



State of Connecticut
Department of Aging and Disability Services

March 22, 2022

TO: School Food Service Directors and School District Business Managers

RE: The Department of Aging and Disability Services-Bureau of Education and Services for the Blind's statutory right of first refusal to place vending machine operation in schools

Dear School Food Service Directors and Business Managers,

I hope this letter finds you well. As you may know, the Bureau of Education and Services for the Blind (BESB)¹ provides financial and other support to visually impaired persons in Connecticut through the revenue it receives from placing vending machines in public schools. BESB thanks school districts for being its partner in this effort. I am writing today to ask you to help BESB to maximize the assistance it provides to the visually impaired by ensuring that all vending machines in public schools are authorized by BESB. I will also explain how maintaining a BESB authorized vending machine is financially beneficial to schools and their food service programs.

Background and Statutory Requirements

BESB has a legal right, granted by statute, to place vending machines in public buildings, including schools, if the authority in charge of a building deems a vending machine to be desirable. *See* Connecticut General Statutes Sec. 10-303 (copy attached). This is referred to as a right of first refusal, *i.e.*, the opportunity to place a vending machine in a school must first be offered to, and refused by, BESB before any other entity can place a vending machine in the school. For many years, BESB exercised this right and placed vending machines through a contract with the Coca-Cola Bottling Company. However, on July 1, 2020, a new exclusive statewide contract to place vending machines on behalf of BESB was awarded to PepsiCo. School districts were then advised by e-mail to remove vending machines that were previously installed by Coca-Cola and to allow for the installation of new vending machines by PepsiCo.

Unfortunately, vending machines not authorized by BESB remain on school premises. Also, some school districts have recently executed new contracts with vending machine operators, or have allowed pre-existing contracts to “automatically renew,” without affording BESB its statutory right of first refusal with respect to the opportunity to place a vending machine in the

¹ BESB is located within the Department of Aging and Disability Services (ADS) and exercises the legal right to place vending machines referred to in this letter through ADS.

school. These actions are contrary to BESB's statutory right of first refusal, and the contracts should be considered invalid, even if the vending machine operator once did or now has a relationship with Coca-Cola, or with PepsiCo, if the vending machines were not placed in the school under the authority of the existing statewide contract with PepsiCo.

Request for Correction

BESB thanks all those school districts that are only utilizing machines and vendors authorized by BESB through PepsiCo. BESB also requests that all school districts ensure that all vending machines in school buildings and on school property are authorized by BESB. If a school system learns that there are any vending machines on its premises that are not BESB-authorized machines, we request that the school contact BESB to schedule the replacement of those machines with vending machines through the current contract with PepsiCo.² If you believe that a school district has a vending machine not authorized by BESB, please send a brief e-mail to that effect to our Vending Machine Supervisor, Tracy Morin no later than May 1, 2021. Her contact information is at the end of this letter.

Limited Waivers of BESB's Right of First Refusal

BESB may choose to waive its right to place vending machines in schools under limited circumstances where: 1) a school district has contracted with an outside cafeteria food service provider (e.g., Food Service Management Company (FSMC), 2) the contract expressly calls for the food service provider to install vending machines in the cafeteria as part of one overall food service contract, and 3) the machines are only placed within the four corners of the cafeteria itself. All three of these conditions must be met to seek a waiver from BESB.

If your school district has entered into such an all-inclusive contract with a food service provider, BESB will defer to that arrangement until the contract expires if you 1) provide us with a copy of the contract so we may know its date of expiration, and 2) communicate with us before that date so we may then inform you of BESB's vending opportunities which may be more beneficial than any alternatives you may be considering (see below). After such consultation, BESB may waive its vending machine rights to accommodate schools and to help them plan and execute the best method to provide for the needs of their students.

Only in these discrete circumstances may the cafeteria operator choose a vending machine provider which is not PepsiCo or one of PepsiCo's contract partners. We 1) do not waive our right to place and control vending machines elsewhere in the school building, 2) do not waive our right to provide these machines in cafeterias that are operated directly by the school or school district itself, and 3) do not waive our rights where there is a contract with an outside food service operator that does not include an express provision for placing vending machines in the cafeteria.

² Please also note that some vending machines that were previously installed by a Coca-Cola subcontractor may continue to maintain stickers indicating that they are "BESB authorized," even though that is no longer the case since the 2020 award of the exclusive BESB contract to PepsiCo.

Potential Benefit of Using BESB Authorized Vending Machines

Using BESB-authorized vending machines will make your school district, in essence, a partner with BESB in supporting individuals with visual impairments. It is also required by state law. Using BESB authorized vending machines may also be financially rewarding to the school district since BESB waives its statutory and contractual right to commission revenue from vending machines located on school property. BESB instead directs PepsiCo to pay all commission revenue directly to the schools provided that the funds are utilized for the benefit of students. The commission revenue pursuant to PepsiCo's contract with BESB is 28% of gross vending machine sales for beverages and 19.5% for snack foods. This commission revenue likely compares favorably to revenue that may be received by those schools that have mistakenly entered into contracts with unauthorized vending machine operators. A recently reviewed contract between a school district and an unauthorized vending machine operator compensated the schools at a comparable commission rate but only provided for the commission to be paid on net sales to the extent that each vending machine realized more than \$100 per month in sales. Once this reduction in the base is considered, schools are likely to achieve substantially less revenue from unauthorized machines. Please also be assured that schools have and will continue to have total control over the types of beverage and snack food products sold in the BESB-authorized PepsiCo vending machines, so long as it is among the wide variety of products provided by PepsiCo.

In summary, we request –

- 1) That all school districts recognize that BESB has the first right to place and operate vending machines in all public schools in the state. Currently, this placement of vending machines is performed exclusively through our contractor PepsiCo and its subcontractors;
- 2) That all schools that currently have non-compliant machines on their premises notify BESB – by May 1 – so that we can arrange for those non-compliant machines to be replaced;
- 3) That any school that has a contract for vending machine services with an outside food service provider - either separately or as part of an overall food service contract – provide BESB with a complete copy of that contract including all of its terms and the date of its expiration; and,
- 4) That all schools consult BESB in advance of the expiration, automatic renewal or re-bidding of any cafeteria contract and offer good faith consideration of BESB vending machines for their cafeteria.

All communications with BESB on these matters can be handled through Tracy Morin, our Vending Services Supervisor. Ms. Morin can be reached at tracy.morin@ct.gov or at (860) 602-4111. If Ms. Morin is unavailable, schools may also contact Tyrell Sampson, our Business Enterprise Supervisor, at tyrell.sampson@ct.gov or at (860) 602-4219.

Any legal questions regarding the BESB's statutory right of first refusal can be directed to my attention at hugh.barber@ct.gov.

This letter is primarily concerned with ensuring that all vending machines on school grounds are BESB-authorized machines. Please also note, however, that all foods and beverages sold from vending machines that are accessible to students must continue to comply with federal and state laws for foods and beverages in schools

Thank you for your anticipated cooperation.



Hugh Barber
Staff Attorney
Department of Aging and Disability Services

Connecticut General Statutes Section 10-303

Sec. 10-303. Food service facilities and vending stands in public buildings controlled by Department of Aging and Disability Services. Permissible uses of vending machine income.

(a) The authority in charge of any building or property owned, operated or leased by the state or any municipality therein shall grant to the Department of Aging and Disability Services a permit to operate in such building or on such property a food service facility, a vending machine or a stand for the vending of newspapers, periodicals, confections, tobacco products, food and such other articles as such authority approves when, in the opinion of such authority, such facility, machine or stand is desirable in such location. Any person operating such a stand in any such location on October 1, 1945, shall be permitted to continue such operation, but upon such person's ceasing such operation such authority shall grant a permit for continued operation to the Department of Aging and Disability Services. The department may establish a training facility at any such location.

(b) Pursuant to the Randolph-Sheppard Vending Stand Act, 49 Stat. 1559 (1936), 20 USC 107, as amended from time to time, the Department of Aging and Disability Services is authorized to maintain a nonlapsing account and to accrue interest thereon for federal vending machine income which, in accordance with federal regulations, shall be used for the payment of fringe benefits to the vending facility operators by the Department of Aging and Disability Services.

(c) The Department of Aging and Disability Services may maintain a nonlapsing account and accrue interest thereon for state and local vending machine income which shall be used for the payment of fringe benefits, training and support to vending facilities operators, to provide entrepreneurial and independent-living training and equipment to children who are blind or visually impaired and adults who are blind and for other vocational rehabilitation programs and services for adults who are blind.

(d) The Department of Aging and Disability Services may disburse state and local vending machine income to student or client activity funds, as defined in section 4-52.

(1949 Rev., S. 1618; 1959, P.A. 264, S. 1; 615, S. 20; 1963, P.A. 386, S. 6; P.A. 75-549; P.A. 78-218, S. 204; P.A. 80-59; June 18 Sp. Sess. P.A. 97-2, S. 163, 165; P.A. 98-252, S. 27, 80; June Sp. Sess. P.A. 01-9, S. 35, 131; June 30 Sp. Sess. P.A. 03-3, S. 64; P.A. 11-44, S. 18; June 12 Sp. Sess. P.A. 12-1, S. 50; P.A. 19-157, S. 25.)

https://www.cga.ct.gov/current/pub/chap_174.htm#sec_10-303