

MATERIALS DISTRIBUTION IN SCHOOLS CASES CHART

Updated: March 16, 2012

FEDERAL DISTRICT COURT DECISIONS

| Case | MATERIALS DISTRIBUTED | TYPE OF DISTRIBUTION | PLACE DISTRIBUTED | FORUM | POLICY | HOLDING | STATUS |
|---|--|----------------------|------------------------------|-------------------|--|---|-----------|
| Nelson v. Moline Sch. Dist. No. 40 , 725 F.Supp. 965 (C.D.Ill. 1989) | Non-denominational religious publication (<i>Issues & Answers</i>) | Student-to-student | School hallway | Nonpublic | Requires principal's prior approval | No free speech violation – reasonable time, place, and manner restrictions that were neutral, applying to all nonschool speech | No appeal |
| Hemry v. School Bd. of Colorado Springs Sch. Dist. No. 11 , 760 F.Supp.856 (D. Colo. 1991) | Non-denominational religious publication (<i>Issues & Answers</i>) | Student-to-student | School hallway | Nonpublic | Distribution restricted to area outside school building | No free speech violation – reasonable time, place, and manner restrictions – policy was not content based – no viewpoint discrimination | No appeal |
| Slotterback v. Interboro Sch. Dist. , 766 F.Supp. 280 (E.D. Penn. 1991) | Religious tracts | Student-to-student | School hallway and cafeteria | Limited public | Prohibits distribution of materials proselytize a particular religious or political belief | Free speech violation – content-based restriction on personal speech that was not narrowly tailored to serve compelling state interest of avoiding Establishment Clause violation | No appeal |
| Johnston-Loehner v. O'Brien , 859 F.Supp. 575 (M.D. Fla. 1994) | Religious pamphlets and flyers | Student-to-student | Classroom | No forum analysis | Requires superintendent prior approval before nonschool materials may be distributed in elementary schools | Free speech violation – prior restraint not permissible because school district failed to show speech being restricted would materially and substantially interfere with school operations or rights of other students (<i>Tinker</i> substantial disruption standard) | No appeal |
| Harless v. Darr , 937 F.Supp. 1351 (S.D. Ind. 1996) | Religious leaflets | Student-to-student | Classroom | Nonpublic | Requires principal's prior approval | No free speech violation – policy did not constitute impermissible prior restraint – no viewpoint discrimination | No appeal |

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| <i>Daugherty v. Vanguard Charter Sch. Acad.</i> , 116 F.Supp.2d 897 (W.D. Mich. 2000) | Religious informational materials | Outside group-to-student | Classroom (take home folders) | No forum analysis | Permits community groups, including religious ones, to distribute information regarding community | No Establishment Clause violation – policy sufficiently neutral on its face | No appeal |
| <i>Jabr v. Rapides Parish Sch. Bd.</i> , 171 F.Supp.2d 653 (W.D. La. 2001) | Bibles | Principal-to-students | Principal’s office | No forum analysis | Elementary school principal had a practice of personally distributing Bibles to students in his office during school hours | Establishment Clause violation – policy ran afoul of the endorsement and excessive entanglement prongs of <i>Lemon</i> test | No appeal |
| <i>Westfield High Sch. L.I.F.E. Club v. City of Westfield</i> , 248 F.Supp.2d 98 (D. Mass. 2003) | Candy containing religious messages | Student-to-student | Throughout school building | No forum analysis | Prohibits distribution of religious materials during non-instructional time | Free speech violation – viewpoint discrimination – prior restraint without showing of <i>Hazelwood</i> legitimate pedagogical interests | No appeal |
| <i>Child Evangelism Fellowship v. Montgomery Cnty. Pub. Sch.</i> , 368 F.Supp.2d 416 (D. Md. 2005) | Religious flyers | Outside group via teacher-to-student | Classroom | Nonpublic | Restricts distribution on the basis of speaker identity (five categories) | Revised policy limiting classroom distribution of material from outside groups based on the type of group, rather than content of materials, does not violate religious group’s free speech rights | Reversed by the Fourth Circuit in August 2006 |

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| <i>Doe v. South Iron R-1 Sch. Dist.</i> , 453 F.Supp.2d 1093 (E.D. Mo. 2006) | Bibles | Outside group-to-student | Classroom | Open | All requests approved unless the material is libelous, illegal, obscene, or commercial – endorses political candidates, promotes alcohol, tobacco, drugs, or is likely to cause substantial disruption | Policy allowing outside group to distribute Bibles to elementary school students in classroom violates the Establishment Clause – court concluded evidence raised strong inference that the purpose of the policy was to promote Christianity by providing means for in-classroom distribution of Bibles to elementary students | In August 2007, Eighth Circuit affirmed the district court, upholding the preliminary injunction In January 2008 |
| <i>Raker v. Frederick County Public Schools</i> , 470 F.Supp.2d 634 (W.D. Va. 2007) | Anti-abortion literature | Student-to-student | Hallways and cafeteria | No forum analysis | Distribution of non-school materials limited to before and after school day | Court issued preliminary injunction barring enforcement of policy. Applying <i>Tinker</i> , court concluded that school district had failed to demonstrate that allowing distribution during non-instructional times of the school day posed a reasonably foreseeable risk of disruption. It held that policy was unreasonable and vague in violation of First Amendment's Free Speech Clause. | No appeal |
| <i>Krestan v. Deer Valley Unified Sch. Dist. No. 97</i> , 561 F.Supp.2d 1078 (D. Ariz. 2008) | Religious leaflets | Student-to-student | School campus | Limited public | Distribution of student materials restricted to 17 days during school year and requires prior approval | Court denied student's motion for injunctive relief. It held; (1) time restriction was reasonable in light of purpose of forum and viewpoint neutral; (2) student failed to show that preapproval policy created "a risk of imminent injury" to students free speech rights | No appeal |

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| <i>C.H. v. Bridgeton Bd, of Educ.</i> , No. 09-5815, 2010 WL 1644612 (D. N.J. Apr. 22, 2010) | Anti-abortion flyers | Student-to-student | School campus | No forum analysis | Principal rejected request to distribute flyers on the ground "no handouts would be allowed because they violate school's literature distribution policy" | Court held school officials failed to show that distribution of "graphic" anti-abortion flyers would be disruptive under <i>Tinker</i> . | No appeal |
| <i>Smith v. Holly Area Sch.</i> , 749 F.Supp.2d 614 (E.D. Mich. 2010) | Religious flyers | Student/parent-to-student/parent | School campus | Limited open | Practice of outright ban on religious materials | Court issued preliminary injunction, holding that plaintiffs had demonstrated likelihood of success on the merits of their claim that school district's practice amounted to unconstitutional viewpoint discrimination. | February 2011 - Parties jointly stipulated to dismissal with prejudice |
| <i>Wright v. Pulaski Special. Sch. Dist.</i> , 803 F.Supp.2d 980 (E.D.Ark. 2011) | Religious flyers | Student/parent-to-student | Cafeteria, literature distribution rack | Nonpublic or limited public as to parent No forum analysis as to student | Three policies interpreted to prohibit religious materials | Court issued preliminary injunction prohibiting school preventing distribution of flyers | February 2012 - Parties jointly stipulated to dismissal with prejudice |

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| <i>K.A. v. Pocono Mountain Sch. Dist.</i> , 2011 WL 5008358, (M.D. Pa. Oct. 20, 2011) | Flyers | Student-to-student | Student "mailboxes," literature distribution table | No forum 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 | Court issued preliminary injunction, ordering school district to allow distribution of flyers 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. | March 2012 - reconsideration denied, 2012 WL 715304 March 2012 - interlocutory appeal to U.S. Court of Appeals for the Third Circuit |

FEDERAL CIRCUIT COURT DECISIONS

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| <i>Berger v. Rensselaer Central School Corp.</i> , 982 F.2d 1160 (7th Cir. 1993) | Bibles | Outside group-to-student | Classroom | No forum analysis | Permitted distribution of religious literature by outside group in classroom | Seventh Circuit held policy violated Establishment Clause – created perception of endorsement | Petition for certiorari denied by U.S. Supreme Court – 508 U.S. 911 (1993) |
| <i>Sherman v. Community Consolidated School District 21 of Wheeling Township</i> , 8 F.3d 1160 (7th Cir. 1993) | Boy Scout literature | Outside group via teacher-to-student | Classroom | Limited open | Permitted distribution of secular group’s literature that had a religious aspect | Seventh Circuit held policy did constitute Establishment Clause violation – distribution did not create endorsement issue (minimal risk from religious aspect of Boy Scout literature) | Petition for certiorari denied by U.S. Supreme Court – 511 U.S. 1110 (1994) |
| <i>Hedges v. Wauconda Community Unit School District</i> , 9 F.3d 1295 (7th Cir. 1993) | Non-denominational religious publication (<i>Issues & Answers</i>) | Student-to-student | Outside school building | Nonpublic | Prohibited distribution of religious materials – restricting distribution of multiple copies of nonschool material to designated time and place | Seventh Circuit held policy violated student’s free speech rights because it amounted to viewpoint discrimination. However, limitations on time and place of distribution were not inappropriate given the nature of school and principal’s duty to maintain order. | No appeal |
| <i>Peck v. Upshur County Board of Education</i> , 155 F.3d 274 (4th Cir. 1998) | Bibles | Outside group-to-student | “Passive distribution,” i.e., tables in school hallways and libraries | Nonpublic | Board interpreted policy to permit “passive distribution” of religious and political material, with time, place and manner restrictions | Fourth Circuit held that policy did not run afoul the Establishment Clause – “passive distribution” avoided endorsement problems. However, court restricted distribution to secondary schools because of elementary students are “particularly impressionable.” | No appeal |

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| <i>Culbertson v. Oakridge School District No. 76</i> , 258 F.3d 1061(9th Cir. 2001) | Religious flyers | Outside group via teachers-to-students | Classroom | Limited public | Court ordered school district to permit classroom distribution of flyers | Ninth Circuit held classroom distribution of religious flyers by teachers violated Establishment Clause because it created impression of school's endorsement of religion | No appeal |
| <i>Hills v. Scottsdale Unified School District No. 48</i> , 329 F.3d 1044 (9th Cir. 2003) | Church brochures for summer camp that included Bible classes | Outside group via teachers-to-students | Classroom | Limited public | Prohibited classroom distribution due to brochures' religious content | Ninth Circuit held policy constituted free speech violation because it amounted to viewpoint discrimination. Court found no Establishment Clause based on minimal endorsement risk. | U.S. Supreme denied petition for certiorari - 540 U.S. 1149 (2004) |
| <i>Walz v. Egg Harbor Tp. Board of Education</i> , 342 F.3d 271 (3d Cir. 2003) | Candy, pencils containing religious messages | Student-to-student | Classroom | No forum analysis | Distribution limited to before school, during lunch, or after school | Third Circuit held no free speech violation –found time, place and manner restrictions reasonable – school district demonstrated legitimate pedagogical interests under <i>Hazelwood</i> . | U.S. Supreme denied petition for certiorari - 541 U.S. 936 (2004) |
| <i>Child Evangelism Fellowship v. Montgomery County Public Schools</i> , 373 F.3d 589 (4th Cir. 2004) | Religious flyers | Outside group via teacher-to-student | Classroom | No forum analysis | Prohibited classroom distribution of religious material from outside group | Fourth Circuit applied <i>Lemon</i> test: held policy violated First Amendment's Free Speech Clause – constituted viewpoint discrimination – permitting distribution would not offend Establishment Clause because no risk of endorsement or coercion. | July 2004 – motion for rehearing and rehearing en banc denied Case remanded to district court – second appeal to Fourth Circuit in 2005 (see <i>2005 district court entry above and 2006 circuit court entry below</i>) |
| <i>Rusk v. Crestview Local Schools</i> , 379 F.3d 418 (6th Cir. 2004) | Religious flyers | Outside group via teacher-to-student | Classroom | No forum analysis | Permitted classroom distribution of religious materials from outside groups | Sixth Circuit applied <i>Lemon</i> test: held policy did not violate Establishment Clause violation – found relative youth of students does not create endorsement risk. | No appeal Sixth Circuit reversed and remanded case to district court |

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| <i>Child Evangelism Fellowship of New Jersey v. Stafford Township School District</i> , 386 F.3d 514 (3d Cir. 2004) | Religious flyers | Outside group via teacher-to-student | Classroom | Limited public | Prohibited classroom distribution of religious material from outside group | Third Circuit held that policy violated First Amendment's Free Speech Clause – found that it constitute to impermissible viewpoint discrimination – ruled that permitting would not result in Establishment Clause violation | No appeal Third Circuit affirmed district court's decision and remanded case to it |
| <i>Child Evangelism Fellowship v. Montgomery County Public Schools</i> , 457 F.3d 376 (4th Cir. 2006) | Religious flyers | Outside group via teacher-to-student | Classroom | Nonpublic or limited public <i>(left forum undecided, finding district court's forum analysis flawed)</i> | Distribution restricted on the basis of speaker identity (five categories) | Fourth Circuit held revised policy still violated outside group's free speech rights because it lack protection against viewpoint discrimination – court noted continued exclusion of religious group from flyer forum alone did not constitute viewpoint discrimination – however, policy constitutionally flawed because it allowed school officials "unfettered discretion" to exclude groups solely on the basis of viewpoint | No appeal Fourth Circuit affirmed in part and reversed in part district court's decision (<i>see 2005 district court entry</i>) |
| <i>Page v. Lexington County Sch. Dist. One</i> , 531 F.3d 275 (4th Cir. 2008) | Newsletter | PTA-to-parent/teacher/student | School campus | Nonpublic or limited public | Access to newsletter forum restricted on basis of speaker identity | Fourth Circuit held limiting access to forum to groups closely associated with school was reasonable restriction in light of purpose of forum and policy restrict access was viewpoint neutral | No appeal Fourth Circuit affirmed district court's decision |

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| <i>M.A.L. v. Kinsland</i> , 543 F.3d 841 (6th Cir. 2008) | Anti-abortion literature | Student-to-student | Hallways | Nonpublic <i>(Rejected student's contention that policy should be subject to Tinker analysis on ground no suppression of viewpoint had been alleged)</i> | Prohibited distribution of literature in hallways between classes | Sixth Circuit held 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 - 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." | No Appeal February 2009 – Sixth Circuit denied petition for rehearing en banc Reversed district court's decision |
| <i>Morgan v. Plano Indep. Sch. Dist.</i> , 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 | Student-to-student | School campus | No forum analysis | 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. | U.S. Supreme Court denied petition for certiorari – 130 S.Ct. 3503 (2010) |

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| Morgan v. Swanson , 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 | Student-to-student | School campus | No forum analysis | Prohibited distribution of religious material | Fifth Circuit applied <i>Tinker</i> analysis to free speech issue. It 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. | November 2010 - opinion withdrawn and superseded - 627 F.3d 170 (5th Cir. 2010) |
| Morgan v. Swanson , 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 | Student-to-student | School campus | No forum analysis | Prohibited distribution of religious material | Fifth Circuit upheld district court's denial of qualified immunity to principals - it held that the ban on distribution was impermissible viewpoint discrimination; and elementary school students' free speech rights were clearly established. | December 2010 - Fifth Circuit vacated decision, granting rehearing en banc - 628 F.3d 705 (2010) |
| Victory Through Jesus Sports Ministry Foundation v. Lee's Summit R-7 Sch. Dist. , 640 F.3d 329 (8th Cir. 2011) | Religious flyer | Outside group | Classroom | Nonpublic or limited public | Restricted access to classroom flyer forum based on speaker identity | Eighth Circuit held policy did not violate group's free speech rights because restrictions were reasonable and viewpoint neutral | U.S. Supreme Court denied petition for certiorari - 132 S.Ct. 592 (2011) |

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| <i>Morgan v. Swanson</i> , 659 F.3d 359 (5th Cir. 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 | Student-to-student | School campus | No forum analysis | Prohibited distribution of religious material | Fifth Circuit, sitting en banc, held principals were entitled to qualified immunity because law was not "clearly established" that elementary school students enjoy First Amendment free speech rights and that principals' actions amounted to impermissible viewpoint discrimination | Petitions for certiorari filed - December 2011 - 80 BNA USLW 3381 (Docket No. 11-804 - January 2012 - 80 BNA USLW 3459 (Docket No. 941) |