

# MAXIMIZE YOUR SCHOOL VENDING CONTRACTS

## Best Practices

By negotiating strong vending contracts, schools can achieve three primary goals:

- (1) Ensure that their wellness policies are fully implemented;
- (2) Hold food and beverage vendors legally accountable for their promises to provide healthy products; and
- (3) Maximize the schools' profits from the arrangements.

This fact sheet outlines some key contract provisions to help guide the negotiation process.

Normally, schools must wait until a vending contract is about to expire before they have an opportunity to change the contract terms. But as large food and beverage companies step forward and pledge to work with schools to limit the sale of non-nutritious products on campus, schools across the country may find an unexpected opportunity to renegotiate their vending contracts, regardless of the expiration date.

How can a school turn this chance to re-open its contract into a true opportunity to improve student nutrition? What follows are three best practices to help guide the negotiations process.

### Best Practice #1:

#### Control Which Products Are Sold or Advertised

Schools—not vendors—must retain absolute control over the following contract terms:

- Choice of products sold, including the choice *not* to sell certain products (such as sodas, diet sodas, or sports drinks)
- Number and location of vending machines on school property
- Location where products are placed in the vending machine slots (also called *slotting position*)
- Portion size of products (i.e., 12-ounce rather than 20-ounce portions)
- Advertising rights, including the decision to prohibit advertising of all kinds (e.g., vending machine fronts, vendor supply cups, sports scoreboards)

### Best Practice #2:

#### Control How Products Are Sold

- Nutritious products (such as milk, 100% juice, and plain water) should be priced lower than non-nutritious options (such as sodas, diet sodas, sports drinks, or flavored waters)
- Commission rates paid for non-nutritious items should not be disproportionately higher than the rates paid for nutritious items, since this could encourage schools to favor the non-nutritious products
- Nutritious products must be kept stocked as continuously as non-nutritious products

**Note:** The contract should state unequivocally that the primary purpose of the contract is to provide healthy beverages, and that the vendor's failure to deliver those products is a *material breach of contract* (meaning it is so damaging to the underlying purpose of the contract that the school district would be justified in ending the contract early)

- Schools should ensure that if the vendor stocks a machine with products that are not on their approved-product list, the contract defines that action as a material breach of contract and requires payment of a predetermined amount of money known as *liquidated damages*

School districts should consolidate all vending operations at the district level, rather than negotiating contracts school by school. The only meaningful way for schools to increase their bargaining power—and their profits—is to aggregate their student body into a consolidated purchasing block and leverage the power that bargaining from a position of such strength can provide.



### Best Practice #3:

#### Maximize Financial Benefit

To protect their financial interests, school should:

- Require the vendor to provide accurate, timely, and readily understandable financial reports
- Require the vendor to permit periodic audits of the vendor's books as they relate to the contract
- Give themselves the ability to terminate the contract for cause or convenience without incurring financial or other penalties
- Commit to no more than a five-year contract term to maximize competition between vendors
- Ensure that the contract can be modified if new federal, state, or local laws affect the contract terms
- Ensure that all vending machines meet the highest standards of energy efficiency (the energy costs associated with a refrigerated vending machine can be substantial)

For real-world examples of how many of these tips have been implemented, see "Making It Happen: School Nutrition Success Stories," produced by the U.S. Department of Agriculture and the Centers for Disease Control and Prevention, at [www.cdc.gov/HealthyYouth/Nutrition/Making-It-Happen](http://www.cdc.gov/HealthyYouth/Nutrition/Making-It-Happen).

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