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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	<p>Districts and schools shall not enter into any exclusive agreements that promote commercial activities or products during the school day or on school grounds.</p>
	<p>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.</p>
	<p>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.</p>
Balancing Tests and Regulatory Requirements	<p>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.</p>
	<p>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.</p>
Processes	<p>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.</p>
	<p>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.</p>