeover the meal program prior to the discontinuation of its own program; and
- c. If contracting with a third-party meal provider to fulfill the above described obligations, i) coordinate with community organizations in the area to distribute meals, and serve as the meal sponsor while continuing its oversight of that program; ii) continue to be the point of contact for students and families in need of meals; iii) provide food to the third-party partners for distribution, as needed; iv) ensure that parents are notified promptly, in English, Spanish and all other languages applicable to each school district, through school channels and continuously update families regarding opportunities to receive meals; v) determine the location for meal provision sites and make schools available as meal distribution sites; and, vii) oversee all other matters necessary to ensure that the third-party provider is meeting the nutritional needs of students.

Third, notify all enrolled students, in English, Spanish and all other languages applicable to each school district, of the meal distribution programs in their area through each district's telephone messenger system, website, Facebook, Twitter and all social media platforms within their control, in addition to the Alabama State Department of Education using its public facing mediums to notify communities statewide. If a district moves to a delivery model, in addition to having rolling sign-ups for students, all students previously receiving free and reduced meals should automatically be enrolled in a delivery program. This will remove any barriers to access or unnecessary delays in meeting this critical need. Families could then opt out of the program if they so choose.

Fourth, require each school district to designate at least one contact person for families in need of nutritional and other assistance who can help them navigate the process and coordinate the delivery of meals, if needed. Publish the contact information for this person through all of the mediums described above.

Fifth, require all school districts to continue their meal provision program through at least the end of their school year under the pre-COVID-19 closure school calendar.

Sixth, ensure that all districts are coordinating with their local summer feeding programs to facilitate a successful transition of meal services for students, including but

not limited to making facilities available for use by summer feeding programs, providing food and other resources, and disseminating information about the programs to its students.

Finally, we have concerns that some districts reportedly will be opening schools this June.²³ It is imperative that the reopening of schools follow federal and local public health guidelines, and actively monitored by the state. As with the feeding programs, the State must take on an active role to assure the safety and well-being of all students.

We urge your office to provide all necessary guidance and resources to support districts in implementing these recommendations. Your office should also consider utilizing federal CARES Act stimulus funds to support these meal distribution efforts in LEAs and schools.²⁴ Even the face of stay-at-home orders, the preparation and transportation of meals to students is being deemed essential.²⁵ LDF is happy to work with and support your office and any school district in need to implement these recommendations. We are aware of many model school districts in and outside of Alabama who have successfully implemented and continued to provide adequate meals to children, as well as agencies and partners who can offer guidance for safety and best practices.

Thank you for considering this request. Because many of our thousands of clients continue to go without meals, we ask you to promptly respond, in writing, to **GeDá Jones Herbert** (gherbert@naacpldf.org) and **Monique Lin-Luse** (mllinluse@naacpldf.org) on or before Friday, **May 8, 2020**, but preferably as soon as possible given the urgency of and importance of this issue. Please do not hesitate to contact us in the meantime.

Respectfully Submitted,

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¹ U.S. Department of Agriculture, *USDA Approves Program to Feed Kids in Alabama*, <https://www.usda.gov/media/press-releases/2020/04/22/usda-approves-program-feed-kids-alabama> (last visited Apr. 29, 2020).

² Press Release, State of Alabama Department of Education (Mar. 18, 2020), <https://www.alsde.edu/COVID19%20Updates/3-18-20%20FREE%20MEALS%20during%20Current%20School%20Closure.pdf>.

³ Trisha Powell Crain, *As Alabama schools end meal programs, burden shifts to food banks*, AL.com (Apr. 17, 2020), <https://www.al.com/news/2020/04/as-alabama-schools-end-meal-programs-burden-shifts-to-food-banks.html>.

⁴ *Id.*

⁵ *Id.*

⁶ Crain, *supra*.

⁷ *Id.*

⁸ Alabama State Department of Education, Report Card 2018-2019, <https://reportcard.alsde.edu/Alsde/OverallScorePage?schoolcode=0000&systemcode=000&year=2019> (last visited Apr. 29, 2020).

⁹ According to the latest available data (2015). PolicyLink & USC Program for Environmental and Regional Equity, National Equity Atlas, *Car Access, Alabama* https://nationalequityatlas.org/indicators/Car_access/By_race~ethnicity:49791/Alabama/alse/ (last visited Apr. 20, 2020).

¹⁰ State of Alabama Department of Education, *Dr. Mackey's Update* (Apr. 24, 2020), <https://www.alsde.edu/COVID19%20Updates/DrMackeyUpdate4-24-20.pdf>.

¹¹ Alabama Department of Labor, *ADOL HAS DISBURSED \$372 MILLION IN UNEMPLOYMENT BENEFITS* (Apr. 27, 2020), https://labor.alabama.gov/news_feed/News_Page.aspx?id=228 (“ADOL has issued payments to [only] 64% of those filing COVID-19 related claims since March 16, 2020.”).

¹² See generally *Freeman v. Pitts*, 503 U.S. 467, 498-99 (1992); *Moore v. Tangipahoa Sch. Bd.*, 921 F.3d 545, 550-51 (5th Cir. 2019). *Cowan v. Cleveland Sch. Dist.*, 748 F.3d 233, 238 (5th Cir. 2014) (quoting *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430, 437-38 (1968)).

¹³ See *Lee v. Macon Cty. Bd. of Ed.*, 267 F. Supp. 458, 478 (M.D. Ala.) (“As has been outlined in some detail, the defendant state officials have engaged in a wide range of activities to maintain segregated public education throughout the State of Alabama. These activities have been concerned with and have controlled virtually every aspect of public education in the state, including site selection, construction, consolidation, assignment of teachers, allocation of funds, transportation, vocational education, and the assignment of students. . . . This Court can conceive of no other effective way to give the plaintiffs the relief to which they are entitled under the evidence in this case than to enter a uniform state-wide plan for school desegregation, made applicable to each local county and city system not already under court order to desegregate, and to require these defendants to implement it. Only in this way can uniform, expeditious and substantial progress be attained, and only in this way can the defendant state officials discharge the constitutional duty that was placed upon them twelve years ago in *Brown v. Board of Education*[.]”).

¹⁴ *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 459 (1979); *United States v. Lawrence Cty. Sch. Dist.*, 799 F.2d 1031, 1044 (5th Cir. 1986).

¹⁵ See, EdBuild, *Fractured: The Accelerating Breakdown of Americas School Districts* (2019), <https://edbuild.org/content/fractured/fractured-full-report.pdf>; See also, *Stout v. Jefferson Cty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018).

¹⁶ Plaintiffs’ motion cited the U.S. Census Bureau’s 2018-2014 American Community Survey, which shows that 14% of Black families with children in Leeds live in poverty and 17% of Black households receive SNAP. Comparatively, approximately 5% of White families in Leeds are in poverty or use SNAP.

¹⁷ *Stout v. Jefferson Cty. Bd. of Educ.*, (City of Leeds Bd. of Educ.), No. 2:17-MC-681-MHH, 2020 WL 1983331 (N.D. Ala. Apr. 27, 2020).

¹⁸ Post at 8:09AM on April 5, 2020,
<https://www.facebook.com/limestonecountyschools/?ref=settings>.

¹⁹ U.S. Census Bureau, Limestone County, AL,
<https://data.census.gov/cedsci/profile?q=Limestone%20County,%20Alabama&g=0500000US01083&tid=ACSDP1Y2018.DP05> (last visited Apr. 30, 2020).

²⁰ Post at 8:09AM on April 5, 2020,
<https://www.facebook.com/limestonecountyschools/?ref=settings>.

²¹ For instance, Huntsville City Schools has implemented and continued these efforts in spite of having at least two employees and one student test positive for COVID-19. (<https://www.huntsvillecityschools.org/newscenter/coronavirus-crisis-contingency-plan-updated-4-17-20>) “The list of best practices is short. ‘Wear masks and gloves as they prepare and deliver their meals,’ she said. ‘Check volunteers’ temperatures at the door.’ If they have a temperature, send them home. Sanitize equipment regularly.” Trisha Powell Crain, *As Alabama schools end meal programs, burden shifts to food banks*, AL.com (Apr. 17, 2020), <https://www.al.com/news/2020/04/as-alabama-schools-end-meal-programs-burden-shifts-to-food-banks.html>. “While temporary suspension of meal programs is to be expected under these circumstances [if an employee tests positive for COVID-19], we urge school districts to take steps to continue meal programs, such as providing personal protective equipment and plexiglass shields to workers who deliver school meals. School service workers and the communities they serve should be protected by the same measures as other essential employees, including grocery store workers and other food service and delivery workers.” American Federation of Teachers and NAACP Legal Defense and Educational Fund, et al., *Joint Statement of Education and Civil Rights Organizations Concerning Equitable Education During the Covid-19 Pandemic School Closures and Beyond* (Apr. 29, 2020), <https://www.naacpldf.org/wp-content/uploads/Joint-Statement-of-National-Education-and-Civil-Rights-Leaders-on-COVID-19-School-Closure-FINAL-4.29.20.pdf>.

²² *Id.*

²³ Bryan Henry, *Alabama’s public schools could reopen in June*, WSFA 12 News (May 4, 2020), <https://www.wsfa.com/2020/05/04/alabamas-public-schools-could-reopen-june/>.

²⁴ U.S. Department of Education, *Secretary of Education Betsy DeVos Authorizes New Funding Flexibilities to Support Continued Learning During COVID-19 National Emergency* (Apr. 6, 2020), <https://www.ed.gov/news/press-releases/secretary-education->

betsy-devos-authorizes-new-funding-flexibilities-support-continued-learning-during-covid-19-national-emergency.

²⁵ Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19, State of Alabama,
<https://www.alsde.edu/COVID19%20Updates/Dr.%20Mackey%20Update%204.3.20.pdf>

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