



Restricting Food and Beverage Marketing in Schools

ChangeLab Solutions developed this fact sheet to provide an overview of food and beverage marketing, to explain what school districts are required to do under federal law, and to outline policy options for school districts that want to go beyond the minimum requirements to address unhealthy marketing in schools.

From sugary drink ads on vending machines to fast food logos on book covers and stadium scoreboards, unhealthy food marketing is a frequent sight in schools. Research shows that, despite common misperceptions, these marketing relationships result in little to no revenue for schools.¹ In addition, they encourage students and staff to make unhealthy food choices and compromise the educational mission of schools.

For the first time, the United States Department of Agriculture (USDA) now limits unhealthy food and beverage marketing in schools. On July 29, 2016, the USDA finalized regulations that strengthen requirements for local school wellness policies.² Among other requirements, the final rule allows in-school promotions only for foods and beverages that meet the USDA Smart Snacks in School nutrition standards (Smart Snacks standards).¹

This fact sheet provides an overview of food and beverage marketing and explains what school districts are required to do under federal law. It discusses policy options for school districts that want to go beyond the minimum requirements to address unhealthy marketing more comprehensively. Finally, it briefly addresses First Amendment considerations.



**ChangeLab
Solutions**

Law & policy innovation
for the common good.

¹ The USDA Smart Snacks in School nutrition standards set limits on the amount of calories, sodium, sugar, and fat in foods and beverages that are sold on campus during the school day but are sold outside the federal reimbursable school meals program.

What is food marketing, and why is it a concern in schools?

Food marketing includes oral, written, or graphic statements made for the purpose of promoting the sale of a food or beverage product. These statements are typically made by the producer, manufacturer, seller, or any other entity with a commercial interest in the product.

In schools, food marketing takes a variety of forms. In its more obvious forms, it can be found on the front of vending machines, book covers, and on scoreboards. But it can also take the form of coupons handed out as rewards, branded educational materials, digital media, and more.

Companies' marketing tactics affect children's food preferences, purchase requests, and eating patterns, which can shape lifelong health.³ Marketing for unhealthy foods and beverages often disproportionately targets Latino and African American youth, who are also hardest hit by diabetes and obesity.⁴ In 2009, the food industry spent approximately \$1.8 billion on marketing to children and youth, and most of that marketing promoted unhealthy foods and beverages; \$149 million was spent on marketing in schools.⁵

Limitations on food and beverage marketing in schools are critical because children are particularly susceptible to advertising. Young children do not have the cognitive ability to discern that advertising presents a biased point of view. Older kids and adolescents understand the intent of advertising, but are often still too young to understand its long-term effects. Resisting advertising for the types of foods most commonly promoted requires the ability to "weigh long-term health consequences of consumption against short-term rewards" – an ability that people don't fully develop until their early 20s.⁶ Children exposed to marketing for unhealthy products are more likely to consume those products, which can lead to increased consumption of foods with little, or no, nutritional value.⁷

How does the USDA's final rule on local wellness policies affect food and beverage marketing requirements?

Under the final rule, only foods and beverages that meet the Smart Snacks standards may be marketed on school campuses.ⁱⁱ This means that if the federal nutrition standards prohibit a food or beverage product from being *sold* to students at school, that product also cannot be *marketed* to students at school. For example, full-calorie sodas may not be sold on school campuses under the food standards; therefore, no marketing of any sort for such sodas may take place on campus.

Exceptions to the Marketing Rule

The final rule allows marketing used in outside media as an educational tool (eg, ads in magazines used in art class) or in the context of personal opinions, expressions, or products (eg, clothing or food products brought from home for personal consumption). In addition, school districts do not have to immediately remove or replace a permanent fixture (eg, a scoreboard in a gymnasium or on an athletic field) to comply with the rule. Such marketing can remain until the permanent fixture is removed or replaced. However, future contracts and purchases should consider and abide by the new marketing guidelines.

What can school districts do to address food and beverage marketing?

At a minimum, school districts must revise their school wellness policies by June 30, 2017, to prohibit on-campus marketing during the school day of foods and beverages that fail to meet the Smart Snacks standards. However, districts may go above and beyond these baseline requirements to address food marketing more comprehensively. For sample policy language addressing each of the issues discussed below, please see our resource, [Food and Beverage Marketing: Model School Wellness Policy Language](#).

Limit brand marketing

Brand marketing is the most prevalent type of marketing on school property. But the USDA does not explicitly prohibit food companies from displaying their corporate logos around campus, even if the foods and beverages those companies sell do not meet the Smart Snacks standards.

School districts can address this by permitting brand marketing in only two instances: if every food and beverage product sold under the corporate brand name meets the Smart Snacks standards, or if the marketing features only specific products that do meet the Smart Snacks standards. For example, a fast food company that sells products that do not meet the Smart Snacks standards could not display its logo on school signage or scoreboards unless the logo was accompanied by images of specific products that do meet the standards (eg, fruits, vegetables, and water).

ⁱⁱ A school campus includes "all areas of the property under the jurisdiction of the school that are accessible to students during the school day." Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 81 Fed. Reg. 146, 50151 (July 29, 2016) (to be codified at 7 C.F.R. pt. 210, 220).



Limiting brand marketing can prevent students from perceiving certain brands as healthy, when those brands actually promote unhealthy foods.

Think beyond the school day

Extending the USDA marketing requirements beyond the school dayⁱⁱⁱ means the district prohibits marketing of unhealthy foods at all times, including during after-school activities, such as sporting events. Changing social norms associated with after-school activities may take time – and in some cases, it may be politically infeasible. Each district should assess its needs and determine whether it is ready to extend the timeframe during which the marketing requirements apply.

Address off-campus school-related activities (such as fundraisers)

Applying USDA restrictions to school-related activities that occur off school property can have many benefits. But doing so can be challenging to implement due to social norms, the popular appeal of traditional fundraising events (eg, candy bar sales), and prevalent fundraisers at fast food restaurants in the community. However, schools that revise their policies to capture off-campus school-related activities provide an opportunity for creative fundraising and engagement. Because these activities often foster important relationships between students and their peers, families, and community members, promoting only healthy foods and beverages or non-food items can have positive effects within and outside the school community. Many school districts have had success with healthy fundraisers that are easy to implement and profitable, including walk-a-thons; selling plants, personal care products, and holiday cards; and recycling printer cartridges.⁸ At a minimum, schools can prohibit the on-campus promotion of off-campus fundraising events that involve unhealthy foods.

Prohibit “look-alike” Smart Snacks

Look-alike Smart Snacks, or copycat snacks, are products that have been reformulated to meet the Smart Snacks standards, but are packaged like the branded products available outside of schools, which do not meet the standards.⁹

For example, a reduced-fat food product (such as chips, pizza, or breakfast cereals) may be sold at school if it has been reformulated to meet the Smart Snacks standards. However, this can be misleading for students, staff, and parents because the packaging of the newly reformulated reduced-fat food product is nearly identical to the packaging of the more ubiquitous original product, which is of poor nutritional value. The products’ nearly identical packaging is particularly problematic because the look-alike Smart Snacks are usually not available for purchase outside of school – only their less nutritious, yet similarly packaged, counterparts can be found in stores.¹⁰ This may lead children to buy or request the less healthy product when they see it outside school.

ⁱⁱⁱ A school day is defined as “the period from the midnight before to 30 minutes after the end of the official school day.” Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 81 Fed. Reg. 146, 50151 (July 29, 2016) (to be codified at 7 C.F.R. pt. 210, 220).



Recent research reveals that many students and parents perceive the branded products available outside of schools and their look-alikes as similar in healthfulness, despite major differences in nutrition.⁹ The availability of look-alike Smart Snacks in schools sends the message that such brands and products are generally healthy, which undermines nutrition education goals.

The final rule does not specifically prohibit the sale or provision of look-alike Smart Snacks. However, school districts can go beyond the minimum federal requirements by adopting appropriate wellness policy language to prohibit the sale or provision of these products to students. Because it is easiest to address the *sale* (rather than marketing) of these products, districts should consider including this language in the section that establishes nutrition standards for competitive foods and beverages (ie, foods and beverages that are sold on campus during the school day but are sold outside the federal reimbursable school meal program).

For more information, see the Rudd Center’s resources on [“look-alike” Smart Snacks in schools](#).

Ban all food and beverage marketing on campus

Banning all food and beverage marketing on campus may be an ideal option for school districts that want to simplify enforcement. This approach bans all unhealthy marketing to students, but it also prohibits the marketing of healthier foods and beverages that meet the Smart Snacks standards. It does not, however, prohibit nutrition education activities or school promotion of healthy foods, since such activities do not fall under the definition of marketing.

Ban all marketing on campus

Banning all marketing on campus – not just food and beverage marketing – captures all brands that supply schools with equipment, sponsorships, and other resources, including foods and beverages. This addresses brand marketing, look-alike products, and other marketing that conveys contradictory messages to students, but it may also prohibit marketing of products that align with or have no effect on healthy eating.

First Amendment Considerations

Even though federal law now limits unhealthy marketing in schools, it is important to understand the legal landscape surrounding advertising restrictions. Because the First Amendment to the US Constitution prohibits the government from imposing certain restrictions on speech, concerns can emerge when a public school district – which is a government entity – limits advertising from food and beverage companies. Fortunately, the First Amendment does not stand in the way of carefully crafted advertising restrictions that apply to public schools because, in legal terms, a public school is a non-public forum.* Because public schools are not open to the general public for speech purposes and because they have a basic and far-reaching mission to educate students, courts have repeatedly ruled that K-12 schools may restrict speech if certain conditions are met.¹¹

A school district may therefore limit advertising in schools as long as any restriction is both reasonable and viewpoint neutral. A policy is reasonable if it is consistent with the district's legitimate interest in preserving the property for its dedicated use – educating students.¹³ A policy will likely be considered reasonable if it promotes a school environment focused on learning rather than commercial activity and protects and promotes student health and welfare by excluding advertising that is inconsistent with the district's wellness policy.

A policy is viewpoint neutral if it restricts all speech on a given subject.¹² Viewpoint neutrality is a complicated issue. But the federal rule and ChangeLab Solutions' model policies are viewpoint neutral because they cover an entire area of commercial advertising equally.

Please [contact ChangeLab Solutions](#) for more information on any of the marketing strategies discussed in this factsheet.

*Oregon law may be different. Advocates in Oregon wishing to go beyond the minimum federal standards should contact ChangeLab Solutions or a local attorney for more information.

References

1. U.S. Department of Agriculture Food and Nutrition Service. Local School Wellness Policy Implementation under the Healthy, Hunger-Free Kids Act of 2010. Regulatory Impact Analysis. Alexandria, VA; 2016. www.regulations.gov/document?D=FNS-2014-0010-0727.
2. Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 81 Fed. Reg. 146, 50151 (July 29, 2016) (to be codified at 7 C.F.R. pt. 210, 220).
3. Institute of Medicine Committee on Food Marketing and the Diets of Children and Youth. Food Marketing to Children and Youth: Threat or Opportunity? Washington, D.C.: National Academies Press; 2006. www.iom.edu/Reports/2005/Food-Marketing-to-Children-and-Youth-Threat-or-Opportunity.aspx.
4. Harris J, Shehan C, Gross R. Food Advertising Targeted to Hispanic and Black Youth: Contributing to Health Disparities. Hartford, CT: UConn Rudd Center for Food Policy & Obesity; 2015. www.uconnruddcenter.org/files/Pdfs/272-7_Rudd_Targeted_Marketing_Report_Release_081115%5B1%5D.pdf.
5. Federal Trade Commission. A Review of Food Marketing to Children and Adolescents Follow-Up Report. Washington, D.C.; 2012. www.ftc.gov/os/2012/12/121221foodmarketingreport.pdf.
6. Harris JL, Graff SK. Protecting children from harmful food marketing: options for local government to make a difference. *Prev Chronic Dis*. 2011;8(5):A92. www.pubmedcentral.nih.gov/articlerender.fcgi?artid=3181192&tool=pmcentrez&rendertype=abstract.
7. Sadeghirad B, Duhaney T, Motaghipisheh S, Campbell NRC, Johnston BC. Influence of unhealthy food and beverage marketing on children's dietary intake and preference: a systematic review and meta-analysis of randomized trials. *Obes Rev*. 2016;17(10):945-959. doi:10.1111/obr.12445.
8. National Alliance for Nutrition & Activity. School Fundraisers Can Be Healthy and Profitable. Washington, D.C.; 2015. www.foodmarketing.org/wp-content/uploads/2015/01/school-fundraiser-factsheet.pdf.
9. Harris JL, Hyary M, Schwartz MB. Effects of offering look-alike products as Smart Snacks in schools. *Child Obes*. 2016. doi:10.1089/chi.2016.0080.
10. Wilking C. Copycat Snacks in Schools. Boston, MA: The Public Health Advocacy Institute; 2014. www.phaionline.org/wp-content/uploads/2014/05/PHAI-Copy-Cat-Snacks-Issue-Brief-FINAL.pdf.
11. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988). See also *DiLoreto v. Sowney Unifed Sch. Dist. Bd. Of Educ.*, 196 F.3d 958 (9th Cir. 1999) (holding that advertising space on school's baseball field fence was a non-public forum).
12. *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983).

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Support for this fact sheet was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.

© 2017 ChangeLab Solutions

Photos courtesy of Lydia Daniller (page 3), and Flickr Creative Commons: btwashburn (cover), and You Belong In Longmont (page 2).