

RELIGION IN THE PUBLIC SCHOOLS

DISTRIBUTION OF RELIGIOUS MATERIALS & PROSELYTIZING BY OUTSIDE GROUPS AND INDIVIDUALS

Individuals, including parents, and groups who have no formal relationship to a school (Third Parties) may distribute religious materials, including Bibles, to students outside of school premises. They may also discuss religious matters with students.

Third-party materials or publications of a religious viewpoint may be distributed on-campus to the same extent distribution of third-party secular materials is permitted. However, courts have applied different rules to distribution of uniquely religious documents such as the Bible. A school can prohibit on-campus, distribution of third-party religious materials by implementing a universal prohibition of on-campus distribution of third-party materials.

Proselytizing or religious indoctrination on-campus by third parties except in the context of Equal Access Act clubs is not permitted. However, there is limited case law suggesting that clergy may come on-campus to discuss secular matters with students to the same extent other third-parties are permitted on campus to discuss secular matters with students.

SPECIFIC ISSUES & QUESTIONS

Off school premises may third parties distribute religious materials to students or speak with students about religion? Yes, third parties may distribute religious materials, including Bibles, to students outside school grounds, as well as speak with students about religious matters.¹ For example, such distribution or discussion is permissible on a public sidewalk or park - areas traditionally open to the public for expressive activity. However, in their roles as teachers or administrators, school personnel cannot direct students to accept religious materials from or engage in discussion of religious matters with third parties. Furthermore, local officials may implement reasonable content-neutral time, place and manner regulations on such distributions.

¹ See *Bacon v. Bradley-Bourbonnais High School Dist. No. 307*, 707 F. Supp. 1005 (C. D. Ill. 1989).

For instance, regulations may prohibit the distribution of materials that disturbs the work of the school or interferes with the well-being of students.

What are some concerns that arise when third parties distribute religious material to students in close proximity to the school grounds?

- Students might not realize that the school itself is not endorsing a religious message. School officials should take affirmative steps to make certain that students understand this.
- Students who reject religious material in front of other students may confront peer pressure, coercion or ostracism.
- It is possible that a religious group, in its zeal, may harass students and force material and views upon the students.

Under what circumstances may third-party religious materials be distributed in school?

Courts have essentially adopted a rule of equal access for distribution of third-party materials or publications in public schools.² Where a school has a policy or practice allowing a broad array of secular groups to have their materials distributed in schools, the school is required to allow distribution of materials from a religious perspective on the same subject matters, and on the same terms and conditions.³ However, a school can issue reasonable and viewpoint neutral rules and restrictions on access to the school and materials to be distributed.⁴ A school has the right to discontinue such a policy or practice, and thereby prohibit any on-campus distribution to students of third-party materials whether religious or secular.⁵

Under this rule of equal access, if a school, for instance, allows non-profit community groups to have their materials distributed, it would be required to allow a similar religious group to have its materials distributed as well. However, it would not be required to allow a for-profit religious group to distribute religious materials. Furthermore, for example, permissible materials could be limited to brochures or promotional fliers providing a short, general description about an outside group, and the date, location and times of events. In this instance, a religious or secular group could not provide a long or proselytizing description about an event.⁶

² See *Victory Through Jesus Sports Ministry v. Lee Summit R-7 School District*, 640 F.3d 329 (8th Cir. 2011), cert denied, 132 S. Ct. 592; *Child Evangelism Fellowship of New Jersey v. Stafford Township School District*, 386 F.3d 514 (3d Cir. 2004); *Child Evangelism Fellowship of Maryland v. Montgomery County Public Schools*, 373 F.3d 589 (4th Cir. 2004); *Hills v. Scottsdale Unified District*, 329 F.3d 1044 (9th Cir. 2003), cert denied, 540 U.S. 1149.

³ *Id.*

⁴ *Id.*

⁵ See *Perry Education Association v. Perry Education Local Educators Association, et. al.*, 460 U.S. 37 (1983); *Make the Road by Walking, Inc. v. Turner*, 378 F.3d 133, (2d Cir. 2004); *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001); *Marlin v. District of Columbia Board of Elections and Ethics*, 236 F.3d 716 (D.C. Cir. 2001), cert denied, 532 U.S. 1039; *Diloreto v. Downey Unified School District Board of Education*, 196 F.3d 958 (9th Cir. 1999).

⁶ See *Hills*, 329 F.3d 1044.

May Bibles from third-parties be distributed in public schools? Courts have uniformly decided that Bibles from third parties cannot be distributed in public elementary schools.⁷ And the vast majority of courts have decided that Bibles cannot be distributed in public middle or high schools, as well.⁸ One decision from the U.S. Court of Appeals for the Fourth Circuit allowed for “passive” distribution of Bibles from a third party.⁹ However, under the relevant policy, teachers or other school personnel could have no active or passive involvement with the distribution, including having no custody over the Bibles. Additionally, the policy placed numerous other restrictions on the distribution.¹⁰

During school hours may clergy or other third-parties visit public schools to proselytize or otherwise religiously indoctrinate students? Schools are not required to allow any third parties on campus during school hours to meet or have discussions with students on any subject.¹¹ Other than for the purposes of Equal Access Act Clubs (see Chapter 9), if third parties are allowed on campus during school hours, they should not proselytize or otherwise religiously indoctrinate students.¹² However, there are limited cases indicating that clergy are permitted on campus during school hours to meet or have discussions with students on secular subjects, provided that clergy do not wear clerical garb and that non-clergy or secular professionals are permitted to meet with students on the same terms and conditions.¹³

SAMPLE SCENARIOS & SITUATIONS

Outside Group Situated on Public Sidewalk Adjacent to School Gives Religious Material to Passing Students

On the public sidewalk outside a public elementary school, a group of religious advocates handed

⁷ See *Roark v. South Iron R-1 School District*, 573 F.3d 556 (8th Cir. 2009); *Peck v. Upshur Board of Education*, 155 F.3d 274 (4th Cir. 1998); *Berger v. Rennselaer Central School Corporation*, 982 F.2d 1160 (7th Cir. 1993), amended by, rehearing en banc, denied by, 1993 U.S. App. LEXIS 2543, cert denied, 508 U.S. 911; *Roe v. Tangipahoa Parish School Board*, 2008 U.S. Dist. LEXIS 32793 (E.D. LA 2008); *Jabr v. Rapides Parish School Board*, 171 F. Supp. 2d 653 (W.D. LA 2001).

⁸ See *Roark*, 573 F.3d 556; *Berger*, 982 F.2d 1160; *Roe*, 2008 U.S. Dist. LEXIS 32793; *Jabr*, 171 F. Supp. 2d 653 (W.D. LA 2001).

⁹ See *Peck*, 155 F.3d 274.

¹⁰ The additional restrictions, include: (1) distribution occurs at tables set up in hallways or libraries where students congregate and do not feel they are being watched or pressured to take a Bible; (2) the tables must be set up by the third party distributing the Bibles and excess Bibles must be removed by the third party from the school by the end of the day; (3) no person is allowed to stand by the table to encourage or pressure students to take a Bible; (4) a sign must be placed at the table stating “please feel free to take one,” but the source of the Bibles cannot not be identified; (5) a required disclaimer of endorsement by the school at the table; (6) the availability of the Bibles cannot be announced at the school or discussed in classrooms; and (7) there can be no student assembly in connection with the availability of the Bibles. See *Peck*, 155 F.3d 274.

¹¹ See Footnote No. 4.

¹² See *Doe v. Beaumont Independent School District*, 240 F.3d 462 (5th Cir. 2001); see also *School Dist. of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963).

¹³ See *Doe*, 240 F.3d 462; *Oxford v. Beaumont Independent School District*, 224 F. Supp. 2d 1099 (E.D. Tex. 2002).

out chocolate chip cookies and pamphlets on religious observance to passing students. A half block away, the community Little League passed out booklets describing the League's activities. Between the two groups, the local firemen's committee distributed handouts containing fire safety tips. Some students accepted all or some of the handouts, others accepted none. Naturally, many students were interested only in the chocolate chip cookies. Michael Johnson accepted the handouts of all three groups and brought them home. When Mrs. Johnson saw that Michael had been given religious material at school, she called the school to complain. The principal told Mrs. Johnson that since the religious group distributed its material off school property, did not force its pamphlets upon the students, and was one of the many groups allowed to distribute its material that afternoon, there was nothing that he could do about it. The principal recommended that Mrs. Johnson instruct her son not to accept any religious material.

Mrs. Johnson was not pleased with the principal's response. What can she do?

Since the distribution of religious material took place on the sidewalk in front of the school and not in the school, the principal cannot ban the distribution. However, local officials may enact time, place and manner regulations to ensure that the distribution does not interfere with school activities or student welfare. School officials should also inform the students that the school is not connected to the religious group and neither supports nor opposes the distribution of religious material. Furthermore, both Mrs. Johnson and school officials should advise Michael that he does not have to accept the religious material.

Middle School Flier Forum for Summer Activities

A Barnard Middle School policy allows creates a flier forum for non-profit groups that offer summer activities for students ages 11-14 on four occasions during the Spring Semester. The flier can provide a brief description of the group, a short and general description of the activity, as well as the activities times and locations, and contact information for the group.

Under the policy, a group must provide a copy of flier to the principal for review. The principal can reject a flier if it is from a for-profit group, threatening or intimidating, uses lewd, offensive, or obscene images or language, engages in libel or slander, promotes unlawful drug use, or is reasonably likely to cause a material or substantial disruption of the school. If the flier is approved, a group must make sufficient copies for distribution to all students and deliver them to the office of administration. The office of administration provides the fliers to teachers who place a flier in each student's homeroom mailbox at the end of the school day.

Camp Blue Lake, a for-profit organization, submits a flier to the principal for approval, but is denied. The Baker County Library, a non-profit group, and Camp Serenity, a non-profit, religious group, also submit fliers for approval. Both fliers include long descriptions about their summer activities. Furthermore, part of Camp Serenity's long description includes the listing of Bible class as one activity as well as a long proselytizing message.

The principal will allow the Library participate in the forum provided that its activity descriptions are shortened and general. However, he rejects Camp Serenity's flier because it lists Bible class as an activity and it includes a long proselytizing message. The flier otherwise meets the requirements of the policy.

Camp Blue and Camp Serenity demand that their fliers be accepted. Is the principal required to accept the fliers?

The policy's requirement that groups be non-profit does not differentiate among groups based on secular or religious viewpoints. Therefore, the principal can prohibit Camp Blue's participation because it is a for-profit group. The principal can require that Camp Serenity revise its flier to provide a shorter description of activities, including removal of the long proselytizing message because it is not brief or general. However, the principal cannot bar Camp Serenity from the forum because it is religious in nature or because one of the listed activities is Bible class.

PROVIDED BY: Civil Rights Division