

The Courts have held that school officials may not give access to religious groups to distribute Bibles on school premises. *Berger v. Rennselaer School District*, (7th Cir. 1993); *Doe v. South Iron R-1 Sch. Dist.*, 540 F.Supp.2d 1047 (E.D. No. 2008) *Gideons International v. Tudor*, 14 N.J. 31 (1953); However, school officials generally cannot ban the distribution of Gideon Bibles on a public sidewalk in front of the school. *Bacon v. Bradley-Bourbonnais High School Dist.*, 707 F. Supp. 1005 (C.D. Ill. 1989) (an Establishment Clause violation would arise only if the school permitted some, but not other, religious groups to distribute materials). School officials also cannot personally distribute Bibles to students. *Jabr v. Rapides Parish School Bd.*, 171 F.Supp.2d 653 (W.D. La. 2001). (principal could not hand out Bibles to students in his office).

In *Peck v. Upshur County Board of Education* (4th Cir. 1998), the court upheld a school policy that allowed religious groups to engage in passive distribution of Bibles from an unmanned table in secondary schools one day a year. The court noted this practice would not pass constitutional muster at the elementary school where younger children would likely view the activity as school-sponsored.

In Attorney General Opinion No. 96-5, the Kansas Attorney General concluded allowing students to be released once a week during the school day to attend a Bible school off school property did not violate the Constitution. Further, the AG opined the school could allow representatives of the Bible School to distribute information about the Bible School on school property and indicated the school would be required to allow such distribution if it permitted representatives of other groups, such as the scouts, to distribute materials about their organizations on school property. Although the AG concluded school personnel could assist in the distribution of these materials if they did so for other groups, this practice is questionable.

While the courts in recent years have vastly expanded the right of religious groups to have access to and use of school facilities, they have steadfastly held that school sponsorship or the appearance of such sponsorship through the involvement of school employees in the activity is not permitted under the Establishment Clause. Given the case law in this area, efforts should be made to limit staff involvement in the distribution of religious materials.

Distribution of Materials by Others

Case Law Guidance

Victory Through Jesus Sports Ministry Foundation v. Lees Summit R-7 Sch. Dist., 640 F.3d 329 (8th Cir. 2011). School district's "Backpack Flyers for Students" program, which restricted in-school distribution of outside organizations' flyers to a once a year opportunity, did not violate an outside religious group's free speech rights. The school policy created a non-public or limited public forum in which the school district could impose reasonable, viewpoint neutral restrictions on in-school distribution of flyers.

Page v. Lexington County Sch. Dist. One, 531 F.3d 275 (4th Cir. 2008). Limiting access to newsletter forum to groups closely associated with the school was a reasonable restriction in light of the purpose of the forum. The policy restricting access was viewpoint neutral.

Rusk v. Crestview Local Sch. Dist., 379 F.3d 418 (6th Cir. 2004). Elementary school could distribute third party flyers so long as students would not be able to participate in the advertised activities without parental consent. See also, *Child Evangelism Fellowship of Md., Inc. v. Montgomery County Public Schools*, 373 F.3d 589 (4th Cir. 2004).

Hills v. Scottsdale Unified Sch. Dist., 329 F.3d 1044 (9th Cir. 2003). Schools may exercise limited discretion in determining which flyers may be sent home with students. Schools cannot refuse to distribute literature advertising a program with underlying religious content if it distributes similar literature for secular activities like summer camps. Schools can refuse to distribute literature that contains proselytizing language.

Culbertson v. Oakridge School District No. 76, 258 F.3d 1061 (9th Cir. 2001). Classroom distribution of an outside group's religious flyers violated the Establishment Clause by creating the impression the school endorsed religion.

Daugherty v. Vanguard Charter Sch. Acad., 116 F.Supp.2d 897 (W.D. Mich. 2000). Policy permitting community groups, including religious groups, to distribute information through distribution in the classroom, did not violate the Establishment Clause.

Chandler v. James, 985 F. Supp. 1094 (M.D. Ala. 1997). Practice of allowing outside groups to distribute Bibles or other religious materials to students during homeroom period violated the Establishment Clause.

Schanou v. Lancaster County School District, 863 F. Supp. 1048 (D. Neb. 1994). Policy which allowed distribution of Gideon Bibles to 5th and 6th graders on school district sidewalks at the end of the school day was constitutional. The court noted distribution inside during instructional time would violate the Establishment Clause.