



Education and the Public Interest Center
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EDUCATION RESEARCH UNIT
ARIZONA STATE UNIVERSITY

LEGISLATION POLICY BRIEF

Policy and Statutory Responses to Advertising and Marketing in Schools

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Executive Summary

It's easy to imagine students at Charter Oak High School feeling lucky as they approached the massive half-pipe set up outside the school for today's special program, the Xbox 360 Anti-Gravity Tour.

Sponsors must have felt lucky also: in January 2009, The National Sports Forum honored the Xbox 360 Anti-Gravity Tour as one of the top three marketing ideas of 2008.

*According to a press release from producer ASA Entertainment, the Tour "...visited high schools across the country with an action sports exhibition that prominently delivered the Xbox message and created opportunities for immediate hands-on interaction with their Xbox 360 gaming consoles. Capturing the youth's attention where they live - in school - was an innovative way to zero in on their core audience. This fresh marketing strategy helped additional Tour sponsors further their brand initiatives as well."*¹

Although Americans have generally come to accept a world filled with advertising, school-based advertising remains a matter of public concern. Since the 1980s public policy has generally favored relaxing regulatory restrictions on business activities, including advertising. This largely unregulated environment, coupled with insufficient public funding for education, has helped erode barriers to marketing in schools.

It is easy to understand why marketers would target children. They influence their parents' spending, they spend a lot of money themselves, and when they develop preferences for brands in childhood, their loyalty often lasts a lifetime. Because children spend so much time in schools, corporations pursue access to them there through a variety of strategies, including returning a share of profit on product sales, offering free sponsored "educational materials" to teachers, and awarding prizes to students or schools

for participating in corporate-sponsored contests. For their part, school districts, especially those facing higher costs and shrinking budgets, often see advertising as a potential source of additional funds. Some are also attracted to advertising and marketing activities because they believe that participating in such activities demonstrates goodwill toward the business community.

While corporate-school arrangements do often provide fundraising opportunities or entertaining activities, their benefits tend to be modest compared with their damage. Students are harmed, for example, when time is diverted from academic pursuits. They are also harmed when “learning” activities teach children to be uncritical and loyal consumers of particular branded products, or teach them, without reflection, to adopt points of view favorable to corporate sponsors. Overall, marketing activities in schools actively threaten high-quality education by causing psychological, health-related, and academic harm to students. Commercial activities offer children experiences primarily intended to serve the sponsors and not the children themselves; they are therefore inherently “*mis-educative*,” because they promote unreflective consumption rather than critical thinking and rational decision making.

The state, which mandates school attendance, should assess these dangers and work to eliminate them. The [attached brief](#) identifies seven categories of commercial activities typically found in schools (exclusive agreements, appropriation of space, corporate-sponsored educational materials, sponsorship of programs and activities, electronic marketing, incentive programs, and fundraising), and provides model legislative language to regulate such activities. These statutory options illustrate three different policy tools: (a) mandates, (b) balancing tests and regulatory requirements, and (c) process-based reform. Multiple options are offered so that state legislatures and local school districts can tailor policy to local contexts, school-specific needs, and community demands.

The chart below offers an illustration of how each of the three policy tools can be used to draft legislation in relation to a specific kind of school-based commercial activity, in this instance Exclusive Agreements. The attached brief includes detailed model statutory language to address each of the seven common types of marketing activities in schools.

Policy Tools	Applications to Exclusive Agreements in Schools
Mandates	Districts and schools shall not enter into any exclusive agreements that promote commercial activities or products during the school day or on school grounds.
	Districts and schools shall not enter into any exclusive agreements for the sale of food and drink products that provide no or minimal nutritional value.
	Districts and schools shall not enter into any exclusive agreements for the sale during school hours of food and drink products that provide no or minimal nutritional value.
Balancing Tests and Regulatory Requirements	School districts entering into exclusive agreements with corporations shall develop and distribute a commercialism policy that specifies how the district will ensure that agreements meet an identified educational need that cannot be met in any other way, do not unduly promote commercial activities or products, do not make unreasonable demands on students and teachers, and do not interrupt the regular school program.
	School districts entering into exclusive agreements for the sale of food and drink products shall develop and distribute a healthy choices policy that specifies how the district will limit the sales of products with no or minimal nutritional value.
Processes	District superintendents, school boards, district-level representatives, or committees including district personnel and parents shall review and approve any proposed exclusive agreements for the promotion of commercial activities or products during the school day.
	District superintendents, school boards, district-level representatives, or committees including district personnel and parents shall review and approve any proposed exclusive agreements for the sale of food and drink products that provide no or minimal nutritional value.

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This policy brief describes the growth of schoolhouse advertising and marketing activities in the last few decades, assesses the harms associated with commercial activities in schools, and provides advocates, policymakers, and educators with a policy framework and model legislative language designed to protect children and the integrity of education programs from advertising and marketing in schools.

Advertising and marketing activities have become a familiar feature of American public education. Corporate sponsored “educational materials,” ads placed on school buses, cafeteria and classroom walls, and ad-laden educational websites are now common.¹ Although Americans have generally accepted a world filled with advertising, commercial activities in public schools present a special case. Commercial activities in schools threaten high quality education by, for example, blurring the line between educational strategies and corporate marketing efforts. Nevertheless, school districts, especially those facing higher costs and shrinking budgets, are vulnerable to the lure of marketing “partnerships” with corporations. Often the prospect of additional funds or the need to be seen as responsive to the business community have overshadowed concerns about subverting the schools’ learning program and promoting values that place consumer purchases at the center of the “good life.”²

Since the state requires that children attend school, if there are tangible and intangible harms that flow from commercial activities in public schools, the state has an obligation to ensure that such harm is mitigated or eliminated. Moreover, advertising any product or service in school means that the state implicitly endorses the product or service; this raises concerns about whether it is appropriate for the state to promote one product or service over another. Similar concerns arise when schools and classrooms are venues for corporate “stories” and points of view promoting the interests of a particular corporation or industry.

In recent years public awareness that schools may harm children by entering into relationships with advertisers has increased. The potential harms to children caused by school marketing activities may be psychological, health-related, or educational. In addition, such activities may harm schools by taking time away from the schools' more important educational program.

Legislatures from New York to California have passed bills intended to curtail a variety of different commercial activities in schools (Appendix A provides a summary of selected legislation targeting school commercialism). But policy reform has, to this point, been halting and piecemeal.

The Lure of In-School Marketing

Marketers target children because they influence their parents' spending, because they spend a lot of money themselves, and because brand loyalty is often established in childhood, making children valuable future customers. Exactly how much children spend and how much marketers spend to reach them is impossible to determine precisely. What is clear, however, is that a lot of money is involved. Estimates of how much children spend and how much spending they influence range from \$18 billion to \$125 billion annually.³ Estimates of how much marketers spend to reach children annually through advertising are in the \$15 billion to \$17 billion range.⁴ Given that between the ages of five and eighteen children spend twenty percent of their time in school, marketers obviously have a strong incentive to exploit schools' ability to provide a captive audience of students.⁵

During the last two decades of the twentieth century, two policy trends—fewer regulatory restrictions on business activities, including advertising, and a chronic lack of adequate public funding for public education—helped to erode barriers to commercialism in schools.⁶ With regulatory restrictions weakened, corporations intensified their efforts to market in schools. To access students, corporations may offer schools a share of sales commissions, or mail teachers free sponsored “educational materials,” or award prizes for participating in corporate-sponsored contests. One indication of the success marketers have had is the increase in the number of media stories about marketing activities in schools. Between 1990 and 2006 the number of stories increased 656%, from 991 stories in 1990, to 6,505 stories in 2006. Figure 1 displays the 16-year trend.⁷

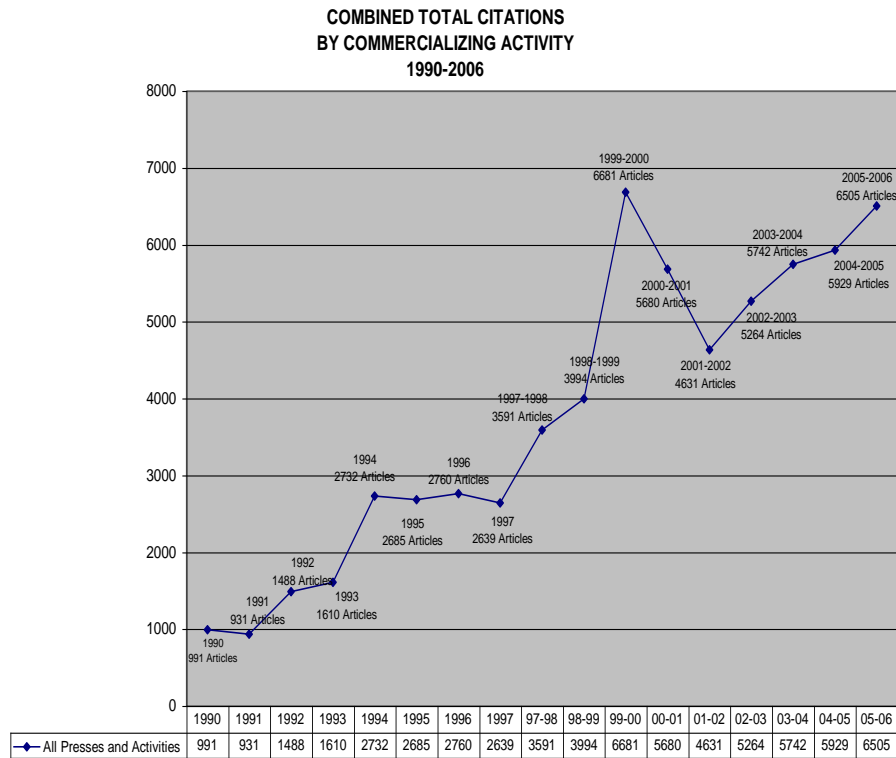


Figure 1. References to School Commercialism in Popular and Trade Press Articles, 1990-2006

Harms Associated with Commercializing Activities in Schools

Psychological Harms

Because advertisements are ubiquitous in American culture, it is easy to view them as an innocuous part of the landscape, of no particular concern in relation to children. However, ads carry values, stories, and morality that promote consumption as the key to personal fulfillment and a happy life. Advertising, in other words, influences how children think about their families, relationships, environment, society, friendships, and selves.⁸ A given advertisement simultaneously promotes a particular product and the underlying message that the good life is defined by purchases.⁹ Advertising promotes values that validate and support consumption, including materialism, the normalcy of debt, and hypersexuality.¹⁰

Corporate advertising aimed at children attempts to shape their tastes and thus influence the purchasing habits of an emerging customer base.¹¹ For example, sponsored “educational materials” promoting the self-interested objectives of a corporate sponsor blur the line between teaching and propagandizing.¹² Fundraising schemes and other more direct forms of advertising in schools

encourage children to buy the promoted products without critically considering their actual value.

Proponents of commercial activities and advertising in schools might suggest that the commercial messaging is obvious and that children are both accustomed to such advertising and sophisticated enough to understand that these messages are intended to persuade them. They might argue that because the advertising mechanisms—such as posters, decals, and other visual logos—are similar to what children experience when they are outside of school, they are better prepared to filter the information and process it as advertisement. Because savvy students are already familiar with direct advertising, the argument goes, they are better equipped to blunt its effects.

Contrary to such claims, advertising has been shown to shape children's attitudes.¹³ There is little evidence that children are actually the savvy consumers that advertisers might suggest. In fact, research establishes clearly that most children under the age of eight do not understand the persuasive nature of advertising.¹⁴ Older, more cognitively developed children may understand that an advertisement is intended to persuade them and still not respond to it critically.¹⁵ In part this is because as advertisements become more embedded in context (for instance, as when they are entwined in an after-school activity or a classroom lesson), children are less likely to recognize them as advertising. This is true even for older students, and research suggests that adolescents may be especially susceptible to such factors used in advertisements as attempts to evoke peer pressure.¹⁶

Even when a person can identify an advertisement's persuasive intent, situational factors affect how a person processes an ad and, consequently, how much he or she is influenced by it.¹⁷ When schools allow advertising, they not only allow their students to be subjected to repeated, daily exposure, but they also implicitly approve the marketing message and lend it credibility. In other words, schools provide the kind of situational context that would help persuade even the savviest consumers.¹⁸ Thus, instead of teaching students how to identify misleading messages in the world around them, schools that permit corporate marketing offer an education laced with corporate bias; rather than learning to thoughtfully consider where their own or society's interests lie, children are encouraged instead to adopt attitudes that serve the interests of corporations.

Health-Related Harms

The health consequences of childhood obesity are staggering.¹⁹ Obese children can expect to live shorter lives than their non-obese

counterparts and can expect their lives to be filled with more illness, including high cholesterol, high blood pressure, type 2 diabetes mellitus, coronary plaque formation, and psychosocial problems.²⁰ Over the past three decades the rate of childhood obesity has more than doubled for preschool children aged 2 to 5 years and for adolescents aged 12 to 19 years, and it has more than tripled for children aged 6 to 10 years.²¹ Only one percent of American children eat a diet consistent with USDA guidelines.²²

Foods of little or no nutritional value, particularly soft drinks, dominate product sales and advertising in schools.²³ Such advertising is intended to persuade children to want and eat more of the foods that are unhealthy for them when eaten to excess, and research suggests that it does influence children's eating behavior, and therefore their susceptibility to obesity and its attendant health threats.²⁴ If a school's health and nutrition curriculum teach children to limit their intake of these foods, and at the same time school-based advertising promotes their overconsumption, lessons on good nutritional habits are subverted. A public school system free of commercial influence could play a pivotal role in helping combat childhood obesity by teaching students to eat healthful food in appropriate portions as well as to lead active, healthy lives.

Educational Harms

Public education is a collective endeavor designed to provide children with a personally enriching and socially useful "educative experience."²⁵ Educators, therefore, seek to select educational content that encourages students to think critically and act intelligently in future situations. Considered in this light, schoolhouse commercialism is clearly antithetical to the underlying purposes of schooling. Whereas schools seek to facilitate a continuous learning process allowing students to develop as thoughtful individuals and community members, advertisers aim to segment children into consuming groups and appeal to their immediate impulses.²⁶ Advertisements are inherently "*mis-educative*," in that they present biased information and discourage rational thought, and thus promote unreflective consumption.²⁷

When educators implicitly endorse advertisers' messages by allowing them to reach students in schools,²⁸ they abdicate their responsibility to provide educative experiences and undermine their ability to help students develop the critical thinking skills necessary to confront the barrage of advertising waiting just outside the schoolhouse gate. By inviting corporate advertising into the educational environment, school personnel thus act at cross-purposes with their responsibility as educators to produce an educated citizenry.²⁹

Cost Harms

While schoolhouse commercialism may be a boon for business, schools themselves do not actually see much of the profit.³⁰ According to a 2006 Commercialism in Education Research Unit Report, 73.4% of schools that participated in advertising activities with food corporations in 2003-2004 did not actually receive any income from those activities.³¹ Similarly, the Center for Science in the Public Interest found in a 2007 study of 120 school beverage contracts that these seemingly lucrative contracts raised an average of just \$18 per student per year for the districts.³² In contrast, when health researcher Marion Nestle examined corporate gain from such contracts, she calculated that if half the students in a 10,000-student district consumed an average of one soda per day at \$1 per day, gross sales would exceed \$25,000 per week.³³

Students in districts who are urged to collect commercial artifacts like Campbell's soup can labels or General Mills box tops to earn cash, prizes, or both do a great deal for the sponsors but little for their schools. For example, students would have to buy over \$33,000 worth of soup to earn a \$300 camcorder.³⁴ Yet despite such paltry returns, the 2000 survey by the Government Accounting Office (GAO) of commercial activities in schools found such practices to be common: all of the elementary schools as well as some of the middle and high schools surveyed participated in such cash or credit rebate programs.³⁵

Some arrangements may seem more profitable, as when corporations provide electronic equipment to schools in exchange for the right to expose students to advertisements (Channel One, for example, provides schools with television and satellite equipment, and BusRadio, until September 2009, provided radio equipment for school buses). However, Sawicky and Molnar's 1998 analysis of the costs to schools of showing Channel One demonstrates that hidden financial costs inherent in exchanging class time for equipment can easily outweigh the financial benefits of "free" equipment.³⁶ Sawicky and Molnar calculated the dollar value of the time schools are required to allocate daily to Channel One and compared it to the cost of the equipment provided. Even when they calculated conservatively the value of time lost from other educational experiences (counting only the daily two minutes of commercials rather than the full 12-minute broadcast time), Sawicky and Molnar found that the cost of instructional time lost was substantially greater than the value of the equipment provided.

By considering the educational and financial costs of school marketing activities and taking a closer look at the actual financial benefits, schools can gain a clearer understanding of the high

educational price routinely paid for the minimal monetary returns of commercial partnerships.

Types of School Commercialism

In order to regulate or eliminate commercial activities in American public schools, it is useful to note their various forms and to consider how best to respond to them. Marketing activities in schools generally take one of the following seven forms: (1) exclusive agreements; (2) appropriation of space; (3) corporate-sponsored educational materials; (4) sponsorship of programs and activities; (5) electronic marketing; (6) incentive programs; and (7) fundraising. Summary definitions and examples of each form follow below; more in-depth discussion and additional examples appear in Appendix B.

Exclusive Agreements

Exclusive agreements between schools and corporations give corporations the exclusive right to sell and promote their goods or services in the school district. In return, the district or school receives a percentage of the resulting profits or other benefit. In Ohio, for example, the Atrium Medical Center provides sports medicine and athletic training services to local schools. From this relationship, Atrium gains enhanced visibility in local communities.³⁷

Appropriation of Space

In appropriation of space agreements, schools receive money in exchange for corporations placing their names, logos, or advertising messages in school space, such as on scoreboards, rooftops, bulletin boards, walls, textbooks, or school buses. In August 2009, for example, the Santa Fe public school district became the first in the state of New Mexico to allow ads on school buses, in exchange for 50% of the revenue generated.³⁸

Commercially Sponsored Educational Materials

Sometimes, corporations or trade associations provide schools with materials that they claim have valuable instructional content. These materials, which were labeled “propaganda” in the early twentieth century,³⁹ are now commonly referred to using the more benign term “sponsored educational materials.” Usually, these materials promote a company, or values consistent with a company’s mission, in the context of an educational lesson. The non-profit organization Junior Achievement (JA), for example, has since the 1940s sought to educate young people to value free enterprise and to understand business and economics.⁴⁰ In 2007 the organization began offering school groups a program that revolves around a

visit to “Biztown,” a simulated town where children can try on adult working roles.⁴¹ In preparation for their visit, classes are provided with materials that teach about the economic system, about jobs that will be available to students, and about how to interview for those jobs. In addition to featuring their business partners as employers in the Biztown economy, JA stocks the partners’ branded products in the Biztown shop.⁴² Children thus learn both about how the larger economy works and about specific partner corporations and their products.

Commercially Sponsored Programs and Activities

Corporations can pay for or subsidize school events or activities in return for the right to associate their names with those events and activities. Schools provide an ideal opportunity for companies to sponsor programs and activities that allow them to create positive images for their brands. For example, Nintendo partners with the nonprofit organization Mathcounts to sponsor a contest that challenges middle school math clubs across the United States to increase their membership and level of participation in Mathcounts challenges. Winning clubs receive Nintendo DS handheld game systems and also copies of Nintendo’s *Personal Trainer: Math* game for the DS.⁴³

Electronic Marketing

Electronic marketing refers to marketing done via electronic channels. It includes in-school marketing programs that use broadcast, Internet, or related media. Sometimes, corporations provide electronic programming, equipment, or both in return for the right to advertise to students, their families, or community members in the school or during their contacts with the school or district. For example, the company HotChalk links students, teachers, and parents by providing a hub for communication among them. Teachers create a class website that serves as a clearinghouse for class information and materials, promoting web-based communication among all the “players.” The Hotchalk service is provided for no charge to schools; its funding comes from the ads it shows to after-school users over the age of 13.⁴⁴

Commercially Sponsored Incentive Programs

Corporate-sponsored incentive programs provide money, goods, or services to a student, school, or school district when its students, parents, or staff engage in specified activities. For example, in 2008, in conjunction with the American elections, the UR Vote Counts program attracted teenagers to malls to vote, offering them “the best discounts and offers available from our network of stores, restaurants, and partners via a monthly email delivered directly to U.”⁴⁵ The program was marketed directly to social studies teachers

via an email to the member list of the National Council for the Social Studies.⁴⁶

Commercially Sponsored Fundraising

Fundraising programs are commercial programs marketed to schools to raise money for school programs and activities. These programs can include door-to-door sales and affinity marketing programs, in which schools receive a percentage of revenue when their students and parents sell product for a company. Schools have been running candy sales, for instance, for decades. More modern examples are fundraising programs offered by coffee roasters, including California Coffee Company and Cortez Coffee Company.⁴⁷ Students whose schools participate in these fundraisers are encouraged to sell the coffee locally and, in the case of the Cortez fundraising program, also to alert friends and family to buy from the company's website. Schools receive a portion of the price of each bag of coffee students sell for the company.⁴⁸ Another example of a fundraising program is provided by www.K12mall.com, a shopping site that donates between 0.25% and 12% of the purchase price of items bought on the site to schools that shoppers choose.⁴⁹

Policy Tools for Addressing School Commercializing Activities

To address school commercial activities, we offer a variety of policy tools—not single prescriptions, but rather several options that are intended to allow state legislatures and local school districts to design policy best suited to local conditions. Policy-makers, educators, and advocates can select from a menu of approaches ranging from an outright ban on those exclusive agreements judged intolerable to a more nuanced decision-making process that includes all stakeholders and that weighs the relevant advantages and disadvantages of specific commercial proposals presented to schools. Such flexibility accommodates differences among local contexts, school-specific needs, and community demands.

Following is a brief summary of three types of policy tools.

Mandates. Mandates can limit the conditions that allow for an activity, can partially ban an activity, or can completely prohibit an activity. Mandates are best suited to those commercial activities that harm students in any way while offering *de minimis* or no redeeming value, and to those activities that harm students so substantively that almost no amount of benefit can justify the cost.

Balancing tests and regulatory requirements to minimize the harm. Balancing tests and regulatory requirements oblige school officials to balance certain benefits of a commercial activity

against the identified harms or costs to students and to the school's educational mission. The specific criteria to be weighed against each other are identified for policy-makers and decision-makers at the school or school district level, who are required to complete an analysis based on them. These strategies may also limit a commercial activity in ways that ensure the risk to children is minimized.

Process-based reform. Process-based policy requires relevant constituencies or stakeholders to be involved in decision-making regarding commercial activities. Stakeholders might include school board members, teachers, administrators, students, and parents. Such policies might be used in conjunction with balancing tests, which provide an analytic framework for the deliberative process. Similar reforms might include requiring informed consent of parents, thus making parents the ultimate authority on whether their children might participate in commercial activities within the school.

A Final Word and Model Legislation

The case for a legislative response to marketing in schools is clear. Commercial relationships between schools and corporations tend to benefit corporations and harm schools and their students. While some arrangements do provide fundraising opportunities or entertaining activities, such benefits are slight compared to the harm done when corporate sponsors use schools to teach children to become uncritical consumers of products and devoted loyalists to certain branded products and services. If we are to create learning environments that encourage students to develop fully as individuals and as thoughtful citizens, then policy makers, educators, and advocates would do well to carefully evaluate whether and to what extent they want to allow advertising and marketing activities in public schools. This brief constitutes a call for all stakeholders to review advertising and marketing activities in schools, assess their potential harms, and act when it is clear that action is necessary to prevent these harms.

In support of such action, the draft legislative language that follows illustrates how each of the three policy tools described above can be used to regulate the forms of commercial activity outlined in this brief. This model language can be immediately adopted or adapted both by state legislators and by policy advocates focusing an advocacy agenda.

**MODEL LEGISLATION PERTAINING TO
COMMERCIALISM IN PUBLIC SCHOOLS**

Model statutory language is provided on the following pages for each of the following types of school marketing activity: (1) exclusive agreements, (2) appropriation of space, (3) sponsored educational materials, (4) sponsored programs and activities, (5) electronic marketing, (6) incentive programs, and (7) fundraising programs.

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Article 123 §§ 101 – 104 Exclusive Agreements

A BILL FOR AN ACT

AN ACT CONCERNING RESTRICTIONS ON EXCLUSIVE AGREEMENTS
IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*
2

3 **Article 123**

4 **Restrictions on Exclusive Agreements in Schools**
5

6 **§ 101. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children from
9 commercial activity in public elementary and secondary schools.
10 (b) It is the intent and purpose of the Legislature in enacting this part to
11 restrict children’s exposure to commercial activity in schools.
12 (c) Research demonstrates that exclusive agreements permitting commercial
13 activity in schools may waste valuable learning time, provide biased
14 information to students, unduly promote commercial activities or products,
15 promote obesity among the state’s children, and compromise the integrity
16 of our state’s public schools.
17

18 **§ 102. Definitions.**

- 19 (a) “Commercial activity” includes direct and indirect advertising, marketing,
20 solicitation, and sponsorship by a commercial entity.
21 (b) “Commercial entity” includes any business, corporation, for-profit
22 organization, or other organization or individual whose primary purpose is
23 selling goods or services.
24 (c) “District-level commercial activity monitoring committee” means a
25 committee selected by the governing board that shall include the
26 following:
27 (1) a district-level administrator, such as a superintendent or assistant
28 superintendent;
29 (2) a school-level administrator, such as a principal or assistant principal,
30 at a school affected by the proposed commercial activity;
31 (3) a teacher at a school affected by the proposed commercial activity; and
32 (4) a parent of a student at a school affected by the proposed commercial
33 activity.
34 (d) “Governing board” means the board of education or other body of any
35 city, county, or other district that has the duty to provide for the education
36 of the children in its jurisdiction.
37 (e) “Exclusive agreement” means an agreement between a school, school
38 district, or school district employee or agent and a commercial entity that

1 gives the commercial entity the exclusive right to sell or promote its goods
2 or services in the school or school district.
3

4 **§ 103. Exclusive Agreements. (Option A - Mandate)**

- 5 (a) No governing board, governing board member, school-level administrator
6 or employee, or district-level administrator or employee may enter into an
7 exclusive agreement that permits commercial activity in any school or on
8 any school or school district property during school hours or school-
9 sponsored activities.
10 (b) This section does not apply to exclusive agreements for the sale of food
11 and drink products.
12

13 **§ 103. Exclusive Agreements. (Option B – Balancing Test and Regulatory
14 Requirements)**

- 15 (a) No governing board, governing board member, school-level administrator
16 or employee, or district-level administrator or employee may enter into or
17 propose to enter into an exclusive agreement without the approval of the
18 governing board.
19 (b) A governing board, governing board member, school-level administrator
20 or employee, or district-level administrator or employee proposing to enter
21 into an exclusive agreement shall provide to the governing board a
22 memorandum that provides written documentation and evidence that the
23 proposed agreement:
24 (1) does not unduly promote commercial activity or products,
25 (2) does not make unreasonable demands on students and teachers, and
26 (3) does not interrupt the regular school program.
27 (c) To permit the proposed exclusive agreement, the governing board shall
28 present all findings and formally approve the proposed exclusive
29 agreement at a public meeting of the governing board. The governing
30 board may only approve the proposal upon consideration of all
31 documentation and evidence in the memorandum in subsection (b).
32 (d) This section does not apply to exclusive agreements for the sale of food
33 and drink products.
34

35 **§ 103. Exclusive Agreements. (Option C - Process)**

- 36 (a) No governing board, governing board member, school-level administrator
37 or employee, or district-level administrator or employee may enter into or
38 propose to enter into an exclusive agreement without the approval of the
39 governing board.
40 (b) A district-level commercial activity monitoring committee shall review all
41 proposed exclusive agreements.
42 (c) After the district-level commercial activity monitoring committee
43 approves a proposed exclusive agreement, the committee shall provide the
44 proposed agreement to the governing board.
45 (d) To permit the proposed exclusive agreement, the governing board shall
46 present all findings and formally approve the proposed exclusive
47 agreement at a public meeting of the governing board.
48

1

Optional Process Addition

(e) The district-level commercial activity monitoring committee may not recommend and the governing board may not approve an exclusive agreement without making specific findings that the agreement:

- (1) does not unduly promote commercial activity or products,
- (2) does not make unreasonable demands on students and teachers, and
- (3) does not interrupt the regular school program.

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(f) This section does not apply to exclusive agreements for the sale of food and drink products.

§ 104. Exclusive Agreements, Food and Drink Products. (Option A - Mandate)

No governing board, governing board member, school-level administrator or employee, or district-level administrator or employee may enter into an exclusive agreement for the sale [*optional limitation*: during school hours] of food and drink products that provide minimal or no nutritional value.

§ 104. Exclusive Agreements, Food and Drink Products. (Option B – Balancing Test and Regulatory Requirements)

(a) No governing board, governing board member, school-level administrator or employee, or district-level administrator or employee may enter into an exclusive agreement for the sale [*optional limitation*: during school hours] of food and drink products that provide minimal or no nutritional value without the approval of the governing board.

(b) A governing board, governing board member, school-level administrator or employee, or district-level administrator or employee proposing to enter into an exclusive agreement for the sale of food and drink products shall provide to the governing board a memorandum that provides written documentation and evidence that the proposed agreement:

- (1) minimizes the sale during school hours of food and drink products with minimal or no nutritional value,
- (2) does not unduly promote commercial activity or products,
- (3) does not make unreasonable demands on students and teachers, and
- (4) does not interrupt the regular school program.

(c) To permit the proposed exclusive agreement, the governing board shall present all findings and formally approve the proposed exclusive agreement at a public meeting of the governing board. The governing board may only approve the proposal upon consideration of all documentation and evidence in the memorandum in subsection (b).

§ 104. Exclusive Agreements, Food and Drink Products. (Option C - Process)

(a) No governing board, governing board member, school-level administrator or employee, or district-level administrator or employee may enter into an exclusive agreement for the sale [*optional limitation*: during school hours]

- 1 of food and drink products that provide minimal or no nutritional value
2 without the approval of the governing board.
- 3 (b) A district-level commercial activity monitoring committee shall review all
4 proposed exclusive agreements for the sale during school hours of food
5 and drink products that provide minimal or no nutritional value.
- 6 (c) After the district-level commercial activity monitoring committee
7 approves a proposed exclusive agreement, the committee shall provide the
8 proposed agreement to the governing board.
- 9 (d) To permit the proposed exclusive agreement, the governing board shall
10 present all findings and formally approve the proposed exclusive
11 agreement at a public meeting of the governing board.
12

Optional Process Addition

- (e) The district-level commercial activity monitoring committee may not recommend and the governing board may not approve an exclusive agreement without making specific findings that the agreement:
- (1) minimizes the sale during school hours of food and drink products with minimal or no nutrition value,
 - (2) does not unduly promote commercial activity or products,
 - (3) does not make unreasonable demands on students and teachers, and
 - (4) does not interrupt the regular school program.

Article 124 §§ 201 – 203 Appropriation of Space

A BILL FOR AN ACT

AN ACT CONCERNING RESTRICTIONS ON THE APPROPRIATION
OF SPACE IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*

2
3 **Article 124**

4 **Restrictions on the Appropriation of Space in Schools**

5
6 **§ 201. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children from
9 commercial activity in public elementary and secondary schools.
10 (b) It is the intent and purpose of the Legislature in enacting this part to
11 restrict children’s exposure to commercial activity in schools.
12 (c) Research demonstrates that appropriation of space in schools for
13 commercial activity may waste valuable learning time, provide biased
14 information to students, unduly promote commercial activities or products,
15 and compromise the integrity of our state’s public schools.

16
17 **§ 202. Definitions.**

- 18 (a) “Commercial activity” includes direct and indirect advertising, marketing,
19 solicitation, and sponsorship by a commercial entity.
20 (b) “Commercial entity” includes any business, corporation, for-profit
21 organization, or other organization or individual whose primary purpose is
22 selling goods or services.
23 (c) “District-level commercial activity monitoring committee” means a
24 committee selected by the governing board that shall include the
25 following:
26 (1) a district-level administrator, such as a superintendent or assistant
27 superintendent;
28 (2) a school-level administrator, such as a principal or assistant principal,
29 at a school affected by the proposed commercial activity;
30 (3) a teacher at a school affected by the proposed commercial activity; and
31 (4) a parent of a student at a school affected by the proposed commercial
32 activity.
33 (d) “Governing board” means the board of education or other body of any
34 city, county, or other district that has the duty to provide for the education
35 of the children in its jurisdiction.
36 (e) “Space” means any surface visible to students and any material
37 distributed to students, including, but not limited to: buses and bus
38 shelters, billboards, facilities, grounds, school and district publications,
39 and textbooks and textbook covers.
40

1 **§ 203. Appropriation of Space. (Option A - Mandate)**

2 No governing board, governing board member, school-level administrator or
3 employee, or district-level administrator or employee may permit or propose to
4 permit a commercial entity to appropriate space in a school or school district.

5
6 **§ 203. Appropriation of Space. (Option B – Balancing Test and Regulatory
7 Requirements)**

8 (a) No governing board, governing board member, school-level administrator
9 or employee, or district-level administrator or employee may permit or
10 propose to permit a commercial entity to appropriate space in a school or
11 school district without the approval of the governing board.

12 (b) A governing board, governing board member, school-level administrator
13 or employee, or district-level administrator or employee proposing to
14 permit a commercial entity to appropriate space in a school or school
15 district shall provide to the governing board a memorandum that provides
16 written documentation and evidence that the proposed appropriation:

17 (1) does not unduly promote commercial activity or products,

18 (2) does not make unreasonable demands on students and teachers, and

19 (3) does not interrupt the regular school program.

20 (c) To permit the proposed appropriation of space, the governing board shall
21 present all findings and formally approve the proposed appropriation of
22 space at a public meeting of the governing board. The governing board
23 may only approve the proposal upon consideration of all documentation
24 and evidence in the memorandum in subsection (b).

25
26 **§ 203. Appropriation of Space. (Option C - Process)**

27 (a) No governing board, governing board member, school-level administrator
28 or employee, or district-level administrator or employee may permit or
29 propose to permit a commercial entity to appropriate space in a school or
30 school district without the approval of the governing board.

31 (b) A district-level commercial activity monitoring committee shall review all
32 proposals to permit commercial entities to appropriate space in a school or
33 school district.

34 (c) After the district-level commercial activity monitoring committee approves a
35 proposal to permit a commercial entity to appropriate space in a school or
36 school district, the committee shall provide the proposal to the governing board.

37 (d) To permit the proposed appropriation of space, the governing board shall
38 present all findings and formally approve the proposal at a public meeting
39 of the governing board.

40

Optional Process Addition

(e) The district-level commercial activity monitoring committee may
not recommend and the governing board may not approve a
proposal to permit a commercial entity to appropriate space in a
school without making specific findings that the appropriation:

(1) does not unduly promote commercial activity or products,

(2) does not make unreasonable demands on students and teachers,
and

(3) does not interrupt the regular school program.

Article 125 §§ 301 – 303 Commercially Sponsored Educational Materials

A BILL FOR AN ACT

AN ACT CONCERNING RESTRICTIONS ON COMMERCIALY SPONSORED
EDUCATIONAL MATERIALS IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*
2

3 **Article 125**

4 **Restrictions on Commercially Sponsored Educational Materials in Schools**

5 **§ 301. Legislative Declaration and Findings.**

6 The General Assembly hereby finds, determines, and declares that:

- 7 (a) The State recognizes the need to minimize potential harm to children from
8 commercial activity in public elementary and secondary schools.
9 (b) It is the intent and purpose of the Legislature in enacting this part to
10 provide for the adoption and selection of quality educational materials for
11 use in the elementary and secondary schools and to restrict children’s
12 exposure to commercial activity in schools.
13 (c) Research demonstrates that commercially sponsored educational materials
14 may waste valuable learning time, provide biased information to students,
15 unduly promote commercial activities or products, and compromise the
16 integrity of our state’s public schools.
17

18 **§ 302. Definitions.**

- 19 (a) “Commercial activity” includes direct and indirect advertising, marketing,
20 solicitation, and sponsorship by a commercial entity.
21 (b) “Commercial entity” includes any business, corporation, for-profit
22 organization, or other organization or individual whose primary purpose is
23 selling goods or services.
24 (c) “District-level commercial activity monitoring committee” means a
25 committee selected by the governing board that shall include, but is not
26 limited to, the following:
27 (1) a district-level administrator, such as a superintendent or assistant
28 superintendent;
29 (2) a school-level administrator, such as a principal or assistant principal,
30 at a school affected by the proposed commercial activity;
31 (3) a teacher at a school affected by the proposed commercial activity; and
32 (4) a parent of a student at a school affected by the proposed commercial
33 activity.
34 (d) “Governing board” means the board of education or other body of any
35 city, county, or other district that has the duty to provide for the education
36 of the children in its jurisdiction.
37 (e) “Commercially sponsored” means supported financially or through the
38 provision of products or services by a commercial entity.

- 1 (f) “Commercial message” means promotion of a product or service.
 2 (g) “Identified educational need” means learning objective established by the
 3 curriculum and courses of study provided by a school.
 4 (h) “Educational materials” means all materials that are designed for use by
 5 pupils and their teachers as a learning resource and help pupils to acquire
 6 facts, skills, or opinions or to develop cognitive processes. Educational
 7 materials may be printed or non-printed, and may include textbooks,
 8 technology-based materials, other educational materials, and tests.
 9

10 **§ 303. Commercially Sponsored Educational Materials. (Option A- Mandate)**

- 11 (a) No governing board, governing board member, school-level administrator
 12 or employee, or district-level administrator or employee may adopt or use
 13 educational materials that contain a commercial brand name, product, or
 14 corporate or company logo.
 15

16 **§ 303. Commercially Sponsored Educational Materials. (Option B- Balancing
 17 Test and Regulatory Requirements)**

- 18 (a) No governing board, governing board member, school-level administrator
 19 or employee, or district-level administrator or employee may adopt or use
 20 educational materials that contain a commercial brand name, product, or
 21 corporate or company logo without the approval of the governing board.
 22 (b) A school-level or district-level administrator or employee proposing to
 23 use commercially sponsored educational materials shall provide to the
 24 governing board a memorandum that provides written documentation and
 25 evidence that the proposed sponsorship:
 26 (1) meets an identified educational need,
 27 (2) does not unduly promote commercial activities or products,
 28 (3) does not make unreasonable demands on students and teachers, and
 29 (4) does not interrupt the regular school program.
 30 (c) Any commercial message shall be minimized to the extent practicable.
 31 (d) To adopt the proposed educational materials, the governing board shall
 32 present all findings and formally approve the proposed sponsorship at a
 33 public meeting of the governing board. The governing board may only
 34 approve the proposal upon consideration of all documentation and
 35 evidence in the memorandum in subsection (b).
 36

37 **§ 303. Commercially Sponsored Educational Materials. (Option C- Process)**

- 38 (a) No governing board, governing board member, school-level administrator
 39 or employee, or district-level administrator or employee may adopt or use
 40 commercially sponsored educational materials without the approval of the
 41 governing board.
 42 (b) A district-level commercial activity monitoring committee shall review all
 43 proposed commercially sponsored educational materials.
 44 (c) After the district-level commercial activity monitoring committee
 45 approves any proposed commercially sponsored educational materials, the
 46 committee shall provide the proposed materials to the governing board.
 47 (d) To adopt the proposed commercially sponsored educational materials, the
 48 governing board shall present all findings and formally approve the
 49 proposed exclusive agreement at a public meeting of the governing board.
 50

1

Optional Process Addition

(e) A district-level commercial activity monitoring committee may not recommend and a governing board may not approve a proposal to adopt commercially sponsored educational materials without making specific findings that the materials:

- (1) meet an identified educational need,
- (2) do not unduly promote commercial activity or products,
- (3) do not make unreasonable demands on students and teachers, and
- (4) do not interrupt the regular school program.

Article 126 §§ 401 – 403 Commercially Sponsored Programs and Activities

A BILL FOR AN ACT

 AN ACT CONCERNING RESTRICTIONS ON COMMERCIALY SPONSORED
 PROGRAMS AND ACTIVITIES IN PUBLIC SCHOOLS

1 *The General Assembly of the State of ABC does enact, as follows:*
 2

3 **Article 126**

4 **Restrictions on the Commercial Sponsorship of Programs and Activities in**
 5 **Schools**

6 **§ 401. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children from
 9 commercial activity in public elementary and secondary schools.
 10 (b) It is the intent and purpose of the Legislature in enacting this part to
 11 restrict children's exposure to commercial activity in schools.
 12 (c) Research demonstrates that commercial sponsorship of programs and
 13 activities in schools may distort educational content, introduce bias, leave
 14 the school susceptible to the sponsor's reputation and activities, and
 15 expose children to commercial activity during school hours.
 16

17 **§ 402. Definitions.**

- 18 (a) "Commercial activity" includes direct and indirect advertising, marketing,
 19 solicitation, and sponsorship by a commercial entity.
 20 (b) "Commercial entity" includes any business, corporation, for-profit
 21 organization, or other organization or individual whose primary purpose is
 22 selling goods or services.
 23 (c) "District-level commercial activity monitoring committee" means a
 24 committee established by the governing board that shall include the
 25 following:
 26 (1) a district-level administrator, such as a superintendent or assistant
 27 superintendent;
 28 (2) a school-level administrator, such as a principal or assistant principal,
 29 at a school affected by the proposed commercial activity;
 30 (3) a teacher at a school affected by the proposed commercial activity; and
 31 (4) a parent of a student at a school affected by the proposed commercial
 32 activity.
 33 (d) "Governing board" means the board of education or other body of any
 34 city, county, or other district that has the duty to provide for the education
 35 of the children in its jurisdiction.
 36 (e) "Commercial Sponsorship" means support of an event, activity, person,
 37 or organization financially or through the provision of products or
 38 services.
 39

1 **§ 403. Commercial Sponsorship of Programs and Activities. (Option A -**
 2 **Mandate)**

3 No governing board, governing board member, school-level administrator or
 4 employee, or district-level administrator or employee may permit a commercial
 5 entity to sponsor a program or activity in a school or school district or at a school-
 6 sponsored activity.

7
 8 **§ 403. Commercial Sponsorship of Programs and Activities. (Option B –**
 9 **Balancing Test and Regulatory Requirements)**

10 (a) No governing board, governing board member, school-level administrator
 11 or employee, or district-level administrator or employee may permit a
 12 commercial entity to sponsor a program or activity in a school or school
 13 district without the approval of the governing board.

14 (b) A school-level or district-level administrator or employee proposing to
 15 permit a commercial entity to sponsor a program or activity shall provide
 16 to the governing board a memorandum that provides written
 17 documentation and evidence that the proposed sponsorship:

18 (1) does not unduly promote commercial activity or products,

19 (2) does not make unreasonable demands on students and teachers, and

20 (3) does not interrupt the regular school program.

21 (c) To permit the proposed sponsorship, the governing board shall present all
 22 findings and formally approve the proposed sponsorship at a public
 23 meeting of the governing board. The governing board may only approve
 24 the proposal upon consideration of all documentation and evidence in the
 25 memorandum in subsection (b).

26
 27 **§ 403. Commercial Sponsorship of Programs and Activities. (Option C -**
 28 **Process)**

29 (a) No governing board, governing board member, school-level administrator
 30 or employee, or district-level administrator or employee may permit a
 31 commercial entity to sponsor a program or activity in a school or school
 32 district without the approval of the governing board.

33 (b) A district-level commercial activity monitoring committee shall review all
 34 proposals to permit commercial entities to sponsor programs or activities
 35 in schools.

36 (c) After the district-level commercial activity monitoring committee
 37 approves a proposal to permit a commercial entity to sponsor a program or
 38 activity in a school or school district, the committee shall provide the
 39 proposal to the governing board.

40 (d) To permit the proposed sponsorship, the governing board shall present all
 41 findings and formally approve the proposed sponsorship at a public
 42 meeting of the governing board.

43
Optional Process Addition

(e) The district-level commercial activity monitoring committee may not recommend and the governing board may not approve a proposal to permit a commercial entity to sponsor a program or activity in a school without making specific findings that the sponsorship:

- (1) does not unduly promote commercial activity or products,
- (2) does not make unreasonable demands on students and teachers,
and
- (3) does not interrupt the regular school program.

Article 127 §§ 501 – 503 Electronic Marketing

A BILL FOR AN ACT

AN ACT CONCERNING RESTRICTIONS ON ELECTRONIC MARKETING
IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*
2

3 **Article 127**

4 **Restrictions on Electronic Marketing in Schools**
5

6 **§ 501. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children from
9 commercial activity in public elementary and secondary schools.
10 (b) It is the intent and purpose of the Legislature in enacting this part to
11 restrict children’s exposure to commercial activity in schools.
12 (c) Research demonstrates that electronic marketing may waste valuable
13 learning time, provide biased information to students, unduly promote
14 commercial activities or products, and compromise the integrity of our
15 state’s public schools.
16

17 **§ 502. Definitions.**

- 18 (a) “Commercial activity” includes direct and indirect advertising, marketing,
19 solicitation, and sponsorship by a commercial entity.
20 (b) “Commercial entity” includes any business, corporation, for-profit
21 organization, or other organization or individual whose primary purpose is
22 selling goods or services.
23 (c) “District-level commercial activity monitoring committee” means a
24 committee established by the governing board that shall include the
25 following:
26 (1) a district-level administrator, such as a superintendent or assistant
27 superintendent;
28 (2) a school-level administrator, such as a principal or assistant principal,
29 at a school affected by the proposed commercial activity;
30 (3) a teacher at a school affected by the proposed commercial activity; and
31 (4) a parent of a student at a school affected by the proposed commercial
32 activity.
33 (d) “Governing board” means the board of education or other body of any
34 city, county, or other district that has the duty to provide for the education
35 of the children in its jurisdiction.
36 (e) “Electronic marketing” means the provision of electronic programming or
37 equipment in return for the right to advertise to schools or to students,
38 families, or community members in the school or during their contacts
39 with the school or district.
40

1 **§ 503. Electronic Marketing. (Option A - Mandate)**

2 No governing board, governing board member, school-level administrator or
3 employee, or district-level administrator or employee may permit electronic
4 marketing in a school or school district or at a school-sponsored activity.
5

6 **§ 503. Electronic Marketing. (Option B – Balancing Test and Regulatory
7 Requirements)**

8 (a) No governing board, governing board member, school-level administrator
9 or employee, or district-level administrator or employee may permit or
10 propose to permit electronic marketing in a school or school district
11 without the approval of the governing board.

12 (b) A governing board, governing board member, school-level administrator
13 or employee, or district-level administrator or employee proposing to
14 permit electronic marketing in a school or school district shall provide to
15 the governing board a memorandum that provides written documentation
16 and evidence that the proposed electronic marketing:

17 (1) does not unduly promote commercial activity or products,

18 (2) does not make unreasonable demands on students and teachers, and

19 (3) does not interrupt the regular school program.

20 (c) To permit the proposed electronic marketing, the governing board shall
21 present all findings and formally approve the proposed electronic
22 marketing at a public meeting of the governing board. The governing
23 board may only approve the proposal to permit electronic marketing upon
24 consideration of all documentation and evidence in the memorandum in
25 subsection (b).
26

27 **§ 503. Electronic Marketing. (Option C - Process)**

28 (a) No governing board, governing board member, school-level administrator
29 or employee, or district-level administrator or employee may permit or
30 propose to permit electronic marketing in a school or school district
31 without the approval of the governing board.

32 (b) A district-level commercial activity monitoring committee shall review all
33 proposals to permit electronic marketing in schools or school districts.

34 (c) After the district-level commercial activity monitoring committee
35 approves a proposal to permit electronic marketing, the committee shall
36 provide the proposal to the governing board.

37 (d) To permit the proposed electronic marketing, the governing board shall
38 present all findings and formally approve the proposal at a public meeting
39 of the governing board.
40

Optional Process Addition

(e) The district-level commercial activity monitoring committee may
not recommend and the governing board may not approve a
proposal to permit electronic marketing in a school or school district
without making specific findings that the electronic marketing:

(1) does not unduly promote commercial activity or products,

(2) does not make unreasonable demands on students and teachers,
and

(3) does not interrupt the regular school program.

Article 128 §§ 601 – 603 Commercially Sponsored Incentive Programs

A BILL FOR AN ACT

 AN ACT CONCERNING RESTRICTIONS ON COMMERCIALLY SPONSORED
 INCENTIVE PROGRAMS IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*
 2

3 **Article 128**

4 **Restrictions on Commercially Sponsored Incentive Programs in Schools**
 5

6 **§ 601. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children
 9 when commercial entities engage in commercial activity in public
 10 elementary and secondary schools.
 11 (b) It is the intent and purpose of the Legislature in enacting this part to ensure
 12 the integrity of our state's public schools is not compromised by the need
 13 to raise funds to support school programs and activities.
 14 (c) Research demonstrates that commercially sponsored incentive programs
 15 may waste valuable learning time, unduly promote commercial activities
 16 or products, and compromise the integrity of our state's public schools.
 17

18 **§ 602. Definitions.**

- 19 (a) "Commercial activity" includes direct and indirect advertising, marketing,
 20 solicitation, and sponsorship by a commercial entity.
 21 (b) "Commercial entity" includes any business, corporation, for-profit
 22 organization, or other organization or individual whose primary purpose is
 23 selling goods or services.
 24 (c) "District-level commercial activity monitoring committee" means a
 25 committee selected by the governing board that shall include, but is not
 26 limited to, the following:
 27 (1) a district-level administrator, such as a superintendent or assistant
 28 superintendent;
 29 (2) a school-level administrator, such as a principal or assistant principal,
 30 at a school affected by the proposed commercial activity;
 31 (3) a teacher at a school affected by the proposed commercial activity; and
 32 (4) a parent of a student at a school affected by the proposed commercial
 33 activity.
 34 (d) "Governing board" means the board of education or other body of any
 35 city, county, or other district that has the duty to provide for the education
 36 of the children in its jurisdiction.
 37 (e) "Commercially sponsored" means supported financially or through the
 38 provision of products or services by a commercial entity.
 39 (f) "Commercial message" means promotion of a product or service.

- 1 (g) “Incentive program” means a commercially sponsored program that
2 provides money, goods, or services to a student, school, or school district
3 when its students, parents, or staff engage in a specified activity.
4

5 **§ 603. Commercially Sponsored Incentive Programs. (Option A- Mandate)**

- 6 (a) No governing board, governing board member, school-level administrator
7 or employee, or district-level administrator or employee may implement a
8 commercially sponsored incentive program.
9

10 **§ 603. Commercially Sponsored Incentive Programs. (Option B- Balancing**
11 **Test and Regulatory Requirements)**

- 12 (a) No governing board, governing board member, school-level administrator
13 or employee, or district-level administrator or employee may implement a
14 commercially sponsored incentive program without the approval of the
15 governing board.

- 16 (b) A school-level or district-level administrator or employee proposing to
17 implement a commercially sponsored incentive program shall provide to
18 the governing board a memorandum that provides written documentation
19 and evidence that the proposed program:

- 20 (1) does not unduly promote commercial activities or products,
21 (2) does not make unreasonable demands on students and teachers, and
22 (3) does not interrupt the regular school program.

- 23 (c) To implement a proposed commercially sponsored incentive program, the
24 governing board shall present all findings and formally approve the
25 proposed program at a public meeting of the governing board. The
26 governing board may only approve the proposal upon consideration of all
27 documentation and evidence in the memorandum in subsection (b).
28

29 **§ 603. Commercially Sponsored Incentive Programs. (Option C- Process)**

- 30 (a) No governing board, governing board member, school-level administrator
31 or employee, or district-level administrator or employee may implement a
32 commercially sponsored incentive program without the approval of the
33 governing board.

- 34 (b) A district-level commercial activity monitoring committee shall review all
35 proposed commercially sponsored incentive programs.

- 36 (c) After the district-level commercial activity monitoring committee approves
37 any proposed commercially sponsored incentive programs, the committee
38 shall provide the proposed incentive program to the governing board.

- 39 (d) To adopt the proposed commercially sponsored incentive program, the
40 governing board shall present all findings and formally approve the
41 proposed incentive program at a public meeting of the governing board.

1

Optional Process Addition

(e) The district-level commercial activity monitoring committee may not recommend and the governing board may not approve a proposal to permit a commercially sponsored incentive program without making a specific finding that the program:

- (1) does not unduly promote commercial activity or products,
- (2) does not make unreasonable demands on students and teachers,
and
- (3) does not interrupt the regular school program.

Article 129 §§ 701 – 703 Commercially Sponsored Fundraising Programs

A BILL FOR AN ACT

AN ACT CONCERNING RESTRICTIONS ON COMMERCIALLY SPONSORED FUNDRAISING PROGRAMS IN PUBLIC SCHOOLS.

1 *The General Assembly of the State of ABC does enact, as follows:*
2

3 **Article 129**

4 **Restrictions on Commercially Sponsored Fundraising Programs in Schools**
5

6 **§ 701. Legislative Declaration and Findings.**

7 The General Assembly hereby finds, determines, and declares that:

- 8 (a) The State recognizes the need to minimize potential harm to children
9 when commercial entities engage in commercial activity in public
10 elementary and secondary schools.
11 (b) It is the intent and purpose of the Legislature in enacting this part to ensure
12 the integrity of our state’s public schools is not compromised by the need
13 to raise funds to support school programs and activities.
14 (c) Research demonstrates that commercially sponsored fundraising programs
15 may waste valuable learning time, unduly promote commercial activities
16 or products, and compromise the integrity of our state’s public schools.
17

18 **§ 702. Definitions.**

- 19 (a) “Commercial activity” includes direct and indirect advertising, marketing,
20 solicitation, and sponsorship by a commercial entity.
21 (b) “Commercial entity” includes any business, corporation, for-profit
22 organization, or other organization or individual whose primary purpose is
23 selling goods or services.
24 (c) “District-level commercial activity monitoring committee” means a
25 committee selected by the governing board that shall include, but is not
26 limited to, the following:
27 (1) a district-level administrator, such as a superintendent or assistant
28 superintendent;
29 (2) a school-level administrator, such as a principal or assistant principal,
30 at a school affected by the proposed commercial activity;
31 (3) a teacher at a school affected by the proposed commercial activity; and
32 (4) a parent of a student at a school affected by the proposed commercial
33 activity.
34 (d) “Governing board” means the board of education or other body of any
35 city, county, or other district that has the duty to provide for the education
36 of the children in its jurisdiction.
37 (e) “Commercially sponsored” means supported financially or through the
38 provision of products or services by a commercial entity.

- 1 (f) "Commercial message" means promotion of a product or service.
 2 (g) "Fundraising program" means a commercially sponsored program to raise
 3 funds for school programs and activities, including but not limited to door-
 4 to-door sales, affinity marketing programs, and similar ventures.
 5

6 **§ 703. Commercially Sponsored Fundraising Programs. (Option A-
 7 Mandate)**

- 8 (a) No governing board, governing board member, school-level administrator
 9 or employee, or district-level administrator or employee may implement a
 10 commercially sponsored fundraising program.
 11

12 **§ 703. Commercially Sponsored Fundraising Programs. (Option B-
 13 Balancing Test and Regulatory Requirements)**

- 14 (a) No governing board, governing board member, school-level administrator
 15 or employee, or district-level administrator or employee may implement a
 16 commercially sponsored fundraising program without the approval of the
 17 governing board.
 18 (b) A school-level or district-level administrator or employee proposing to
 19 implement a commercially sponsored fundraising program shall provide to
 20 the governing board a memorandum that provides written documentation
 21 and evidence that the proposed program:
 22 (1) does not unduly promote commercial activities or products,
 23 (2) does not make unreasonable demands on students and teachers, and
 24 (3) does not interrupt the regular school program.
 25 (c) To implement a proposed commercially sponsored fundraising program,
 26 the governing board shall present all findings and formally approve the
 27 proposed program at a public meeting of the governing board. The
 28 governing board may only approve the proposal upon consideration of all
 29 documentation and evidence in the memorandum in subsection (b).
 30
 31

32 **§ 703. Commercially Sponsored Fundraising Programs. (Option C- Process)**

- 33 (a) No governing board, governing board member, school-level administrator
 34 or employee, or district-level administrator or employee may implement a
 35 commercially sponsored fundraising program without the approval of the
 36 governing board.
 37 (b) A district-level commercial activity monitoring committee shall review all
 38 proposed commercially sponsored fundraising programs.
 39 (c) After the district-level commercial activity monitoring committee
 40 approves any proposed commercially sponsored fundraising programs, the
 41 committee shall provide the proposed fundraising program to the
 42 governing board.
 43 (d) To adopt the proposed commercially sponsored fundraising program, the
 44 governing board shall present all findings and formally approve the
 45 proposed fundraising program at a public meeting of the governing board.

1

Optional Process Addition

(e) The district-level commercial activity monitoring committee may not recommend and the governing board may not approve a proposal to permit a commercially sponsored fundraising program without making specific findings that the program:

- (1) does not unduly promote commercial activity or products,
- (2) does not make unreasonable demands on students and teachers,
and
- (3) does not interrupt the regular school program.

Appendix A

Summary of Selected Legislation Pertaining to Commercialism in Public Schools

This appendix provides a list of selected state statutes and selected legislation introduced at the state and federal levels pertaining to commercialism in public schools. It should be noted that this list is not intended to be comprehensive. Rather, the list is provided to give the reader specific examples of legislation directed at the various categories of commercialism discussed in the brief.

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Statutes Enacted at the State Level

Statutes Pertaining to Commercialism in General

- **North Carolina**: regulates the “use of school day” and requires local school boards to assure that students are not regularly required to observe, listen to, or read commercial advertising (16 NC ADC 6D.0105)

.0105 Use of School Day

(a) Local boards of education are obligated both to assure that materials presented to students during the school day are related to the curriculum, and to preserve their discretion and the discretion of administrators and teachers to determine, within the limits of the prescribed curriculum, the materials to be presented to students during the school day and the times during which materials selected will be presented. Therefore, no local board of education may enter into a contract or agreement with any person, corporation, association or organization which:

- (1) limits or impairs its authority and responsibility, or the authority and responsibility of administrators and teachers, to determine the materials to be presented to students during the school day; or
- (2) limits or impairs its authority and responsibility, or the authority and responsibility of administrators and teachers, to determine the times during the school day when materials will be presented to students.

(b) Local boards of education are obligated to assure that students, as a consequence of the compulsory attendance laws, are not made a captive audience for required viewing, listening to, or reading commercial advertising. Therefore, no local board of education may enter into any contract or agreement with any person, corporation, association or organization pursuant to which students are regularly required to observe, listen to, or read commercial advertising. This Rule does not prohibit local boards of education, teachers or administrators from requiring students from time to time to observe, listen to, or read educational materials that contain commercial advertising. This Rule also shall not prohibit the regular study of advertising as an academic subject.

(c) This Rule shall apply both retroactively and prospectively. Any contract or agreement previously made in contravention of this Rule is declared void and unenforceable.

- **New York**: generally prohibits commercial promotional activities on school premises except where commercial entity sponsors a school

activity which does not involve promoting the sponsor's product or service (8 NY ADC 23.2)

Section 23.2. Prohibition of commercial promotional activity in the public schools

Boards of education or their agents shall not enter into written or oral contracts, agreements or arrangements for which the consideration, in whole or in part, consists of a promise to permit commercial promotional activity on school premises, provided that nothing in this Part shall be construed as prohibiting commercial sponsorship of school activities.

- **Rhode Island**: prohibits the distribution to students of commercial materials unless approved by the local school committee (RI ST § 16-38-6).

§ 16-38-6. Restrictions on commercial activity and fundraising in public schools

(a) No public school official or public school employee shall, for any purpose, solicit or exact from any pupil in any public school any contribution or gift of money or any article of value, or any pledge to contribute any money or article of value. No public school teacher shall accept payment for tutoring directly from the parents of a student under his or her instruction. If a teacher is to be assigned and compensated as a tutor for a student under his or her instruction, the assignment and compensation must be through the school department pursuant to policies and procedures adopted by the school committee. Nothing in this section shall be interpreted to prohibit a teacher from tutoring a student who is not concurrently under his or her instruction in the public school and receiving compensation for the tutoring from the parents of the student.

(b) No commercial goods or services shall be sold to students in the public schools or on public school property, nor shall any commercial materials (flyers, literature, advertisements, commercial materials, or solicitations) be sent home with students from the public school, except as authorized pursuant to policies and procedures adopted by the local school committee, which shall, at a minimum, address the following:

- (1) The conduct and financial accountability of public school employees and public school officials engaged in commercial activities for the benefit of public schools;
- (2) The use of schoolchildren to deliver commercial materials to parents.

(c) Any approved fundraising activity shall be conducted on a voluntary basis and in accordance with rules and regulations promulgated by the school committee, which shall at a minimum, address the following:

- (1) The conduct and financial accountability of public school employees and public school officials engaged in fundraising activities for the benefit of public schools;
- (2) The specific circumstances, if any, for door to door solicitations and door to door sales by public school students for fundraising;
- (3) The use of schoolchildren to deliver fundraising materials to parents.

(d) The commissioner of elementary and secondary education shall provide technical assistance to assist the school committees of the several towns and cities in the formulation of the local policies and procedures mandated by this section.

- **Virginia:** requires each school board to develop a policy on commercial, promotional, and corporate partnerships involving public schools (VA ST § 22.1-89.4)

§ 22.1-89.4. Certain policy required; partnerships and sponsorships

Each school board shall develop and implement, and may, from time to time, revise, a policy relating to commercial, promotional, and corporate partnerships and sponsorships involving the public schools within the division.

Statutes Pertaining to Exclusive Agreements

Exclusive agreements between schools and corporations give corporations the exclusive right to sell and promote their goods or services in the school. In return, the district or school receives a percentage of the resulting profits or other benefit.

- **California:** prohibits teachers, dentists, or optometrists from soliciting students on school grounds (CA EDUC § 51520)

§ 51520. School premises; prohibited solicitations

(a) During school hours, and within one hour before the time of opening and within one hour after the time of closing of school, pupils of the public school shall not be solicited on school premises by teachers or others to subscribe or contribute to the funds of, to become members of, or to work for, any organization not directly under the control of the school authorities, unless the organization is a nonpartisan, charitable organization organized for charitable purposes by an act of Congress or under the laws of the state, the purpose of the solicitation is nonpartisan and charitable, and the solicitation has been approved by the county board of education or by the governing board of the school district in which the school is located.

(b) A licensed dentist who provides voluntary dental health screening programs for pupils on school premises, shall not solicit a pupil, or the pupil's parent or guardian, or encourage, or advise treatment or consultation for the pupil by the licensed dentist, or any entity in which the licensed dentist has a financial interest, for any condition discovered in the course of the dental health screening. It is the intent of the Legislature that no licensed dentist use voluntary dental health screening programs for the generation of referrals or for financial benefit. The Legislature does not intend to deny or limit freedom of choice in the selection of an appropriate dental provider for treatment or consultation.

(c) A licensed optometrist who provides voluntary vision testing programs for pupils on school premises, shall not solicit a pupil, or the pupil's parent or guardian, or encourage, or advise treatment or consultation for the pupil by the licensed optometrist, or any entity in which the licensed optometrist has a financial interest, for any condition discovered in the course of the vision testing. It is the intent of the Legislature that no licensed optometrist use voluntary vision testing programs for the generation of referrals or for financial benefit. The Legislature does not intend to deny freedom of choice in the selection of an appropriate vision care provider for treatment or consultation.

(d) Nothing in this section shall be construed as prohibiting the solicitation of pupils of the public school on school premises by pupils of that school for any otherwise lawful purpose.

- **Rhode Island**: generally prohibits the sale of commercial goods or services in schools & prohibits school officials from soliciting any pupil in any public school (RI ST § 16-38-6)

§ 16-38-6. Restrictions on commercial activity and fundraising in public schools

(a) No public school official or public school employee shall, for any purpose, solicit or exact from any pupil in any public school any contribution or gift of money or any article of value, or any pledge to contribute any money or article of value. No public school teacher shall accept payment for tutoring directly from the parents of a student under his or her instruction. If a teacher is to be assigned and compensated as a tutor for a student under his or her instruction, the assignment and compensation must be through the school department pursuant to policies and procedures adopted by the school committee. Nothing in this section shall be interpreted to prohibit a teacher from tutoring a student who is not concurrently under his or her instruction in the public school and receiving compensation for the tutoring from the parents of the student.

(b) No commercial goods or services shall be sold to students in the public schools or on public school property, nor shall any commercial materials (flyers, literature, advertisements, commercial materials, or solicitations) be sent home with students from the public school, except as authorized pursuant to policies and procedures adopted by the local school committee, which shall, at a minimum, address the following:

- (1) The conduct and financial accountability of public school employees and public school officials engaged in commercial activities for the benefit of public schools;
- (2) The use of schoolchildren to deliver commercial materials to parents.

(c) Any approved fundraising activity shall be conducted on a voluntary basis and in accordance with rules and regulations promulgated by the school committee, which shall at a minimum, address the following:

- (1) The conduct and financial accountability of public school employees and public school officials engaged in fundraising activities for the benefit of public schools;
- (2) The specific circumstances, if any, for door to door solicitations and door to door sales by public school students for fundraising;
- (3) The use of schoolchildren to deliver fundraising materials to parents.

(d) The commissioner of elementary and secondary education shall provide technical assistance to assist the school committees of the several towns and cities in the formulation of the local policies and procedures mandated by this section.

- **Multiple states**—California (CA EDUC § 35182.5), CO, HI, IL, KY, LA, MS—prohibit/limit sale of competitive foods

§ 35182.5. Legislative findings and declarations; limitations on contracts; public hearing requirements; sale of advertising products

(c) The governing board of a school district may not do any of the following:

(1) Enter into or renew a contract or permit a school within the district to enter into or renew a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal;

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. The governing board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that requires the dissemination of advertising to pupils, unless the governing board of the school district does all of the following:

(A) Enters into the contract at a noticed public hearing of the governing board;

(B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils;

(C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils;

(D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians;

(E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(d) A governing board may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district, by either of the following:

(1) Review of the contract at a public hearing by a Child Nutrition and Physical Activity Advisory Committee established pursuant to Section 49433 that has contract review authority for the sale of food and beverages;

(2) (A) An annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(B) The public hearing shall include, but not be limited to, a discussion of all of the following:

(i) The nutritional value of food and beverages sold within the district;

(ii) The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce;

(iii) The amount of fat, sugar, and additives in the food and beverages discussed;

(iv) Barriers to pupil participation in school breakfast and lunch programs.

(C) A school district that holds an annual public hearing consistent with this paragraph is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public any contract entered into pursuant to paragraph (1) of subdivision.

(c) and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.

(f) The governing board of a school district may sell advertising, products, or services on a nonexclusive basis.

(g) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program.

(h) Contracts entered into prior to January 1, 2004, may remain in effect, but may not be renewed if they are in conflict with this section.

Statutes Pertaining to Appropriation of Space

In appropriation of space agreements, schools receive money in exchange for corporations placing their names, logos, or advertising messages in school space, such as on scoreboards, rooftops, bulletin boards, walls, textbooks, or school buses.

- **Arizona:** permits advertising on school buses with certain restrictions (AZ ST § 15-342)

§ 15-342. Discretionary powers

The governing board may:

27. Sell advertising space on the exterior of school buses as follows:

- (a) Advertisements shall be age appropriate and not contain promotion of any substance that is illegal for minors such as alcohol, tobacco and drugs or gambling. Advertisements shall comply with the state sex education policy of abstinence.
- (b) Advertising approved by the governing board may appear only on the sides of the bus in the following areas:

- (i) The signs shall be below the seat level rub rail and not extend above the bottom of the side windows;
- (ii) The signs shall be at least three inches from any required lettering, lamp, wheel well or reflector behind the service door or stop signal arm;
- (iii) The signs shall not extend from the body of the bus so as to allow a handhold or present a danger to pedestrians;
- (iv) The signs shall not interfere with the operation of any door or window;
- (v) The signs shall not be placed on any emergency doors.

(c) Establish a school bus advertisement fund that is comprised of revenues from the sale of advertising space on school buses. The monies in a school bus advertisement fund are not subject to reversion and shall be used for the following purposes:

- (i) To comply with the energy conservation measures prescribed in § 15-349 in school districts that are in area A as defined in § 49-541, and any remaining monies shall be used to purchase alternative fuel support vehicles and any other pupil related costs as determined by the governing board;
- (ii) For any pupil related costs as determined by the governing board in school districts not subject to the provisions of item (i) of this subdivision.

- **California:** prohibits advertising of tobacco products on any outdoor billboard within 1,000 feet of any public (or private) school (Cal. Bus. & Prof. Code § 22961)

§ 22961

(a) No person, firm, corporation, partnership, or other organization shall advertise or cause to be advertised any tobacco products on any outdoor billboard located within 1,000 feet of any public or private elementary school, junior high school, or high school, or public playground.

(b) This section sets forth minimum state restrictions on the advertisement of any tobacco products on outdoor billboards near schools and public playgrounds and does not preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising. A local standard that imposes a more restrictive or complete ban on billboard advertising or on tobacco-related billboard advertising shall control in the event of any inconsistency between this section and a local standard.

(c) This section shall not be construed to prohibit the display of a message or advertisement opposing the use of tobacco products. However, this subdivision shall not be construed to permit an advertisement promoting the use of tobacco products by including a message opposing the use of tobacco products within that advertisement.

- **Colorado:** student editors determine advertising content of school-sponsored publications (CO ST § 22-1-120)

§ 22-1-120. Rights of free expression for public school students

(1) The general assembly declares that students of the public schools shall have the right to exercise freedom of speech and of the press, and no expression contained in a student publication, whether or not such publication is school-sponsored, shall be subject to prior restraint except for the types of expression described in subsection (3) of this section. This section shall not prevent the advisor from encouraging expression which is consistent with high standards of English and journalism.

(2) If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.

(3) Nothing in this section shall be interpreted to authorize the publication or distribution in any media by students of the following:

- (a) Expression that is obscene;
- (b) Expression that is libelous, slanderous, or defamatory under state law;

- (c) Expression that is false as to any person who is not a public figure or involved in a matter of public concern; or
- (d) Expression that creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school or that violates the rights of others to privacy or that threatens violence to property or persons.

(4) The board of education of each school district shall adopt a written publications code, which shall be consistent with the terms of this section, and shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district's jurisdiction. The publications code shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of each school year.

(5)

(a) Student editors of school-sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications advisor of school-sponsored student publications within each school to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism.

(b) For the purposes of this section, "publications advisor" means a person whose duties include the supervision of school-sponsored student publications.

(6) If participation in a school-sponsored publication is part of a school class or activity for which grades or school credits are given, the provisions of this section shall not be interpreted to interfere with the authority of the publications advisor for such school-sponsored publication to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experience that the publication is intended to provide.

(7) No expression made by students in the exercise of freedom of speech or freedom of the press shall be deemed to be an expression of school policy, and no school district or employee, or parent, or legal guardian, or official of such school district shall be held liable in any civil or criminal action for any expression made or published by students.

(8) Nothing in this section shall be construed to limit the promulgation or enforcement of lawful school regulations designed to control gangs. For the purposes of this section, the definition of "gang" shall be the definition found in section 19-1-103 (52), C.R.S.

- **Illinois:** prohibits certain private businesses or vocational schools from advertising for student enrollees unless approved by the superintendent (IL ST CH 105 § 425/4)

105 Illinois Compiled Statutes § 425/Sec. 4. Prohibition against advertising school or soliciting students without Superintendent authorization

Prior to the establishment of a private business or vocational school or the approval of an existing out-of-state school and the issuance of a certificate of approval therefor, no person shall advertise such a school or its courses of instruction or solicit prospective students unless the person has applied for and received from the Superintendent authorization to conduct such activity.

- **Kansas:** permits student editors to determine advertising content in student publications (KS ST § 72-1506)

72-1506. Liberty of press protected; regulation authorized; review of material not restraint on publication; material not protected; responsibilities of editors and advisers; liability, immunity and limitations

(a) The liberty of the press in student publications shall be protected. School employees may regulate the number, length, frequency, distribution and format of student publications. Material shall not be suppressed solely because it involves political or controversial subject matter.

(b) Review of material prepared for student publications and encouragement of the expression of such material in a manner that is consistent with high standards of English and journalism shall not be deemed to be or construed as a restraint on publication of the material or an abridgment of the right to freedom of expression in student publications.

(c) Publication or other expression that is libelous, slanderous or obscene or matter that commands, requests, induces, encourages, commends or promotes conduct that is defined by law as a crime or conduct that constitutes a ground or grounds for the suspension or expulsion of students as enumerated in K.S.A. 72-8901, and amendments thereto, or which creates a material or substantial disruption of the normal school activity is not protected by this act.

(d) Subject to the limitations imposed by this section, student editors of student publications are responsible for determining the news, opinion, and advertising content of such publications. Student publication advisers and other certified employees who supervise or direct the preparation of material for expression in student publications are responsible for teaching

and encouraging free and responsible expression of material and high standards of English and journalism. No such adviser or employee shall be terminated from employment, transferred, or relieved of duties imposed under this subsection for refusal to abridge or infringe upon the right to freedom of expression conferred by this act.

(e) No publication or other expression of matter by students in the exercise of rights under this act shall be deemed to be an expression of school district policy. No school district, member of the board of education or employee thereof, shall be held responsible in any civil or criminal action for any publication or other expression of matter by students in the exercise of rights under this act. Student editors and other students of a school district, if such student editors and other students have attained the age of majority, shall be held liable in any civil or criminal action for matter expressed in student publications to the extent of any such student editor's or other student's responsibility for and involvement in the preparation and publication of such matter.

- **Louisiana:** permits donor decals on school buses to acknowledge donations of cellular telephone service (28 LA ADC Pt XXV, s 537)

**Title 28 Louisiana Administrative Code, Part XXV, §537.
Identification**

A. Only lettering and signs approved by state law or regulation shall appear on school buses. Lettering shall be limited to the name of the owner or operator necessary for identification, including the name of the parish/city school system. All lettering shall be in block form.

1. The lettering shall be placed as high as possible to provide maximum visibility and conform to series B of Standard Alphabets for Highway Signs. (Contact the National Commission on Safety Education; 1201 Sixteenth Street NW, Washington, D.C. 20036 for more information.)

B. All letters and numbers used for identification purposes shall be in glossy black enamel or glossy black vinyl decals.

1. The numbers located on the front bumper shall be of contrasting color.

C. The body shall bear the words SCHOOL BUS in glossy black letters at least 8 inches high on both the front and rear of the school bus or on signs attached thereto.

D. The numbering system on school buses shall be a minimum of 5 inches in height and is required in and limited to four locations.

1. On the right side of the bus, it is behind the service door below the window line and not to exceed 24 inches below this point.
2. On the left side, it is directly below the driver's window.
3. On the rear, it is beneath the right rear tail light.
4. On the front, it is either in the center of the front bumper, the right side of the bumper, or on a panel along the bumper. The numbers on the front bumper shall be of contrasting color to the bumper.

E. The bus shall have the name of the owner on the left side of the bus under the driver's side window in glossy black lettering at least 2 inches in height, but not more than four inches in height. The name should be the owner's legal name and should not contain nicknames, handles, etc.

F. Only the following signs/decals are approved for use on school buses:

1. decals indicating handicapped riders are on board;
2. a decal indicating the school bus stops for all railroad crossings.
3. No more than two signs, not to exceed 18 inches x 7 inches, acknowledging a cellular telephone service provider may appear on the side of a school bus. One sign shall be placed to the immediate left of the main door. The other sign shall be placed below or to the right of the driver's side window.

- **Maryland**: permits advertising on school bus shelters under certain restrictions (MD TRAN § 8-703)

§ 8-703. Effect of subtitle on school bus shelter signs

(a) *Certain signs exempt.*- This subtitle does not apply to the erection or maintenance of any school bus waiting shelter displaying outdoor signs if:

- (1) The advertising does not exceed 32 square feet;
- (2) The shelter has no more than one sign facing in any one direction; and
- (3) The shelter has no more than two signs in all.

(b) *Subject to local regulation.*- All outdoor signs on school bus waiting shelters are subject to applicable local zoning regulations and standards approved by the State Highway Administration and, in an area to which Part IV of this subtitle applies, that are consistent with the Code of Federal Regulations regarding national standards for outdoor signs on interstate and federal-aid primary highways.

- **Massachusetts**: prohibits outdoor advertising of cigarettes within 1,000-foot radius of any school (940 CMR 22.06) (formerly 940 MA ADC 22.06)

940 CMR § 22.06: Point of Sale Restrictions**(5) Advertising Restrictions.**

Except as provided in 940 CMR 22.06(6), it shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in any of the following practices:

(a) Outdoor advertising of cigars or little cigars, including advertising in enclosed stadiums and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment, in any location within a 1,000 foot radius of any public playground, playground area in a public park, elementary school or secondary school;

(b) Point-of-sale advertising of cigars or little cigars any portion of which is placed lower than five feet from the floor of any retail establishment which is located within a one thousand foot radius of any public playground, playground area in a public park, elementary school or secondary school, and which is not an adult-only retail establishment.

- **Minnesota:** permits school board to contract with advertisers or others to sell naming rights and advertising rights to its school facilities (MN ST § 123B.025)

123B.025. School sponsorship and advertising revenue

Subdivision 1. Board authority; contracts. A school board may enter into a contract with advertisers, sponsors, or others regarding advertising and naming rights to school facilities under the general charge of the district. A contract authorized under this section must be approved by the school board. The powers granted to a school board under this section are in addition to any other authority the school district may have.

Subd. 2. Authorized agreements. A school district may enter into a contract to:

- (1) lease the naming rights for school facilities, including school buildings, ice arenas, and stadiums;
- (2) sell advertising on or in the facilities listed in clause (1); and
- (3) otherwise enter into an agreement with a sponsoring agent.

Subd. 3. Revenue uses. Revenue generated under this section must be used according to a plan specified by the school board.

- **Minnesota:** permits advertising on school buses under certain restrictions (MN ST § 123B.93)

123B.93—Advertising on School Buses

(a) The commissioner, through a competitive process, may contract with advertisers regarding advertising on school buses. At a minimum, the contract must prohibit advertising and advertising images that:

- (1) solicit the sale of, or promote the use of, alcoholic beverages and tobacco products;
- (2) are discriminatory in nature or content;
- (3) imply or declare an endorsement of the product or service by the school district;
- (4) contain obscene material;
- (5) are false, misleading, or deceptive; or
- (6) relate to an illegal activity or antisocial behavior.

(b) Advertisement must meet the following conditions:

- (1) the advertising attached to the school bus does not interfere with bus identification under section 169.441; and
- (2) the bus with attached advertising meets the school bus equipment standards under sections 169.4501 to 169.4504.

(c) All buses operated by school districts may be attached with advertisements under the state contract. All school district contracts shall include a provision for advertisement. Each school district shall be reimbursed by the advertiser for all costs incurred by the district and its contractors for supporting the advertising program, including, but not limited to, retrofitting buses, storing advertising, attaching advertising to the bus, and related maintenance.

(d) The commissioner shall hold harmless and indemnify each district for all liabilities arising from the advertising program. Each district must tender defense of all such claims to the commissioner within five days of receipt.

(e) All revenue from the contract shall be deposited in the general fund.

- **Mississippi:** permits commercial advertising on protective textbook covers (MS ST § 37-43-19)

Sec. 37-43-19. General powers and duties of board.

The board shall have the power and is hereby authorized:

(a) To promulgate rules and regulations for the purchase, care, use, disposal, distribution and accounting for all books to be furnished under the terms of this chapter, and to promulgate such other rules and regulations as may be necessary for the proper administration of this chapter.

(b) To adopt, contract for, and make available for purchase, cash or credit, basal, supplementary or alternative textbooks through twelve (12) grades as provided in the school curriculum, or for any other course that it may add thereto.

(c) To determine the period of contract for rated and adopted textbooks which shall not be for less than four (4) years nor more than five (5) years, with the right of the board, in its discretion, to renew or extend such contract from year to year for a period not exceeding two (2) additional years and to determine the conditions of the approval or forfeiture of a contract and such other terms and conditions as may be necessary and not contrary to law.

(d) To have complete power and authority over additions and amendments to textbooks, advertising for bids and the contents thereof, including auxiliary materials and workbooks, advertising on the protective covers of textbooks, bids and proposals, prices of textbooks, specimen copies, cash deposits, selection and adoption, distribution, fumigation, emergencies, selling to others, return of deposits, forfeiture of deposits, regulations governing deposits, renovation and repair of books, requisition, transportation or shipment of books, and any other acts or regulations, not contrary to law, that may be deemed necessary for furnishing and loaning free textbooks to the school children, as provided in this chapter.

- **Nevada**: permits advertising on and in school buses (NV ST 387.800)

NRS 387.800 Use of school buses for commercial advertising; Authorization; conditions; establishment of special revenue fund; authorized use of fees.

1. A board of trustees of a school district may:
 - (a) Authorize for commercial advertising the use of buses owned by the school district; and
 - (b) Establish the fees and other terms and conditions which are applicable to such advertising.
2. Any advertising authorized pursuant to subsection 1:
 - (a) Must conform with all applicable local ordinances regarding signs; and
 - (b) Must not:
 - (1) Promote hostility, disorder or violence;
 - (2) Attack ethnic, racial or religious groups;
 - (3) Invade the rights of others;

- (4) Inhibit the functioning of the school;
- (5) Override the school's identity;
- (6) Promote the use of controlled substances, dangerous drugs, intoxicating liquor, tobacco or firearms;
- (7) Promote any religious organization;
- (8) Contain political advertising; or
- (9) Promote entertainment deemed improper or inappropriate by the board of trustees.

3. The board of trustees of each school district that receives money pursuant to subsection 1 shall establish a special revenue fund and direct that the money it receives pursuant to subsection 1 be deposited in that fund. Money in the fund must not be commingled with money from other sources. The board of trustees shall disburse the money in the fund to the schools within its district giving preference to the schools within the district that the district has classified as serving a significant proportion of pupils who are economically disadvantaged.

4. A school that receives money pursuant to subsection 3 shall expend the money only to purchase textbooks and laboratory equipment and to pay for field trips.

- **New Hampshire**: permits advertising on school bus shelters (NH ST Title XX, § 236:87)

§ 236:87 School Bus Shelters

School bus shelters for school children where used for or constructed to carry advertising matter, when approved by the superintending school committee of the town in which they are located, and upon payment of applicable license and permit fees may be placed or maintained outside the right-of-way and carry not more than 2 panels each thereon for the identification of sponsors. No such panel shall exceed 32 square feet or extend beyond the sides of such shelter and at least 60 percent of its area must be devoted to public service, safety or other noncommercial use. Each such shelter shall, to the satisfaction of the superintending school committee, be constructed of durable material, with concrete floor raised above ground level, kept clean, well painted or otherwise suitably maintained at all times and kept free from snow, or the commissioner may order its removal.

- **New Hampshire**: prohibits advertising on school bus exterior except for manufacturer's logo (NH ADC SAF-C 1308.14)

Saf-C 1308.14 Identification and Marking

- (a) Each vehicle shall be marked with the words "... (city or town) schools" or the name of the transportation company on both sides of the

bus in black letters no less than 5 inches in height, using 3/4 inch brush strokes. The location of the wording shall be directly below the window line. Numbers on the side of the bus shall be near the front line of lettering.

(b) In addition to (a) above:

- (1) Each school bus manufactured before July 1, 1991 with permanent plates is authorized to have the name of the carrier, school district and town on both sides of the vehicle; and
- (2) Each school bus manufactured on or after July 1, 1991 with permanent plates is authorized to have the name of the school district and town on both sides of the vehicle.

(c) The words "STOP ON SIGNAL" shall be in permanent black letters on the rear of the bus. The word "STOP" by itself, shall not be used. The words "STOP ON SIGNAL" shall not appear on the front of the bus.

(d) The name of the owner, operator or both may be located to the immediate left of the entrance door and directly below the driver's window. The lettering shall comply with the requirements of (g) below.

(e) Seating capacity shall be in permanent letters on the body of the school bus to the left of the entrance door below the window level and the letters shall be 2 inches in height and one 1/4 inches wide with a 3/8 inch width, as follows:

- (1) Student capacity - - -;
- (2) Adult capacity - - -;
- (3) No standees - - -;
- (4) In lieu of (1) and (2) above, - - -/13 inch seats.

(f) Signs or lettering, other than required or permitted in this section, shall not appear on the front, back or sides of the bus. The words "SCHOOL BUS" shall be displayed in black letters, 8 inches in height and in compliance with "Series B" of the standard alphabet for highway signs on the national school bus yellow background. Fleet identification and/or route, alpha or numeric designations, ICC and DOT numbering shall be permitted. No ICC numbers shall be placed on any vehicle that has permanent plates.

(g) Fleet identification lettering shall:

- (1) Be black, unless the school bus body's color is black, in which case the lettering shall be white;
- (2) Be located on the sides of the school bus;
- (3) Be visible from a distance of 50 feet while the school bus is stationary and during daylight hours; and
- (4) Be 2 inches in height and one 1/4 inches wide with a 3/8 inch width.

(h) No advertisements, decals or decorations, except the bus manufacturer's logo, shall be permitted on the exterior of the school bus.

- **New Jersey**: prohibits advertising on the interior or exterior of buses except for manufacturer's or vendor's trade name (NJ ADC 13:20-49.3(i))

§ 13:20-49.3 Bus body standards supplement to the 1985 National Minimum Standards

(i) No advertisement of any kind shall be exhibited either on the interior or exterior of the school bus, with the exception that the manufacturer's and vendor's trade name(s) shall be permitted to be exhibited on the bus.

- **New Mexico**: commercial advertising permitted inside and on sides of school buses (NM ST § 22-28-1, NM ST § 22-28-2, & NM ST § 22-28-3)

22-28-1. Bus advertisements authorized; limitations and restrictions

A. The state transportation division of the department of education [public education department] shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

- (1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or
- (2) general content that is harmful or inappropriate for school buses as determined by the state board [department].

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school board, except as required by Section 3 [22-28-1 NMSA 1978] of this act.

D. An officer or employee of a school district or of the department of education who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach

of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division.

22-28-2. School bus title; leasing space

A. All school bus private owners that have legal title to school buses used and operated pursuant to an existing bus service contract with a school district may lease space on their buses to the school district for the purpose of selling commercial advertisements. In exchange for leasing the space, the school bus private owners shall receive ten percent of the total value of the amount of the contract between the school district and the commercial advertiser.

B. The amount of space that will be available for commercial advertisements on school buses shall be established by regulations of the department of education consistent with national and state requirements for school bus markings, lights and signs.

C. Space for advertising on school buses owned by the department of education shall be provided to school districts without cost for the purpose of selling advertising space to commercial advertisers.

22-28-3. Solicitation; lease; rent payment

A. A school district shall be permitted to solicit offers from commercial advertisers for the use of space on the school buses that service their school district. The school district may enter into a lease agreement with a commercial advertiser for the use of any designated advertising space on a school bus that services the school district.

B. In a lease agreement with a commercial advertiser, the school district shall establish the rental amount, schedule and term. The term of any lease agreement shall not be for a period longer than the time remaining on the school district's bus service contract with a school bus private owner who owns the bus that is the subject of the lease agreement.

C. A school district shall not enter into a lease agreement with a commercial advertiser that seeks to display an advertisement that is prohibited by local school board guidelines.

- Monies goes into a particular account

- **Tennessee:** permits commercial advertising on school buses, in accordance with policy established by local school board (TN ST § 49-6-2109)

§ 49-6-2109. Safety; equipment; inspection

(e) Nothing in this title shall prohibit a local school district from allotting space on the exterior or interior of a school bus for the purpose of commercial advertising. After consultation with the department of safety, the state board of education is directed to promulgate rules and regulations to effectuate the provisions of this subsection (e). Commercial advertising shall be permitted only on the rear quarter panels of the school bus of a size not to exceed sixteen inches (16") in height and sixty inches (60") in length, be composed of black lettering on a white background, and shall not advertise alcohol or tobacco products. Commercial advertising permitted by this subsection (e) shall not include campaign advertising as prohibited in § 2-19-144, and any such campaign advertising shall be expressly prohibited.

- **Texas:** permits advertising on the exterior of a school bus, provided that it does not distract from the effectiveness of required safety warning equipment (TX TRANSP § 547.701)

Sec. 547.701. Additional Equipment Requirements for School Buses and Other Buses Used to Transport School Children

(a) A school bus shall be equipped with:

- (1) a convex mirror or other device that reflects to the school bus operator a clear view of the area immediately in front of the vehicle that would otherwise be hidden from view; and
- (2) signal lamps that:

- (A) are mounted as high and as widely spaced laterally as practicable;
- (B) display four alternately flashing red lights, two located on the front at the same level and two located on the rear at the same level; and
- (C) emit a light visible at a distance of 500 feet in normal sunlight.

(b) A school bus may be equipped with:

- (1) rooftop warning lamps:
 - (A) that conform to and are placed on the bus in accordance with specifications adopted under Section 34.002, Education Code; and
 - (B) that are operated under rules adopted by the school district; and
- (2) movable stop arms:
 - (A) that conform to regulations adopted under Section 34.002, Education Code; and
 - (B) that may be operated only when the bus is stopped to load or unload students.

(c) When a school bus is being stopped or is stopped on a highway to permit students to board or exit the bus, the operator of the bus shall activate all flashing warning signal lights and other equipment on the bus designed to warn other drivers that the bus is stopping to load or unload children. A person may not operate such a light or other equipment except when the bus is being stopped or is stopped on a highway to permit students to board or exit the bus.

(d) The exterior of a school bus may not bear advertising or another paid announcement directed at the public if the advertising or announcement distracts from the effectiveness of required safety warning equipment. The department shall adopt rules to implement this subsection. A school bus that violates this section or rules adopted under this section shall be placed out of service until it complies.

Text of subsection effective only if the legislature appropriates money specifically for the purpose of reimbursing school districts for expenses incurred in complying with this subsection.

(e) In this subsection, "bus" includes a school bus and a school activity bus. A bus operated by or contracted for use by a school district for the transportation of schoolchildren shall be equipped with a three-point seat belt for each passenger, including the operator. This subsection applies to:

- (1) each bus purchased by a school district on or after September 1, 2010, for the transportation of schoolchildren; and
- (2) each school-chartered bus contracted for use by a school district on or after September 1, 2011, for the transportation of schoolchildren.

Statutes Pertaining to Commercially Sponsored Educational Materials

Sponsored educational materials are materials provided to schools by corporations or trade associations that are claimed to have instructional content. Usually, these materials promote a company, or values consistent with a company's mission, in the context of an educational lesson.

- **California:** prohibits school boards from adopting sponsored educational materials unless the board makes a specific finding that the use of the commercial material is appropriate. (CA EDUC § 60048)

§ 60048. Commercial brand names, products, or logos

(a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.

(b) The governing board of a school district may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

(c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.

(e) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

§ 60200(c)(5). Adoption of list of basic instructional materials; submission procedures; criteria

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate

or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the state board.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

- **North Carolina:** grants authority to local school boards regarding selection of supplementary instructional materials, including materials with commercial advertising. (N.C.G.S.A. § 115C-98)

§ 115C-98. Local boards of education to provide for local operation of the textbook program, the selection and procurement of other instructional materials, and the use of nonadopted textbooks

(a) Local boards of education shall adopt rules not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audiovisual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(b1) A local board of education may establish a community media advisory committee to investigate and evaluate challenges from parents, teachers, and members of the public to textbooks and supplementary instructional materials on the grounds that they are

educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of the students. The State Board of Education shall review its rules and policies concerning these challenges and shall establish guidelines to be followed by community media advisory committees.

The local board, at all times, has sole authority and discretion to determine whether a challenge has merit and whether challenged material should be retained or removed.

***Statutes Pertaining to Commercially Sponsored
Programs and Activities***

Corporations pay for or subsidize school events or activities in return for the right to associate their names with those events and activities.

- **Minnesota**: school board may contract with advertisers or others to sell naming rights and advertising rights to its school facilities (MN ST § 123B.025)

123B.025. School sponsorship and advertising revenue

Subdivision 1. Board authority; contracts. A school board may enter into a contract with advertisers, sponsors, or others regarding advertising and naming rights to school facilities under the general charge of the district. A contract authorized under this section must be approved by the school board. The powers granted to a school board under this section are in addition to any other authority the school district may have.

Subd. 2. Authorized agreements. A school district may enter into a contract to:

- (1) lease the naming rights for school facilities, including school buildings, ice arenas, and stadiums;
- (2) sell advertising on or in the facilities listed in clause (1); and
- (3) otherwise enter into an agreement with a sponsoring agent.

Subd. 3. Revenue uses. Revenue generated under this section must be used according to a plan specified by the school board.

- **New York**: generally prohibits commercial promotional activities on school premises except where commercial entity sponsors a school activity which does not involve promoting the sponsor's product or service (8 NY ADC 23.2)

Section 23.2. Prohibition of commercial promotional activity in the public schools

Boards of education or their agents shall not enter into written or oral contracts, agreements or arrangements for which the consideration, in whole or in part, consists of a promise to permit commercial promotional activity on school premises, provided that nothing in this Part shall be construed as prohibiting commercial sponsorship of school activities.

Statutes Pertaining to Electronic Marketing

Electronic marketing refers to marketing done via electronic channels. It includes in-school marketing programs that use broadcast, Internet, or related media. Sometimes, corporations provide electronic programming, equipment, or both in return for the right to advertise to students, their families and/or community members in the school or during their contacts with the school or district.

- **California:** prohibits schools from contracting for electronic products or services that disseminate advertising to students unless certain notice requirements are followed (CA EDUC § 35182.5)

§ 35182.5. Legislative findings and declarations; limitations on contracts; public hearing requirements; sale of advertising products

(c) The governing board of a school district may not do any of the following:

(1) Enter into or renew a contract or permit a school within the district to enter into or renew a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board to ensure that the district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a Request for Proposal;

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. The governing board shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the school board.

(3) Enter into a contract or permit a school within the district to enter into a contract for electronic products or services that

requires the dissemination of advertising to pupils, unless the governing board of the school district does all of the following:

- (A) Enters into the contract at a noticed public hearing of the governing board;
- (B) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils;
- (C) Makes a finding that the school district cannot afford to provide the electronic product or service unless it contracts to permit dissemination of advertising to pupils;
- (D) Provides written notice to the parents or guardians of pupils that the advertising will be used in the classroom or other learning centers. This notice shall be part of the district's normal ongoing communication to parents or guardians;
- (E) Offers the parents the opportunity to request in writing that the pupil not be exposed to the program that contains the advertising. Any request shall be honored for the school year in which it is submitted, or longer if specified, but may be withdrawn by the parents or guardians at any time.

(d) A governing board may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages or nonnutritious beverages or nonnutritious food within the district, by either of the following:

- (1) Review of the contract at a public hearing by a Child Nutrition and Physical Activity Advisory Committee established pursuant to Section 49433 that has contract review authority for the sale of food and beverages;
- (2) (A) An annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(B) The public hearing shall include, but not be limited to, a discussion of all of the following:

- (i) The nutritional value of food and beverages sold within the district;
- (ii) The availability of fresh fruit, vegetables, and grains in school meals and snacks, including, but not limited to, locally grown and organic produce;
- (iii) The amount of fat, sugar, and additives in the food and beverages discussed;
- (iv) Barriers to pupil participation in school breakfast and lunch programs.

(C) A school district that holds an annual public hearing consistent with this paragraph is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public any contract entered into pursuant to paragraph (1) of subdivision (c) and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.

(f) The governing board of a school district may sell advertising, products, or services on a nonexclusive basis.

(g) The governing board of a school district may post public signs indicating the district's appreciation for the support of a person or business for the district's education program.

(h) Contracts entered into prior to January 1, 2004, may remain in effect, but may not be renewed if they are in conflict with this section.

- **Minnesota:** prohibits school boards from contracting for computer or related equipment that requires advertising to be disseminated to students unless parents are given the opportunity to opt their child out of exposure to the advertising (MN ST § 125B.022)

125B.022. Contracts for computers or related equipment or service

(a) The school board of a school district may not enter into a contract or permit a school within the district to enter into a contract for the use of a computer or related equipment or service that requires advertising to be disseminated to students unless the school board:

- (1) enters into the contract at a public hearing of the school board;
- (2) makes a finding that the offered electronic product or service is an integral component of students' education;
- (3) provides written notice to students' parents that advertising will be used in the classroom, media center, computer lab, or other areas of learning, whether data will be collected on students, and how that data will be used;
- (4) as part of normal, ongoing district communications with parents, allows parents to request in writing that (i) their student not be exposed to the program that contains the advertising for the current school year, or that (ii) any or all data relating to the student that is collected as a result of this contract is not disclosed;

and

(5) honors parents' request, under clause (4), that their student not be exposed to the advertising program or that data relating to the student is not disclosed and allows parents to withdraw their request at any time.

(b) Advertising under this section does not include:

- (1) the identification of the source of the document or information;
and
- (2) advertising that is generally available to the public viewing a particular site or application and is not directed specifically to students benefiting from a contract under paragraph (a).

Legislation Introduced at the Federal and State Levels

***Proposed Legislation Pertaining to a Study and Report
on the Marketing of Foods in Public Schools***

- **U.S. Congress** (H.R. 3625)

SECTION 1. SHORT TITLE.

This Act may be cited as the “Food Marketing in Schools Assessment Act”.

SEC. 2. STUDY AND REPORT ON FOOD MARKETING.

(a) **STUDY REQUIRED.**—The Secretary of Education shall conduct a study on the extent and types of marketing of foods and beverages in elementary and secondary schools. In carrying out the study, the Secretary shall collaborate with, and include information from, the Division of Adolescent and School Health of the Centers for Disease Control and Prevention.

(b) **ASSESSMENT OF NUTRITION.**—The study required by subsection (a) shall assess the nutritional quality of the types of foods and beverages marketed in schools.

(c) **ASSESSMENT OF MEDIA.**—The study required by subsection (a) shall assess all media through which foods and beverages are marketed to children in elementary and secondary schools, including—

- (1) brand and product logos, names, or information on educational materials, book covers, school supplies, posters, vending machine exteriors, scoreboards, displays, signs, equipment, buses, buildings, and other school property;
- (2) educational and other incentive programs;
- (3) label redemption programs;
- (4) in-school television, radio, and print publications;
- (5) free samples and coupons;
- (6) branded fundraising activities;
- (7) taste-testing and other market research activities; and
- (8) incidental exposure to food and beverage marketing through computer use, including computer banner and wallpaper ads, or podcasts in schools.

(d) **EXAMINATION OF REGULATORY MECHANISMS.**—

The study required by subsection (a) shall also examine mechanisms regulating marketing in elementary and secondary schools, including—

- (1) Federal, State, and local policies;

- (2) contracts; and
- (3) sales incentives.

(e) REPORT.—Not later than July 1, 2011, the Secretary shall submit to Congress a report on the results of the study required by subsection (a).

Proposed Legislation Pertaining to Appropriation of Space

In appropriation of space agreements, schools receive money in exchange for corporations placing their names, logos, or advertising messages in school space, such as on scoreboards, rooftops, bulletin boards, walls, textbooks, or school buses.

- **Massachusetts** (H.B. 489): would prohibit companies from advertising their product on public school grounds and from providing schools with items bearing their mark or brand, except for their primary products.
 - Presented as a public health issue

SECTION 1. Chapter 71 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 2A the following section:

Section 2A1/2. As used in this section, the following words shall have the following meanings:

“Mark”, any brand name, alone or in conjunction with any other word, logo, symbol, motto, selling message, signage, recognizable color or pattern of colors, spokesperson, spokes character, or any other indicia of product identification identical or similar to, or identifiable with, those used for any consumer products or services;

“Public school”, an elementary, middle, high school or charter school as defined in this chapter;

“School buildings”, any building or facility located on public school grounds, including all interior and exterior walls, surfaces, or fixtures.

No manufacturer or distributor shall advertise in any manner consumer products or consumer services on public school grounds, buildings, or real property owned or leased by a public school from one-half hour before the beginning of the school day, during the school day and one-half hour after the school day. Advertisements shall include, but not be limited to, placement of manufacturer marks, or manufacturers’ or distributors’ consumer products or services marks for the purpose of promoting purchase of products or promoting brand loyalty by a student or a student’s family.

Placement of manufacturer marks, or manufacturers’ or distributors’ consumer products or services marks shall not be permitted on school grounds including, but not limited to, equipment dispensing products, posters, trademark cups, book covers, banners, beverage coolers, sporting equipment, as screen savers on computers, or displayed on other electronic equipment or on any items located within school buildings, or on school building exteriors.

Advertising using marks or other advertising means on school grounds is prohibited in analog and digital formats including, but not limited to, audio and video formats.

Manufacturers or distributors may not provide any type of information or donate any promotional items or offer gifts, other than the manufacturer's own primary consumer products, which bear the mark or brand name of the manufacturer's products.

This section shall not apply to manufacturers' or distributors' primary consumer products package labels.

SECTION 2. Section 197 of Chapter 184 of the Acts of 2002 is hereby amended by inserting after the word "buses", in the first sentence, the following words:- ";including advertising in analog and digital formats including, but not limited to, audio and video formats."

SECTION 3. Notwithstanding any special or general law to the contrary, the department of education shall have the authority to promulgate rules and regulations to carry out section 1 of this act and shall implement enforcement provisions for violations of said rules and regulations.

SECTION 4. Notwithstanding any special or general law to the contrary, the commissioner of public health shall convene a study and investigation within the department of public health to assess the impact of advertising and marketing on behavioral risk factors utilizing data collected through the national Behavioral Risk Factor Surveillance System (BRFSS). The commissioner of public health shall advise the commissioner of education and file a report with the house and senate chairs of the joint committee on public health of the findings within six months of the inception of this act.

SECTION 5. This act shall take effect on August 31, 2008.

- **Vermont** (H. 813): would prohibit companies from advertising their products on public school grounds and from providing schools with items bearing their mark or brand, except for their primary products
 - Similar to MA bill
 - Not presented as a public health bill

§ 1266. PRODUCT ADVERTISING

(a) For purposes of this section:

(1) "Mark" means a brand name alone or in conjunction with one or more other words, a logo, a symbol, a motto, a selling message, a sign, a recognizable color or pattern of colors, a spokesperson or

a character acting as spokesperson, and any other indicia of product identification identical or similar to or identifiable with those used for any consumer product or service;

(2) "School property" means all buildings, vending machines, posters, cups, book covers, banners, beverage coolers, screensavers on computers and any other electronic equipment or items located within school buildings, on school building exteriors, or on school grounds, regardless of whether they are owned or leased by a public school district.

(b) No manufacturer or distributor shall advertise and no public school shall permit a manufacturer or distributor to advertise consumer products or consumer services on school property beginning one-half hour before the school day until one-half hour after the school day's completion. Prohibited advertising activities include placement on school property of manufacturer marks or of manufacturers' or distributors' consumer product or service marks for the purpose of encouraging purchase of the product or service or of promoting brand loyalty. Advertising is prohibited in analogue and digital formats, including audio and video formats.

(c) No manufacturer or distributor shall provide and no public school shall accept any information, promotional items, or gifts that bear the manufacturer's or the product's mark, except if the object donated is a primary consumer product produced by the manufacturer that bears the mark of the product.

(d) This section shall not apply to the package labels of a manufacturer's or distributor's primary consumer product.

- **South Carolina** (S. 1071): would prohibit advertising on school buses

SECTION 1. Article 1, Chapter 67, Title 59 of the 1976 Code is amended by adding:

"Section 59-67-310. A school bus may not be used to advertise any item to school children."

SECTION 2. This act takes effect upon approval by the Governor.

Appendix B

Extended Discussion of Forms of Commercial Activity in Schools

To offer a fuller picture of corporate strategies, each section below offers extended detail on the seven forms of school commercialism and their effects.

1. Exclusive Agreements

Exclusive agreements between schools and corporations give corporations the exclusive right to sell and promote their goods or services in the school district. In return, the district or school receives a percentage of the resulting profits or other benefit. Some of the sharpest criticism leveled against advertising in schools focuses on exclusive agreements to sell foods of little or no nutritional value, such as soft drinks and snack foods.

A 2008 Federal Trade Commission (FTC) study found that 90 percent of the \$186 million spent by food companies on in-school marketing in 2006 were for beverages.⁵⁰ Companies contract for “pouring rights”⁵¹ at a particular school or district, and funding for the school is tied to beverage sales. The increase in childhood obesity in recent years has helped focus attention on these contracts, and as a result of beverage industry self-regulation, much school beverage marketing, particularly at the elementary level, is now for bottled water, juice, and milk. However, pouring rights contracts continue to provide for an exclusive advertising situation that often lasts through a child’s entire tenure in the school system, exposing even the youngest students to brand logos and products in school.

Schools seeking funding for athletics sometimes enter into exclusive contracts with companies such as Nike and Adidas. Typically, the company agrees to subsidize certain expenditures, such as athletic shoe purchases, in exchange for the exclusive right to sell those athletic teams equipment bearing the company’s logo. In this case, parents may be subject to a perverse incentive to shop around for “shoe schools” with sponsored programs, hoping to enroll their child in a school with high quality gear and talent scouts.⁵²

Although exclusive agreements result in lucrative sales for companies, they have no direct educational purpose and ultimately provide relatively little money for schools.⁵³ Furthermore, exclusive agreements with schools legitimize corporate activities, give their products credibility, and provide corporations with constant access to children during school hours.

2. Appropriation of Space

In appropriation of space agreements, schools receive money in exchange for corporations placing their names, logos, or advertising messages in

school space, such as on scoreboards, rooftops, bulletin boards, walls, textbooks, or school buses.

Common examples include the awarding of “naming rights” to corporate entities in return for their sponsorship of capital projects or other school operations. Exclusive agreements with soft drink companies or fast food providers also typically involve the appropriation of space in cafeterias and on vending machines, cups, napkins, and scoreboards.

Appropriation of space encompasses some of the most blatant forms of school commercialism. Seductive representations of foods of little or no nutritional value, sexuality, and consumer goods create pressure on children and teens that should not follow them onto school grounds. However, over the last twenty years, appropriation of school property for commercial purposes has increased dramatically.⁵⁴ Marketing contracts between schools and corporations have turned public school corridors, sports facilities, buses, scoreboards, cafeterias, book covers, rooftops, and even restrooms into advertising billboards.

For example, some school districts have sold the rights to use the space on the inside of school buses.⁵⁵ To school districts, this is an appealing opportunity to increase revenue with little effort. Marketers are equally enticed by the idea that children will be exposed to their messages twice daily, sometimes for over an hour.⁵⁶

Sometimes schools realize some profit from selling space, but in many cases they do not.⁵⁷ As is the case with the exclusive agreements with which it often co-occurs, corporate appropriation of space in schools legitimizes corporate activities, gives products credibility, and provides advertisers with constant access to children during school hours.

3. Commercially Sponsored Educational Materials

“Sponsored educational materials” are materials provided to schools by corporations or trade associations that are claimed to have instructional content. Usually, these materials promote a company, or values consistent with a company’s mission, in the context of an educational lesson. They demonstrate the subtle ways in which commercial interests can infiltrate the school environment.

For example, the makers of Hidden Valley ranch dressing have been successful at incorporating the company’s marketing messages into curriculum materials with a purported educational purpose.⁵⁸ These include classroom kits, distributed in 30,000 elementary school classrooms in 2008, which focused on the theme “Vegetables and You.”⁵⁹ Hidden Valley justified its school program by referring to a study that showed kids prefer vegetables, and will increase their consumption of them by 23%, if paired with ranch dressing.⁶⁰

Proponents may depict these materials as free learning tools or fun activities that spice up the traditional school curriculum. They might suggest that these instructional materials fill a void created by decreases in teachers' discretionary spending allowances and increases in the cost of materials.

However, sponsored educational materials carry disadvantages that outweigh these ostensible benefits. Not only may they contain biases, but they often are of little or no educational value.⁶¹ Because the materials are often of poor quality and are rarely tied to state educational standards, many teachers find them difficult to integrate into the curriculum. Instead, they are used primarily for short or one-time lessons, or as supplements to the regular classroom curriculum.⁶² Furthermore, the materials may betray a corporate bias ranging from a subtle sales pitch to a more blatant twisting of the facts in support of the corporate perspective on important policy issues.⁶³ For example, some companies produce materials on industries related to their work, such as ecology units produced by oil and plastic companies and safety units produced by insurance companies.⁶⁴ A 2000 study of corporate-sponsored educational materials by the Government Accountability Office (GAO) found that "80 percent contained biased or incomplete information or promoted a viewpoint that favored consumption of a sponsor's product or service or a position that favored a company or its economic agenda."⁶⁵

The subtle marketing messages contained in sponsored educational materials may be especially damaging because they are injected into the curriculum itself. Students' abilities to be critical consumers of advertising are compromised and they are less able to filter out marketing messages when these messages are integrated into the curriculum.⁶⁶ Not only do these materials waste valuable learning time, they are at odds with the purposes of education and they compromise schools' integrity.

4. Commercially Sponsored Programs and Activities

Corporations pay for or subsidize school events or activities in return for the right to associate their names with those events and activities. Examples of this type of commercial activity in schools include scholarships offered by such corporations as Coca Cola, Wendy's and Toyota; community service awards sponsored by Prudential; and academic competitions such as the AAA Travel High School Challenge.⁶⁷

While corporate sponsorship of this type may enhance business images and inject funding to support school activities and events, it can also harm students and schools. Specifically, when corporate-sponsored activities are closely integrated with schools, the dangers of distorting educational content and introducing bias become more prominent. For instance, when McDonald's Corporation sends Ronald McDonald into public schools as an "ambassador for an active, balanced lifestyle,"⁶⁸ the schools might be much less willing to explain to students that fast-food restaurants, such as McDonald's, have menus that contain high calorie, high fat foods.

Additionally, corporate sponsorship may leave the school susceptible to the company's reputation and activities, may overshadow the school activity or event,⁶⁹ and may encourage increased additional commercial activities if other companies enter the fray to gain naming rights.

5. Electronic Marketing

Electronic marketing refers to marketing done via electronic channels. It includes in-school marketing programs that use broadcast, Internet, or related media. Sometimes, corporations provide electronic programming, equipment, or both in return for the right to advertise to students, their families and/or community members in the school or during their contacts with the school or district. When the Internet came online in 1992, the traditional educational world collided with the new digital age.⁷⁰ In order to keep pace with the increasing technological demands of an advancing society, schools began taking advantage of the willingness of computer hardware and software companies to provide electronic equipment and programming in exchange for advertising rights.

Beyond the computer hardware and software companies, other electronic media companies have made inroads into the classroom. In 1990, Channel One broke new ground in classroom electronic marketing by providing free video equipment to schools in exchange for students being required to watch 12-13 minutes of programming—with commercials—daily.⁷¹ Similarly, ZapMe!, which launched in 1996, provided computer equipment, support, and Web access in exchange for schools' agreement to use the computers several times daily.⁷² After intense controversy erupted over its reach into 2,300 schools in 45 states, ZapMe! folded in late 2000.⁷³

More recently, Bus Radio began providing radio programming on school buses in the 2006-2007 school year. According to the company's website, its radio show was "packed with age-appropriate top-40 music, kid-friendly news, exciting contests and positive messages about staying healthy and safe" and "minimal, carefully selected sponsorships of which participating districts receive a portion of revenue."⁷⁴ BusRadio served as a portal to advertising on the Internet: its student listeners were regularly exhorted to visit the companion website, where they could both view ads and click through to other commercial sites.⁷⁵ In September 2009, shortly after the Federal Communications Commission (FCC) determined that BusRadio's programming and website blurred content and advertising, and that the company's website, in particular, violated industry self-regulatory guidelines set by the Children's Advertising Review Unit (CARU), BusRadio stopped broadcasting.⁷⁶

Proponents argue that electronic marketing programs in schools supply free educational equipment, student exposure to current and relevant news, development of media literacy skills, and access to educational Internet resources. However, there are hidden financial costs inherent in exchanging class time for equipment that can easily outweigh the financial

benefits of getting the equipment for “free.”⁷⁷ Other disadvantages include forced exposure to advertising; loss of instructional time and waste of tax payer dollars by showing news, commercials, and other advertisements during school hours; infringement on privacy in the form of unregulated market research, including unauthorized personal information gathering and disclosure; and the awarding of potentially undeserved credibility to advertised goods and services.

6. Commercially Sponsored Incentive Programs

Corporate-sponsored incentive programs provide money, goods, or services to a student, school, or school district when its students, parents, or staff engage in specified activities. Incentive programs can take the form of software/hardware training programs, management and creativity technique classes, other teacher training programs, prizes, gifts, and contests.⁷⁸ The Campbell Soup Company started incentive programs over 30 years ago when it began providing educational equipment in return for proof of purchases.⁷⁹ Similarly, since 1985, Pizza Hut has offered a reading incentive program called Book It!, rewarding children with pizza for meeting their reading goals.⁸⁰ More recently, Droga5 began offering New York City students points to pay for phone time, text messaging, and downloading in exchange for good attendance, behavior, and class performance.⁸¹

The advantages of incentive programs include the educational promotion of reading, participation, good behavior, goal setting and attainment, and the supply of goods and services that may otherwise be unaffordable.⁸² A primary disadvantage is that these programs teach children that learning should be accompanied by external rewards rather than internal satisfaction. This is a powerful indirect message when it is delivered by parents and schools. Moreover, students are exclusively exposed to the goods and services of the incentive program promoters.

7. Commercially Sponsored Fundraising

When schools require funding beyond their public means they often turn to fundraising. Fundraising programs are commercial programs marketed to schools to raise money for school programs and activities. These programs can include door-to-door sales and affinity marketing programs, in which schools receive a percentage of revenue when their students and parents sell product for a company.⁸³

Fundraisers can include the sales of goods and services such as candy, magazines, gift-wrap, cookie dough, car washes, baked goods, and other concession items.⁸⁴ In addition, fundraising can be done through certain activities such as jog-a-thons, book-a-thons, and box top collecting.

The advantages of fundraising include the raising of funds for sports, clubs, part time teachers, coaches, and other school related resources.⁸⁵ In addition, students become motivated to get involved. Disadvantages

outweigh these advantages, however. Most significantly, fundraising activities force students (not to mention parents and teachers) to spend time on an activity with no educational value. Furthermore, because a family's ability to raise funds outside of school is directly related to its level of income, fundraising can underscore inequity and place a disproportionate amount of pressure on low-income families to buy brands they would normally deem too expensive or undesirable. Other disadvantages include the lengthy outside classroom time required by participating schools, students, and parents; the potential dangers of door-to-door sales and other student-adult interactions; the pressure on students to raise benchmark amounts; and the potential development of negative feelings from competition.⁸⁶

Conclusion

The relationships between schools and corporations, termed "partnerships," tend to benefit the corporate partners much more than schools and their students. While some arrangements do provide for fundraising opportunities or entertaining activities, such benefits are slight compared with the harm done by using schools to teach children to be uncritical, loyal consumers of products and to adopt points of view favorable to corporate sponsors. If we are to create learning environments that encourage students to develop fully as individuals and as thoughtful citizens, then policy makers, educators, and advocates would do well to carefully evaluate whether and to what extent they want to allow advertising and marketing activities in public schools.

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