

# SAMPLE STATE LEGISLATION: BREAKFAST AFTER THE BELL



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## INTRODUCTION

Breakfast After the Bell legislation—which requires high need schools to make breakfast available after the school day has begun—has been passed in several states across the country including Colorado, New Mexico, West Virginia, Nevada and Illinois. This resource is intended to provide state legislators, advocates and other stakeholders with sample legislative language for passing Breakfast After the Bell laws in their own states.

The sample language provided in this resource is modeled after legislation that has been passed in those five states as well as pending legislation introduced in other states.

## SAMPLE LEGISLATION

Sec. 1. The legislature finds clear evidence that school breakfast is associated with improved outcomes for students, including fewer discipline incidents, better attendance, and improved performance on standardized tests. Breakfast After the Bell models, such as Breakfast in the Classroom or Grab and Go breakfast, are proven models to boost school breakfast participation and related positive outcomes.

Therefore, the legislature intends to expand the opportunity for students to get a healthy breakfast by requiring schools with large populations of low-income students who are eligible for free or reduced-price meals to serve breakfast after the bell, a model that has increased breakfast participation rates in various states across the nation.

Sec. 2. (1)(a) Beginning in the [2018-2019] school year, and each year thereafter, each public or charter school that has an enrollment of seventy percent or more students eligible for free or reduced price meals in the prior school year shall offer Breakfast After the Bell to each student in the school after the instructional day has officially begun. Any school using provision two of the National School Lunch Act or the community eligibility provision under section 104(a) of the federal Healthy, Hunger-Free Kids Act of 2010 to provide universal meals that has an individual claiming percentage for free or reduced-price meals of seventy percent or higher shall provide Breakfast After the Bell. This does not prohibit schools from also providing breakfast before the instructional day begins.

(b) Each school may determine the breakfast after the bell service model that best suits its students. Service models include, but are not limited to, Breakfast in the Classroom, Grab and Go breakfast, and Second Chance Breakfast.

(c) Public or charter schools that demonstrate they are delivering school breakfast effectively, as defined by seventy percent or more of free or reduced price eligible students participating in the School Breakfast Program, are not required to participate in the Program.

(d) If a public or charter school falls below the seventy percent threshold for two consecutive years, it has the option to continue participating in the Program, but is not required to do so. All public schools are encouraged to offer Breakfast After the Bell even if not required to do so under this section.

(2) The [State Department of Education] shall:

(a) Notify schools on or before [DATE] that they are required to implement Breakfast After the Bell.

(b) Develop and distribute procedures and guidelines for the implementation of this act, which must be in compliance with federal regulations governing the School Breakfast Program.

(c) Offer technical assistance to public schools and school districts relating to the implementation of Breakfast After the Bell.

(d) Annually collect information about Breakfast After the Bell delivery models implemented at each school and make the information publicly available.

(3)(a) If the [State Department of Education] determines at the end of a school year that a public or charter school participating in the program has not increased the provision of breakfast to enrolled pupils who are eligible for free or reduced price lunches under the National School Lunch Act by at least ten (10) percentage points, the Department shall provide written notice of its findings to the school.

(b) A school that receives notice shall not later than 30 days after receiving such notice submit to the Department a plan for increasing participation in the Program by enrolled pupils in the school who are eligible for free or reduced price lunches.

(4) The [State Department of Education] shall, on or before [DATE] of each year:

(a) Prepare a report on the implementation and effectiveness of the Program in this state; and

(b) Submit the report prepared pursuant to subsection (a) to the state legislature.

(5) In fulfilling its responsibilities under this section, the [State Department of Education] shall collaborate with nonprofit organizations knowledgeable about equity, the opportunity gap, hunger and food security issues, and best practices for improving student access to school breakfast. The office shall maintain a list of opportunities for philanthropic support of school breakfast programs and make the list available to schools interested in Breakfast After the Bell.

## KEY LEGISLATION COMPONENTS

The sample legislation provided above includes each of the following key recommended elements. Most of these have been included in some format in every passed and pending Breakfast After the Bell legislation.

**Eligibility requirements:** This determines the free or reduced price eligibility threshold at which schools will be required to implement Breakfast After the Bell. Most of the currently passed legislation has set this at seventy percent, but some states currently pursuing breakfast legislation have lowered this to sixty percent or even fifty percent to ensure that more children in need have better access to school breakfast.

**Date of implementation:** This specifies when the legislation will go into effect. It is important to give schools enough time to prepare for Breakfast After the Bell implementation to ensure that they are able to do this successfully, ideally one school year after the bill is passed.

**Allowable models:** All passed legislation has allowed schools the flexibility to determine the Breakfast After the Bell model that works best for their own unique structure and needs.

**High Participation Exemption:** The goal of Breakfast After the Bell legislation is to increase participation in school breakfast. Schools that already have consistently high breakfast participation should not be required to change what they are currently doing to implement Breakfast After Ball if they have already found a way to successfully provide breakfast to students.

**State agency responsibilities:** The state agency that oversees the School Breakfast Program (typically the Department of Education or Agriculture) will be responsible for implementing and enforcing the law. It's important to outline the state agency's responsibilities to ensure that they notify affected schools, provide technical assistance to support schools with implementation, create any necessary guidelines, and share information.

**Participation achievement requirements:** It is helpful to encourage successful Breakfast After the Bell adoption by setting participation achievement requirements that schools must attain in order to meet the requirements of the law. This will ensure that schools are truly meeting the spirit of the law by working to increase participation and not doing the bare minimum that may not have any actual participation impacts.

**Reporting:** Including reporting requirements ensures that the state legislature and other stakeholders will understand the participation and financial impacts of the law in the state and have evidence to highlight its success.

**Partnering with Non-Profits:** Non-profit organizations can be helpful partners to assist schools with Breakfast After the Bell implementation and sometimes even funds for potential start-up costs. Including them as partners in the legislation ensures that the state agency will partner with them to provide this support to impacted schools.

## OPTIONAL PROVISIONS AND CONSIDERATIONS

There are a number of optional provisions that can be added to legislation to address specific state circumstances. This section provides the reasons for including these optional provisions as well as sample language that can be incorporated.

**State Funding:** Some states such as Nevada have provided state funding to support impacted schools with their Breakfast After the Bell implementation efforts and potential start-up costs. This is included as an optional provision, since not all states are in a position to pass Breakfast After the Bell legislation with accompanying funding. States like Illinois have passed legislation without funding.

If you are able to attach funding, it is helpful to include language directing how the funding will be allocated and allowable expenditures.

Sample Provision: *The [State Department of Education] shall allocate to each public or charter school that is required to participate in the Program an amount of money necessary to carry out the Program as determined by the Department. A public or charter school that receives money pursuant to this act may use the money for purposes related to the implementation and operation of the Program.*

**Opt-out:** Most Breakfast After the Bell legislation has included an opt-out option for schools due to financial hardship. An opt-out provision may be necessary to include to account for issues specific schools or stakeholders face, but is not recommended since it will weaken its authority. If an opt-out provision is included, it is important that it is limited in scope so it does not undermine the intent of the legislation. One way to do this is to prevent schools from opting out until after implementing Breakfast After the Bell for two school years when they can verifiably demonstrate that the program has a negative financial impact.

Sample Provision: *A public or charter school is not required to continue to participate in the Breakfast After the Bell program in any school year after the [2019-2020] school year if the school can demonstrate to the satisfaction of the [State Department of Education] that a financial hardship exists.*

**Instructional Time:** Schools and districts sometimes express concerns about how providing Breakfast After the Bell will impact instructional time, particularly when serving or allowing students to eat it in the classroom. It could be helpful to clarify in the legislation that consuming breakfast in the classroom counts towards instructional time, like states such as Oregon have done.

Sample Provision: *Time spent by students consuming breakfast is considered instructional time when students consume breakfast in the students' classroom and educational activities are being provided while students are consuming breakfast. No more than 15 minutes may be considered instructional time when students are consuming breakfast.*