

Creative Revenue Generation for Public Schools



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Attorneys at Law



Trending Nationwide

- Non-traditional, New And Creative Revenue Streaming
- What are schools doing to raise money?
- Do site level administrators know what is happening with all staff in all buildings?
- Are staff members trained? Do they know what is permissible?
- What policies exist in your district to guide these types of activities?
- What protocols and procedures do you need to put into place to protect schools from liability?

Show Me the Money

- In-school advertising
- Licensing of the School Brand
- Naming Rights
- Crowdfunding
- Booster Clubs/Private Donations
- Cellular Tower Leases

Advertising on School Grounds or Through School Media



- Advertising is found all around school campuses.
- WHAT TYPES?
- All schools should have policies governing the use of advertising on school property.
- Procedures and protocols must also be established to ensure consistent practices across buildings.
- Inconsistent practices increase school district risk of discrimination and Free speech claims.

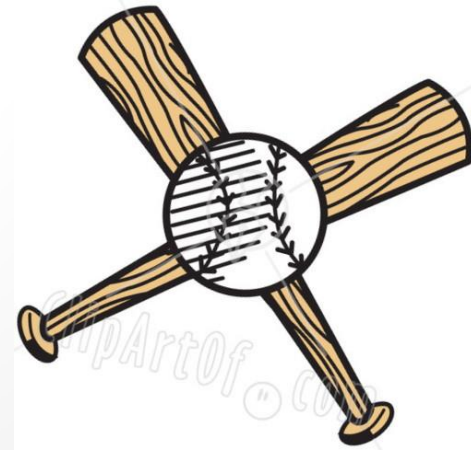
What does Advertising have to do with the Constitution?



- **Remember:** Different types of speech = different protections under the Constitution.
- Generally: a 3rd party has no speech rights in the public schools.
- However: when you allow a 3rd party access to school property for the purpose of advertising, you open the door to 1st amendment protection.
- Have you created a limited public forum in your school?

Policies Matter

- Board must determine where 3rd party speech, i.e. advertising, will be permitted.
- In areas where advertising is not permitted, a closed forum exists.
- *Example: May permit advertising on the fence around the baseball field, but not inside the school building. Therefore, a limited public forum exists on the softball field, but the school building is a closed forum.*



Your Actual Practices Matter

- All administrators must understand your policy.
- All administrators must practice consistent enforcement of the policy.
- Policy should be clear as to those individuals responsible for enforcing the policy.

Private speech in a public school?

- You decide; however, all restrictions must be **viewpoint neutral**.
- Schools may make restrictions based on:
 - Subject matter
 - Class of Speaker
- Schools may restrict:
 - Time
 - Place
 - Manner



What Can Schools Legally Restrict?

- Advertising relating to:
 - Religion
 - Politics
 - Controversial Subject Matters

Government Speech Test

- 3-prong test:

1. The historical context of the speech.

2. Whether a reasonable observer would believe that the school endorsed the message.

3. Whether the school had direct control over the message.



Website Advertising

- Different types of revenue generation
 - Lease-of-Space
 - Pay-per-click
 - Special Savings offers
- Address issues through contractual terms
- All advertising must be thoroughly investigated
 - Does the site link to inappropriate or objectionable sites?
 - What is being sold on the site?
 - Is it appropriate for all ages of the children/public who may view it?



- Is the site legally compliant with Federal Laws?
 - CIPA
 - COPPA

School Bus Advertising

- NMSA § 22-28-1-6; NMAC 6.40.2.11
- School boards may allow advertising on inside and outside of school buses; board must develop guidelines
- No obscenity, sexual material, tobacco alcohol, political campaigns or causes, religion, promoting drug use or general content determined harmful or inappropriate by PED.
- Private bus contractors may lease space to district for advertising; contractor gets 10% of the revenue.
- Must not interfere with rules for bus markings, lights and signs; specific rules in NMAC 6.40.2.11
- Interior ads limited to over every other window not more than 24" wide by 12" height

School Bus Advertising cont'd.

- Lease agreements establish the price, schedule and term; agreements maintained for 5 years after term.
- Funds raised are remitted to PED school bus advertising fund.
- 60% of proceeds distributed to districts to use in accordance with districts technology plan in amount proportional to district's contribution.
- 40% distributed to districts for middle and junior high schools for extracurriculars.
- Funds raised subject to audit and reporting reqs.

Licensing the School Brand

- A school's name, brand, logo, mascot and image are intellectual property (IP) owned by the District which may be used to generate revenue.
- Districts should make sure schools' logo, mascot and brand are not violating anyone else's trademark (before trying to realize revenue for it).
- District should monitor unauthorized use of its IP.
- District may license the use of its IP through carefully structured contracts.

Work Made for Hire

- Work Made for Hire Doctrine—
- Generally, the author of a work owns the copyright.
- However, if the work is “made for hire,” the employer owns the copyright unless otherwise agreed (agreement could be in a CBA).
- A work is “made for hire” if prepared by an employee in the scope of employment.
- Not applicable to software or to patents.
 - Means that software designed in house may be owned by its author; District should set clear policy or contractual expectations about the ownership of these types of IP
- Market for Online Lesson Plans (teachers selling to teachers)
 - Teacher may not own the rights to the lesson plans.

Licensing the School Brand Cont'd.

- District's can place restrictions on the use of their school names, brands and mascots by booster clubs, foundations, or other third parties, and thereby exercise some control over their activities.
- For all purposes, District's should set clear expectations about what IP it owns, who may use, and under what circumstances.
- District policy should reserve all IP rights on behalf of the board and mandate that no group/person may make money from District IP without express permission.

Booster Clubs, Gifts, Donations and Title IX

- Booster clubs and foundations are invaluable to districts because they exist solely to support the district but they can also give the district a public relations “black eye” or create legal liability to the district.
- Contracts with booster clubs, PTA’s and foundations should specify obligations to be complied with in consideration for use of school’s name and brand.
- Funds and like-kind donations should come directly to the district, and become the district’s funds to ensure equitable distribution.
- All district’s need to have at least one T9 coordinator and gifts and donations must be scrutinized for T9 compliance if they may affect boys and girls unequally.

Booster Clubs, Gifts, Donations and Title IX Cont'd.

- Unequal gifts or donations to one gender do not *per se* violate Title IX but OCR will scrutinize to find some “off-setting benefit” to ensure overall equal treatment. The off-set may need to come from district funds.
- OCR ordered a Michigan school district to tear down newly renovated baseball bleachers financed by the baseball boosters over 6 years because no offsetting benefit to softball field.
- All donations into a single “Athletic Equity Fund” may be best practice.

Booster Clubs, PTO's and other Support Groups

- District's policies and contracts with outside groups should address:
 - Title IX issues
 - How funds are handled– specific accounting and banking procedures to reduce risk of embezzlement
 - Information provided to district, e.g., list of activities to be pre-approved, financial reports
 - Insurance
 - Bonding of organization treasurer
 - Tax liability for donations
 - Food handling
 - Supervision/Prohibition of students engaged in fundraising
 - Use of school facilities
 - Unauthorized activities
 - District liaison to group
 - Disclaim liability for support group activities

Crowdfunding: Loot and Liability

- What is crowdfunding?
 - A form of online begging.
 - A number of sites cater to educators and some school districts have set up their own sites as a way of regulating these activities.
 - Teachers can ask for funds for class projects and equipment, but there must be policies and procedures in place in advance.

Regulate

- Why?
 - Most school districts do not know that teachers are engaged in crowdfunding until something goes wrong.
 - Educators are raising money in the name of your district and specific schools.
 - Some crowdfunding sites are not reputable.
 - Who owns the equipment purchased with the funds?

DonorsChoose.org



- Lots of New Mexico teachers asking for money to buy I-pads and I-pad minis, surface pros, etc.
 - If they raise the money and purchase the equipment, who owns the equipment?
 - If they go to a different school, can they take it with them?
 - A different district?



Be Careful Out there...

- “My students need 170 science journals to make the most of the short time we are allowed to teach this subject in 3rd grade.”
- Same teacher also looking for “...ipads to be able to practice for the PARCC tests in class.”

Caution...



- Almost every picture accompanying the request has pictures of children.
- Have the parents of these children given permission for their images to be used?
- Have these children been identified in some manner which violates FERPA?
 - Special Education – the site allows you to filter for classrooms with special needs and there are pictures of lots of little kids.
 - English Language Learners
 - Can filter schools by highest rates of poverty.

How is the district/school portrayed?

- “My students need and deserve the best and with an up-to-date teacher workroom us teachers, can deliver our best, as well. We are in need of basic teacher items.”
- Requesting \$2,164.00



Solution

- **Regulate**
- **The district must either allow or prohibit.**
- **If allowed, which sites are allowed?**
 - Sites must be vetted and pre-approved
 - Sites should be limited to those designed for schools/educators
- **If allowed, require pre-approval:**
 - For the project
 - For the language in the request
 - For any photos being used
 - Teacher may not receive money/items directly – should go to administrator to be inventoried prior to use.
- **Your teachers are doing this now – that one site had 111 projects posted for New Mexico.**
 - **Do you have your policies in place?**



Cell Tower Leases

- Districts may be land rich and cash poor.
- Companies lease a sliver of land over a long term to erect a tower.
- Rent dependent on market conditions but may be \$1000-2000/month
- Must be approved by State Board of Finance
- Requires a commercial appraisal. May costs >\$4k.
- Must comply with zoning laws
- Other issues to consider:
 - Subleasing allowed
 - Signal interference
 - Access rights

Other Sources of Revenue to Explore...

- Sponsorship for theater productions.
 - Example: Instead of a goblet, Macbeth drinks from a Starbucks cup and Starbucks donates \$250.00 to the production.



Caution: **advertising policy must be followed consistently – is advertising allowed in the building?**

Is the theater considered the building?

Naming Rights

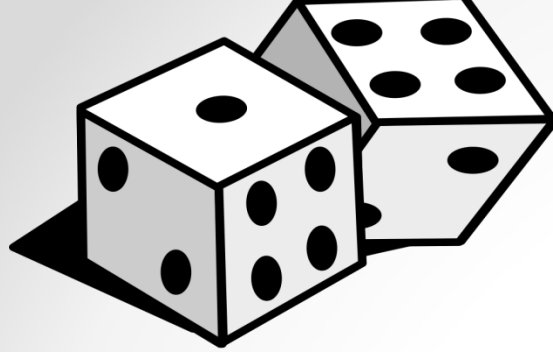
- **Policies must include:**
- Facilities
- Non-permanent structures (i.e.. Benches)
- Memorials
- Statutes
- Fields
- Roads
- Require design plans
- May include Corporate and Individual naming.
- Rules may be different depending on state law



Did We Mention?

- Private Donations
- Broadcasting rights
- Child Care and After School programs
- Pay-to-play
- Facilities Use
- Solar and Wind farm leases





Take Away

- There are ways to generate money for school districts, outside of traditional methods.
- Policies, procedures and protocols are critical in keeping the District out of trouble and minimizing hassles.
- Do not leave this to chance...

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