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Abstract

Schools have evolved to be providers of education as well as suppliers of ancillary services to the population that they serve. This article examines one of these ancillary services, food service, in order to provide some awareness of the political aspects of the decision-making process in choosing whether or not to contract this service, as well as the pros and cons of the situation.

Keywords

food service, health law, politics, ancillary, sustainability

Contracted School Food Service: Advantages, Disadvantages, and Political Concerns

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Schools have evolved to be providers of education as well as suppliers of ancillary services to the population that they serve. This article examines one of these ancillary services, food service, in order to provide some awareness of the political aspects of the decision-making process in choosing whether or not to contract this service, as well as the pros and cons of the situation.

One of the broadest principles of American education is that all members of society are entitled to equal opportunity in education. In reaching out to the culturally diverse population of this country and its children with a myriad of socio-economic backgrounds, and to carry out the charge of providing a universal education for all, schools have been required to assume more responsibilities than only providing the legislated product, education.

Public schools have entered the business of providing ancillary services, in most cases as a requirement of accepting federal funding for particular purposes. Providing education is a responsibility of the individual states. The United States Constitution declares, "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders..." As an example of compliance with the U.S. Constitution, the constitutions of California, Iowa, Nevada, Michigan, and North Carolina provide that education shall be encouraged. The Illinois, Louisiana, and Montana constitutional provisions describe the goal of education; in Massachusetts, New Hampshire, and Tennessee, the constitutions state that education should be cherished. Rhode Island assigns a responsibility to the General Assembly to promote education as that body sees fit. Maine's constitution authorizes the legislature to require towns to make suitable provisions.

The federal government can become involved in the provision of education through application of the "good and welfare" clause in the Constitution, which allows for the federal government to provide funding for programs deemed to be for the benefit of the population as a whole. In many instances this clause has been enacted to provide

federal funding for education, including the national school lunch program. However, this funding comes with attachments to the individual states, requiring educators to use the funds in a manner prescribed by the federal government. Most schools are willing to abide by the parameters established by the federal government in order to continue to receive funding for the programs. There is no requirement for schools to accept federal dollars for programs such as the national school lunch program; however, if they accept them, then they are bound by the requirements for their use.

An underlying philosophy supporting the provision of these services is that if schools provide the social safety net for students who are lacking individual means, disadvantaged students will be able to exercise the right to universal education that is equal to any other student. As far as food service is concerned, students who are well nourished should perform better in the classroom than those who are not.

Food service is a product that can be delivered by an independent business or by the school district itself. Either way, schools provide food service as a non-instructional benefit, undertaken to help accomplish the mission of public education. It also must be delivered and managed in a manner consistent with the guidelines established by the federal government if it wishes to continue to receive federal financial support.

Management Companies Have Grown

Food service management companies have become a significant provider of public school food services in recent years. Twenty years ago Hockenbery¹ reported that food service contracts in schools were on the rise and eventually would equal contracted services for bus transportation, cleaning services, and production services. These contacts, properly written and executed, allowed educators to get back to the task of educating students.

Schumacher² reported that about one half of the states employ the services of food service management companies in various degrees, and that percentage has continued to grow. At the school level where a management company is contracted, Schumacher found that the overwhelming majority of the institutions were satisfied (89 out of 91), and about 70 percent opted for a professional management company because they were operating at a loss.

The management food service companies have also become proficient in the processing and filing of reports and forms that are necessary for the school district to continue to receive federal funding from the school lunch program. This has expanded the role further of these private enterprises.

Contract Companies Offer Advantages

The advantages of using a food service management company are realistic salary levels for managers, tighter control of costs, fewer costly benefit packages, application of professional management

techniques, and assistance in report preparation. The school district is in the business of providing education and has salary scales, job descriptions, and job duty lists for individuals performing functions related to educating students, and for the support personnel that they employ. The school district is forced to structure the management salary compensation packages around those that exist for other management and professional positions within the school district. The salary structure therefore cannot be equivalent. If the salary is too low, then the best food service managers would not be attracted to the school district. If it is too high, the local school board is spending excessive funds for this function.

The development of internal controls and the application of current technology in food service management is not generally created at the operational level, but rather evolves through management interaction, task forces, investigations, and the application of modern management techniques. A self-operated food service establishment relies on the food service professional in its employ for the development of these methods and procedures. Unfortunately, this individual does not have the support of a corporate staff that works to develop policies and procedures that help the food service operation control its costs.

A costly component of wages and salaries is employee benefits. The contract food service business is extremely competitive, and most client decisions on choosing a contractor are driven by the cost of operation. Contract food service companies generally use a significant amount of part-time labor, not eligible for benefits, and benefit packages are generally less than those offered by businesses outside the contract food service business.

Food service management companies offer their employees corporate training programs and continuing education opportunities. At these sessions, managers share ideas with their peers; are introduced to new management techniques, methods, and procedures to improve their jobs; and become acquainted with the various corporate services that the company offers and with methods to obtain these services. For example, many food service companies employ corporate chefs who are available to travel to individual locations for the purpose of working with the operation's food production staff. These opportunities for advanced management do not exist in a school setting.

The food service management companies recognize that in order to be a successful partner with the school district, they must learn the various required federal and state forms and reporting procedures. Without offering this assistance, the school district never really gets out of the food service business. Although the responsibility still rests with the school district for the accuracy and timeliness of these reports, with the assistance of the food service management companies, this is a considerable lightening of the burden.

Some Disadvantages Do Exist

The disadvantages of using outside vendors to provide this service are a loss in personal relationships between the students, staff, and food service employees; elimination of the use of the program as an educational service; and loss of operational control, which can result in low sanitation standards, improper equipment maintenance, and a deterioration of community goodwill.

The private food service management company is a for-profit independent business and, as such, is operated in a manner that will achieve its financial goals. This may involve the frequent transfer of employees which prevents personal relationships to develop between the management company and the client or the client's employees and students. The management company also operates to provide a service and, as such, is not a part of the school district's "family."

Management companies are given exclusive control over the food service facilities. Good management practice dictates that only authorized individuals are allowed in food production areas, and sanitation codes provide additional restrictions on who may enter these areas. Food service management companies generally discourage persons not associated with the food service operation from entering the area, which might be a different policy than that in effect in certain self-operated food service facilities. This ultimately will limit access of students and faculty, a factor which may have been used in the past as an educational enhancement.

The loss of operational control by the school board over food service facilities can result in equipment not being maintained and sanitation levels decreasing. These conditions are generally the result of an operation that has excessively reduced its labor for the purpose of achieving its financial goals. Part of the liaison's job description must include monitoring these aspects of the operation and meeting with parent groups and others in the community who may have concerns over the operation of the food service facility.

Local School Board Political Issues Also Surface

Szabo³ recognized that in times of tight budget constraints, school districts face a political issue of convincing their constituents that bringing in a professional management company will not increase costs, but will rather reduce expenses. This reduction can be accomplished through the use of the company's modern operational techniques and its corporate services, including purchasing, distribution systems, recipe and production methods, and pricing methodologies. Unfortunately, in the process of getting the message out to the community, administrators are often forced to justify the management fee that is embedded in the contract, and are not able to demonstrate the savings that will be generated.

Management companies are eager to provide, at no cost to the district, a feasibility study of the operation, which includes an evaluation of personnel, management systems, forecasts and budgets,

financial systems, inventory controls, participation, and costs. In evaluating the proposal, the district should be certain that the program is consistent with the goals of the district and is at an acceptable price. It is imperative in the request for proposal that the district is clear in the statement of its goals and objectives. These organizations also are available to perform an array of associated services in addition to food management, including facilities planning, architectural planning and fixed asset replacement. Often these services are provided at no additional cost.

Crimmins⁴ suggested that finding the right food service contractor for the district is a three-step process. The first is to send an invitation to bid only to reputable, experienced companies. Second, the request for proposal must be developed by the district and include clear and precise specifications. Finally, the returned proposals need a thorough and careful analysis. Often the best approach is to retain a professional independent consultant to assist the district in the evaluation process.

Selection Involves Employees, Costs

The proposal and bid process must include interaction on the part of the district with affected employees. Since the process normally takes a few months, political consideration must be given to the potential coalition of food service workers in the district's employment. These workers, without receiving factual information from district administration, could reach out to other organized groups such as teachers, staff, parents, and students to solicit their support in the effort to retain the food service program in its present state. Properly mobilized, this coalition could prevent the district from making the improvements that it planned.

Political concerns of operating food services by district employees can cause additional unnecessary expenses. Hockenbery⁵ cited that pay scales of district food service employees could become higher than those of outside private food service establishments; this would be a political problem in justifying district expenses to the general public or taxpayer. A second political consideration of operating a district's own food service is the issue of patronage positions awarded to individuals who, on an level playing field, would probably not be retained. Traditionally, the amount of incompetence tolerated in the public sector is greater than in private enterprise. Local school boards often have in place policies that require schools to purchase products locally, which can cost the district additional money since it negates the advantage of a national purchasing program in place by most management companies.

Since it has been established that the main reason for moving to a private food service company is cost, Hockenbery suggested that the price that a school district would have to pay to eliminate the operation of a food service program and to transfer its control to a private business would be to trade a nutrition education program for

a profit situation. He determined that school districts that offered food services in the spirit of the National School Lunch Program were not as profitable (or, indeed, were unprofitable) as those districts that offered students an array of food service products including soft drinks and other high-profit items. However, many parent and student groups feel that schools are not only responsible for education, but also for providing a good nutrition program, even if it causes a strain on the budget and decreases available funds for instructional programs.

Stumph⁶ addressed the issue of whether or not food services should be contracted at the higher education level. Although many of the same issues apply to higher education, the situation is different in that the institution most probably would be sacrificing the potential profits that exist if the decision is made to go to a contracted situation.

The argument that the institution is solely in the business of providing an education and does not have professional retailers on the staff does little to appease a community that is the recipient of higher tuition bills. The freedom from day-to-day problems and pitfalls that a contractor can provide may be a high price to pay for the political consequences of allowing profits to leave the school.

Choices Exist As to Type of Contract

There are four categories of food service contracts:⁷

- one in which the management company assumes the total risk of profit and loss
- one in which the school assumes the risk and guarantees a fee to the management company
- one where the caterer assumes the risk but agrees to limit profit
- one where the caterer assumes the risk and guarantees a fee to the school – either a dollar amount or a percentage of the revenue

Choosing the best type of contract for both the district and the food service operator depends on the situation of the individual school. From a political perspective, once the decision is made to “go contract,” if the contractor cannot be financially successful, or if the contract creates a higher financial burden for the district than it had when it operated the service itself, additional challenges will be created. These problems are usually political in nature since the end result of changing vendors allows critics the opportunity to question the district’s decision in hiring a professional management company.

In addition to the type of contract, the actual document will also include responsibilities for the contractor and the school district. Usually, vendor expenses include food, labor, payroll taxes, insurance, supplies, telephone, and laundry. District expenses include insurance, capital purchases, maintenance and repair, painting and decorating, utilities, and cleaning and trash removal.

Although the agreement will cover many other issues and items, the most important aspect of the negotiations is to create a win-win situation. Even with the employ of a professional company, the district has not alleviated itself of the responsibility for providing food services, and the contractor's problems become the district's as well. This is a partnership agreement, and both partners need to work together to achieve their individual goals.

Laws Support Programs

A review of sample state laws relative to the legality of for-profit private management food service companies operating school food service programs indicates that there are no problems with these arrangements. For example, Minnesota Statutes 1991 Supplement, reads in part:⁸

(c) Revenues and expenditures ...documented as attributable to the food service program may be charged to the food service fund provided that the school district does not employ or contract with a food service director or other individual who manages the food service program, or food service management company...if a district contracts with a food service management company.

As further evidence of the legality of private companies entering into agreements with local school boards to manage food service programs, Title 1, of the New York Education Laws states in part:⁹

All contracts...to provide, maintain and operate cafeteria or restaurant service by a private food service management company shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his opinion, the best interests of the district will be promoted thereby. All such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all.

OAG 74-043. A food service management company may include the cost of bodily injury and property damage liability insurance as a cost of operation of the school food service program, if the contract so provides. (See also OAG 87-069.)

OAG 74-043. The employees of a board of education may be supervised by a food service management company with which the board contracts for food service; however, ultimate supervisory responsibility remains with the board. (See also OAG 87-069.)

OAG 70-084. A school board may contract with a caterer to provide food service to a school within the district.

Banks-Baldwin Law Publishing Company provides the following additional subchapter general provisions:¹⁰

OAG 74-043. If agreed upon by the board of education and the food service management company the company may pay for supplies for the school food service program and seek reimbursement from the school food service fund...a food service management company may not make purchases in the name of the board of education with which it contracts...whether a food service management company may make purchases exclusively with its national director of purchasing and regional purchasing coordinators depends upon the agreement between the company and the school board of education.

OAG 74-043. A properly supported statement of expenditures of purchases for a school food service program by a food service management company would meet the requirements of the national school lunch program agreement.

OAG 74-043. The contract price of the food service may be a percentage of gross sales, but the total price must have a maximum limit for the contract to comply with RC 5705.41 and 5705.412; moneys supplied to the food service fund from the general revenue fund and from federal programs may be considered part of "gross sales." (See also OAG 87-069.)

OAG 74-043. Proceeds from the sales of meals by a food service management company which contracts with a board of education to provide food service must be deposited pursuant to RC 3313.81 within twenty-four hours of receipt.

These rules and statutes support the premise that a for-profit private management company can operate in a public environment. They also open the way for future such alliances, particularly since provisions have been made for these private companies to supervise district employees, which can occur when a school district evolves from self-operated status to contract management, and through the authorization for private companies to participate in federal programs.

A typical contract between a food service management company (contractor) and a public school district (client) has several provisions:¹¹

- **Employment of contractor:** Client defines the scope of the employment of the contractor, granting the contractor sole provider status to provide management services in connection with the operation of the client's non-profit school food service operation in compli-

ance with the applicable provisions of the National School Lunch Act, the Child Nutrition Act of 1966, and the United States Department of Agriculture.

- **Authority of client:** The client retains control and signature authority of its food service operation through periodic inspections and observations and pricing structures.

- **Regulatory requirements:** The responsibility for maintenance of records as needed to support claims for reimbursement under the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program rests with the contractor and are to be furnished to the client in a timely manner, based on a periodic schedule.

- **Food service:** This paragraph defines the work to be provided by the contractor such as serving breakfasts and lunches which meet the meal component requirements prescribed by USDA as well as other food as agreed upon by the contractor and client.

- **Facilities and equipment:** The client provides food service facilities completely equipped, together with utilities, and furnishes building maintenance services for the premises, including equipment repairs and replacements. Also, the client provides an initial inventory of smallwares.

- **Cleaning responsibilities:** The contractor assumes maintenance responsibilities as a direct cost of operation, usually with the exception of trash removal.

- **Health certification:** The contractor is responsible to comply with all federal, state, and local laws and regulations governing the preparing, handling and serving of food, and obtains all licenses, permits, food handlers' cards, and health certifications as required.

- **Personnel:** The contractor shall provide and pay a staff of its employees as well as expert administrative, dietetic, purchasing, personnel advice, and supervision.

- **Equal employment opportunity:** The contractor agrees that it shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," and that it will not discriminate against any employee or applicant for employment because of race, color, age, sex, religion, handicap, or national origin and agrees that it will abide by all federal and state laws, rules, and regulations applicable to equal employment opportunity.

- **Health examinations:** The contractor will submit all of its employees to periodic health examinations, as required by federal, state, and/or local law.

- **Purchasing:** The contractor purchases and pays for all food and related supplies required for operation of the food service provided

for in this agreement. Title to such food and supplies shall remain with the client at all times.

- **Inventory of food and supplies:** Title to the inventory of food and supplies pertaining to the food service operation shall remain in client.

- **Government donated foods and commodities:** Any federally-donated foods received by the client and made available to the contractor shall be utilized solely for the purpose of providing benefits for the client's food service operation and be kept separate from the purchased inventory of food and supplies.

- **Licenses, permits, and taxes:** The contractor will obtain and pay for all licenses and permits required for the operation of the food service, and will collect all sales, use, excise, and state and local income taxes.

- **Insurance:** The contractor agrees to provide workers' compensation insurance as required by law. In addition, the contractor shall carry comprehensive general liability insurance, including products, contractual, and broad form vendors' coverage. The contractor will furnish a certificate of insurance to the client.

- **Indemnification:** The contractor shall hold harmless, indemnify and defend the client against any claim, action, loss, damage, injury, liability, cost, or expense related to the performance of this contract.

- **Fiscal arrangement:** All reimbursements and cash receipts shall be utilized solely for the operation of the client's food service. All cash receipts shall be turned over to client for deposit in the client's food service account. The contractor receives for its services reimbursement for all direct costs of operation incurred by the contractor, including an allowance for its general administrative costs plus a management fee per meal served. If the client is not satisfied with the management services provided by the contractor during an accounting period, the client will not be required to pay to the contractor its management fee for the period. If at the end of the school year there is a deficit in the client's food service budget, the contractor shall return to the client an amount equal to the amount of the management fee actually paid to the contractor by client for the school year or the amount of the deficit, whichever is the lesser amount.

- **Accounting:** The accounting periods shall be on a calendar month basis, and within seven days after the end of each week of operation, the contractor will submit to client an invoice, payable within 10 days, for its entitlement. Within 30 days after the end of each accounting period, the contractor will submit to the client an operating statement for the period.

- **Remedies:** Neither party shall be responsible to the other for any losses resulting from the failure to perform any terms or provisions of

this agreement, except for payment of monies owed, if the party's failure to perform is attributable to war, riot, or other disorder; strike or other work stoppage; fire; flood; or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.

- **Confidentiality:** All financial, statistical, operating, and personnel data such as recipes, menus, and meal plans used in the contractor's business are the property of contractor and shall be confidential.

- **Term and termination:** This agreement shall be in effect for the school year, and may be renewed by mutual agreement of client and contractor. Either party may terminate this agreement at any time by giving 60 days written notice to other party of its intention to terminate as of the date specified in the notice.

References

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⁴M. Crimmins, "Food service management: Selecting the right company," *School Business Affairs*, (November 1980), pp. 22-23.

⁵Hockenbery, *op.cit.*

⁶W.J. Stumph, *In-House vs. Franchise College Food Services and Bookstores*, (Atlanta, GA: Association of School Business Officials, 1982).

⁷H.D. Scott, *Negotiation, Administration, and Measurement of Food Service Contracts in Higher Education*, (ERIC Document Reproduction Service No. ED 112 754, 1973), p. 2

⁸Minnesota State Statutes 1991 Supplement, Section 124.646, Subdivision 4.

⁹New York Education Laws, Title 1, Article 7, Paragraph 14a.

¹⁰Baldwin's Ohio Revised Code Annotated, Banks-Baldwin Law Publishing Company, Title 33, Chapter 3313, Subchapter General Provisions ORC Ann. @ 3313.81.

¹¹Contract between ARASERVE, Inc. and the Duval County School Board, Duval County, Florida, May 29, 1990, was used as a guide.

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