

# **NEPC REVIEW: COMMERCIAL CASH: HOW NY SCHOOLS CAN RAISE EXTRA MONEY WITHOUT RAISING TAXES (EMPIRE CENTER, SEPTEMBER 2019)**



**Reviewed by:**

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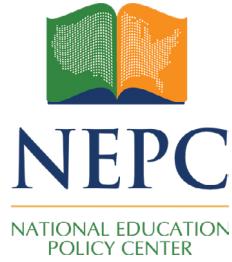
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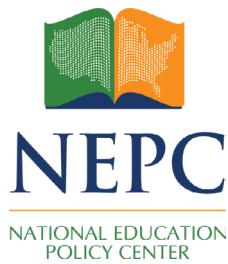
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### Executive Summary

*Commercial Cash: How NY Schools Can Raise Extra Money Without Raising Taxes* gets it half right. This issue brief makes the persuasive legal case that current policy and legal guidance from New York state education officials severely restricts the ability of school districts to allow any form of commercial advertising, making it difficult to raise revenues—without raising taxes—from advertising, sponsorships, and naming rights deals. The brief calls on lawmakers to “free school districts from the current regulatory quagmire by eliminating legal barriers and permitting local decision-making.” But that argument addresses only the revenue half of the equation. The other half, which the brief largely ignores, involves the significant costs of commercial advertising in schools. Those costs include the potential *psychological* harms stemming from corporate advertising; *health-related* harms that might flow from promoting foods and drinks with little nutritional value; *educational harms* coming from the schools’ and educators’ implicit endorsement of commercial culture and even the products themselves; and the emerging *harm to privacy* presented by digital data collection and targeted digital marketing. Beyond these potential harms, the brief may overstate the economic benefits of these deals because neither the costs of negotiating and administering these contracts nor the potential of diminished donor and taxpayer support are considered. While the brief’s call for the New York legislature to revisit and revise policy governing advertising in schools is timely and appropriate, it provides little useful guidance for officials considering a substantive reworking of regulations.



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### I. Introduction

For many schools, years of tightening budgets have forced administrators to find new ways to both cut costs and find additional revenue.<sup>1</sup> One option school officials have found increasingly attractive has been to negotiate contracts allowing for various methods of commercial advertising in their schools. The implicit assumption has been that such advertising deals provide much-needed revenue, while having little or no impact on students, who already experience pervasive advertising in their everyday lives outside the classroom.

Within this context, *Commercial Cash: How NY Schools Can Raise Extra Money Without Raising Taxes*<sup>2</sup> argues for greater freedom for New York schools to engage in advertising arrangements: “School districts across New York are constrained from fully exploiting a potential source of revenue . . . commercial advertising—including signs, sponsorships and facility naming rights . . .”<sup>3</sup> This issue brief from the Empire Center, authored by Peter Murphy and released in September 2019, makes the persuasive legal case that current interpretation of New York’s Constitution and the application of policies and legal guidance from the state Attorney General, Board of Regents, and Department of Education severely restricts the ability of school districts to allow any form of commercial advertising. The brief concludes that lawmakers must “free school districts from the current regulatory quagmire by eliminating legal barriers and permitting local decision-making,” authorizing certain commercial activity in schools, and repealing prohibitions on school bus advertisements in order to increase school revenue.<sup>4</sup>

This review briefly summarizes *Commercial Cash*, provides an analysis of its argument and conclusions, and then provides a more complete picture of not only the potential—albeit modest—economic benefits of commercial advertising and naming rights deals, but also the likely—and potentially overwhelming—unacknowledged costs of those deals for students.

The review concludes with suggestions for a more robust regulatory and policy framework for those jurisdictions and school districts considering commercial contracts.

## **II. Findings and Conclusions of the Report**

To be clear, *Commercial Cash* does not purport to provide a comprehensive economic analysis of the potential benefits and costs of commercial arrangements to schools in New York nor does it claim to provide a detailed analysis of advertising and naming rights deals in other jurisdictions. Rather, this policy brief makes the straightforward argument that the legal and regulatory restrictions on commercial activity in New York schools result in money being left on the table for those schools.

To illustrate the potential revenue available to schools, the brief first provides a sampling of commercial advertising and naming rights deals in school districts outside of New York. Based on a review of deals in other jurisdictions as reported in local media, the brief concludes that the prime purchasers of naming rights and advertising space are regional banks and credit unions, healthcare providers, grocery stores, and auto dealers. The brief acknowledges that the deals generate modest revenues, especially compared to school district budgets, but argues that the money would be welcomed in the most hard-pressed New York districts with stagnant or even shrinking local tax bases. To support its analysis, the brief provides examples of commercial deals from other states, ranging from a major naming rights deal for high school athletic facilities in Texas (\$2.5 million over 10 years) to modest naming rights for an indoor track in Pennsylvania (\$18,000 over three years). Based on that review, the brief speculates that the smaller scale deals from neighboring Pennsylvania provide a better estimate as to what most (presumably upstate) school districts in New York could secure.

The brief then provides an analysis of the policies and regulations that restrict commercial advertising, naming rights, and other activities in New York. Article VIII of the New York state constitution provides that “No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking . . .” In 1973, the County of Niagara sought permission for a commercial advertising deal on the Buffalo Bills professional football team stadium (which apparently was located on public property). In an informal opinion, the State Attorney General, interpreting Article VIII, determined that no municipality may engage in the private business of advertising or allow its property to be used for such advertising. Citing that opinion, the Attorney General, Comptroller, and, importantly, the State Department of Education have denied requests to enter advertising deals absent explicit legislative permission. Consequently, the New York State Regents have barred commercial deals unless they meet a restrictive two-part test that, in practice, allows only the “underwriting of an activity on school premises,” not the advertising of a product or service. Such restrictions include an outright ban on commercial promotions being transmitted “electronically,” including a ban on advertising on school district websites.

*Commercial Cash* then notes that other non-school district local governments and agencies

in New York have developed various workarounds on the commercial advertising restrictions, including the rebranding of commercial contracts as philanthropic contributions, execution of contracts through third-party partners such as developers and local development corporations, and other sponsorship deals. The brief also notes that some public entities—namely local transportation authorities and the state itself—seem to be given discretion for advertising and naming rights deals (advertisements in the NYC subway system, for example). The implication is that school districts, too, could employ these types of workarounds or outright flouting of the rules.

The brief ends with a call for lawmakers to (1) pass legislation specifically authorizing commercial activity in schools, (2) legislatively reverse the Regents' broad ban on electronic promotional content, and (3) repeal the state and local prohibitions on school bus advertisements. Without explication, the brief also offers some “suggested ground rules” to school boards that might consider the sale of advertising, sponsorship, and naming rights. Those include: (1) specifying which properties and locations are suitable for advertising or sponsorship; (2) delineating the types of products, services, and businesses that might be promoted; (3) establishing a price structure for commercial arrangements; (4) providing a process for soliciting and considering proposals, including a public comment period; and (5) establishing conditions for contract termination prior to expiration.

### **III. The Report's Rationale for Its Findings and Conclusions**

The rationale behind *Commercial Cash* is straightforward—the legal and regulatory restrictions on commercial activity in New York schools prevent school districts from raising money from advertising, naming rights, and sponsorship deals. In states that allow such commercial activity, the brief argues, school districts have been able to generate revenues and, even in New York, certain public agencies that are permitted to enter advertising deals similarly raise funds for operations. Accordingly, the brief calls on New York legislators to loosen the regulatory restrictions on commercial activities in schools.

### **IV. The Report's Use of Research Literature**

*Commercial Cash* is not a traditional empirical study and therefore does not provide a review of the empirical or other scholarly literature regarding commercialism in schools. Rather, the brief provides a solid analysis of the legal and regulatory restrictions on commercial activities in schools and a non-scientific sampling and description of media articles regarding commercial deals in other jurisdictions. As discussed further below, the brief ignores the substantial scholarly and empirical literature—much of which has been published by organizations such as the Commercialism in Education Research Unit at the University of Colorado Boulder, Campaign for a Commercial-Free Childhood, and Common Sense Media—that has detailed the harms of advertising and media messaging on children generally and the harms from advertising in schools specifically.<sup>5</sup>

## V. Review of the Report's Methods

Because *Commercial Cash* does not provide an empirical, economic, or even philosophical analysis of commercial advertising in schools, it does not employ traditional empirical methods or scholarly analysis. Rather, it is an argument based on an analysis of New York law and a non-scientific sampling of the revenues (not net earnings) from advertising and sponsorship deals in other states. In this section, I review that argument.

At the outset, it's worth noting that *Commercial Cash* acknowledges that the amount of money New York schools might generate through advertising and sponsorship deals, although not necessarily trivial, is relatively modest. As noted above, to determine likely income for a typical New York school district, the brief employs a comparison to a naming rights deal in Pennsylvania; that comparison suggests that a school might gross as little as \$6000 per year—and likely net less than that. Hidden and ignored costs of such contracts include actual out-of-pocket costs and administrative time necessary to negotiate and administer such arrangements as well as relevant legal expenses, all of which affect actual net revenues. There are also less tangible, though no less meaningful, costs of diminished support from donors and even taxpayers who may mistakenly assume that the commercial deals are generating large sums of cash.<sup>6</sup>

More significant, however, are the psychological, health-related, educational, and privacy harms that are virtually ignored by the brief. *Commercial Cash* does not mention any of the extensive scholarship and research in this area. The brief considers only the modest financial revenues that might flow from advertising deals, but fails to weigh them against the costs and harms of those deals. Because the harms of advertising in schools have been detailed elsewhere,<sup>7</sup> I will only provide a brief description of each here.

The very point of advertising is to influence the thinking and behavior of people. Indeed, in nearly all aspects of American life, we are accustomed to advertisements that are aimed at influencing how we think about our families, relationships, environment, and selves. Because commercial culture has saturated the environment, many wonder how there could be any problem with allowing still more advertising in schools. One problem is that the *psychological harm* of advertising in schools is categorically different because children are not yet equipped to respond critically to commercial messaging, particularly when encountering it in the “safe” environment of school, overseen by adults charged with protecting their welfare. As described in detail by Alex Molnar and his colleagues in several reviews of the research on the psychological effects of advertising on children, however, commercial messaging can negatively affect children’s self-esteem, body image, peer relations, and general well-being.<sup>8</sup> After all, selling many products, from breath mints to the latest toy or fashion, routinely depends on advertisers persuading children that they *need* the product in order to be well-liked by and attractive to others—that they have some “problem” only the product can fix.

The *health-related harms* of advertising are also well known.<sup>9</sup> From banning soft drink vending machines in school to regulating the advertisement of foods with little or no nutritional value in school, some policymakers and school officials have been relatively proactive in shielding students from advertising for products that can cause health problems. While

*Commercial Cash* does not specifically advocate for commercial arrangements promoting unhealthy products, neither does it urge school officials to weigh the potential harms of such advertising.

The *educational harms* of commercial advertising are more indirect, but no less damaging than the others ignored by *Commercial Cash*. Not only are students, quite literally, a captive audience, they are an audience conditioned to believe that their teachers have their best interests at heart and that education itself will allow them to develop as critical, thoughtful individuals and community members. “Advertisements, [however], are inherently ‘mis-educative,’ in that they present biased information and discourage rational thought, and thus promote unreflective consumption.”<sup>10</sup> This may be particularly problematic with commercial messages bearing the implicit imprimatur of the child’s school. This is also why *Commercial Cash*’s “whatabout” litany of other public agencies and entities—such as municipal arenas and buses—that are permitted to sell or have devised workarounds to sell advertising space and naming rights is inapposite and unpersuasive.

Finally, in an era in which much—if not most—commercial advertising is targeted to individual consumers on the internet, the prospect of schools’ selling or permitting web-based advertising raises the additional concern of protecting students’ privacy and personal data.<sup>11</sup> While it is common, indeed expected, for teachers to rely on the internet to enhance their lessons and develop digital and media literacy among their students, such technology use comes with the risk of exposing students’ personal data or at least increasing the likelihood that students will be targeted for individual marketing. While some student data collection may (for now) be an unfortunate cost of using most online resources, schools should do all they can to protect students’ personal data. They should not invite such data collection by selling online advertising rights (on school websites, for instance) or by purchasing curricula and other materials from commercial vendors without adequate protection of students’ personal data, even when theoretically rendered anonymous in metadata. In calling on New York policymakers to loosen restrictions on commercial promotional activity through “electronic” means, *Commercial Cash* fails to recognize the risks to student privacy.

## **VI. Review of the Validity of the Findings and Conclusions**

Because *Commercial Cash* does not provide a full cost-benefit analysis of commercialism in schools, ignores the substantial body of scholarship that considers such commercial activity harmful to students, and merely cherry-picks news articles that suggest some school districts appear to earn revenues from advertising deals, its findings and conclusions should be viewed with a great deal of caution.

## **VII. Usefulness of the Report for Guidance of Policy and Practice**

The brief’s call for the New York legislature to revisit and revise policy governing advertising in schools is timely and appropriate. However, in addition to ignoring the potential costs

and harms of advertising, the brief itself provides little useful guidance for officials considering a substantive reworking of regulations.

*Commercial Cash* appears to call for the outright deregulation of school commercial activities, while providing some suggested “ground rules” for local officials to consider when exploring advertising, sponsorship, and naming rights deals. While the criteria identified are helpful, deregulation should not simply task local school boards—often facing intense fiscal and even business community pressure—with voluntarily adopting and implementing sound policy. Rather, the legislature should update and rationalize its outdated and rather ambiguous regulatory regime by establishing a clear regulatory framework, one that prohibits some harmful commercial activities and provides well-placed guardrails for others.

In *Policy and Statutory Responses to Advertising and Marketing in Schools*,<sup>12</sup> Alex Molnar, Faith Boninger, and I offer several options for regulating schoolhouse commercial activity. Recognizing that states differ in their appetites for regulation and commercial activity, we proposed three broad categories of regulation, along with specific statutory language, that New York, or any state, might consider.

### *1. Mandates*

These reform proposals limit the conditions in which the activity may be engaged, partially ban the activity, or outright ban the activity. Mandates are best suited to those commercial activities that cause any amount of harm to students with little or no redeeming value, or that are so harmful that almost no amount of benefit is worth the cost.

### *2. Balancing tests and regulatory requirements to minimize the harm*

These reform proposals would require school officials to publicly balance certain stated benefits of the commercial activity against the identified harms or costs to students and the educational mission of the school. Our proposal offered specific criteria to be weighed against each other for policymakers and decision-makers at the school or school district level. Such balancing-test regulations may also put limitations on the commercial activity to ensure that any risk to children is ameliorated to the extent possible.

### *3. Process-based reform*

These reform proposals require relevant constituencies or stakeholders to be involved in deciding whether to permit a commercial activity. Such stakeholders may include school board members, teachers, administrators, students, and parents. While the focus here is on the process, these policies could be employed in conjunction with the analytic framework provided by the balancing tests. Other process-based reforms we proposed would require informed consent of parents, giving sole discretion to parents on the decision of whether their children may participate in activities with a commercial component.

## Notes and References

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