

Albemarle Truth in Taxation Alliance

Albemarle County School Personnel Entering in to External Contracts Without Authorization Creates Potential Financial Liability to County Taxpayers

Insufficient Communication and Availability of Policies to Albemarle County Public School Students and Guardians

Overview

Albemarle County High School Athletic Program Directors have signed 'exclusivity agreements' with sporting apparel and equipment companies (Vendors) that were never approved by Albemarle County Public School (ACPS) Administration. ATTA has discovered that these contracts were not reviewed by Albemarle County or ACPS legal departments and The Albemarle County School Board was unaware the agreements existed.

The unauthorized entry into these contracts by all three ACPS High School Athletic Directors has occurred for several years. These contracts were signed with different vendors and have different terms and conditions. In the case of Monticello High School, their agreement has either been entered into each of the last three years (and maybe prior), or is an agreement with duration of three or more years.

The signing of these documents without legal review or administrative oversight has created the potential for significant financial liability to the taxpayers of Albemarle County. Additionally ATTA has identified a number of issues as part of its discovery process in regards to communication, policy and procedures in place in ACPS.

Details

Exclusivity Agreements are contracts where a Vendor offers benefits to a customer in exchange for the agreement of the customer to purchase certain goods from that Vendor. The compensation to the customer can be monetary or other items of value. In the case of Albemarle County athletes in some high school sports are required to wear athletic apparel from only the Vendor that has signed an agreement with the Athletic Director at that high school.

ATTA has established the following information about the exclusivity agreements at this time:

- The benefits of each of these agreements were never weighed by the ACPS School Board against the potential harm to students and their parents.
- The requirements of these agreements were never evaluated by competent authority for potential liability to the taxpayers of Albemarle County.

- No evaluation was conducted, prior to entering into the contracts, to determine if a single master agreement with one Vendor could have been negotiated to derive better value for student athletes.
- These agreements have not been made available to the public or even to the members of the School Board, even after specific request for their disclosure.
- There has never been an accounting to the public or even internally within ACPS, of the benefits or costs of these agreements.
- There has never been an accounting to the public or even internally within ACPS of how the benefits received have been applied.

At the beginning of the current school year Albemarle County High School Athletic Programs implemented a charge of \$75 per athlete, per sport, athletic fee. Multiple requests by athletes' parents for a process to follow if they cannot afford the gear required by the exclusivity agreement or the athletic fee have not been answered. Requested of the Monticello Athletic Department, a written procedure has never been provided. Both issues relate to a financial burden placed on athletes and the ability to seek exemption or accommodation when appropriate. Both issues require public accountability and a direct policy response by ACPS.

For several years, athletes in selected sports at Albemarle High Schools have been required to purchase certain athletic gear only from a single approved manufacturer. This gear is not required for safety reasons, but required to provide undisclosed benefits to the school athletic programs. The number of athletes being required to purchase gear from the approved manufacturer has been increasing to include more athletes in more sports each year.

Athletic Departments have assured parents and athletes that no student would be prohibited from participation if they could not afford the approved gear or the required fee. Attempts to secure a set of written instructions outlining a process that athletes should follow to request an exemption or accommodation were not successful through multiple direct athletic department requests over a period of two school years.

Request for School Board Member Assistance: Subsequent Internal ACPS Review of High School Athletic Agreements and Policies

In February of 2011 a request was submitted to a member of the Albemarle County School Board to obtain information on policies and procedures in regards to the required gear and athletic fees. The member of the School Board contacted was unaware that these athletic agreements existed and agreed to look into the matter. The School Board member contacted was extremely responsive at the time of the initial request, and in all subsequent dialogue, has been timely and open.

The following information was requested:

- To make available for public viewing, the exclusivity agreements signed by the High School Athletic Directors

- To make available for public viewing, a complete and thorough account of the benefits received from these agreements and exact detail of how the benefits have been applied, to ensure that benefits derived from the purchase of gear by athletes in Sport A were not used to benefit athletes in Sport B.
- To provide students and parents a written procedure to seek exemption or accommodation if the expense for items required by the exclusivity agreements and/or the athletic fee, that had not been provided when previously requested.

The School Board member contacted later confirmed that no one on the School Board was aware these agreements were in place and no one in a position of proper authority had reviewed or authorized the exclusivity agreements. Later, the member provided a more detailed update explaining that during March 2011 it was determined through an internal investigation by ACPS staff:

- That the Athletic Directors of three ACPS High Schools had, in fact, signed exclusivity agreements with vendors without authorization to do so and that the School Board was unaware of the existence of these agreements prior to ATTA's contact in February, 2011.
- That the Athletic Directors of three ACPS High Schools had, in fact, signed exclusivity agreements with vendors without any review by ACPS Central Administration.
- That the Athletic Directors of three ACPS High Schools had, in fact, signed agreements with vendors without any review for possible legal exposure, Title IX violations or discrimination issues by the ACPS or Albemarle County Legal Departments.
- In and of themselves, the current agreements appear not to pose any legal issues, in the opinion of those involved in the internal ACPS review.
- Although not in writing, and not properly documented or disseminated, the review indicated the ACPS High School Athletic Directors had stated during the investigation that procedures were in place to assist athletes requiring exemptions or accommodation for required gear or fees.

During the initial internal review, the statement from the athletics departments was, *"In all situations, either the booster club would contribute toward the footwear or the student would be allowed to purchase less expensive footwear."* (NOTE: The exclusivity agreements are not limited to "footwear")

In the case of Monticello High School the statement given during the internal review is not supported by any available information. At Monticello High School no procedure to request Booster Club Assistance or permission to purchase alternative footwear was distributed or was made available when requested

The internal review information made available did not include any accounting of the benefits received or accounting of the distribution of those benefits. Most importantly, no statement was made indicating that the benefits received by each of the athletic programs were distributed fairly and in accordance with Title IX requirements.

Conclusion

All three ACPS High School Athletic Departments have signed different exclusivity agreements with different athletic apparel and equipment vendors. In the absence of any governing policy, each of the three ACPS High School Athletic Departments has handled individually and differently their exclusivity agreements and the exemption or accommodation in regards to these agreements and fees. At all three high schools exclusivity agreements were entered into by unauthorized personnel, but it may be determined that at least one the schools, but not Monticello High School, has a process in place that can be used as model for all schools.

Without being granted access to the full text of each of the exclusivity agreements and a complete accounting of what has occurred under these agreements the ACPS School Board and the public cannot determine the full extent of the situation in the High School Athletic Programs, despite the internal investigation. Athletes and their parents deserve resolution of policy and procedure issues for the future, and full accountability for what has occurred in the past, immediately. The taxpayers of Albemarle County could have been financially responsible for a virtually unlimited amount of liability if these agreements, or the disposition of their associated benefits, were deemed to be discriminatory or in violation of Title IX. "The public deserves a full accounting of what has happened, and clear insight into the policies and procedures being implemented to prevent reoccurrence." The public also must be informed of any remedies needed to bring the distribution of past benefits into legal compliance immediately.

In the early stages of this inquiry, and immediately after issues were identified, the School Board member contacted stated that procedures would be put in place immediately to prevent unauthorized personnel from entering into agreements on behalf of ACPS and that a procedure would be documented for student athletes to follow in case of need.

The openness and quick reaction by the ACPS School Board to the issues brought to their attention has been the positive side of the issue. Additionally, the School Board will discuss this matter during the meeting scheduled Thursday April 14, 2011, under "Other Business" since it was too late to be added to the regular agenda.

Immediate Expectations

The School Board has indicated the issues ATTA has brought to their attention will be discussed at the April 14th School Board Meeting, under the heading of "Other Business". ATTA expects that the following issues will be resolved or a plan put in motion to achieve resolution:

- Existing, prior and future agreements must be made public and released in their entirety.
- The breakdown that allowed agreements to be signed by unauthorized staff, potentially expose the taxpayers of Albemarle County to legal expenses and fines and potentially adversely affecting the health and well-being of ACPS students must be identified. Subsequently, a procedure to prevent unauthorized personnel from entering into agreements must be put in place immediately.

- A process must be put in place so that all future agreements are negotiated under the direction of a single party that can ensure the best possible benefits are being achieved for all athletes.
- Policy must detail the distribution of future benefits to athletes in accordance with Title IX and in accordance with fairness to those affected by the requirements.
- A common process must be created and disseminated to all athletes seeking exemption or accommodation.
- A central repository for all agreements and contracts to be available on demand by School Board Members and a process in place for public access. (Despite copies of agreements being in the possession of Central Administration personnel for several weeks, direct conversation with two School Board Members indicates that as of the first week in April, even they have been unable to view these agreements.)
- Through an audit, the benefits received from prior and current agreements need to be documented, those benefits need to be verified with the vendors and the results of the audit made public.
- Through an audit, documentation should be produced, verified and made public, which proves all athletes required to purchase exclusive gear have received a proper share of the benefits, no Title IX violations have occurred and if necessary correct any improper distributions.
- A comprehensive policy on all future agreements made with outside parties that affect ACPS students should be composed and made public. This policy must include on mandatory minimum required communication by athletic departments in regards to exclusivity agreements and the availability and dissemination of the process for athletes to seek exemption or accommodation in regards to the exclusivity agreements and athletic fees.
- Simultaneous to the ACPS School Board publishing the policies and procedures to be implemented, the internal Attorney Review conducted should be released to the public, assuring that the changes will protect the taxpayers of Albemarle County from being placed in a position of fiscal liability in the future by unauthorized personnel entering into contracts. Then the Albemarle County Board of Supervisors should review everything and state to the public they approve of what has been implemented.
- If any ACPS High School Athletic Director signed an exclusivity agreement in the past or one that is currently in place, which does not allow for exemption and/or accommodation for athletes, or that creates financial liability for Albemarle County taxpayers, the School Board should declare that it will dismiss that Athletic Director.
- If any ACPS High School Athletic Director signed an exclusivity agreement in the past or one that is currently in place that does allow for exemption and/or accommodation, but did not provide written documentation to athletes and parents thoroughly explaining the requirements, benefits and exceptions of the agreement prior to, or simultaneous with, the very first day of the agreement going into effect, the School Board should declare that it will dismiss that Athletic Director.