

**DISTRIBUTION OF RELIGIOUS AND OTHER MATERIALS IN PUBLIC SCHOOLS  
FEDERAL CASES (organized chronologically)**

Updated: October 24, 2011

<b>CASE</b>	<b>MATERIALS DISTRIBUTED</b>	<b>DISTRIBUTED BY</b>	<b>DISTRIBUTED TO</b>	<b>MODE OF DISTRIBUTION</b>	<b>FORUM</b>	<b>POLICY</b>	<b>HOLDING</b>	<b>STATUS</b>
<b><i>Nelson v. Moline School District No. 40</i></b> , 725 F.Supp. 965 (C.D.Ill. 1989)	Non-denominational religious publication ( <i>Issues &amp; Answers</i> )	Students	Secondary students	School hallway	Nonpublic	Distribution permitted with approval of principal	No free speech violation - reasonable time, place, and manner restrictions were neutral, applying to all nonschool speech.	No appeal
<b><i>Henry v. School Board of Colorado Springs School District No. 11</i></b> , 760 F.Supp 856 (D.Colo. 1991)	Non-denominational religious publication ( <i>Issues &amp; Answers</i> )	Students	Secondary students	School hallway	Nonpublic	Limited distribution to area outside school building	No free speech violation - reasonable time and place restrictions in nonpublic forum. Policy was not content based - no viewpoint discrimination.	No appeal
<b><i>Slotterback v. Interboro School District</i></b> , 766 F.Supp. 280 (E.D.Penn. 1991)	Religious tracts	Students	Secondary students	School hallway and cafeteria	Limited public forum	Prohibited distribution of materials that proselytize a particular religious or political belief	Free speech violation - content-based restriction on personal speech in limited open forum not narrowly tailored to serve compelling state interest of avoiding Est. Cl. violation.	No appeal

<b>CASE</b>	<b>MATERIALS DISTRIBUTED</b>	<b>DISTRIBUTED BY</b>	<b>DISTRIBUTED TO</b>	<b>MODE OF DISTRIBUTION</b>	<b>FORUM</b>	<b>POLICY</b>	<b>HOLDING</b>	<b>STATUS</b>
<b><i>Berger v. Rensselaer Central School Corp.</i></b> , 982 F.2d 1160 (7th Cir. 1993)	Bibles	Outside group	Elementary students	Classroom	No forum analysis (court concluded Bible distribution constituted school-sponsored speech)	Permitted distribution of religious literature by outside religious group in classroom	Establishment Clause violation - distribution of Bibles created perception of endorsement.	Petition for certiorari to U.S. Supreme Court denied  508 U.S. 911 (1993)
<b><i>Sherman v. Community Consolidated School District 21 of Wheeling Township</i></b> , 8 F.3d 1160 (7th Cir. 1993)	Boy Scout literature	Teacher	Elementary students	Classroom	Limited open forum	Distribution of secular group's literature that contains a religious component	No Establishment Clause violation - distribution did not create endorsement problem (minimal risk from religious component of Boy Scout literature).	Petition for certiorari to U.S. Supreme Court denied  511 U.S. 1110 (1994)

Reprinted with permission from National School Boards Association, August 2006.  
 Copyright 2006 National School Boards Association. All rights reserved.  
 Contact: Tom Burns, Legal Research Specialist, [tburns@nsba.org](mailto:tburns@nsba.org)

<b>CASE</b>	<b>MATERIALS DISTRIBUTED</b>	<b>DISTRIBUTED BY</b>	<b>DISTRIBUTED TO</b>	<b>MODE OF DISTRIBUTION</b>	<b>FORUM</b>	<b>POLICY</b>	<b>HOLDING</b>	<b>STATUS</b>
<b><i>Hedges v. Wauconda Community Unit School District</i></b> , 9 F.3d 1295 (7th Cir. 1993)	Non-denominational religious publication ( <i>Issues &amp; Answers</i> )	Student	Junior high students	Outside school building	Nonpublic forum	Prohibited distribution of religious material - restricting distribution of multiple copies of nonschool material to designated place and time	Free speech violation - viewpoint discrimination - limitations on time and place of distribution were not inappropriate given the nature of school and principal's duty to maintain order.	No appeal
<b><i>Johnston-Loehner v. O'Brien</i></b> , 859 F.Supp. 575 (M.D.Fla. 1994)	Religious pamphlets and flyers	Student	Elementary students	Classroom	No forum analysis (court found policy constituted prior restraint)	Required prior approval by superintendent before distribution of nonschool materials in elementary schools	Free speech violation - prior restraint permissible if school district established that student speech being restricted would materially and substantially interfere with school operations or rights of other students, but school district failed to carry its burden of proof.	Affirmed by Eleventh Circuit 7 F.3d 241 (11th Cir. 1993)

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b>Harless v. Darr</b> , 937 F.Supp. 1351 (S.D.Ind. 1996)	Religious leaflets	Student	Elementary students	Classroom	Nonpublic forum	Required prior approval of principal before nonschool materials were distributed	No free speech violation - policy did not constitute impermissible prior restraint - no viewpoint discrimination.	No appeal
<b>Peck v. Upshur County Board of Education</b> , 155 F.3d 274 (4th Cir. 1998)	Bibles	Outside group	Elementary and secondary students	"Passive distribution," <i>i.e.</i> tables in school hallways and libraries	Nonpublic forum	Board interpreted its policy to permit "passive distribution" of religious and political material with time, place, and manner restrictions	No Establishment Clause violation - policy of "passive distribution" avoided endorsement problems - however, distribution limited to secondary schools because elementary school students are "particularly impressionable."	No appeal

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Daugherty v. Vanguard Charter School Academy</i></b> , 116 F.Supp.2d 897 (W.D. Mich. 2000)	Religious informational materials	Outside group	Elementary students	Classroom (take home folders)	No forum analysis	Permitted community groups, including religious organizations, to distribute information regarding community activities and events	No Establishment Clause violation - policy sufficiently neutral on its face.	No appeal
<b><i>Jabr v. Rapides Parish School Board</i></b> , 171 F.Supp.2d 653 (W.D. La. 2001)	Bibles	Principal	Elementary students	Principal's office	No forum analysis (court employed <i>Lemon</i> test)	Elementary school principal engaged in practice of personally distributing Bibles to students on school grounds during school hours	Establishment Clause violation - policy failed endorsement and excessive entanglement prongs of <i>Lemon</i> test.	No appeal
<b><i>Culbertson v. Oakridge School District No. 76</i></b> , 258 F.3d 1061(9th Cir. 2001)	Religious flyers	Teacher	Elementary students	Classroom	Limited public forum	Court ordered school district to permit classroom distribution of group's flyers	Establishment Clause violation - distribution by teachers creates impression of school endorsement of religion.	No appeal

Reprinted with permission from National School Boards Association, August 2006.  
 Copyright 2006 National School Boards Association. All rights reserved.  
 Contact: Tom Burns, Legal Research Specialist, [tburns@nsba.org](mailto:tburns@nsba.org)

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b>Westfield High School L.I.F.E. Club v. City of Westfield</b> , 248 F.Supp.2d 98 (D. Mass. 2003)	Candy containing religious messages	Student	High school students	Throughout school building	No forum analysis – viewpoint restrictions	Prohibited distribution of religious materials during non-instructional	Free speech violation – viewpoint discrimination – prior restraint without <i>Hazelwood</i> showing of legitimate pedagogical interests.	No appeal
<b>Hills v. Scottsdale Unified School District No. 48</b> , 329 F.3d 1044 (9th Cir. 2003)	Summer camp brochures offering variety of activities including Bible classes	Teacher	Elementary students	Classroom	Limited public forum	Prohibited classroom distribution of camp brochures due to religious content	Free speech violation – viewpoint discrimination – no Establishment Clause violation – minimal endorsement risk	Petition for certiorari denied by U.S. Supreme Court on 1/20/04  Docket No. 03-693
<b>Walz v. Egg Harbor Tp. Board of Education</b> , 342 F.3d 271 (3d Cir. 2003)	Candy, pencils containing religious messages	Student	Elementary students	Classroom	No forum analysis (endorsement analysis)	Limited distribution to before school, during lunch, or after school	No free speech violation – time, place, and manner restrictions reasonable – demonstrated <i>Hazelwood</i> s legitimate pedagogical interests.	No appeal

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Child Evangelism Fellowship v. Montgomery County Public Schools</i></b> , 373 F.3d 589 (4th Cir. 2004)	Religious flyers	Teacher	Elementary students	Classroom	No forum analysis ( <i>Lemon</i> test analysis)	Prohibited classroom distribution of religious materials from outside groups	Free speech violation – viewpoint discrimination – no Establishment Clause violation – no endorsement or coercion risk.	Fourth Circuit reversed and remanded 6/30/04  Motions for reh’g and reh’g en banc denied 7/27/04  Docket No. 03-1534
<b><i>Rusk v. Crestview Local Schools</i></b> , 379 F.3d 418 (6th Cir. 2004)	Religious flyers	Teacher	Elementary students	Classroom	No forum analysis ( <i>Lemon</i> test analysis)	Permitted classroom distribution of religious materials from outside groups	No Establishment Clause violation – relative youth of students does not create endorsement risk.	Sixth Circuit reversed and remanded 8/12/04

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Child Evangelism Fellowship of New Jersey v. Stafford Township School District</i></b> , 386 F.3d 514 (3d Cir. 2004)	Religious flyers	Teacher	Elementary students	Classroom	Limited public forum	Prohibited classroom distribution of religious materials from outside groups.	Free speech violation – viewpoint discrimination – no Establishment Clause violation	Third Circuit affirmed and remanded 10/15/04
<b><i>Child Evangelism Fellowship v. Montgomery County Public Schools</i></b> , 368 F.Supp.2d 416 (D. Md. 2005)	Religious flyers	Teacher	Elementary students	Classroom	Nonpublic forum	Limited distribution on the basis of speaker identity (five categories)	Revised policy limiting classroom distribution of materials from outside groups based on type of group, rather than content of materials, does not violate religious group's free speech rights.	Fourth Circuit reversed in part 8/10/06  <b>Note:</b> Remand of Fourth Circuit's 2004 decision, <i>see above</i> 373 F.3d 589; board revised policy to eliminate prohibition based on viewpoint

Reprinted with permission from National School Boards Association, August 2006.  
 Copyright 2006 National School Boards Association. All rights reserved.  
 Contact: Tom Burns, Legal Research Specialist, [tburns@nsba.org](mailto:tburns@nsba.org)

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<p><b>Child Evangelism Fellowship v. Montgomery County Public Schools</b>, 457 F.3d 376 (4th Cir. 2006)</p>	Religious flyers	Teacher	Elementary students	Classroom	Nonpublic or limited public forum (court left forum issue undecided because it found district court's forum analysis flawed)	<p>Limited distribution on basis of speaker identity (five categories)</p> <p>Allowed distribution of another group's materials if sponsored or endorsed by a group in one of five categories</p> <p>Provided that principal "may approve" of distribution of materials from groups, may withdraw approval if distribution contrary to intent of policy</p>	<p>Policy limiting classroom distribution of materials from outside groups based on type of group, rather than content of the materials, still violates religious group's free speech rights, because fails to protect against viewpoint discrimination.</p> <p>Continued exclusion of religious group from flyer forum under revised policy does not of itself constitute viewpoint discrimination.</p> <p>However, revised policy constitutionally flawed because it gives school officials "unfettered discretion" to engage in viewpoint discrimination.</p>	N/A

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Doe v. South Iron R-1 School District</i></b> , ___ F.Supp.2d ___, 2006 WL 2819766 (E.D. Mo. Sept. 5, 2006)	Bibles	Outside group	Elementary students	Classroom	Open forum	All requests approved unless the material is libelous, illegal, obscene, or commercial - endorses political candidates, promotes alcohol, tobacco, drugs, or illegal activity, or is likely to cause substantial disruption.	a school district's policy allowing an outside group to distribute Bibles to elementary school students in the classroom violates the Establishment Clause.  The court concluded that "the evidence of the School Board's behavior here raises a very strong inference that the purpose of this new policy is to promote Christianity by providing a means for Christian Bibles to be distributed to the elementary school students."	Eighth Circuit upheld preliminary injunction 8/21/07.  On remand, district court held school district's longstanding practice violated the Establishment Clause - 1/8/08.  Eighth Circuit upheld lower court's issuance of permanent injunction, but overturned the lower court's granting of declaratory judgment in the case as superfluous. 7/16/09.

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<p><b><i>Raker v. Frederick County Public Schools,</i></b> 470 F.Supp.2d 634 (W.D. Va. 2007)</p>	<p>Anti-abortion literature</p>	<p>Student</p>	<p>High school students</p>	<p>Hallways and cafeteria</p>	<p>Rejected forum analysis in favor of <i>Tinker</i></p>	<p>Distribution of non-school materials limited to before and after the school day.</p>	<p>Court issued a preliminary injunction preventing a school district from enforcing a rule that any distribution of non-school materials must take place before or after the school day.</p> <p>The court found that the school district failed to demonstrate that distribution of materials during non-instructional times of the school day would pose a risk of disrupting school operations. As a result, the court concluded that the rule was unreasonable and overbroad, in violation of the First Amendment's Free Speech Clause.</p>	<p>No appeal</p>

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<p><b><i>Krestan v. Deer Valley Unified Sch. Dist. No. 97</i></b>, ___ F.Supp.2d ___, 2008 WL 2026340 (D. Ariz. May 9, 2008)</p>	<p>Religious leaflets</p>	<p>Student</p>	<p>High school students</p>	<p>School campus</p>	<p>Limited public forum</p>	<p>Distribution of student materials restricted to 17 days and students required to obtain pre-approval of materials</p>	<p>Court held: 1) time restriction reasonable in light of purpose of forum and viewpoint neutral; 2) regarding the pre-approval procedures, because school found the content of student's leaflet unobjectionable and approved its distribution during the 17 days allowed by the policy, that CC had failed to show there is "a risk of imminent injury due to {MRHS's] pre-approval policy" required to issue injunctive relief.</p>	<p>N/A</p>

<b>CASE</b>	<b>MATERIALS DISTRIBUTED</b>	<b>DISTRIBUTED BY</b>	<b>DISTRIBUTED TO</b>	<b>MODE OF DISTRIBUTION</b>	<b>FORUM</b>	<b>POLICY</b>	<b>HOLDING</b>	<b>STATUS</b>
<b>Page v. Lexington County Sch. Dist. One</b> , ___ F.3d ___, 2008 WL 2486739 (4th Cir. June 23, 2008)	Newsletter	PTA (parent-teacher organization)	Parents, teachers, students	School campus	Nonpublic or limited public	Limited access to newsletter based on speaker identity	Court held: limitation on access to forum to groups closely associated with the school was a reasonable restriction in light of the purpose of the forum and viewpoint neutral	N/A

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<p><b><i>M.A.L. v. Kinsland</i></b>, 543 F.3d 841 (6th Cir. 2008)</p>	<p>Anti-abortion literature</p>	<p>Student</p>	<p>Middle school students</p>	<p>Hallways</p>	<p>Nonpublic forum, rejected applying <i>Tinker</i> over forum analysis in favor because no viewpoint suppression involved</p>	<p>Prohibits distribution of literature in hallways between classes</p>	<p>Sixth Circuit ruled that a school district's time, place, and manner restrictions on distribution of student materials in school did not violate a student's free speech rights because those restrictions were reasonable.</p> <p>It concluded the hallways were non-public forum and, therefore, the school district was justified in imposing time, place, and manner restrictions on hallway speech, provided such "restrictions are viewpoint neutral and reasonable in light of the school's interest in the effectiveness of the forum's intended purpose."</p>	<p>Petition for rehearing <i>en banc</i> pending before Sixth Circuit</p>

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b>Morgan v. Plano Indep. Sch. Dist.</b> , 589 F.3d 740 (5th Cir. 2009),	Pencils and candy canes with religious messages, tickets to a church's religious musical programs, and tickets to a dramatic Christian play	Students	Students	School campus	No forum analysis, applied <i>Tinker</i> standard	Imposes time, place and manner restrictions contains narrow limitations on the content of materials distributed, <i>i.e.</i> no blanket ban on materials containing religious messages.	Fifth Circuit held: policy imposing time, place and manner restrictions on the distribution of materials in school is constitutional. However, it found adoption of the current policy did not moot the student's free speech claims under the prior policy, which prohibited the distribution of religious materials.	Petition for cert. to U. S. Supreme Court filed Mar. 17, 2010 (No. 09-1130)  <i>Cert. denied</i> , 2010 WL 1004558 (2010)
<b>C.H. v. Bridgeton Bd. of Educ.</b> , No. 09-5815, 2010 WL 1644612 (D. N.J. Apr. 22, 2010)	Anti-abortion flyers	Students	Students	School campus	No forum analysis, applied <i>Tinker</i> standard	Principal rejected request to distribute flyers on the ground "no handouts would be allowed because they would violate the school's literature distribution policy"	District court held school officials failed to establish distribution of "graphic" anti-abortion flyers would be disruptive under <i>Tinker</i> .	N/A

<b>CASE</b>	<b>MATERIALS DISTRIBUTED</b>	<b>DISTRIBUTED BY</b>	<b>DISTRIBUTED TO</b>	<b>MODE OF DISTRIBUTION</b>	<b>FORUM</b>	<b>POLICY</b>	<b>HOLDING</b>	<b>STATUS</b>
<b><i>Morgan v. Swanson</i></b> , 610 F.3d 877 (5th Cir. 2010)	Pencils and candy canes with religious messages, tickets to a church's religious musical programs, and tickets to a dramatic Christian play	Students	Students	School campus	No forum analysis, applied <i>Tinker</i> standard	prohibited the distribution of religious materials	Fifth Circuit held: elementary school principals were not entitled to qualified immunity from a suit by parents of elementary school children who were prevented from distributing materials with religious messages in school	<i>Opinion withdrawn and superseded by</i> 2010 WL 4814384 (5th Cir. Nov 29, 2010)
<b><i>Smith v. Holly Area Sch.</i></b> , ___ F.Supp.2d ___, 2010 WL 4286176 (E.D.Mich. 2010)	Religious flyers	Student, parent	Students, parents	School campus	Limited open forum	Practice of outright ban on religious materials	District court issued a preliminary injunction, concluding that the plaintiffs had demonstrated a likelihood of success on the merits of their First Amendment claim that the school district's practice of prohibiting distribution of religious materials at time, place or manner in its schools amounted to constitutionally impermissible viewpoint discrimination.	Pending decision in district court on the merits

Reprinted with permission from National School Boards Association, August 2006.  
 Copyright 2006 National School Boards Association. All rights reserved.  
 Contact: Tom Burns, Legal Research Specialist, [tburns@nsba.org](mailto:tburns@nsba.org)

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Morgan v. Swanson</i></b> , 627 F.3d 170 (5th Cir. 2010), <i>reh'g en banc granted</i> , 628 F.3d 705 (2010)	Pencils and candy canes with religious messages, tickets to a church's religious musical programs, and tickets to a dramatic Christian play	Students	Students	School campus	No forum analysis, applied <i>Tinker</i> standard	prohibited the distribution of religious materials	Fifth Circuit upheld district court's denial of qualified immunity to two principals who enforced the ban.  It held: that the ban was impermissible viewpoint discrimination; and elementary school students free speech rights were clearly established.	Rehearing en banc granted on Dec. 17, 2010, 628 F.3d 705 (2010)
<b><i>Wright v. Pulaski Special Sch. Dist.</i></b> , 2011 WL 1134965 (E.D.Ark. Mar. 25, 2011)	Flyers for church-sponsor event	Student, parent	Students	Classroom, literature distribution rack	<i>Tinker</i> standard as to student Forum analysis as to parent	Three policies interpreted to prohibit religious materials	District court issued preliminary injunction enjoining school from prohibiting distribution of flyers	Pending

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>Victory Through Jesus Sports Ministry Foundation v. Lee's Summit R-7 Sch.</i></b> <i>Dist.</i> , ___ F.3d ___, 2011 WL 1900386 (8th Cir. May 20, 2011)	Flyer	Outside religious organization	Students	In-classroom	Nonpublic or limited public	Limited access based on speaker identity	Eighth Circuit held: no free speech violation because policy was reasonable and viewpoint neutral	N/A
<b><i>Morgan v. Swanson</i></b> , ___ F.3d ___, 2011 WL 4470233 (5 <sup>th</sup> Cir. Sept. 27, 2011) (en banc)	Pencils and candy canes with religious messages, tickets to a church's religious musical programs, and tickets to a dramatic Christian play	Students	Students	School campus	No forum analysis	Prohibited the distribution of religious materials	Fifth Circuit held principals are entitled to qualified immunity because law was not "clearly established" that elementary schools enjoy First Amendment free speech rights and that principals' actions amounted to impermissible viewpoint discrimination	N/A

CASE	MATERIALS DISTRIBUTED	DISTRIBUTED BY	DISTRIBUTED TO	MODE OF DISTRIBUTION	FORUM	POLICY	HOLDING	STATUS
<b><i>K.A. v. Pocono Mountain Sch. Dist.</i></b> , 2011 WL 5008358, (M.D. Pa. Oct. 20, 2011)	Flyer	Student	Students	Student "mailboxes," literature distribution table	No forum analysis, applied <i>Tinker</i> analysis	Original policy limited approval to materials promoting student interests  Revised policy prohibits use of students or staff to solicit, advertise, or promote nonschool events, groups, individuals during school hours or at school-sponsored events	Federal district court granted student preliminary injunction ordering school district to allow student to distribute flyers promoting religious events.  Court held that speech in question was "personal" student speech governed by <i>Tinker</i> standard, and school district had failed to show allowing distribution of flyers would cause substantial disruption.  Rejected forum analysis on ground that its use is limited to situations where outside groups are seeking access to the school forum.	Pending decision on the merits of student's claims