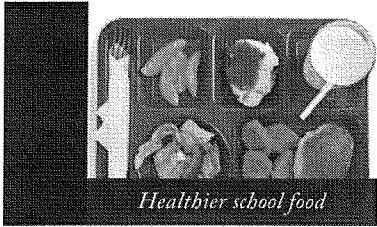


Food for thought — state standards you need to know

Candice L. Christon, staff attorney



Student nutrition and wellness have become hotly debated topics in recent years. In light of this, it's important to be aware of required state nutritional standards that boards of education must adopt and enforce, as well as the a la carte items that may be sold on school property.

Although students can purchase any food and beverages outside of school, districts are required to follow certain state regulations when determining what items may be sold on school property.

State nutritional standards

First, let's review nutritional standards required under state law. Each school district is required to "adopt and enforce" nutritional standards that govern food and beverage items that may be sold on school property, including time and place restrictions (Ohio Revised Code (RC) 3313.814 and Ohio Administrative Code 3301-91-09). In developing these standards, boards must consider the "nutritional value of each food or beverage" item that may be sold (RC 3313.814).

Each board must consult with a licensed dietician, a registered dietetic technician or a certified/credentialed school nutrition specialist. In addition, the district must consult the national dietary guidelines developed by the U.S. Department of Agriculture and U.S. Department of Health and Human Services, and incorporate these guidelines into the district's standards to the "maximum extent possible."

The board must select staff members to ensure the nutritional standards required under state law are being met.

The staff members are required to draft an annual report that illustrates the district's compliance with the standards and release the report to the Ohio Department of Education (ODE). The board must annually present the compiled information during a regular meeting of the board. Upon request, the district must make copies of the report available to the public.

A la carte items

Districts may sell a la carte food and beverage items to students. What is an a la carte item? Pursuant to RC 3313.814, an a la carte item is defined as a food or beverage item individually priced and available for sale to students through a school food service program, such as a breakfast or lunch program, a school vending machine or a school store. Items available for sale through a school-sponsored event held outside the regular school day or at an interscholastic athletic event are not considered a la carte items.

In addition, items included in a reimbursable meal that are available for sale as an individual item "in a serving portion of the same size as in the reimbursable meal, regardless of whether the items are included in the reimbursable meal served on a particular school day," are not considered a la carte items.

Beverage sale regulations

A la carte beverage items that may be sold during the regular and extended school day vary according to grade level. Each district is required to follow the statutory guidelines set forth in RC 3313.816 when selling these beverages to students.

For schools with mostly kindergarten through fourth-grade students, the only beverages that may be sold are:

- water;
- milk;
- eight ounces or less of 100% fruit juice containing no more than 160 calories per eight ounces;
- eight ounces or less of 100% fruit juice and water blend, with no added sweeteners, containing no more than 160 calories per eight ounces.

For schools with mostly fifth- through eighth-grade students, the only beverages that may be sold are:

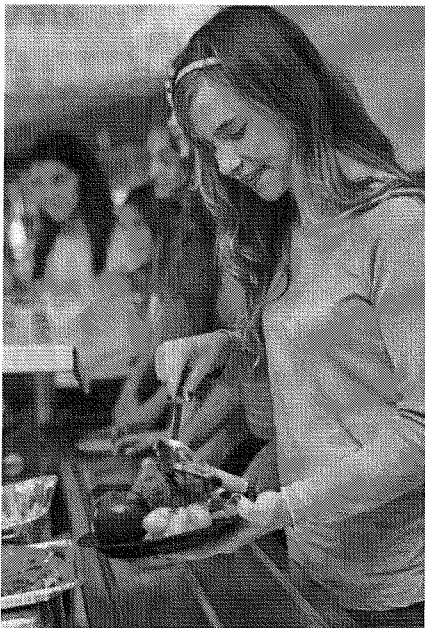
- water;
- milk;
- 10 ounces or less of 100% fruit juice containing no more than 160 calories per eight ounces;
- 10 ounces or less of 100% fruit juice and water blend, with no added sweeteners, containing no more than 160 calories per eight ounces.

For schools with mostly ninth- through 12th-grade students, the only beverages that may be sold are:

- water;
- milk;
- 12 ounces or less of 100% fruit juice containing no more than 160 calories per eight ounces;
- 12 ounces or less of 100% fruit juice and water blend, with no added sweeteners, containing no more than 160 calories per eight ounces;
- 12 ounces or less of any beverage containing no more than 66 calories per eight ounces;
- any size beverage containing no more than 10 calories per eight ounces, including caffeinated

beverages and beverages with added sweeteners, carbonation or artificial flavoring.

In addition, at least 50% of the a la carte beverages — other than milk (as modified by House Bill 153 in 2011 and Senate Bill 316 in 2012) — available for sale to all grade levels through a school food service program, a school vending machine that “does not sell only milk or reimbursable meals” or a school store must be water or other beverages containing no more than 10 calories per eight ounces.



Districts are required to follow certain state regulations when determining what food items may be sold on school property.

Food sale regulations

Determining the nutritional value of each a la carte food item for sale is another duty assigned to the district (RC 3313.817). The nutritional value of foods is one of the most important reasons for regulating the sale of a la carte food on school property.

How can a district determine the nutritional value? Under state law, when ODE is able to obtain free computer software that assesses the nutritional value of foods, it must make that software available to each school free of

charge. ODE has identified the Snackwise software program as meeting those requirements under RC 3313.817. Districts can access this free program at www.snackwise.org. The software is required to do the following:

- rate the healthiness of foods based on nutrient density;
- assess the amount of calories, total fat, saturated fat, trans fat, sugar, protein, fiber, calcium, iron, vitamin A and vitamin C in each food item;
- evaluate the nutritional value of foods based on the national dietary guidelines developed by the U.S. Department of Agriculture and U.S. Department of Health and Human Services as it relates to children and adolescents.

Each district is required to use the software provided by ODE to determine the nutritional value of the a la carte food items that may be sold. In addition, a la carte food items are prohibited from being in the lowest-rated category of foods designated by the software. The statute requires at least 20% of the a la carte food items available for sale through a school food service program, school vending machine or a school store during the regular and extended school day to be in the highest-rated category of foods designated by the software during the first year of use.

After the first year, at least 40% of the a la carte food items available for sale in the same manner must be in the highest-rated category of foods designated by the software.

However, if any a la carte food item is not in the highest-rated category of foods designated by the software, it must contain at least two of the following:

- at least five grams of protein;
- at least 10% of the recommended daily value of fiber;
- at least 10% of the recommended daily value of calcium;
- at least 10% of the recommended daily value of iron;
- at least 10% of the recommended daily value of vitamin A;
- at least 10% of the recommended

daily value of vitamin C.

As an alternative to complying with the nutritional requirements of the software provided by ODE, “schools may comply with the most recent guidelines for competitive foods issued by the Alliance for a Healthier Generation.” Districts can visit the Alliance for a Healthier Generation website at www.healthiergeneration.org.

A la carte items in vending machines

Just as students may purchase a la carte items through a school food service program or school store, they may purchase items from a school vending machine (RC 3313.814). Vending machines are prohibited from being placed in classrooms where students are “provided instruction,” unless students are served meals in those classrooms. Vending machines are exempt from this restriction if they sell only milk, reimbursable meals and any food and beverage items that are part of a reimbursable meal and may be individually sold in serving portions that are the same size as in the reimbursable meal.

Good nutrition essential to learning

Nutrition impacts school performance and achievement. Therefore, it is important that your district provides students with access to healthy foods and beverages. Your district must ensure students receive the proper nutrition mandated by law during regular and extended school hours. Encourage your students to maintain a healthy lifestyle and practice healthy eating habits, because the habits they form today can last a lifetime.

If you have questions about any of the information discussed in this article, please contact OSBA’s legal services division at (614) 540-4000. ■

“According to law” is designed to provide authoritative general information, sometimes with commentary. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.