

**Public School Distribution of Community Group Materials  
Advertising Religious Events:**

**Recent Developments in the Law**

*By: Attorney Timothy W. Denney*

Public schools frequently hand out materials advertising private community group events such as Boy Scouts, Girl Scouts, Jaycees, etc. Recent legal developments will have a significant impact on that practice, especially as it relates to distribution of materials advertising religious events.

In August of 2004, a high-level federal court ruled that if a public school hands out private secular community literature, it may also lawfully hand out materials advertising events sponsored by religious organizations.<sup>1</sup> This ruling protects all Michigan schools and even applies to distribution of materials to elementary school students.<sup>2</sup> The court even stated that if a school were to refuse to distribute flyers advertising religious activities while continuing to distribute flyers advertising other kinds of activities, students might conclude that the school policies disapprove of religion. More importantly, at least three other high-level federal courts have ruled that if a public school hands out flyers advertising private secular community group literature, it cannot refuse to hand out flyers for religious community groups.<sup>3</sup> One court has concluded that public schools cannot legally distribute material to students with overtly proselytizing language, but even this rule still allows the school to distribute community group materials that simply encourage students to attend a religious event.<sup>4</sup>

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<sup>1</sup>Rusk v Crestview Local School District, 379 F.3d 418 (6<sup>th</sup> Cir, 2004).

<sup>2</sup>Rusk, *supra*. It should also be noted that the Michigan Court of Appeals has ruled that public school distribution of materials advertising events sponsored by religious organizations does not violate state law either where the school also distributes materials for private secular community groups even where the elective distribution takes place in elementary schools. See Scalise v Boy Scouts of America, 265 Mich App 1 (2005) 1 v den 473 Mich 859 (2005).

<sup>3</sup>Hills v. Scottsdale Unified School District, 329 F.3d 1044 (9<sup>th</sup> Cir, 2003) cert den 124 S. Ct. 1146 (2004); Child Evangelism Fellowship of Maryland v. Montgomery County Public Schools, 373 F.3d 589 (4<sup>th</sup> Cir, 2004). Child Evangelism Fellowship of New Jersey, Inc. v Stafford Township School District, 386 F.3d 514 (3<sup>rd</sup> Cir, 2004).

<sup>4</sup>Hill, *supra*; see also Rusk, *supra*.

It should also be noted that in January 2005, the Michigan Court of Appeals ruled that public school distribution of materials sponsored by religious organizations does not violate state law, where the school also distributes materials for private secular community groups, even if the distribution takes place in elementary schools.<sup>5</sup>

Entirely different rules apply for materials distributed student-to-student. Students generally have a constitutional right to distribute religious materials at school during non-instructional time, subject to reasonable rules regarding the time, place and manner of distribution.<sup>6</sup>

### **CONCLUSION**

It is now fairly well established that a public school may lawfully hand out community group materials that advertise religious events, especially where it does so pursuant to a policy under which the school allows distribution of materials for both secular and religious community groups. While schools may be prohibited from distributing overtly proselytizing materials to students, this rule still permits the school to distribute materials that simply invite students to attend religiously sponsored events. If a public school does distribute materials for private secular community groups, it is legally required to allow private religious community groups the same privilege.

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<sup>5</sup>Scalise v Boy Scouts of America, 265 Mich App 1 (2005) I v den 473 Mich 853 (2005).

<sup>6</sup>Hedges v Wauconda Community Unit School District, 9 F 3d 1295 (7<sup>th</sup> Cir, 1993); (total ban on student religious literature distribution at junior high school found unconstitutional); Westfield High School LIFE Club v City of Westfield, 249 F Supp 2d 98 (D. Mass, 2003) (ruling ban on student religious literature distribution outside of class was unlawful); Johnston-Loehner v O'Brien, 859 F Supp 575 (MD Fla, 1994); Nelson v Moline School Dist, 725 F Supp 965 (CD Illin, 1989); Clark v Dallas Independent School Dist, 806 F Supp 116 (ND Tex, 1992); Slotterback v Interboro School Dist, 766 F Supp 280 (ED Pa, 1991) (upholding right of students to distribute religious tracts and striking down school policy banning materials that proselytized a particular belief); Thompson v Waynesboro Area School Dist, 673 F Supp 1379 (MD NC, 1987).

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