

Resources:

- 1 See American Beverage Association, "School Beverage Guidelines," accessed August 9, 2006 at: www.ameribev.org/schools/vending.asp. The voluntary policy is the result of an agreement signed between the American Beverage Association, Coca-Cola Company, PepsiCo, and Cadbury Schweppes, and the Alliance for a Healthier Generation, a joint initiative of the Clinton Foundation and the American Heart Association (see: www.healthiergeneration.org/engine/renderpage.asp?pid=s017).
- 2 According to a 2005 GAO report, nearly 75 percent of high schools, 65 percent of middle schools, and 30 percent of elementary schools had exclusive beverage contracts during the 2003-2004 school year. See Government Accountability Office, "School Meal Programs: Competitive Foods are Widely Available and Generate Substantial Revenues for Schools," August 2005 (GAO-05-563).
- 3 Community Health Partnership, "School Soda Contracts: A Sample Review of Contracts in Oregon Public School Districts, 2004" at www.communityhealthpartnership.org/publication2.html.
- 4 The 2005-06 Oregon School Directory can be found at: www.ode.state.or.us/pubs/directory/200506schdir.pdf.
- 5 42 U.S.C. § 1751 (Child Nutrition and WIC Reauthorization Act of 2004, P.L. 108-265). Districts participating in federally-sponsored child nutrition programs are required to establish local wellness policies.
- 6 The Oregon Department of Education, Child Nutrition Program, provides links to the federal wellness policy requirements and samples of model policies: www.ode.state.or.us/search/results/?id=270.
- 7 This method of estimating revenues does not factor in costs associated with the beverage sales. These costs should also be considered and can include, for example, the costs of energy to power the machines, building maintenance and cleaning costs, bottle deposit fees, and personnel costs for administering and monitoring the contracts. In addition, for simplicity, the equation is based on beverage sales through vending machines. It does not address how to calculate revenue generated from beverages purchased according to the contact product price agreements and sold at non-vending outlets.
- 8 Oregon Soft Drink Association, Oregon Student Weekly Beverage Consumption, data compiled by CPA firm Shackelford, Hanson, & Parr, LLP (2005). Data is based on sales of drinks in 97 Oregon school districts during the 2003-04 school year, covering nearly 234,000 enrolled students. Report available at: www.ode.state.or.us/services/nutrition/nslp/foodchoices/school_summary.pdf.
- 9 7 CFR Part 210 (Nation School Lunch Program), 7 CFR Part 220 (School Breakfast Program).
- 10 Loew, Tracy, "Pepsi nixes school fund-raiser," Statesman Journal, (November 3, 2002).

Additional School Soda Contract Resources:

Healthy Beverage Toolkit. The Food Trust. March 7, 2005. http://www.thefoodtrust.org/catalog/resource.detail.php?product_id=111.

Liquid Candy: How Soft Drinks Are Harming America's Health. Center for Science in the Public Interest. www.cspinet.org/liquidcandy/.

School Pouring Right Contracts. American Dental Association. www.ada.org/public/topics/softdrink_faq.asp.

Soft Drinks in Schools. Policy Statement of the American Academy of Pediatrics. Pediatrics. Vol. 113 No. 1 January 2004, pp. 152-154 aappolicy.aappublications.org/cgi/content/full/pediatrics;113/1/152.

Taking the Fizz out of Soda Contracts: A Guide to Community Action. The Public Health Institute. www.phi.org/pdf-library/sodareport.pdf.



Oregon's Public Health Institute

Community Health Partnership is an independent, not-for-profit organization committed to improving the health of Oregonians through advocacy and support of effective public health policy and activities.

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School Beverages – Time to Pop Open Your Soda Contract

This year, Coca-Cola, Pepsi and other beverage industry giants announced a new voluntary policy to remove soda and other sugary drinks from schools nationwide. Recognizing the importance of supporting school environments that teach children how to be healthy, these companies have committed to taking high-calorie beverages out of schools as soon as possible, aiming for 100 percent removal by 2009.¹

The key to turning this voluntary policy from words into action lies within the terms of the contracts many schools have signed with local bottlers.² The contracts are the legally binding agreements through which schools and soda companies have decided *what* and *how* beverages are sold in schools. Often, these agreements grant companies exclusive, long-term rights to sell and advertise their brand beverages on school campuses. Changes to these contracts may be necessary to ensure that healthier beverages are provided in your schools.

In 2004, our organization, Community Health Partnership, reviewed school beverage contracts in Oregon and we released our findings in the report, *School Soda Contracts: A Sample Review of Contracts in Oregon Public School Districts*.³ This report provides a close look at the rights and obligations exchanged through these agreements. We found that the contracts are not as lucrative as many people might assume, and that school districts have granted companies a host of advertising rights and relinquished control over beverages in schools.

Despite the common perception, contracts are not unalterable documents set in stone. Contracts are simply agreements between two parties, and the two parties – schools and beverage companies – can agree to make changes at anytime.

Key Recommendations

- #1 Ensure Parent, Student, and Community Involvement in the Decision-Making Process.
- #2 Understand the Finances.
- #3 Retain Full Control over the Length of the Contract.
- #4 Ensure that Parents and Schools – not the Companies – Choose the Types of Beverages Sold.
- #5 Ensure that Parents and Schools Retain Sole Control over How and When Beverages are Sold.
- #6 Evaluate Merit of Granting Exclusive Advertising and Marketing Rights.
- #7 Build In Financial and Legal Accountability.
- #8 Centralize Individual School Contract Management and Negotiations.



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Building on the knowledge we gained through our analysis of contracts in Oregon, and on the beverage industry's recent commitment to provide healthier beverages in schools, we have developed the following guide to assist schools, parents, students and communities in evaluating and considering amendments to these agreements. We have also highlighted example provisions from contracts negotiated by Oregon school districts that give communities

increased control over the sale of beverages on campus. We hope this information provides a starting point for understanding the types of contract terms that can strengthen your community's control over the sale of beverages in your schools.

Recommendation #1 – Ensure Parent, Student, and Community Involvement in the Decision-Making Process.

The process by which a school or school district decides whether to amend, renew or enter a beverage contract should be open and involve parents, students, and the local community. The following steps provide a starting point for ensuring an open process.

Obtain a Copy of the Beverage Contract: School beverage contracts are public documents and you are entitled to a copy under Oregon Public Records Law. In some cases, districts or individual schools may ask that your request be in writing. Your request should reference Oregon Public Records Law, and clearly identify the document(s) that you are requesting. (See sample)

To find out if your district has a contract, start by contacting your school district business manager. If your district does not have a contract, you may then need to contact individual school principals to obtain copies of contracts signed at the school level. The Oregon School Directory is a useful resource for district and school contact information.⁴

Provide Public Comments: As of the beginning of the 2006 school year, a new federal law requires school districts nationwide to establish "local wellness policies" that set nutrition standards and address physical activity in schools.⁵ The law requires districts to involve parents, students, community members and others in developing the policy. Input into this policy and its related implementing regulations can be a valuable opportunity for people in your community to influence decisions about the types of beverages sold through your school beverage contracts. To find out about how to get involved, contact your school district about the status of your local wellness policy. The Oregon Department of Education, Child Nutrition Program, also provides a number of useful resources for developing these policies.⁶

Sample Public Records Request

Dear [District Business Manager/School Principal],

In accordance with Oregon Public Records Law (ORS 192.420), I respectfully request a certified copy of the district's (or school's) contract(s) for all beverages sold on school campuses outside of the school meal programs.

I appreciate your time to provide a copy of the contract(s) at your earliest convenience.

Sincerely,
[Your Name & Address to send or fax contract(s)] contract(s)]

Recommendation #2 – Understand the Finances.

Faced with funding gaps, many schools have entered into beverage contracts because these agreements appear to offer immediate solutions to keep certain school activities afloat. But the contracts are not as lucrative as they first appear. A solid grasp of the finances is essential for recognizing the negotiating power you have to shape these agreements.

Here's how it works. Money generated by school beverage contracts comes from two sources. One source is **company sponsorship payments** in the form of direct cash or non-cash items. These payments are not charitable donations by the companies. They are part of a business agreement: companies make these payments and in exchange districts grant them rights to sell and market their products on school campuses.

The sponsorship payments are often made in large sums at the beginning of a contract term, and the amount is usually specified in the contract. For non-cash items like scoreboards, the item's value may or may not be identified in the contract. Based on our review of beverage contracts in Oregon, these sponsorship payments amounted to \$2 – \$8 per student per year. Some contracts do not include these sponsorship payments, in which case, you need only look at sales revenue, as described below.

The second way schools make money is through **sales revenue** from students purchasing drinks. Each contract identifies a commission that a school or district receives for each beverage sold from a vending machine. In Oregon, these commission rates range between 15 and 50% of the price of each beverage, with an average commission rate of 32%. For beverages sold through non-vending outlets, such as the school store, the contracts establish product pricing agreements, whereby districts purchase beverages at prices set forth by the contracts and then sell beverages and keep the net profit.

The amount of sales revenue generated depends on how much students purchase, and it is generally a much larger and ongoing source of revenue than the upfront company sponsorship payments. Again, the sharing of this revenue is a business agreement: companies share the sales revenue in exchange for the opportunity to sell and market beverages on school campuses.

Eugene School District – A Community-Based Approach

In the Fall 2005, Eugene Superintendent George Russell appointed a 24 person advisory group of parents, students, community members and school district staff to draft a wellness policy for the district. In the Spring 2006, this broad-based committee solicited wider public input into proposed policy options at a public hearing with more than 100 parents, students and other community members present.

Superintendent Russell and the Eugene School Board later adopted the committee's proposed policy, and the district is now working with companies to amend the district's contracts. The companies have readily agreed to comply with the new policy, and sodas will be removed from all schools by the beginning of the 2006 school year.

In addition, the district's policy creates a "Wellness Advisory Committee" consisting of parents, students, community members, teachers, school and district staff to advise the district on the development of administrative rules and implementation of the policy.

If your school district receives sales revenue reports from the company, you can simply ask to see a copy of those reports, or use a public records request if necessary. If revenue figures are not available, you can at least calculate a reasonable estimate by approximating the volume sold and multiplying that number by the price per drink and the district's commission rate.⁷

For example, according to a 2005 Oregon Soft Drink Association report, middle and high school students drink on average 1.5 twelve ounce beverages per week.⁸ With 36 weeks in a school year, that's 54 drinks for the average student. If your district has 1,000 middle and high school students, a price per drink of \$0.75, and the commission rate is 30%, the estimate would look like this:

$$\begin{array}{r}
 54,000 \text{ drinks purchased} \\
 (54 \text{ drinks/student} \times 1000 \text{ students}) \\
 \times \\
 \$0.75 \text{ beverage price} \\
 \times \\
 30\% \text{ district commission rate} \\
 \hline
 \text{\$12,150 annual sales revenue for school district} \\
 \text{\$12.15 per student per year}
 \end{array}$$

Keep in mind that the amount that schools earn in sales revenue is only a portion of the total dollars that students spend. In the example of above, students spend \$40,500 and the company collects the remaining 70% of the sales revenue, or \$28,350.

Recommendation #3 – Retain Full Control over the Length of the Contract.

Many schools have signed 9, 10, and even 15 year contracts. Future school board members, students, parents and administrators may find themselves bound to agreements that they didn't sign. Your community can negotiate contract terms that give your community flexibility to make changes and even end the contracts early, if so desired.

Steps for retaining control include:

- Establish no more than a three year contract term. Oregon school board members serve four year terms and this three year limit ensures that contracts are not decided entirely by past school board members.
- Provide districts with the option to terminate the contract without cause or financial penalties.
- Define a company's failure to provide beverages in accordance with federal and state laws, as well as the district's wellness policy, as a "material breach" of contract, which gives the district the right to terminate the contract and seek monetary damages.

In addition to these specific provisions, it is important to structure the contract's financial arrangement to ensure your school district has flexibility to make changes when desired. Companies often offer upfront payments at the start of the contracts, but these payments

Limit the Contract Length:

Greater Albany School District signed a three-year contract with the company's sponsorship payment made in equal installments over the course of the contract.

can make it difficult for schools to make changes or end a contract early if they are required to pay back money received in advance. Portland Public Schools, for example, received \$1.9 million upfront when it signed its 8-year contract with Coca-Cola in 2001. Ending the contract three years early, the district would owe Coca-Cola approximately \$712,000. You can avoid this pitfall by spreading any company sponsorship payments equally over the course of the contract, allowing your school more flexibility to make changes as different circumstances arise.

Recommendation #4 – Ensure that Parents and Schools – not the companies – Choose the Types of Beverages that are Sold.

Contracts generally grant companies rights to sell and market their beverages on school grounds. Your contract should clearly identify that your school or district has sole decision-making power over the types of beverages sold, including the ability to choose *not to sell certain beverages*, regardless of whether the beverages are allowed by the beverage industry's new voluntary policy. The industry's policy, for example, still allows diet sodas and sports drinks to be sold in middle and high schools, which your school or district may or may not want to offer.

The contracts should also incorporate references to federal, state, or local laws or policies that affect the availability of beverages in schools, and subsequent changes in these laws. Federal law, for example, currently requires that sodas are not sold in school lunch rooms during lunch hours.⁹ As mentioned earlier, local school wellness policies must also be in place by the beginning of the 2006 school year, and may limit the types of beverages available in your schools. Including these legal references in the contracts can help ensure compliance with laws surrounding the sale of beverages in your schools.

Recommendation #5 – Ensure that Parents and Schools Retain Sole Control over How and When Beverages are Sold.

Contracts include a variety of terms that shape how and when beverages are sold on school grounds. Your contract can be negotiated to ensure that your district or school has sole control over all decisions relating to the availability of beverages in schools.

Such controls could include decisions to determine:

- Number and location of vending machines in schools (require vendor to add, remove, or replace machines at district discretion).
- Hours of vending operation (require machines with automatic timers).
- Types of vending equipment (require energy efficient and quiet machines).

Include References to Existing Laws and Subsequent Changes:

"The machines will be operated by the Vendor in such a way as to fully comply with all federal, state and local laws, as well as Portland Public Schools policies, and USDA regulations. Should any federal, state, local, or District law, regulation, or policy change during the life of this Agreement, the Vendor will be expected to comply with these changes, and in such, hold the District harmless from the consequences of those changes."

- Portland Public Schools

Negotiate District Control:

"The location of the vending machines and the type of beverages sold therein shall be subject to the control of the District."

- Hermiston School District

- Percentage and location of various types of beverages in machines (require a certain percentage to be water).
- Restocking machines (ensure water and healthy beverages are regularly replenished).
- Beverage prices (consider lower prices for water than other beverages).
- Images featured on vending machine side panels (prohibit product advertising).
- Responsibility for recycling containers and building cleanliness.

Recommendation #6 – Evaluate Merit of Granting Companies Advertising and Marketing Rights.

Contracts often grant companies rights to market and advertise their products, name brands and logos on school campuses. These rights are often “exclusive,” and allow only the company’s brand beverages to be sold or distributed on schools campuses. For example, in 2002, a West

Salem High cheerleader tried to sell bottled water under the school logo “Titans” as a fund-raiser for her squad. Pepsi, however, with its 10-year exclusive contract with the Salem Keizer School District, stepped in and reminded the cheerleaders that only its Aquafina brand water is allowed to be sold on school grounds.¹⁰

As discussed earlier, the contract advertising rights, especially the exclusive rights, provide companies with competition-free opportunities to build brand loyalty among young people, and are of enormous financial value to the companies. Given the fact that little money is actually coming from the companies, however, schools may want to reevaluate the value of granting companies such advertising rights. Companies already gain value from the opportunity to sell beverages on school campuses. Advertising rights (much less exclusive rights) do not need to be a part of these deals.

Recommendation #7 – Build in Financial and Legal Accountability.

Because companies are often responsible for collecting money from the machines, it is important that your contract ensure financial accountability by requiring the company to provide accurate, timely and readily understandable

financial reports. These reports could be provided to the district or schools on a monthly or quarterly basis, and detail the sales revenue, as well as the number and type of beverages sold in each machine location.

The contract should allow the school district to perform periodic audits of the company’s books as they relate to the contract.

Negotiate District Control:

- *“Machines will be controlled with electronic timers supplied by the vendor. Timers will have at least ten (10) on/off cycles. On/off cycles will be determined by the School District.”*
- *“Each school retains the right to establish the price to be charged.”*
- *“The Vendor shall provide a sufficient number of recycling containers to ensure that the area, in the vicinity of vending machines, will be kept clean at all times.”*

- Greater Albany School District

Recommendation #8 – Centralize Individual School Contract Management and Negotiations.

To increase your bargaining position, consider consolidating your purchasing power by negotiating on behalf of all schools in the district. Such consolidation can also help improve accountability and simplify administration of contracts across all schools in the district.

Conclusion

When negotiating school beverage agreements it is essential to understand that they are *not* charitable donations by the companies. They are business agreements and beverage companies are gaining valuable rights to market and advertise their products on school campuses. Meanwhile, money generated for schools is not as lucrative as it may first appear, and most importantly, it’s not coming from the companies: it’s coming from your community’s pockets.

The beverage industry’s new voluntary agreement provides a timely opportunity for your community to take a closer look at your school beverage contracts. This is an excellent reminder that school beverage contracts are not agreements set in stone – schools and beverage companies can agree to make changes. We hope information in this guide provides a starting point for your community to understand how school beverage contracts work, and the types of contract terms that can strengthen your community’s control over the sale of beverages in your schools.

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Disclaimer:

The information contained in this guide is provided for general information only and is not offered or intended as legal advice. Examples given are intended to illustrate particular points. If you are interested in the practical application of the material presented, please seek the advice of an attorney.

Establish Financial Accountability:

“Commissions will be paid on a monthly basis ... each check will be accompanied by an itemized statement indicating:

Gross and net sales for each location.

Counter readings and unit sales by product for each machine.

Separate statements for all machines located in cafeterias.

... Authorized representatives of the District may inspect and audit all financial records of the Vendor pertaining to this Agreement.”

- Portland Public Schools