

***Telling Your Community About Your Church:  
New Legal Developments Concerning Public School  
Distribution of Materials  
Advertising Religious Events.***

*By: Attorney Timothy W. Denney*

This article highlights recent legal developments that make it easier for churches to make their ministry be known through literature distribution in the public schools. Public schools are a crucial mission field. At least one survey indicates that the overwhelming percentage of most people who accept Christ as their Savior say they did so before age 16.<sup>1</sup> Before age 16, most children spend many of the choicest hours of their life in public schools. Approximately 90% of school-age children attend public schools. Churches in the United States that plan to fulfill the Great Commission in their community cannot afford to ignore the public school mission field.

Because of recent legal developments, there are new significant opportunities for churches to make their ministries known through the public schools. Public schools are not legally required to hand out flyers advertising any community group events. However, most public schools do. In August of 2004, a high-level 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>2</sup> This ruling protects all Michigan schools and even applies to distribution of materials to elementary school students.<sup>3</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 disapproves 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>4</sup> One court has concluded that public schools can’t legally distribute material to student with overtly proselytizing language, but even this rule still allows the school to distribute community group

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<sup>1</sup>Based on an article by Barna Research Group from November 15, 1999.

<sup>2</sup>Rusk v Crestview Local School District, 379 F3d 418 (6<sup>th</sup> Cir, 2004).

<sup>3</sup>Rusk, *supra*.

<sup>4</sup>Hills v. Scottsdale Unified School District, 329 F3d 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 F3d 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).

materials that simply encourage students to attend a religious event.<sup>5</sup> 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>6</sup>

Entirely different rules applies 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>7</sup>

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<sup>5</sup>Hill, *supra*; see also Rusk, *supra*.

<sup>6</sup>Scalise v Boy Scouts of America, 265 Mich App 1 (2005) lv den 473 Mich 853 (2005).

<sup>7</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 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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### *Other Resources:*

Are you interested in other opportunities for religious freedom in the public school? You are encouraged to read Mr. Denney's book entitled "Religious Freedom 101: A Christian Civil Rights Handbook". This book and other materials can be accessed on-line through Mr. Denney's web-site as follows:

1. Search on-line at "twdpclaw.com".
2. Click on the icon "Religious Freedom".
3. Click on "Religious Freedom 101" (or, if you want another copy of this article, click on "Telling Your Community About Your Church").
4. These materials can be downloaded at no charge.