



Digital Commons@

Loyola Marymount University
LMU Loyola Law School

Loyola of Los Angeles Law Review

Volume 39
Number 1 *Symposium: Food Marketing to
Children and the Law*

Article 3

5-1-2006

Food and Beverage Marketing to Children in School

Edward L. Palmer

Lisa Sofio

Follow this and additional works at: <https://digitalcommons.lmu.edu/llr>



Part of the [Law Commons](#)

Recommended Citation

Edward L. Palmer & Lisa Sofio, *Food and Beverage Marketing to Children in School*, 39 Loy. L.A. L. Rev. 33 (2006).

Available at: <https://digitalcommons.lmu.edu/llr/vol39/iss1/3>

This Symposium is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

FOOD AND BEVERAGE MARKETING TO CHILDREN IN SCHOOL

Edward L. Palmer and Lisa Sofio***

I. INTRODUCTION

Once upon a time, many years ago, our public schools were centers of education. Forefathers and foremothers walked long distances through snow, rain, mud, and the seasons to learn and broaden their knowledge about the world. They learned and honored the "Three Rs," and as they became parents, they sought to provide educational opportunities for their children—opportunities well beyond those they themselves had been privileged to have and to experience.

In the 1920s, this academic landscape began to change when public relations frontiersman, Edward L. Bernays, brought Ivory Soap-sponsored soap-carving competitions to public schools.¹ To bolster the public image of banking institutions after the market crash of 1929, the American Bankers Association brought educational materials into public schools in the early 1930s.² The drumbeat quickened when the National Association of Manufacturers (NAM) distributed its *Young America Magazine* to 70,000 schools in 1937.³ Touted by NAM as the vehicle for bringing "the story of American industry into those places where the story is most needed—the school and the home," it was seen as counteracting "the radical propaganda which [was] finding its way into our American

* Watson Professor of Psychology, Davidson College. M.S. and Ph.D. Social Psychology, Ohio University; A.B. Gettysburg College; B.D. Lutheran Theological Seminary, Gettysburg.

** J.D. Candidate May 2007, University of California, Hastings College of Law.

1. Deborah Stead, *Corporate Classrooms and Commercialism: Some Say Business Has Gone Too Far*, N.Y. TIMES, Jan. 5, 1997, §4A, at 30.

2. *See id.*

3. STUART EWEN, *PR!: A SOCIAL HISTORY OF SPIN* 314 (1996).

institutions."⁴ Following the turn-of-the-century wisdom from Gustave Le Bon, the school-based messages became more dramatic via tapes, film documentaries, radio, and eventually television.⁵ Junior Achievement had arrived by the late 1940s.⁶ Designed by American industry as an in-school program "to get kids interested in entrepreneurialism," it further solidified and legitimized corporate presence in the public school classroom.⁷

Since 1979, corporate marketing involving "public-private partnerships" has grown enormously.⁸ For example, some schools aligned with major corporations in the technology industry with the stated goal of stimulating the economy by upgrading computer literacy in the work force.⁹ By 1993, corporate expenditures involving partnerships between schools and the technology industry totaled \$38 million nationwide.¹⁰

Concurrently, Whittle Communications (Whittle) launched the concept of advertisement panels and wallboards in school hallways and lunchrooms.¹¹ Featuring product advertising and a celebrity message, these panels and wallboards rapidly gained prominence in schools.¹² More recently, Los Angeles-based Channel One moved Whittle from hallways and bulletin boards directly into the classroom environment.¹³ The subsequent venues and varieties of school-based approaches to students have skyrocketed geometrically.¹⁴

4. *Id.* at 314–315.

5. *See id.* at 315–319 (discussing various forms of propaganda and media); William Bird, *Enterprise and Meaning: Sponsored Film 1939–1949*, HIST. TODAY, Dec. 1989, at 24, 25.

6. Stead, *supra* note 1.

7. *See id.*

8. *See* ALEX MOLNAR, GIVING KIDS THE BU\$INESS: THE COMMERCIALIZATION OF AMERICA'S SCHOOLS 39 (1996).

9. Jeff I. Richards et al., *The Growing Commercialization of Schools: Issues and Practices*, 557 ANNALS AM ACAD. POL. & SOC. SCI., 148, 150–51 (1998).

10. EDUC. SERVS. DEP'T, CONSUMERS UNION EDUC. SERVS., CAPTIVE KIDS: COMMERCIAL PRESSURES ON KIDS AT SCHOOL 33 (1995) [hereinafter EDUC. SERVS. DEP'T].

11. *Id.* at 25.

12. *See id.*

13. *Id.*

14. *See id.* at 23–29 (documenting various forms of advertising, including print, radio, school buses, school walks, videos, textbook covers, and scoreboards).

II. RISK ASSESSMENT

One of the most deleterious outcomes of this trend towards school commercialism has been children and teens' exposure to unhealthful food and beverage products and consumption lifestyles that can lead to obesity and its many related health problems.¹⁵ Never before in the history of our nation has this trend become more alarming and critical than it is today. More than nine million American children and teens are either overweight or obese, and scores are joining them daily.¹⁶ The assortment of obesity health risks includes coronary heart disease, hypertension, stroke, diabetes, and cancer.¹⁷ Young children also risk gall bladder disease, sleep apnea, the early onset of Type 2 diabetes, and enlarged livers.¹⁸ Other health costs include general ill health, reduced quality of life, poor self-esteem, and a higher rate of morbidity.¹⁹ Indeed, this may be the first generation of children destined to die before their parents.²⁰

Running parallel to this downward spiral of health risks is a very sophisticated, high-tech food and beverage marketing approach to children and teens in all aspects of their daily lives. Nowhere is this sophistication more prevalent or apparent than within the context of students' school days. In virtually every aspect of the education day—from the classroom and hallways to the lunch room and athletic field—children are targets for the marketing of high-fat, highly-sugared junk food and beverage products. The setting once

15. See BRIAN L. WILCOX ET AL., REPORT OF THE APA TASK FORCE ON ADVERTISING AND CHILDREN 61–62 (2004), <http://www.apa.org/pi/cyf/advertisingandchildren.pdf>; see also AHA Scientific Statement, Am. Heart Ass'n, *Cardiovascular Health in Childhood*, July 2002, at 144–45 (describing the health problems associated with obesity).

16. Karen Pallarito, *Plumping Up Profits: Companies of All Sizes Are Rushing to Market Products Aimed at an Increasingly Obese Population*, U.S. NEWS & WORLD REP., Dec. 20, 2004, at 40; see Janet Shortt, *Obesity: A Public Health Dilemma*, ASS'N OPERATING ROOM NURSES J., Dec. 2004, at 1069, 1072; WORLD HEALTH ORG. [WHO], THE WORLD HEALTH REPORT 1998: LIFE IN THE 21ST CENTURY, at 87 (1998) (report of Hiroshi Nakajima, Director-General).

17. Shortt, *supra* note 16, at 1074.

18. *Cardiovascular Health in Childhood*, *supra* note 15, at 145.

19. See sources cited *supra* note 16.

20. See Anne M. Wolf & Graham A. Colditz, *Current Estimates of Economic Costs of Obesity in the United States*, OBESITY RES., 1998, at 97–106; WHO *supra* note 16.

reserved for children's education is now flooded with unhealthy, obesity-promoting foods and beverages.

III. IN-SCHOOL COMMERCIALISM PRACTICES

A 2000 report by the U.S. General Accounting Office set forth a four-category framework for reviewing in-school commercialism practices: (1) product sales, (2) direct advertising, (3) indirect advertising, and (4) market research.²¹ Each category includes a variety of practices.²² This Part will focus on the ways in which corporations and their agents market food and beverage products to children within each of these basic categories.

A. Product Sales

The common feature within this category is the sale of a product to gain revenue for the school. The most publicized practice is the procurement of multi-year exclusive contracts by major soft drink companies with an individual school, a school district, or district consortia.²³ The contracting company sets sales quotas, pays the contracting school, district, or consortium, and guarantees a certain monetary figure for meeting the quota.²⁴ Coke and Pepsi are two of the most prevalent and publicized corporations establishing these contract arrangements.²⁵ Other arrangements include contracts made with fast food companies, such as McDonald's and Taco Bell, to sell food on the school grounds or in the school cafeteria.²⁶

A second product sales category encompasses a broad spectrum of cash and credit rebate programs. The school or district might collect a given store's receipts and, in return, receive perhaps one percent of the receipt total to put towards school equipment or

21. U.S. GEN. ACCOUNTING OFFICE, HEHS-00-156, PUBLIC EDUCATION: COMMERCIAL ACTIVITIES IN SCHOOLS 8 tbl.1 (2000), available at <http://www.gao.gov/new.items/he00156.pdf>.

22. *Id.*

23. *Id.*

24. See, e.g., Andrew Hagelshaw, *Advertising Doesn't Belong in the Classroom*, S.F. CHRON., June 21, 1999, at A21; WILCOX ET AL., *supra* note 15, at 58.

25. WILCOX ET AL., *supra* note 15, at 58; see Betsy McKay, *Coke Finds Its Exclusive School Contracts Aren't So Easily Given Up*, WALL ST. J., June 26, 2001, at B1.

26. Richards et al., *supra* note 9, at 153–54 tbl.1.

supplies.²⁷ Credit or shopping card programs follow a similar principle, with customers designating a school on a form at the time of a purchase.²⁸ The Internet shopping principle is virtually identical to the card program practices.²⁹ From the food and beverage perspective, this approach might entail collecting sales receipts from a given supermarket chain to submit to the school or school district.³⁰ Since larger total sales translate into higher dollar returns for the school, the school's students and their families have incentives to focus their purchases on this retailer, to purchase more food products than usual, and to encourage their friends and relatives to do the same. Maximizing food product receipts for turn-in becomes the singular focus and goal.

A third category of product sales involves a smorgasbord of fundraising activities. Students are encouraged and expected to sell products in order to benefit a class, club, or the school at large.³¹ Candy is one of the most frequently sold food products.³² A significant new factor influencing fundraising is a vast cadre of sophisticated fundraising companies representing a range of businesses and their products.³³ These companies offer their services to schools and school districts.³⁴ A massive army of students fan out across the community selling products to their parents, relatives, neighbors, and friends.³⁵ The school or group then receives a percentage of the sales revenues.³⁶

B. Direct Advertising

In a variety of venues, this in-school commercialism entails advertising directly to students.³⁷ Two of the most prominent venues are school grounds and school equipment.³⁸ The advertisements may

27. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 8, 17.

28. *Id.*

29. *Id.* at 8.

30. *Id.* at 8, 17.

31. *See* EDUC. SERVS. DEP'T, *supra* note 10, at 28–29.

32. *See id.*

33. *See id.*

34. *See id.*

35. *See id.*

36. *See* WILCOX ET AL., *supra* note 15, at 57; EDUC. SERVS. DEP'T, *supra* note 10, at 28–29.

37. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21.

38. *Id.*

be featured on billboards, marquees, message boards, school buses, and scoreboards. Company-donated book covers provide a "wrap-and-carry" advertisement medium.³⁹ Assignment books and posters are other familiar in-school advertisement sites.⁴⁰ Students also see food and beverage advertisements at bus stop kiosks.⁴¹

A second avenue of direct advertising relies on the use of school publications, such as school newspapers, yearbooks, and sports programs.⁴² Publications sell advertisement space to fund their operations and create additional revenue.⁴³

Media-based advertising provides a third avenue. Schools invite the advertisers onto their premises in exchange for money, equipment, or student services.⁴⁴ Channel One is the most active entity in this group.⁴⁵ Typically, Channel One contracts with the participating school to show Channel One's news program (ten minutes of news and two minutes of commercials) on ninety percent of all school days, in eighty percent of all classrooms.⁴⁶ The school receives a KU-band satellite dish installed by Channel One, two central videocassette recorders, internal wiring for transmission throughout the school, and a nineteen-inch television set for each classroom.⁴⁷ Channel One transmits a daily news program from Los Angeles to the school's satellite dish between 3:30 a.m. and 5:30 a.m.⁴⁸ The company also offers other programs and channels for classroom use at the discretion of individual classroom teachers.⁴⁹ Channel One's "golden goose," however, is the integration of paid commercials into its daily news program.⁵⁰ Some of the products advertised include Snickers, Rold Gold pretzels, CareFree gum, and Pepsi.⁵¹ The typical Channel One contract mandates that students

39. *See id.* at 22.

40. *See id.* at 18.

41. *See, e.g., id.* at 12 tbl.2.

42. *Id.* at 18.

43. *Id.*

44. *See id.* at 5.

45. *See* EDUC. SERVS. DEP'T, *supra* note 10, at 20.

46. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 26.

47. EDUC. SERVS. DEP'T, *supra* note 10, at 20.

48. *Id.*

49. *See id.*

50. *See id.* at 21.

51. *Id.* at 20.

view this daily program.⁵² All the equipment is owned, operated, and maintained by Channel One.⁵³

A similar contractual pattern is used by Star Broadcasting, based in St. Paul, Minnesota.⁵⁴ Like Whittle, they provide a satellite dish and transmit Top 50 "hot rock" or "hot country" tunes and food and beverage ads into school hallways, lunchrooms, and lobbies.⁵⁵ The arrangement is a "cash-to-carry" one, whereby Star Broadcasting pays cash to schools that contract to carry its content.⁵⁶

The now defunct ZapMe! also followed the Whittle tradition. Participating schools or districts received a computer lab with fifteen personal computers, a printer, seventeen-inch monitors, installation, computer-training, and a high-speed Internet connection.⁵⁷ In return, contracting schools or districts agreed to use the computers for a minimum of four hours per day.⁵⁸ ZapMe! placed advertisements in the lower left-hand corner of the computer screen.⁵⁹ In addition to advertisement placement, ZapMe! microtargeted school districts and student populations based on user profile information (e.g., a student's age, gender, and zip code) provided by each student user.⁶⁰ ZapMe! failed as an economic school-based venture in October 2000.⁶¹ Despite its failure, others have adopted the ZapMe! approach to media-based food and beverage advertising in schools.⁶²

Colorado-based Word of Mouse, for example, developed a related concept.⁶³ The company contracts with schools or school districts to provide them with mouse pads for computer labs.⁶⁴ These colorful pads contain four Web site addresses tailored to the age

52. *See id.* at 21.

53. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 26.

54. *See* EDUC. SERVS. DEP'T, *supra* note 10, at 25.

55. *See id.*

56. *See id.*

57. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 27.

58. *Id.*

59. *Victory! ZapMe Zapped*, NOT FOR SALE! (Ctr. for Commercial-Free Pub. Educ., Oakland, Cal.), Winter 2001, at 2, 2.

60. *See id.*; U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 31.

61. *Victory! ZapMe Zapped*, *supra* note 59.

62. *Id.*; *see* U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 28.

63. Rebecca Gardyn, *Mouse-Trapping the Student Market*, AM. DEMOGRAPHICS, May 2000, at 30.

64. *See id.*

level of each school's students.⁶⁵ Web marketers purchase semester-long visibility at 20,000 to 400,000 school computer terminals.⁶⁶ Depending on the targeted age level, the cost per thousand user sessions ranges from \$0.73 to \$1.18.⁶⁷ The company requires each participating school or school system to sign a three to five-year contract in which the schools agree to use only Word of Mouse mouse pads.⁶⁸ Word of Mouse restocks the supply of mouse pads each semester.⁶⁹

In other media-based advertising, entities such as the New York Times or the Wall Street Journal provide newspapers to the students at below-market rates.⁷⁰ Like any newspaper, these newspapers contain food and beverage advertising.⁷¹

A fourth avenue of direct advertising is corporate samples. A company may provide samples of a candy or a snack food.⁷² Hershey is just one of the major companies that distributes school samples.⁷³

C. Indirect Advertising

Indirect advertising represents yet another form of in-school commercialism. By far the most prevalent entry in this category is corporate-sponsored educational materials (SEMS).⁷⁴ Typically, companies supply schools with educational materials that cover a broad range of topics.⁷⁵ In some instances, the topic is directly related to a company's major product.⁷⁶ Sometimes, the materials

65. *Id.*

66. *Id.* at 32.

67. *Id.*

68. *Id.*

69. *Id.* at 32-33.

70. EDUC. SERVS. DEP'T, *supra* note 10, at 24 (explaining that the New York Times provides their regular adult edition and the Wall Street Journal provides schools with a special student edition).

71. *See id.*

72. *Id.* at 27.

73. *Id.* at 9.

74. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 8 tbl.1, 29; EDUC. SERVS. DEP'T, *supra* note 10, at 3.

75. *See generally* EDUC. SERVS. DEPT., *supra* note 10, at 12-16 (listing various forms of SEMS).

76. *Id.* at 13; *see also* U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 28-29 (explaining that schools in several districts used materials from local power companies to teach students about energy conservation).

express a "good community citizen" message that the company wants to convey about its industry or what the company does to promote the general welfare.⁷⁷ Thus, a dental hygiene unit may have basic information about tooth and gum care, supplemented by brand-name toothpaste and toothbrush samples.⁷⁸ A food company may have educational materials on fruits and vegetables, or a candy company may have materials explaining how its product is made and the ingredients that go into the process.⁷⁹ Less frequently, a company will provide materials that have no apparent relationship to its product or industry.⁸⁰

Corporate-sponsored contests and incentives programs are the second most prevalent entry in this category.⁸¹ A national pizza company may award free pizza coupons to students who read a specified number of books.⁸² A popular food chain may provide coupons for free meals to students who meet some certain academic criteria.⁸³ Like the sponsored educational materials, these contests and incentives range from highly commercial to noncommercial.⁸⁴

Textbook branding is another classroom-based practice.⁸⁵ A textbook (e.g., McGraw-Hill's) may have a math problem that states, "If Joe wants a \$108 pair of Nikes and earns \$6 an hour at Taco Bell, how many hours will he have to work to buy the shoes?"⁸⁶ Comparable problems or classroom packets may have students counting M&Ms or Tootsie Rolls.⁸⁷ Each of these—both subtly and overtly—brings food product advertising and marketing to young students.

Corporations also sponsor teacher training which can be centered on areas directly related to a company's product or industry,

77. EDUC. SERVS. DEP'T, *supra* note 10, at 13.

78. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 8 tbl.1.

79. *See id.*

80. *See* EDUC. SERVS. DEP'T, *supra* note 10, at 13.

81. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 8 tbl.1; EDUC. SERVS. DEP'T, *supra* note 10, at 19–20.

82. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 29–30.

83. EDUC. SERVS. DEP'T, *supra* note 10, at 63 (describing McDonald's incentive program).

84. *See id.* at 19–20, 43, 57–63.

85. *See* Patt Morrison, *This Educational Message is Brought to You by . . .*, L.A. TIMES, Sept. 3, 1999, at A10.

86. *Id.*

87. *See id.*

or topics of a more general nature.⁸⁸ Similarly, a computer company may provide a training workshop in its hardware or software. More generally, a major national firm may provide a workshop in effective communication or management skills. While the computer training sessions may not be product-related, the communication and management workshops are tailored to promote food corporations.⁸⁹

The fourth and final entry in this category, corporate grants or gifts, carry either direct sales-based benefits to the donor or less tangible, indirect public goodwill.⁹⁰ These grants and gifts come from a variety of corporate entities including major food and beverage companies.⁹¹ In some instances, students directly use and experience the company's products.⁹² In other cases, the gift is part of general funding and granting.⁹³

D. Market Research

Market research involves companies gathering data relating to student-consumer tastes, preferences, and lifestyle patterns.⁹⁴ Market research has three basic aspects: polls and surveys, Internet panels, and Internet tracking.⁹⁵

In polls or surveys, a company distributes and collects questionnaires from students ranging from general lifestyle patterns to specific tastes and preferences.⁹⁶ The most immediate and literal version of this might be a soft-drink company that conducts taste tests.⁹⁷ In each instance, the company gains specific information that enables it to create target groups and may aid in developing marketing strategies.⁹⁸ Similarly, Internet panels function like polls, except that the vehicle for communication is more direct and

88. See generally EDUC. SERVS. DEP'T, *supra* note 10, at 13-16 (detailing SEMS, which cover topics such as the environment, nutrition, food-based cross-curricular lessons, health and safety, economics, history, money management, communications or blatant appeals to use corporate products).

89. See *id.* at 5-6.

90. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 30-31.

91. *Id.* at 31.

92. *Id.* at 30-31.

93. See *id.*

94. WILCOX ET AL., *supra* note 15, at 58-59.

95. *Id.*

96. *Id.*

97. *Id.*

98. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 31.

immediate.⁹⁹ This paperless pathway facilitates quick-and-easy market inquiry and student response.

Internet tracking does not involve direct communications with a student. Instead, it tracks a student's pattern of hits on given Web sites.¹⁰⁰ For example, if a student accesses a Web site pertaining to pets, the tracking company can more precisely determine whether the student has a dog, cat, gerbil, or pet frog. If a student downloads music, the company can determine the student's specific music preferences. If a student accesses a food or beverage Web site, this data enables the company to fine-tune its marketing strategy to this individual. All of this data—in combination with polls and questionnaires—enables a company to sharpen its marketing approach and determine what methods will most effectively reach a given set of students.¹⁰¹

As one can readily see, commercialism activities are broad and far reaching, touching each aspect of the student's school day, athletic events, commute, and homework. It is an all-encompassing package of practices and approaches to students, their pocketbooks and billfolds, their influence on major household purchasing decisions, and their long-term brand loyalties and consumer patterns.

IV. RATIONALE, PREVALENCE, AND PERSPECTIVE

A. Rationale

Three basic forces are driving commercialism in schools — one fed by schools' needs and the other two by corporate interests. Because tax dollars are not keeping pace with school expenses and the general public resists tax increases, school systems are hungry for dollars and explore a variety of corporate ways to fill the void.¹⁰² Corporations, by contrast, have two basic goals: product placement and loyalty patterns. Product placement enables a company to reach its intended student-consumer group in a single setting and during a

99. *Id.*

100. *Id.*; JOSEPH TUROW & LILACH NIR, ANNENBERG PUB. POL'Y CTR. U. PA., No. 33, THE INTERNET AND THE FAMILY 2000: THE VIEW FROM PARENTS, THE VIEW FROM KIDS 15–16 (2000).

101. TUROW & NIR, *supra* note 100, at 15.

102. WILCOX ET AL., *supra* note 15, at 57–58; see Morrison, *supra* note 85 (describing schools as “hungry for business” because of budgetary deficits).

previously inaccessible time-frame.¹⁰³ From a corporate perspective, reaching this student target group within educational "prime-time" is far more cost-effective than trying to reach smaller fractions or segments of this group in non-school-based venues.¹⁰⁴ Also, the brand and consumer patterns that students, as entry-level consumers, form at a young age are likely to be the same or similar to patterns they will continue throughout their consumer lives.¹⁰⁵ Taken together, these driving forces constitute a potentially lucrative land of opportunity—both for schools and their corporate partners.

B. Prevalence

Exact figures on prevalence patterns are difficult to obtain. The U.S. Government Accounting Office (GAO), Consumers Union (CU), Center for the Analysis of Commercialism in Education (CACE), Council on Commercialism in Education (CCE), Council for Aid to Education (CAE), and other monitoring and research agencies agree that commercialization has mushroomed and morphed into new dimensions within the past decade.¹⁰⁶

Product sales are the most prominent activity across all schools.¹⁰⁷ Exclusive long-term system, district, or consortia agreements with food and drink providers and a variety of other product companies are most widespread at the high school level.¹⁰⁸ Middle and elementary schools also enter into such contract arrangements, but their most prominent practices relate to cash-and-credit rebate programs and fundraising activities.¹⁰⁹ Scholars

103. WILCOX ET AL., *supra* note 15, at 57–58.

104. *Id.*; see also MOLNAR, *supra* note 8, at 35–36 (discussing advertising targeting students in a "prime market").

105. See MOLNAR, *supra* note 8, at 36.

106. See, e.g., U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 17–18; see also Alex Molnar & Jennifer Morales, *Commercialism @ Schools: Research by the Center for the Analysis of Commercialism in Educations Shows an Increase in Commercial Activities in Schools*, EDUC. LEADERSHIP, Oct. 2000, at 40–43 (describing increases in commercialism in schools between the years 1990 and 2000 including a 1384% increase in exclusive agreements, a 231% increase in incentive programs, a 539% increase in advertisements on school space, a 1875% increase in SEMS and a 139% increase in electronic marketing).

107. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 4.

108. *Id.* at 4–5.

109. KELLY P. BROWNELL & KATHERINE BATTLE HORGAN, *FOOD FIGHT: THE INSIDE STORY OF THE FOOD INDUSTRY, AMERICA'S OBESITY CRISIS AND*

recently found that 240 school districts in thirty-one states have entered into exclusive "pouring rights" agreements with cola companies.¹¹⁰

Prior to this decade, it was commonplace for an individual school to make agreements with a local soda bottler.¹¹¹ Now, it is standard for bottlers to secure multi-million dollar, district-wide contracts that guarantee exclusivity.¹¹² On March 14, 2001, Coca-Cola announced that in response to parent criticism it would encourage local bottlers to stop signing exclusive contracts with secondary schools.¹¹³ Despite the announcement, Coke's largest bottler, Coca-Cola Enterprises Inc., had signed twenty of these exclusive contracts by mid-year.¹¹⁴

A variety of direct-advertising venues are prevalent throughout schools across the country. Advertising on school grounds and on school equipment is most apparent at the middle and high school levels; however, bus stop kiosks, samples, and boxes of corporate-donated book covers span all school-age ranges.¹¹⁵ Cover Concepts Marketing Services, Inc., for example, claims their free book covers go to class each day with more than sixteen million students in some 25,000 schools.¹¹⁶ An increase in exclusive agreements with cola companies has corresponded with a similar increase in scoreboard advertising and space appropriation.¹¹⁷

Advertising in school publication is most prevalent at the high school level, although media-based advertising and its leading entities, Channel One and Star Broadcasting, target both middle schools and high schools.¹¹⁸ According to a Channel One official, roughly thirty-eight percent of all middle schools and high schools in the United States were connected to its system by 2000, and another

WHAT WE CAN DO ABOUT IT 155 (2004); U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 1517.

110. BROWNELL & HORGAN, *supra* note 109, at 163.

111. Molnar & Morales, *supra* note 106, at 40.

112. *Id.*

113. McKay, *supra* note 25.

114. *Id.*

115. EDUC. SERVS. DEP'T, *supra* note 10, at 2.

116. *Id.* at 26.

117. See generally Molnar & Morales, *supra* note 106, at 40–41 (describing an increase of 539% for appropriation of space).

118. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 26.

1000 schools were expected to join the existing 12,000 over the next several years.¹¹⁹ With 5000 schools signed on by the end of its first broadcast year, this marked a 240% increase in connected schools.¹²⁰ Similarly, Star Broadcasting beamed into the hallways, lunchrooms, and lobbies of 400 schools nationwide.¹²¹

Indirect advertising spans the entire school age-range. Corporate-sponsored educational materials (SEMS) are readily available to teachers at all grade levels.¹²² Consumers Union (CU) collected more than 200 SEMS and believes this to be merely the "tip of the iceberg"—perhaps less than half the SEMS available to schools.¹²³ Of the seventy-seven kits and packets evaluated, CU judged more than half to be either "commercial" or "highly commercial" and found biased or incomplete information in nearly eighty percent of the materials.¹²⁴

C. Perspective

Administrators, teachers, parents, students, and the general public are not of one mind with respect to the marketing of food and beverage products in schools. Major arguments concerning the marketing of food and beverage products underscore the ability of commercialism in school to provide desperately needed funds, equipment, and materials.¹²⁵ Moreover, because commercialism is "in the air everywhere,"¹²⁶ some posit that its presence in schools is just a natural and harmless extension of its role in our lives—one in which students can become more literate about advertising.¹²⁷ Some perceive the corporate community as possessing expertise,

119. *See id.* at 27.

120. Christine M. Bachen, *Channel One and the Education of American Youths*, 557 ANNALS AM. ACAD. POL. & SOC. SCI., 132, 133 (1998).

121. EDUC. SERVS. DEP'T, *supra* note 10, at 25.

122. *See id.*; *see also* Molnar & Morales, *supra* note 106, at 41–42 (describing teaching aids made available to high school teachers by McDonald's and to elementary students by the National Hockey League in collaboration with Nike).

123. EDUC. SERVS. DEP'T, *supra* note 10, at 12.

124. *Id.* at 12–13.

125. *See id.* at 31–33.

126. "In the air everywhere" is the slogan for KDKA, the first commercial radio station in the U.S. *See* KDKA Home Page, <http://www.kdkaradio.com/history.shtml> (last visited Nov. 12, 2005).

127. WILCOX ET AL., *supra* note 15, at 57–58.

information, and resources that can improve and enhance a student's education.¹²⁸

Defenders of commercialism in schools argue that teachers are highly capable of evaluating materials that come into the school and their classrooms.¹²⁹ Based on their evaluations, teachers can determine whether SEMS, for example, are useful as intended by the supplier, can be used as an educational demonstration of commercial bias, or should be denied classroom entry.¹³⁰ It is further argued that critics grossly exaggerate problems with SEMS and that teachers find them to be an excellent tool to provide hands-on student experience, up-to-date information, and a refreshing variation in their lesson plans.¹³¹ To quote one Stamford, Connecticut middle-school teacher, "If it's free (and good) it's for me! Great, glossy, up to date, motivating materials . . . are a heck of a lot better than the 1966 textbooks that many teachers are refurbishing to pass out each September."¹³²

Those who oppose commercialism in schools take a different stance on what education should and should not be. Their benchmark criterion is simply what provides the best education for students.¹³³ The criteria of the most lucrative deals, which provide schools with the most resources, tend to defeat basic educational goals and compromise educational integrity.¹³⁴ SEMS blur the line between education and propaganda, thereby distorting classroom messages. Both SEMS and other in-school advertisement methods carry a subtle, yet compelling, message that schools and their teachers endorse these companies, products, and perspectives.¹³⁵ Under this view, it is naïve to believe that teachers can serve as gatekeepers who can safeguard classrooms from SEMS-bias, especially since the programs and materials themselves routinely bypass any system or school-based processes intended to safeguard students.¹³⁶ As a matter of values and principles, in-school

128. See EDUC. SERVS. DEP'T, *supra* note 10, at 31–32.

129. *Id.* at 4.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. See *id.*

135. See *id.*

136. *Id.* at 7.

commercialism fosters a student culture of materialism that affects how students see themselves, how they relate to others, and how they paint the basic features of their society and the world.¹³⁷ In addition to being highly unethical, the suggestion that school-business partnerships will always have commercial payback serves only to further deepen the materialist message.¹³⁸

V. SURVEY OF RESEARCH ON MATERIALISM

Research has addressed both the broad spectrum of materialism and its narrower counterpart within school settings. For purposes of this review, materialism will be defined as the acquisition of products becoming the basis for evaluating an individual's personal worth. Within this "you are what you buy" context, such judgment spawns both the group evaluation and the individual's own self-evaluation.¹³⁹

In examining the broader social context, sociologists Anne Beutel and Monica Marini examined gender and values among high school seniors from 1977–1991.¹⁴⁰ Values were measured across three dimensions: compassion, materialism, and meaning in life.¹⁴¹ Females scored significantly higher than males on compassion, which was defined as concern and responsibility for the well-being of others and granting importance to finding purpose and meaning in life.¹⁴² Males scored significantly higher than females on materialism and competition.¹⁴³ These differences are evident throughout the 15-year time period and span social class sub-groups.¹⁴⁴

Another dimension of materialism relates to how corporate America perceives and markets to children. The types of products advertised to children and the major appeals within the advertisements themselves serve to create America's "portrait of the

137. *Id.*

138. *Id.* at 33.

139. Stanley J. Baran et al., *You are What You Buy: Mass-mediated Judgments of People's Worth*, J. COMM., Spring 1989, at 46, 52–53.

140. Anne M. Beutel & Monica Kirkpatrick Marini, *Gender and Values*, 60 AM. SOC. REV., 436, 439–40 (1995).

141. *Id.* at 436.

142. *Id.* at 441 tbl.1.

143. *Id.*

144. *Id.* at 446.

child."¹⁴⁵ In his early work, Professor Francis Earle Barcus examined the advertising environment on children's commercial television.¹⁴⁶ Children most frequently viewed advertisements for cereals, candies, fast foods, and pre-Christmas toys.¹⁴⁷ Most of the cereals were heavily sugared.¹⁴⁸ One can readily understand why nutritionist Joan Gusow termed it "audio-visual diabetes."¹⁴⁹ Children's health and welfare were neither an issue nor a concern to advertisers. Subsequent content analysis by Dale Kunkel and Walter Gantz found advertisement prevalence patterns closely paralleling those found by Barcus over a decade earlier.¹⁵⁰ There had been no substantive change within the intervening years.¹⁵¹

Happiness and fun are the major product appeals to children.¹⁵² As the young viewer watches the advertisement—children having fun and being accepted within the group—the unspoken, visual message becomes, in effect, "buy this and you, too, can be happy." Linking product purchase with one's attainment of happiness is the ultimate expression of materialism.

Moving from the general viewing context to the public school classroom, Bradley Greenberg and Jeffrey Brand have examined the impact of Channel One upon 10th grade viewers.¹⁵³ Comparing 756 viewers with 891 non-viewers, they found that viewers knew more about issues presented in the programs and expressed positive

145. Francis Earle Barcus, *The Nature of Television Advertising to Children*, in CHILDREN AND THE FACES OF TELEVISION: TEACHING, VIOLENCE, SELLING 273, 275–76, 279–81 (Edward L. Palmer & Aimee Dorr eds., 1980).

146. *Id.* at 273.

147. *Id.* at 275.

148. *Id.* at 276 (noting that about seven out of ten advertisements were for high-sugar products such as cereal).

149. WILCOX ET AL., *supra* note 15, at 61 (citing Joan Gusow, Products and Programs – The Child as Consumer Introductory Remarks at Action for Children's Television's Sixth National Symposium (Nov. 22, 1976)).

150. Dale Kunkel & Walter Gantz, *Children's Television Advertising in the Multi-channel Environment*, 42 J. COMM. 134, 144–46 (1992).

151. See sources cited *supra* notes 147 & 150.

152. Kunkel & Gantz, *supra* note 150.

153. Jeffrey E. Brand & Bradley S. Greenberg, *Commercials in the Classroom: The Impact of Channel One Advertising*, 34 J. OF ADVERTISING RES. 18, 21–22 (1994); Bradley S. Greenberg & Jeffrey E. Brand, *Television News and Advertising in Schools: The "Channel One" Controversy*, 43 J. COMM. 143, 145–50 (1993).

attitudes toward and greater desire to buy the advertised products.¹⁵⁴ Interestingly, Professor Christine Bachen found that the ability of the program to enhance knowledge of and interest in current events mainly depended on the presence of supplemental activities by teachers.¹⁵⁵ Bachen notes that a combination of organizational factors and restrictive contract terms limits teachers' ability to provide such activities.¹⁵⁶ Ironically, the most comprehensive study of Channel One's impact did not examine advertising's effects on children.¹⁵⁷ The impact of school-commercialism venues beyond Channel One has not been systematically studied.

VI. POLICIES, POSITIONS, AND PRACTICES

A. Legal Challenges

Legal challenges have focused on the daily airing of Channel One and its two minutes of commercials in school classrooms. In *State v. Whittle Communications*,¹⁵⁸ the Supreme Court of North Carolina considered the validity of a rule promulgated by the State Board of Education (Board).¹⁵⁹ The rule prohibited local districts from entering into contracts that limit school administrators' authority to determine the content and timing of materials presented to students.¹⁶⁰ The court found the state rule invalid because the contract concerned supplementary education materials, an area which had been delegated to the local school boards to oversee.¹⁶¹ The only limitation on a local board's discretion in choosing supplementary materials was that it could not displace textbooks.¹⁶² Additionally, the court noted that the legislature had expressly given local boards the power to enter into contracts for materials with commercial

154. Greenberg & Brand, *supra* note 153, at 145-50.

155. Bachen, *supra* note 120, at 144-45.

156. *Id.* at 138.

157. See JEROME JOHNSTON & EVELYN BRZEZINSKI, TAKING THE MEASURE OF CHANNEL ONE: THE FIRST YEAR 1, 3 (1992) (describing that the parameters of the study did not include the effects of advertising on children, but explaining that the study's design, data collection, and reporting was not influenced by the sponsor).

158. 402 S.E.2d 556 (N.C. 1991).

159. *Id.* at 558.

160. *Id.*

161. *Id.* at 560.

162. *Id.* at 561.

advertising without the Board's approval.¹⁶³

The court in *Whittle Communications* also considered the state's contention that the contract violated the state constitution and public policy.¹⁶⁴ The Board relied on Article V of the state constitution, which provides that taxes can only be used for public purposes, and Article IX, which includes the general requirement for a free public school system.¹⁶⁵ The Board also argued that tax dollars were being used to further the interests of Channel One sponsors and that, in watching commercials, students were forced to pay for school with their time.¹⁶⁶

In dismissing the first argument, the court emphasized that no tax dollars were expended on the contract besides *de minimis* electricity expenditures.¹⁶⁷ Regarding the contention that students were forced to pay for school with their time, the court relied on the opt-out ability for students and emphasized that watching Channel One was not mandatory.¹⁶⁸ The court rationalized that because viewing was not mandatory, the students were not paying anything.¹⁶⁹ The general rule in North Carolina is that the legislature is free to set public policy absent a constitutional violation.¹⁷⁰ Therefore, the court was required to respect the legislature's policies of removing control over secondary educational materials from the state and allowing districts to enter into contracts that involve commercial advertising because neither policy violated the constitution.¹⁷¹ The Supreme Court of North Carolina affirmed the trial court's dismissal of plaintiff's claim.¹⁷²

In *Dawson v. East Side Union High School District*,¹⁷³ the court reviewed a Channel One contract similar to the contract at issue in *Whittle Communications*.¹⁷⁴ The court disagreed with the plaintiff's

163. *Id.*

164. *Id.* at 563.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.* at 564.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 565.

173. 34 Cal. Rptr. 2d. 108 (Ct. App. 1994).

174. *Id.* at 111.

assertion that various California statutes and administrative declarations rendered contracts such as the Channel One contract unlawful.¹⁷⁵ However, the court considered four other issues regarding the district contract with Channel One.¹⁷⁶

First, the court decided the trial court was correct in rejecting the plaintiff's claim that a school district may never enter into such a contract.¹⁷⁷ The court reasoned that a school district may expose students to a non-educational curriculum element as long as it is only incidental to educational material and is not prohibited by the constitution or any other law.¹⁷⁸ Because Channel One did not attempt to frame the commercials as educational, the court was left to decide whether the commercials were merely incidental to an otherwise valid educational purpose.¹⁷⁹ Principles of local control mandate that a court may overturn a decision by a local school district or board only when there has been a clear abuse of discretion.¹⁸⁰ The court did not find abuse of discretion; therefore, the trial court was correct to respect the decision of the school board.¹⁸¹ Further, the court noted the lack of a statute banning video advertising in classrooms.¹⁸²

Second, the court affirmed the trial court's conclusion that the program must be voluntary.¹⁸³ Whittle, Channel One's owners, argued that because the advertising was found to be incidental, viewing it should not have to be voluntary.¹⁸⁴ In an amicus curiae brief, the California Teachers Association (CTA) pointed to mandatory school attendance laws permitting students to be confined only for a compelling purpose.¹⁸⁵ The trial court agreed with the CTA argument and concluded that viewing commercials was not a compelling enough reason to confine students, even if it was only

175. *Id.* at 125.

176. *Id.* at 111.

177. *Id.*

178. *Id.* at 117.

179. *Id.* at 119–20.

180. *Id.* at 118.

181. *Id.* at 120.

182. *Id.* at 124.

183. *Id.* at 129.

184. *Id.* at 128.

185. *Id.* at 128–29.

incidental to the purpose of education.¹⁸⁶

Third, the court found the injunction issued by the lower court to be improper because it specified procedures for opting-out from viewing the program.¹⁸⁷ An opt-out option already existed in the contract, so the lower court had no basis to assume that students would be compelled to view the advertisements.¹⁸⁸ Without such a threat, an injunction providing for thorough procedures was unnecessary.¹⁸⁹

Lastly, the court found improper the trial court's retention of jurisdiction to appoint a compliance monitor without a showing of need.¹⁹⁰ While such an appointment might be proper in certain situations, the court held that the record did not demonstrate a sufficient need warranting such an intrusion.¹⁹¹

In a more remote claim, the plaintiff in *Wallace v. Knox County Board of Education*,¹⁹² alleged that airing Channel One in classrooms violated the Establishment Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and due process.¹⁹³ The court dismissed plaintiff's first claim which was premised on the program's promotion of commercial values because it did not involve religion.¹⁹⁴ Plaintiff's second claim was based on the school's failure to provide alternative activities for him when he was exercising his option not to view Channel One.¹⁹⁵ Since his non-participation was voluntary, the court found no equal protection violation.¹⁹⁶ The court also found that plaintiff's disagreement with the ideas expressed on Channel One did not constitute a violation of his due process rights.¹⁹⁷

186. *Id.*

187. *Id.* at 130–33.

188. *Id.* at 130–31.

189. *Id.*

190. *Id.* at 133.

191. *Id.* at 134.

192. No. 92-00219, 1993 WL 304460, at *1 (6th Cir. Aug. 10, 1993).

193. *Id.* at *2.

194. *Id.*

195. *See id.* at *1–2.

196. *Id.* at *2.

197. *Id.*

B. Policy Arguments

Professional organizations give varying degrees of attention to in-school commercialism. The National Education Association (NEA) and National Parent Teacher Association (PTA) strongly oppose commercialism in elementary and secondary schools, and the Association for Supervision and Curriculum Development (ASCD) opposes classroom-based commercialism altogether.¹⁹⁸ Among the other eighteen educational associations polled by the Consumers Union, half took strong stands against Channel One and none considered it educationally valuable.¹⁹⁹ Only ASCD expressed outright opposition to SEMS, while most organizations encouraged teachers and principals to closely monitor these materials.²⁰⁰ Beyond the national organizations already mentioned, virtually no organization has taken a formal position on commercialism in schools, SEMS, or ad-bearing materials and programs.²⁰¹ Districts, local boards, and schools are left to their own discretion.²⁰²

State organizations and boards show even wider variability in their positions. The National Association of State Boards of Education endorses corporate-school partnerships with the single caveat that they not commercialize instructional time.²⁰³ Schools and state boards also endorse these partnerships, and include a broad array of caveats.²⁰⁴ As one might imagine, they are even less likely than their national counterparts to take formal positions. With Texas' Grapevine-Colleyville School District receiving several hundred thousand dollars each year from school bus and building advertisements, and New York City's Board of Education projecting \$100 million annually from corporate advertisements on their Internet service and Web site, the landscape has become extremely varied.²⁰⁵

198. EDUC. SERVS. DEP'T, *supra* note 10, at 34.

199. *Id.* at 37-40.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 38.

204. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 34.

205. *Id.*

C. Legislative Action

State legislatures have comparable variability in their positions and practices. Nineteen states have passed statutes or regulations pertaining to specific school-based commercial activities.²⁰⁶ In fourteen of these states, the legislation focuses only on certain types of activities.²⁰⁷ Only seven states address product sales.²⁰⁸ Florida, for example, gives responsibility to school boards for establishing policies on fundraising.²⁰⁹ By contrast, New York prohibits school-based commercial activities altogether.²¹⁰

Similar variability characterizes states' policymaking in other commercialism categories. For example, of the eight states regulating direct advertising, seven still permit school bus advertising.²¹¹ Only two states address indirect advertising: California prohibits classroom use of promotional SEMS and Business Sponsored Educational Materials (BSEMS) unless local school boards comply with state mandated procedures, while North Carolina permits their use unconditionally.²¹² No states currently address school-based market research.²¹³

Delegation of authority also varies among the states.²¹⁴ Laws in Florida, Illinois, and Maine grant decision-making responsibility at the local level, whereas California and New York laws prohibit or restrict many types of commercial activities from the state level.²¹⁵

Efforts at the state level to combat obesity have increased significantly in the past few years. From 2003–2005, forty-five states introduced 287 bills to limit the availability of soft drinks and junk food in public schools.²¹⁶ Only twenty-one states succeeded in passing any legislation and only thirty-one bills out of the 287 were

206. *Id.* at 10.

207. *Id.*

208. *Id.* at 11.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *See id.*

214. *Id.*

215. *Id.*

216. NAT'L CONFERENCE OF STATE LEGISLATURES, *Childhood Obesity—2005 Update and Overview of Policy Options*, <http://www.ncsl.org/programs/health/childhoodobesity-2005.htm> (last visited Nov. 3, 2005).

enacted.²¹⁷ Where legislation did succeed, the restrictive bill often wound up being a weaker, watered-down version of the bill as originally proposed.²¹⁸

In 2005, this all-too-familiar scene played out dramatically in state legislatures across the country. On June 14, 2005, Connecticut Governor Jodi Rell vetoed what many hoped to be one of the nation's strongest school-based nutrition laws.²¹⁹ This veto silenced a wrenching three-year battle pitting well-paid, multi-national corporation lobbyists against advocates for children's health and well being.²²⁰ Covering the gamut from legislative stall tactics to extraneous amendments and riders, the bill that began by allowing only water, juice, and milk to be sold during the school day, transformed into one allowing the sale of diet soda and sports drinks in high schools.²²¹ Interestingly, Coca-Cola hired lobbyist Patrick Sullivan, of the influential lobbying firm Sullivan and LeShane, to attack the bill.²²² Governor Rell, in her veto, never mentioned that the firm's co-founder, Patricia LeShane, had previously served as her campaign advisor.²²³

In March 2005, the Kentucky state legislature and Coca-Cola lobbyists ended a protracted four-year battle with child advocates by banning soda sales only in elementary schools while still permitting sales in middle and high schools.²²⁴ In April 2005, Arizona passed similar legislation, banning only soft drink and candy sales in kindergarten, elementary, and middle schools.²²⁵ Meanwhile, Oregon, typically a health-oriented state, prepared for its May 2005 gutting of a strong bill that bans school sales of carbonated soft

217. *Id.*

218. See Press Release, Michele Simon, Ctr. for Informed Food Choices & Campaign for a Commercial-Free Childhood, Empty Calories, Empty Promises: Advocates Call New School Beverage a PR Stunt (Aug. 17, 2005), <http://www.informedeating.org/emptycalories.htm> (last visited Aug. 25, 2005).

219. Michelle Simon, *Another State Falls Prey to the Junk Food Lobby*, COMMON DREAMS NEWS CENTER, June 16, 2005, <http://www.commondreams.org/views05/0616-26.htm> (last visited Nov. 12, 2005).

220. See *id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

drinks, candy, and fried pastry products.²²⁶ The final, heavily-lobbied bill stipulated only that schools have "wellness policies."²²⁷

Similar proposals and legislative battleground campaigns are currently underway in several other states.²²⁸ Usually enacted as part of a more comprehensive strategy that includes diabetes screening, insurance coverage for obesity prevention and treatment, education, and promotion of physical activity, these bills recognize the role junk food and soda in schools plays in furthering the obesity problem.²²⁹

In the meantime, some states have succeeded in enacting piecemeal legislation. California successfully enacted a 2003 bill that restricts the sale of certain items in schools and largely prohibits the sale of certain beverages at elementary and middle schools.²³⁰ Once again, war-weary nutrition advocates are asking lawmakers to ban soda sales in high schools—a lobbyist casualty of the earlier bill.²³¹ Using a carrot approach, a 2004 Louisiana bill rewards schools that develop physical activity and nutrition programs.²³² In 2004, Tennessee enacted a bill that required the state to develop standards regarding the food offered to children in schools.²³³ In Texas, the Agriculture Commissioner implemented a Public School Nutrition Policy, effective in August 2004, which caps the amount of sugar and fat that can be served to children each week, phases out the deep fried foods served in schools, and limits sales of foods that compete with the National School Lunch Program, School Breakfast Program, and After School Snack Program.²³⁴

226. *Id.*

227. *Id.*

228. *See id.*

229. *See generally* NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 216 (listing the more prevalent legislative approaches under consideration or enacted in 2005 with respect to remediation of childhood obesity).

230. AMY P. WINTERFELD, NAT'L CONFERENCE OF STATE LEGISLATURES, *Childhood Obesity—An Overview of Policy Options in Legislation for 2003–2004*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/programs/health/childhoodobesity.htm> (last visited Aug. 25, 2005) (discussing "Nutrition Standards in Schools").

231. Simon, *supra* note 219.

232. Winterfeld, *supra* note 230.

233. *Id.*

234. Winterfeld, *supra* note 216 (discussing "Summaries of School Nutrition Legislation that Passed Both Chambers of the Legislature").

In 2005, these efforts continued with 176 pieces of state legislation introduced to address aspects of obesity.²³⁵ Fifteen states enacted, and twenty-one states considered, legislation regarding school nutrition.²³⁶ The provisions of the bills range from encouraging schools to set standards banning certain foods to requiring schools to provide healthful foods.²³⁷ California, Illinois, Massachusetts, and New York considered legislation requiring nutrition labels on all foods and beverages served in schools.²³⁸

Federal legislation also speaks to the market-research strategies. Under the Children's Online Privacy Protection Act (COPPA), in effect since 2000, school districts must obtain parental consent before allowing students under thirteen to visit data-collecting Web sites.²³⁹ A 1999 bill that did not pass would have also required school districts to obtain parental permission if the district contracts with companies that collect student information for commercial purposes.²⁴⁰ In addition, H.R. 2915 and S. 1908 were designed to protect student privacy by forbidding commercial entities from gathering, storing, or transferring information from any student under eighteen years of age without parental consent.²⁴¹

VII. GUIDELINES, CONTROL EFFORTS AND PRINCIPLES

Professional concern about in-school commercialism began in 1929 when the National Education Association issued its Report of the Committee on Propaganda in the Schools.²⁴² Its author, Edwin Broome, stated that the basic principle governing the use of corporate SEMS in the classroom should be whether those materials are indispensable to a student's education.²⁴³ The report drew little public attention and SEMS grew in classroom prominence.²⁴⁴ Public

235. *Record Number of Obesity Bills Introduced at State Level*, OBESITY POL'Y REP., May 2005, at 1.

236. Winterfeld, *supra* note 216.

237. *See id.*

238. *Id.*

239. Arnold F. Fege & Andrew J. Hagelshaw, *Beware of "Creeping Corporatizations,"* PRINCIPAL MAG., Nov. 2000, at 52, 55.

240. *Id.*

241. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 10 n.3.

242. MOLNAR, *supra* note 8, at 39.

243. *Id.*

244. *See id.*

notice reawakened in 1979 with Sheila Harty's book, *Hucksters in the Classroom*, when she cited SEMS as corrupting educational curricula and spawning self-serving corporate interests during limited classroom time.²⁴⁵

A. SOCAP Guidelines

The Society of Consumer Affairs Professionals in Business (SOCAP) created a set of formal guidelines in 1982.²⁴⁶ Developed in cooperation with three consumer interest groups, these voluntary guidelines stipulated that SEMS should meet minimum standards in the following six areas:

[1.] *Accuracy*. Statements are consistent with established fact or with prevailing expert opinion on the subject. Information is easily verifiable and current at the time material is produced. Information can be expected to remain current throughout the time period the sponsor distributes it.

[2.] *Objectivity*. Points of view are fairly presented. If the subject is controversial, arguments are balanced and sponsor bias is clearly stated and references differing views.

[3.] *Completeness*. The materials contain all relevant information and do not deceive or mislead by omission.

[4.] *Language*. Materials are both interesting and understandable and suited to the primary target audience.

[5.] *Nondiscrimination*. The text and illustrations are free of any content that could be considered derogatory toward a particular minority group.

[6.] *Noncommercial*. The business name or logo is used to identify the source of the materials and, if applicable, to provide contacts for further information. Text and illustrations do not contain any of the sponsor's brand names, trademarks, related trade names, or corporate identification.²⁴⁷

245. *Id.*

246. *See id.* at 40.

247. *Id.* at 186–187.

In 1989, the International Organization of Consumers Unions (IOCU), a consumer-based group, created and published its "Code of Good Practice and Guidelines for Controlling BSEMS Used in Schools."²⁴⁸ Covering many of the standards categories set forth by its SOCAP predecessor (i.e., accuracy, objectivity, completeness, nondiscriminatory, non-commercial), it went further in several significant tenets. It stipulated that BSEMS should not be distributed unsolicited to students and teachers, advocated independent assessment of all BSEMS, and stated that schools should reject any promotional materials sent to them by companies.²⁴⁹ In addition, it established guidelines for government agencies, national and regional education authorities, and independent consumer organizations.²⁵⁰

Comparing the SOCAP guidelines and IOCU code, the two differ significantly in the following ways:

1. *Accuracy*

SOCAP	IOCU
"Information is easily verifiable." ²⁵¹	"Information must be appropriately referenced so that it can be easily verified." ²⁵²

248. *Id.* at 40.

249. EDUC. SERVS. DEP'T, *supra* note 10, at 34.

250. *Id.*

251. *Id.* at 42.

252. *Id.*

2. Objectivity

SOCAP	IOCU
"Points of view are fairly presented." ²⁵³	"All major or relevant points of view are fairly presented." ²⁵⁴
"If the subject is controversial, arguments are balanced." ²⁵⁵	"If the subject is controversial, arguments in favor must be balanced by arguments against." ²⁵⁶
"Any sponsor bias is clearly stated and references to differing views are made." ²⁵⁷	"The sponsor bias must be clearly stated, and references to opposing views must be made." ²⁵⁸

3. Completeness

SOCAP	IOCU
"The materials contain all relevant information and do not deceive or mislead by omission." ²⁵⁹	"The materials contain all relevant information and do not deceive or mislead by omission nor by commission." ²⁶⁰

4. Language

SOCAP	IOCU
"Materials are interesting and understandable. Word choice, organization and sentence length are suited to the primary target audience. Technical terms are used sparingly and are fully defined." ²⁶¹	[Contains no section on this topic.]

5. Non-discrimination

The two documents are comparable in this area. Yet SOCAP goes a step further by stating, "[t]he diversity of our population

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

should be recognized."²⁶²

6. *Non-commercial*

SOCAP	IOCU
[Does not address most of these points beyond the following reference: "[t]he name or logo of the business sponsor is used to identify the source of the materials . . ."] ²⁶³	"Sponsored material specifically designed for educational use should be clearly designated as such. Under no circumstances should promotional material be presented as 'educational.' Corporate identification, however, should be stated clearly and in a prominent place (for example, the front or back cover of publications or in the titles of videos or teaching packs). Such corporate identification should be used in these positions only to identify the sponsor with the material and to provide contacts for further information. No implied or explicit sales message, exhortation to buy a product or service, merchandising slogan or other attempts to influence the purchasing decisions of pupils, or their families, should be included." ²⁶⁴

Additionally, the IOCU code adds two headings not included in the SOCAP document:

7. *Evaluative*

This IOCU heading notes that the materials should encourage both awareness among pupils and cognitive evaluation of the said subject.²⁶⁵

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

8. *Distribution*

This IOCU heading notes that no BSEM should be distributed or mailed to pupils or teachers without solicitation.²⁶⁶

B. Organizational Responses to Commercialism in Schools

Following the creation of IOCU's code in 1989, several organizations and groups took steps to oppose and control the rising tide of commercialism in school classrooms.²⁶⁷ Ironically, Channel One launched its classroom advertising initiative the very same year and opposition to classroom advertising was immediate and widespread.²⁶⁸ Outspoken opposition came from government agencies, professional educators, and students' parents.²⁶⁹ Even students were quoted as saying they felt they should have the choice to watch commercials as part of their classroom day.²⁷⁰

Among organizational responses, California's Department of Education and New York's Board of Regents mounted efforts to keep Channel One out of their states.²⁷¹ The National Parent Teacher Association (PTA), the National Education Association (NEA), and the Association for Supervision and Curriculum Development (ASCD) all voiced their opposition to Channel One.²⁷²

In 1990, two highly significant initiatives emerged. Consumers Union (CU) published *Selling America's Kids: Commercial Pressures on Kids of the 90's*, and the Milwaukee Conference on Corporate Involvement convened at the University of Wisconsin-Milwaukee's School of Education.²⁷³ CU's goals were to document marketing objectives and practices in schools, and oppose the growth of in-school commercialism.²⁷⁴ The Conference assembled participants from national education associations and other concerned organizations with the stated goal of creating "a set of principles to which educators and businesses [could] subscribe, which [would] distinguish those areas in which both [could]

266. *Id.*

267. *Id.* at 34–35.

268. *Id.* at 35.

269. *Id.*

270. *Id.* at 22.

271. *Id.*

272. *Id.*

273. *Id.* at 35.

274. *Id.*

cooperate."²⁷⁵ Although the conference failed in its attempt to form a coalition of education associations that endorsed the Conference's guidelines, these guidelines nonetheless were adopted by some of the key national education associations.²⁷⁶ The basic tenets of the guidelines included the following:

- Corporate involvement shall not require students to observe, listen to, or read advertising.
- Selling or providing access to a captive audience in the classroom for commercial purposes is exploitation and a violation of public trust.
- Since school property and time are publicly funded, selling or providing free access to advertising on school property outside the classroom involves ethical and legal issues that must be addressed.
- Corporate involvement must support the goals and objectives of the schools. Curriculum and instruction are within the purview of educators.
- Programs of corporate involvement must be structured to meet an identified education need, not a commercial motive, and must be evaluated for educational effectiveness by the school/district on an ongoing basis.
- Schools and educators should hold sponsored and donated materials to the same standards used for the selection and purchase of curriculum materials.
- Sponsor recognition and corporate logos should be for identification rather than commercial purposes.²⁷⁷

As one readily can see, the Milwaukee Conference Guidelines and their SOCAP and IOCU predecessors address different aspects of the reality of school commercialism. SOCAP and IOCU set forth guidelines for evaluating SEMS and BSEMS while the Milwaukee Conference more directly addresses corporate-school partnerships. Like tongue-in-groove flooring, SOCAP, IOCU, and the Milwaukee

275. *Id.* (quoting Alex Molnar, Coordinator, Remarks at the Milwaukee Conference on Corporate Involvement in Schools (Nov. 26–27, 1990)).

276. *Id.*

277. *Id.*

Conference Guidelines fit neatly together while providing their own separate and notably unique codes and guidelines.

Since these guidelines were created, further significant initiatives have surfaced. In 1995, CU published *Captive Kids: Commercial Pressures on Kids at School*; and in September 2000, the GAO published *Public Education: Commercial Activities in Schools*.²⁷⁸ With considerable input from leading educational authorities in key national associations and universities, CU's publication stemmed from a growing awareness that the public desperately needed a focused study of commercialism in schools.²⁷⁹ The study analyzes different forms of school commercialism, their rationales, and the factors contributing to this growing trend.²⁸⁰ It also evaluates different aspects of school commercialism, assesses the extent of the problem, and proposes recommendations.²⁸¹

The GAO Report responded to a request from Senator Christopher J. Dodd (D-Connecticut) and Representative George Miller (D-California) to "(1) identify laws, regulations, and policies that regulate commercial activities in schools and (2) describe the nature and extent of these activities."²⁸² To fulfill this request, the GAO reviewed state laws and regulations, gathered data during site visits to nineteen elementary and secondary schools across three states and seven school districts, reviewed commercial activities reports, and interviewed representatives of national education and business organizations.²⁸³ The GAO found no systematic approach to the issue of school commercialism; states either differed widely in their attitude towards school commercialism, or they did not address the issue at all.²⁸⁴ Only nineteen states had any statutes or regulations for commercialism in school and, in fourteen of those, the states were concerned only with addressing specific activities.²⁸⁵ Of the five states that addressed the issue comprehensively, two gave policymaking authority to local officials, while three prohibited or

278. *Id.*; U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 3.

279. EDUC. SERVS. DEP'T, *supra* note 10, at 1.

280. *Id.*

281. *Id.*

282. U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 3.

283. *Id.*

284. *See id.* at 3-4.

285. *Id.* at 3.

limited specified commercial activities.²⁸⁶

The GAO Report concluded that there was wide variability in the prominence of commercial activity throughout the schools visited.²⁸⁷ The GAO's findings mirrored those chronicled by Molnar and Morales: cola contracts and fundraising sales figured most prominently in the product sales category, followed by vending machine and scoreboard visibility.²⁸⁸ Further, in media-based advertising, although two school districts contracted with Channel One and ZapMe!, the majority of the other school districts elected not to contract with them.²⁸⁹ However, unlike Molnar and Morales' data, the GAO found the use of SEMS and BSEMS to be limited and subtle, relating to a given topical unit such as dental health, with teachers and principals setting the tone for how these materials should be used.²⁹⁰ In fact, none of the schools participated in market research.²⁹¹

VIII. COST-BENEFIT ANALYSIS—HOW MUCH AND FOR WHOM?

The costs and benefits of school commercialism are direct and indirect in nature. In order to fully understand their impact, one must consider both the "face" cost-benefit aspects and those facets that are hidden and long term.

A. "Face" Benefit

In most instances, the "face" benefit of school commercialism is money or equipment. There is wide variability in the dollar value of these benefits from one school or district to another.²⁹² A complex set of variables can make comparisons of cola contracts misleading, including district size, beverage prices, favorable contract terms, or even whether the district has a champion football team.²⁹³

Depending on the size of a school district, cola contracts can net a district consortium as much as \$1.5 million a year or as little as

286. *Id.* at 4.

287. *Id.*

288. *Id.*; see also Molnar & Morales, *supra* note 106, at 40 (discussing exclusive bottling agreements with soda bottlers).

289. Molnar & Morales, *supra* note 106, at 18, 27.

290. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 8 tbl.1.

291. *Id.* at 31.

292. *Id.* at 33.

293. *Id.* at 33 n.12.

\$4,800 a year.²⁹⁴ A more accurate, though elusive, comparative figure is per-student revenue which can range anywhere from \$3.65 to \$30.²⁹⁵ Quotas built into these contracts, however, can be exceedingly difficult, and in several cases, impossible for a district to meet.²⁹⁶ One district, for example, contracted to sell 70,000 cases of Coke over a three-year contract period. At the end of one year, it had barely reached 12,000 cases.²⁹⁷

"Face" benefits also materialize in the form of equipment or products. Channel One, Star Broadcasting, and ZapMe! contracts, for example, share a common pattern of providing equipment as their "face" benefit.²⁹⁸ Some schools believe this is the only way they can obtain such equipment for their students.²⁹⁹ The "face" benefit of free samples, coupons, book covers, and SEMS or BSEMS are the items themselves, such as sampling a product, "wrapping and carrying" books, and having glossy corporate materials to include in teaching curriculum.

In financial terms, the "face" benefit to recipients is modest, at best, while the benefit to companies is enormous. A typical print advertisement will show a close-up view of an attentive student with the caption: "We have the UNDIVIDED ATTENTION of millions of teenagers for 12 minutes a day [THAT MIGHT BE A WORLD RECORD]."³⁰⁰ The advertisement goes on to state that its eight million daily teen viewers are tuned in "to the world and to you."³⁰¹ Other Channel One ads tell potential corporate clients that teens are a \$63 billion a year market with each teen spending upwards of \$3,000, nearly half of that amount comes from their brand-decision influence on family purchasing.³⁰² National corporate sponsors come to the table with up to \$195,000 per day for a thirty-second

294. *Id.* at 15–16.

295. *Id.* at 32–33.

296. BROWNELL & HORGAN, *supra* note 109, at 164.

297. *Id.*

298. EDUC. SERVS. DEP'T, *supra* note 10, at 25; U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 27–28.

299. See EDUC. SERVS. DEP'T, *supra* note 10, at 21; see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 5, 27; Bachen, *supra* note 120, at 135.

300. CTR. FOR COMMERCIAL-FREE PUB. EDUC., CHANNEL ONE, <http://www.ibiblio.org/commercialfree/channelone.html> (last visited Nov. 12, 2005).

301. *Id.*

302. *Id.*

commercial.³⁰³ Other media-based advertisers, such as Star Broadcasting and ZapMe!, make similar claims to their potential corporate clients.³⁰⁴ Star Broadcasting, for example, asks would-be clients to consider how else they could reach forty percent of the teen audience in school hallways, lunchrooms, and lobbies.³⁰⁵ Claiming a target-group audience percentage larger than the Super Bowl, the company reminds potential clients of its access to this \$81 billion teen market.³⁰⁶ For this market access, Star Broadcasting will pay a large school up to \$20,000 per year, roughly its charge to corporate clients to carry a single, one-day advertisement to the school's students.³⁰⁷

Salt Lake City's Youthtalk Advertising Agency places acrylic billboards in school toilets and lunchrooms, claiming 80,000 student exposures, so to speak, as they visit toilet stalls and stand at urinals.³⁰⁸ While the cost per advertisement is undisclosed, a school can receive between \$2,000 and \$10,000 per year just for signing up.³⁰⁹ With each of these examples, a significant "face" benefit is much more readily visible to the corporate entity than to the school or its students.

B. "Face" Cost

The "face" cost of entities like Channel One, ZapMe!, and SEMS or BSEMS are apparent as they move directly into the allotted and curricular educational time of the school day.³¹⁰ By CU estimates, Channel One's advertising time consumes one school day per year.³¹¹ Twelve years ago, California school officials (a non-subscribing system) did a theoretical calculation of costs as if California had been a subscriber.³¹² Officials estimated the statewide, one-day operating cost of its public high schools at \$29

303. *Id.*

304. EDUC. SERVS. DEP'T, *supra* note 10, at 25.

305. *Id.*

306. *See* MOLNAR, *supra* note 8, at 35 (referring to an advertisement by Modern Education Services that mentions the "\$81 billion teen market.").

307. EDUC. SERVS. DEP'T, *supra* note 10, at 25.

308. *Id.* at 25.

309. *Id.*

310. *Id.* at 23.

311. *Id.*

312. *Id.*

million, or \$87 million across a three-year Channel One contract.³¹³ A recent research study by Molnar and Sawicky places the nation's taxpayer cost of Channel One at \$1.8 billion annually.³¹⁴ Taken in this context, the value of the satellite dish, VCRs, monitors, and internal wiring come nowhere close to off-setting the systematic costs of school commercialism.

C. Indirect Benefit

Entities such as Channel One state they are bringing award-winning daily newscasts to students and enhancing their knowledge of world and national events.³¹⁵ Similar claims are made by corporations distributing SEMS and BSEMS to teachers and school classrooms.³¹⁶ ZapMe!, like Channel One, viewed its contribution as providing access to a mind-broadening window to the world.³¹⁷ Beyond the prospect of brand awareness and brand loyalty, the indirect benefits of samples, coupons, and other gimmicks are somewhat less distinct.

D. Indirect Cost

As advertising is transmitted to students in classrooms, several messages are communicated simultaneously and indirectly. The advertised product takes on the tacit endorsement of the school and its teachers, which can be fairly compelling for the pre-teen or teen.³¹⁸ When combined with the unhealthful nature of many junk foods and empty-calorie products, this endorsement can be instrumental in fostering and supporting a food consumption lifestyle that will be deleterious to the student. Type-two diabetes, for example, has reached down into pre-teen and teen populations in

313. *Id.*

314. CTR. FOR COMMERCIAL-FREE PUB. EDUC., *supra* note 300.

315. *See id.*

316. EDUC. SERVS. DEP'T, *supra* note 10, at 18.

317. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 27 (describing ZapMe!'s custom-built Web browser that gave students access to approximately 12,000 educational Web sites); *see also* EDUC. SERVS. DEP'T, *supra* note 10, at 21 (discussing Channel One's stated purpose to "use news and current events information as a tool to educate and engage young adults in world happenings").

318. EDUC. SERVS. DEP'T, *supra* note 10, at 32.

alarming numbers.³¹⁹ Much of the increase in teenage diabetes appears to correlate with the rapid growth of school cola contracts, established sales quotas, and an increased classroom presence of Channel One and Star Broadcasting.³²⁰ In addition to diabetes, these unhealthful foods have also been associated with bone fracture, dental problems, and obesity, all of which carry a range of potential health problems for young people as they mature.³²¹

It is a bifurcated message to students: be healthy and fit and gorge on high-empty-calorie junk foods. Much of the anticipated healthcare cost will not be fully realized until several years into the future—even though the early warning signs are visible. Consequently, some of the nation's largest school districts have been rejecting the most lucrative cola-contract offers.³²²

Another indirect cost relates to the overall message that commercialism and commodities are the pinnacle ingredients of a successful society.³²³ Individual worth becomes judged by external images and outward appearances, such as what one owns or how "appropriately" one is brand-clad.³²⁴ Commodities and "things" take on greater importance than people.³²⁵ The implications of this message for the meaning and depth of human relationships are sobering. The balance sheet is not easily drawn nor can it be precisely calculated, but what is apparent is that long-term costs threaten to outrun any short-term gains schools or districts attain.

IX. THE ROLE OF PROFESSIONAL ORGANIZATIONS

Professional organizations at the national, regional, and state levels have unique capacities to educate and sensitize school

319. Shortt, *supra* note 16, at 1072–73.

320. *See id.* (noting increases in obesity within the last several decades); *see also* U.S. GEN. ACCOUNTING OFFICE, *supra* note 21, at 19, 26 (describing increases in advertising on school grounds within the last ten years).

321. *Cola Consumption Leads to Broken Bones*, NOT FOR SALE! (Ctr. for Commercial-Free Pub. Educ., Oakland, CA), Winter 2001, at 1, 1.

322. Constance L. Hays, *School District Rethinks Its Soda-Pop Strategy*, N.Y. TIMES, Apr. 19, 2000, at B11; Paul T. Rosynsky, *Oakland Schools Pop Deal Fizzles*, OAKLAND TRIB., Nov. 23, 2000, at B01; Susan Snyder, *School Board Scuttles Deal with Coke*, PHILA. INQUIRER, Feb. 8, 2000, at B1.

323. Baran et al., *supra* note 139, at 52–53 (evaluating the relationship of brand names, gender and the media).

324. *Id.*

325. *Id.* at 53.

administrators, teachers, parents, and students to the issues of school-commercialization and its ramifications for children's education, health, and general welfare. When one realizes that child viewers of advertising, both in and beyond the classroom, consider advertising to be a reliable and trusted source of information, the magnitude of this challenge and need becomes even more evident.

The American Bar Association (ABA) and The American Psychological Association (APA) are in pivotal positions to take the lead. The ABA and its members are uniquely qualified and positioned to examine the legal issues, precedents, and history of school commercialization, and to foster and support initiatives for legal and legislative change.³²⁶ Members of the APA are likewise qualified to assess the in-school impact of school commercialism and to help administrators and teachers understand the gravity and implications of commercialism within the context of the tacit endorsement by the school.³²⁷ These organizations, in combination with groups such as the American Academy of Pediatrics, the National Education Association, and the American Medical Association, possess the potential to launch a multi-faceted approach to this critical issue.

Only with broad-based cooperation from the legal, psychological, medical, health, and educational communities can significant strides be made to inform, educate, and formulate legislation to best serve the interests of children. These groups, through their vast media networks, could help educate professional school administrators through article submissions to their central journals. These groups could also create pamphlets and brochures for broad distribution to teachers and parents, while a blend of education and health professionals can provide critical on-site communication and coordination.

326. *See generally* Am. Bar Ass'n, Mission Statement, <http://www.abanet.org/about/home.html> (last visited Nov. 5, 2005) (describing member activities in law school accreditation, continuing legal education and in providing information about the law and programs to assist lawyers and judges in their work).

327. *See generally* Am. Psychology Ass'n Home Page, <http://www.apa.org/about> (last visited Nov. 5, 2005) (describing member activities in the study of behaviors).

Ultimately, 'a multifaceted approach will be required.³²⁸ Additional steps could include workshops targeting administrators and teachers who would serve as advisors in school system decision-making groups. Such groups would evaluate SEMS, BSEMS, lunchroom contracts, and other related aspects of school-commercialism policy and practice. These administrators could develop and evaluate awareness-building materials for classroom use; provide resources to parents through PTA meetings; and promote legislative measures at both the state and national levels.

Another critical role would be to facilitate meaningful school partnerships between corporations and schools, building upon pro-social models such as The Edible Schoolyard and The Algebra Project.³²⁹ Cooperative efforts and planning between each of the concerned professional groups and their members would be equally important, as would legislative efforts at the national level. These initiatives would make a significant difference in the current landscape of school commercialization, helping preserve the integrity of the educational setting and the value of the young people within it.

X. DISCUSSION

Education has come a long way from the early twentieth century one-room school with its pot-bellied stove, outdoor facilities, and hand pump at the well. In those days the stove and pump likely had brand names on them, but beyond those elements, there was no intent to sell products to students or commercialize their classrooms. One could say that somewhere along the line, we as professionals, educators, and citizens lost our way. Now, so many aspects of public education and the ideals on which it was founded lie buried beneath heaping mounds of commercialism that have seeped into and, more recently, flooded, America's classrooms.

If we have, indeed, lost our way, it is critically important that we find it. The health of our children and future generations depends upon our commitment and resolve. After twenty-seven years of imprisonment, Nelson Mandela stated that "children are the most important asset in a country. For them to become that asset, they

328. See discussion *infra* Part XI.

329. See *infra* notes 335-336 and accompanying text (discussing these projects in detail).

must receive education and love from their parents."³³⁰ Considering he endured the hardship and sacrifice of prejudice, discrimination, and imprisonment, Mandela's message could not be more compelling.

We can begin to grow and strengthen those future prospects with such seedlings as the guidelines, codes, and legal and cross-disciplinary initiatives referenced earlier.³³¹ Professional education organizations, school administrations, and the public will need to rally with strong voices and action in support of major corrective initiatives. The guidelines and codes are already there, and have been since the 1980s. Major initiatives of the 1990s and 2000 have further fortified and endorsed those principles.³³² What has been lacking is the will to endorse, adopt, and implement them.

Like the effort itself, the essential will must come from several quarters. Legislators must be willing to forego some of their own special interests to legislate more effectively and convert guidelines into the rule of law. Public interest groups must marshal the Capitol Hill forces necessary to ensure legislative success. Professional organizations, schools, and the general public must find a compelling, singular voice in support of classrooms as centers of learning. Without such initiative and general commitment, what formerly had been public education will become nothing but a series of classroom commercial one-liners.

If parents and educators can succeed in their efforts, children will not be the only parties who will benefit. Ironically, the corporations who seek to infiltrate the classroom will profit in the long run. After all, to the extent that employers find healthy, informed, knowledgeable graduates, they too, like society at large, will be enhanced and well served.

XI. RECOMMENDATIONS

Given the current state of in-class commercialism, one is tempted to ask, "Where do we go from here?" It is a deceptively simple question. Like planning for a trip, one must determine the

330. Oprah Winfrey, *Oprah Talks to Nelson Mandela*, O: OPRAH MAG., Apr. 2001, at 154, 223.

331. See *supra* Part VII (discussing guidelines and codes); see also *supra* Part VI.A, VI.C (discussing legal challenges and legislative action).

332. EDUC. SERVS. DEP'T, *supra* note 10, at 34–35.

destination and how best to get there. In this instance, determining the destination itself is a notable challenge. Take, for example, these possible end points:

1. Formulating legal measures to rid schools of all commercialism both in and out of the classroom, on buses, kiosks, scoreboards, and the like;
2. Eradicating in-class commercialism while allowing corporate logos to appear inconspicuously on posters and other donated materials;
3. Forming school-corporate partnerships with clearly-stated educational goals and plans for achieving them.

Though assuredly not mutually exclusive, each goal sketches notably different landscapes and potential courses of action.

Ridding schools of all commercialism might prove unrealistic. Few educators or laypeople will volunteer to take up placards against the time-honored soup label collection initiatives, the receipts collections from a given local business, or the advertisements in school newspapers or yearbooks. If, indeed, this is the reality, the question then becomes where to make the distinction and where to draw the line. The 1980s guidelines and codes of SOCAP and IOCU, in combination with the more recent work of the Milwaukee Conference, CU, and the GAO are instructive on this point.³³³ The following recommendations draw from the fruits of their work as we look to the future:

1. Remove all commercialism from classrooms and instructional time. This means canceling and not renewing contracts with Channel One and, instead, subscribing to a noncommercial alternative such as CNN's *Newsroom*. It would require schools and districts to set up a formal, centralized review and evaluation procedure for all SEMS and BSEMS, approving for classroom use only those materials that are authoritative, thorough, and noncommercial.
2. Remove from schools and school-related facilities all commercial advertising that promotes unhealthy nutrition lifestyles, fosters brand-conscious materialism, or promotes

333. *Id.*

gender-discriminatory images of beauty and social acceptability. Posters, samples, book covers, and similar materials would be included within this context. All these venues would come under the judgment and purview of a district-based review committee comprised of a cross-section of school officials, teachers, and parents.

3. Create, at the district level, a review committee of legal and health professionals. The committee would evaluate all existing and pending commercial school lunchroom contracts and practices, approving only those following strict guidelines of nutrition and balanced food offerings. Also, the committee would ensure that legal measures are in place to nullify and end any contracts that do not comply. Under the authority of this committee, the initiative would place all existing and pending cola contracts with comparable strict approval guidelines. Unless cola companies are willing to provide only noncarbonated, healthful beverages in plainly marked machines, this review and approval process would end the cola contracts.

4. Cancel existing contracts with Star Broadcasting, Word of Mouse, and comparable commercial providers whose primary goal is to target teens during their educational day. If an individual school or district desires these services, adopt them from noncommercial providers or corporate entities willing to partner with them on a non-commercializing basis.

5. Create and provide curriculum materials beginning at third-grade level that address the nature of advertising and marketing, its techniques, and its consumption-based goals and objectives. At higher grade-levels, include the implications of conglomerate ownership (e.g., K-III Communications' ownership of both Weekly Reader and Channel One Communications, and Scholastic Inc.'s Teen Network of magazines ad-targeting the teen market).³³⁴

6. Develop and fund at the national level workshops for teachers and administrators focusing on grant writing to foundations and agencies as noncommercial resource

334. *Id.* at 8–9.

avenues for funding schools and facilities.

7. Foster and develop partnerships between schools and corporations who both have as their primary goal the education and preparation of students to become effective, contributing members in their vocations and communities.³³⁵ The Edible Schoolyard and The Algebra Project serve as model curriculum partnership initiatives effectively serving basic educational goals.³³⁶

8. Prominently advocate and support legislative initiatives at both the national and state level, and sensitize our nation's leaders and the public to the critical need for additional legislative and funding measures to ensure attainment of the goals herein proposed.

9. Educate legislators and the general public about the critical importance of preserving and fostering a positive,

335. Notable examples of such partnerships include corporations providing employee time and incentives to student-tutoring and mentoring programs in schools, opportunities for students to "shadow" a professional in their desired vocational field, grant and scholarship awards, and wings or labs that are provided with noncommercial attribution.

336. The APA Task Force on Advertising and Children has described The Edible Schoolyard and The Algebra Project as follows:

Restaurant owner and chef Alice Waters launched The Edible Schoolyard in Berkeley, California's, Martin Luther King, Jr., Middle School to teach "transformative values of nourishment, community, and stewardship of the land." The students participate in the entire food production cycle, from planting through cultivating to harvesting.

Civil rights leader Robert Moses spearheaded The Algebra Project to develop science/mathematics abilities among middle school students. This experiential-based project now reaches 40,000 students in 22 underserved urban and rural schools across the country. A national evaluation by the MacArthur and Lilly foundations reported the notable success of this project in improving mathematics skills and incorporating innovative teaching methods. The project is supported by more than 50 corporate sponsors, none of whom requests any advertising or marketing in return. Both The Edible Schoolyard and The Algebra Project are exemplary models of how to build corporate partnerships.

EDWARD PALMER ET AL., REPORT OF THE APA TASK FORCE ON ADVERTISING AND CHILDREN: SECTION; PSYCHOLOGICAL IMPLICATIONS OF COMMERCIALISM IN SCHOOLS 9 (2004), *available at* http://www.apa.org/releases/childrenads_implications.pdf (citation omitted).

healthful, commercial-free environment for our students by blending the teaching and research assets of current technology with the educational integrity of the one-room school.

Momentum toward these goals has begun. It is critical that it continues with increased vigor and intensity to counter the commercialization that is already prominent and dramatically increasing. Only with strong, concerted commitment to these goals and actions can we send the convincing and vital message that our students, their education, and their health are not for sale to the highest bidder.

