

LIMITING “JUNK-FOOD” ADVERTISING ON SCHOOL CAMPUSES

A Legal Q&A

Limiting or banning “junk food” advertising in schools is a complicated legal issue.

This Q&A is designed to help schools, community-based organizations, public health departments, and others better understand the legal issues involved.

Q How can a school district legally limit or ban the advertising of non-nutritious foods and beverages on its property?

A There are two ways: (1) through individual contracts with its vendors, and (b) through districtwide policy. When a school district permits a private vendor to sell food or beverages on campus, it usually does so via a contract with that vendor. The school district has the right to request that the vendor agree to certain conditions, including a request not to market non-nutritious foods or beverages on school property. A districtwide policy, meanwhile, can ban such advertising regardless of whether the advertisers have a contractual relationship with the school. For example, a school board could draft a policy saying that if the food or beverage cannot be sold on campus because it does not meet the food and beverage standards adopted by the school board, the food or beverage cannot be advertised, either.

Q What would a districtwide policy look like?

A To be legally sound, the policy should include some introductory language about the school board’s educational purposes in enacting the advertising restrictions. These purposes should include:

- Promoting an educational rather than a commercial environment
- Dissociating itself from speech that could be inconsistent with its educational mission
- Preventing school facilities from becoming a place where commercial vendors debate the topic of non-nutritious foods or beverages
- Preventing the commercial exploitation of students
- Avoiding the appearance of endorsing any particular food or beverage product

The resolution should include a requirement that all of the district’s contracts be consistent with the policy.

Q What about the First Amendment? Wouldn’t a ban on advertising violate the advertiser’s right to free speech?

A No. Public schools have a basic and far-reaching educational mission, so the U.S. Supreme Court has recognized that schools have a considerable amount of power to control speech that takes place on school property. The First Amendment is most protective of speech that takes place in *public forums*: places that, like public parks or city squares, have for many years been made available to and used by a wide array of speakers. In *non-public forums*, the government

has significantly more latitude to regulate speech. The Court has ruled repeatedly that K-12 schools are non-public forums.

Q Are there any limits on a school district’s power to regulate advertising on campus?

A Yes. School districts must adopt policies about advertising on campus that are both *reasonable* and *viewpoint neutral*. Generally speaking, a reasonable and viewpoint-neutral policy would be one that appropriately reflects the school’s educational concerns and also treats all sides of a topic in a similar manner. For example, if the Coca-Cola Bottling Company would not be allowed to take out an ad imploring students to drink certain Coca-Cola products on campus, the American Diabetes Association would also not be allowed to take out an ad imploring students not to drink certain Coca-Cola products.

Q What if a school wants to present an educational curriculum or stage a debate at a school assembly about the health risks and benefits of eating or drinking certain foods or beverages?

A Schools are free to frame issues and present educational materials as they see fit. Limiting a food or beverage company’s access to a campus for advertising or marketing does not necessarily limit the school’s ability to express its own views on controversial or educational topics. For example, a school district that prohibits the American Diabetes Association from taking out an ad imploring students not to drink sodas could invite a representative from that organization to make a presentation to a health education class in order to discuss the health risks associated with drinking too much soda.

For technical assistance regarding school vending contracts, contact:

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