

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL AND U.S. MAIL
tpaesano@k12.wv.us

Toni A. Paesano Shute
Superintendent
Brooke County Schools
1201 Pleasant Avenue
Wellsburg, WV 26070

Re: Unconstitutional Bible Distributions

Dear Superintendent Shute:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional concerns in Brooke County Schools (“District”). FFRF is a national nonprofit organization with more than 29,000 members across the country, including members in West Virginia. FFRF’s purpose is to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned local resident and parent informed us that Gideons International distributed bibles to fifth grade students at Follansbee Middle School (“FMS”) this past spring. We understand that the Gideons or school staff visited classrooms to tell students that bibles would be available in the office. We also understand that bibles were available in student homerooms. At least one teacher during class told students to raise their hands if they wanted a bible.

Gideons International is a self-described interdenominational association of Christian business and professional men who are members of Protestant and evangelical churches.¹ The organization’s members “personally witness and distribute God’s Word to... students in the fifth grade and above; and to those with whom they interact on a daily basis.”²

Courts have held that the distribution of bibles to students at public schools during instructional time is prohibited. *See Roark v. South Iron R-1 Sch. Dist.*, 573 F.3d 556 (8th Cir. 2009) (permanently enjoining distribution of bibles to school children on school property); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir. 1993) (holding that classroom distribution of Gideon bibles to fifth-graders violated the Establishment Clause of the First Amendment to the United States Constitution); *see also Tudor v. Bd.*

¹ <https://www2.gideons.org/faq> (last accessed July 7, 2017).

² <https://www2.gideons.org/about> (last accessed July 7, 2017).

of Educ. of Rutherford, 14 N.J. 31 (1953), *cert. denied*, 348 U.S. 816 (1954) (finding unconstitutional a school board resolution permitting Gideons to distribute bibles). In striking down a school district’s policy permitting Gideons to distribute bibles, the Seventh Circuit stated, “... the Gideon Bible is unabashedly Christian. In permitting distribution of ‘The New Testament of Our Lord and Savior Jesus Christ’ along with limited excerpts from the Old Testament, the schools affront not only non-religious people but all those whose faiths, or lack of faith, does not encompass the New Testament.” *Berger*, 982 F.2d at 1170.

It is noteworthy that the circumstances here appear to be different from cases that involve a clear, equal, and truly open forum for the distribution of literature. *See Peck v. Upshur Cnty. Bd. of Educ.*, 155 F.3d 274 (4th Cir. 1998) (upholding school policy allowing religious and secular materials in an open forum with no appearance of school endorsement for any material). The bibles in *Peck* were on unsupervised tables affixed with a disclaimer, stating in part “These materials are neither sponsored nor endorsed by the [County’s] Board of Education, its agents or employees.” *Id.* at 278. These tables were placed in neutral locations. *Id.* at 277. The school’s employees were “affirmatively forbidden from, in any way, pressuring or even encouraging students to take Bibles.” *Id.* at 282. Finally, this distribution was allowed one day a year. *Id.* at 282-83.

We understand that the situation in FMS is substantially different from the one in *Peck*. First, the bible distribution was targeted at 10 and 11 year olds, rather than more mature students. Second, the bibles in FMS are available in the main office, in students’ homerooms, and in certain teachers’ classrooms, whereas in *Peck* they were available only in unsupervised locations like hallways. Third, there is no indication of any disclaimer dissociating FMS from the religious content of the bibles or the religious mission of the Gideons, whereas in *Peck* there was an explicit disclaimer. Fourth, school employees in *Peck* could not encourage students to take the bibles, whereas in FMS there was at least one teacher who asked students to indicate whether they wanted bibles by raising their hands. Last, the bibles at FMS were available for multiple days, whereas in *Peck* they were available for one day only.

Public schools have a constitutional obligation to remain neutral toward religion and to protect the rights of conscience of young and impressionable students. When a school distributes religious literature to its students, or permits evangelists like the Gideons to distribute religious literature to its students, it entangles itself with that religious message. Bible distributions alienate the 23% of Americans, including 36% of young people, who identify as nonreligious.³

The District need not create an open public forum whereby any private organization may take advantage of school resources and a captive student audience to further its religious goals. Such an environment is not conducive to educating young minds and may even appear hostile to those who disagree with a third party’s message. FFRF has, in the past, sought to distribute our own literature alongside bibles, and may seek to do so in Brooke

³ *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

County Schools if it maintains that bible distributions will continue to be allowed. The Satanic Temple and other groups may also seek to distribute literature.

Allowing religious distributions turns public schools into religious battlegrounds, fraught with solicitation and propaganda. If the District allows one group to distribute religious materials, it must allow all groups to do the same. The best solution is to limit the distribution of materials to those that are related to education.

Please inform us in writing of the steps you take to remedy this serious constitutional violation so that we may assure our complainant that it will not continue. We would like assurances that similar distributions will not be allowed in the future and that school administrators and staff will monitor school property to ensure compliance with constitutional requirements. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Elliott", with a large, stylized flourish at the end.

Patrick Elliott
Staff Attorney

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