

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTIANS IN ACTION CLUB, a student association at Mechanicsburg Area Senior High School, by and through L.B., parent and guardian of B.B., a minor leader of the club; K.H. and C.H., parents and guardians of T.H., a minor leader of the club; and C.W and E.W, parents and guardians of G.W. and N.W., minor leaders of the club,

Plaintiffs,

v.

MECHANICSBURG AREA SCHOOL DISTRICT, SUPERINTENDENT MARK LEIDY in his official capacity, and PRINCIPAL DAVID HARRIS in his official capacity,

Defendants.

Case No. _____

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Civil Rights Action (42 U.S.C. § 1983)

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

Now comes Plaintiffs, Christians in Action Club and student leaders, by and through the parents of the leaders of the club and through counsel at Independence Law Center, and avers the following:

INTRODUCTION

1. This a civil rights action under 42 U.S.C. § 1983, and the First and

Fourteenth Amendments to the United States Constitution, to remedy a violation of the constitutional rights of the student members of Christians in Action Club (“the Bible Club” or “the students”) by Mechanicsburg Area School District (“MASD”) in Mechanicsburg, Pennsylvania.

2. The students challenge Defendant MASD’s facially unconstitutional prohibition on student expression contained in Administrative Regulation 220-0, which is implementing Policy 220 (Student Expression/Distribution and Posting of Materials). Administrative Regulation 220-0 contains overbroad and unconstitutional time and place restrictions that impose a complete ban on literature distribution during the school day.
3. Under Regulation 220-0, students are only allowed to distribute non-school literature on “public sidewalks bordering school property” thirty minutes before the start of school and thirty minutes after the end of school unless the principal, in his discretion, determines otherwise.
4. Regulation 220-0 would thus prohibit a student from handing out invitations to a birthday party, giving a friend a copy of an interesting magazine article, sharing notes of encouragement with classmates, or even handing out pocket Constitutions to commemorate Constitution Day at any time during the school day.

5. Under Regulation 220-0, students are given even fewer rights outside of the school day than any average citizen, who is permitted under the U.S. Constitution to distribute literature on any public sidewalk (which is the quintessential traditional public forum) at any time during the day.
6. This policy, regulation, and student handbook are overbroad and unconstitutionally grants unbridled discretion to Principal David Harris to deny or approve any student distribution of written materials.
7. Principal Harris has not only been granted unbridled discretion by the school, but he has wielded his unbridled discretion in a discriminatory manner. To wit, at the beginning of the 2018 school year, he denied a request by the Bible Club to post flyers advertising the time and location of their club meetings despite granting requests from other school clubs to post their flyers. He told the Bible Club students they would only be permitted to post the flyers if they agreed to remove a Bible verse from the flyer. The verse was Mark 16:15: “Go into all the world and preach the gospel to all creation.” Only after involvement of counsel, did Principal Harris rescind his denial.
8. Principal Harris again wielded his unbridled discretion in a discriminatory manner when he denied the Bible Club’s request for permission to offer

Bibles to classmates during non-instructional time, specifically lunch. The request was made well in advance of the day the students planned to offer Bibles to classmates. But Principal Harris not only denied the students' request to offer Bibles during lunch, he went further than the actual request and stated broadly that students are "not permitted to handout Bibles during the school day." The principal's denial email then invited the student to submit another request "if he would like to request to distribute them outside of the school day...."

9. Not only does MASD prohibit students from offering literature to other students unless approved, without any written guidelines to restrain the unbridled discretion of the principal, but it also completely prohibits students from expressions that "[s]eek to establish the supremacy of a particular religious denomination, sect or point of view."
10. MASD prohibited the students in the Bible Club from offering the Bible to their classmates during the school day's non-instructional time pursuant to its policies and practice.
11. Plaintiffs challenge the district's policies, Administrative Regulations, and Student Handbook, both facially and as applied.
12. The District's censorship of Plaintiffs' religious speech, and the Policies on

which that censorship was based, violate the First and Fourteenth Amendment to the United States Constitution, and the Pennsylvania Public School Code 22 Pa. Code §12.9.

JURISDICTION AND VENUE

13. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. §§ 2201-2202 and 42 U.S.C. § 1983.
14. This Court possesses original jurisdiction over Plaintiffs' claims by operation of 28 U.S.C. §§ 1331 and 1343.
15. This Court is vested with authority to issue the requested declaratory relief under 28 U.S.C. §§ 2201- 2202 and Federal Rule of Civil Procedure 57.
16. This Court has authority to award the requested injunctive relief under 28 U.S.C. § 1343(a)(3) and Federal Rule of Civil Procedure 65.
17. This Court is authorized to award nominal damages under 28 U.S.C. § 1343(a)(4).
18. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.
19. Venue is proper under 28 U.S.C. § 1391 in the Middle District of Pennsylvania because the facts underlying this suit arose there and because Defendant is located in the Middle District of Pennsylvania.

IDENTIFICATION OF THE PARTIES

20. Christians in Action (“Bible Club”) is an association of students at Mechanicsburg Area Senior High School (“MASH”) who have associated together for the purpose of fellowship, growing in their relationship with God and each other, serving together, and studying and sharing the Bible and its principles with each other and other students at MASH. The Bible Club is also an approved club by MASH.
21. The parents through whom this case is being brought, L.B., K.H., C.H., E.W., and C.W., are all parents of the leaders of the Bible Club.
22. Defendant Mechanicsburg Area School District is organized under the laws of the State of Pennsylvania and may sue and be sued. 24 Pa. Cons. Stat. § 2-213 (“Each school district shall have the right to sue and be sued in its corporate name.”).
23. The District is charged with and is responsible for the formulation, adoption, implementation, and enforcement of District policies and practices, including the policies challenged herein related to student speech and literature distribution.
24. The District is charged with and responsible for the enforcement of its policies and practices by its employees, including those related to student

speech and literature distribution.

25. Dr. Mark Leidy (“Leidy”) is the Superintendent of MASD and is sued in his official capacity.
26. David Harris (“Harris”) is the Principal of MASH, which is the high school within MASD, and is sued in his official capacity.

ALLEGATIONS OF FACT

MASD POLICIES REGARDING STUDENT RELIGIOUS EXPRESSION

27. Policy 220 and the Student Handbook provide that the board reserves for itself the right to “designate and prohibit” student expression that it deems is “not protected by the right of free expression.” Exhibit A, 2018-2019 Senior High School Student Handbook, at 33; Exhibit B, Policy 220.

28. MASD Policy 220 states that

[s]tudent initiated religious expression is permissible and shall not be prohibited except as to time, place and manner of distribution, or if the expression involved violates some other part of this policy, e.g., because it is independently determined to be unprotected expression under the standard and definitions of this policy.

Exhibit B, Policy 220.

29. Policy 220 and the Student Handbook both prohibit all expression that “violates the rights of others,” and the Handbook defines “expression [that]

violate the rights of others” to include student expressions that “[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view.” Exhibit A, 2018-2019 Senior High School Student Handbook, at 33. The Middle School and Elementary School handbooks both include the same discriminatory language.

30. The students in the Bible Club, in light of their sincerely held religious beliefs, desire to express their religious beliefs to interested classmates as being true.
31. This prohibition of speech is both content-based and viewpoint-based discrimination on its face in violation of the Free Speech Clause of the First Amendment due to its censorship of certain “religious” messages. It also prevents students from freely exercising their religion in violation of the Free Exercise Clause of the First Amendment.

**MASD POLICIES REGARDING
TIME AND PLACE RESTRICTIONS ON STUDENT SPEECH**

32. MASD, by policy, alleges that it permits students to “express themselves in word or symbol and to distribute materials as a part of that expression.”
Exhibit A; Exhibit B.
33. Policy 220 provides,

Students have the right to express themselves unless such expression is likely to or does materially or substantially interfere with the educational process, including school activities, school work, or discipline and order on school property or at school functions; threatens serious harm to the school or community; encourages unlawful activity; or interferes with another's rights.

Exhibit B.

34. Policy 220's time and place restrictions state that

the board shall require that distribution and posting of non-school materials occur only at the places and during the times set forth in written administrative regulations. Such regulations or procedures shall be written to permit the orderly operation of schools, while recognizing the right of students to engage in protected expression.

Id.

35. The *time* restrictions in the Administrative Regulations explicitly prohibit students from any distribution of literature at any time during the school day.
36. District Administrative Regulation 220-0, which is not available in the Student Handbook and does not appear to be available to students online, states:

Students may only distribute nonschool materials at the following times: Thirty (30) minutes before the official start of school; Thirty (30) minutes after the official end of school; and as otherwise designated by the building principal in writing.

Exhibit C, Administrative Regulation 220-0.

37. The principal has not designated any additional times in writing.
38. The *place* restrictions in the Administrative Regulations not only prohibit any distribution of literature in or around the building, but designate that the only place where students can offer literature to their classmates is where *every member* of the general public already has the right to offer literature—“public sidewalks bordering school property.” *Id.*
39. Specifically, the *place* restrictions state:

So as to allow for the normal flow of traffic within the school and its exterior doors, the distribution of such materials will be permitted only on public sidewalks bordering school property. Building entrance walkways and building lobbies will not be utilized for such distribution. Distribution of nonschool materials in other places will be permitted only upon receipt of written permission from the building principal or designee.

Exhibit C, ¶ 6.

40. The principal has not designated any additional places in writing.
41. In fact, in addition to being an unconstitutional place restriction for MASD to limit distribution to “public sidewalks bordering school property,” Administrative Regulation 220-0’s requirement that students ask permission and get pre-approval to hand out materials on the public sidewalks bordering school property outside of the school day constitutes an unconstitutional

prior restraint on speech in a quintessential public forum. MASD has taken away student speech rights in the school and even seeks to regulate their speech rights during non-school hours on public sidewalks that every member of the general public possesses.

42. The Bible does not fit into the narrow constitutional exceptions of speech that can be restricted in public schools, like lewd speech or that which encourages illegal drug use.
43. Prohibiting the offering of Bibles to fellow students (or a copy of any piece of literature for that matter, including the Constitution) during the entirety of the school day and anywhere on the inside of the building at any time of day is not necessary to protect against any substantial disruption of school operations or necessary to prevent interference with the rights of others.
44. Such an excessive prohibition on speech violates all students' First Amendment rights, not just the students involved in this lawsuit, and does not give the students the opportunity to reach fellow students.
45. Even a cursory review of MASD policies and the Student Handbook reveals there are plenty of non-instructional times where students should be free to offer literature because it would not create a material and substantial disruption to the instructional activities.

46. Students may already congregate together and talk during these non-instructional times, and allowing students to distribute non-school materials during these same non-instructional times would not result in a material and substantial disruption.
47. District Policy 122 explicitly designates lunch as a “non-instructional time” where student clubs could even hold meetings should they desire. Exhibit D, section labeled “Equal Access Act.”
48. Policy 122 also designates “before actual classroom instruction begins or after actual classroom instruction ends” as being “non-instructional times.”
Id.
49. All students at MASH are located in the same building and share several common areas, including a cafeteria, lobby, courtyard, and hallways.
50. Sophomore, Junior, and Senior students who meet certain criteria have access to another common area known as the “student commons,” as well as the adjacent courtyard when the weather is favorable, where eligible students can congregate instead of attending a study hall as per the Student Handbook. *See* Exhibit E, Student Handbook, at 18.
51. “During the lunch period, [students] may move freely within the cafeteria” as per the Student Handbook. In addition, “[i]f the weather is favorable,

students may use the adjacent (outside) courtyard.” Exhibit F, Student Handbook, at 15.

52. Students, including but not limited to those in the Bible Club, have obtained permission to set up tables during lunch for the purpose of having students come up to the table and interact or sign banners, which occurs without any substantial disruption.

MASD SPEECH-DISTRIBUTION POLICIES VESTING THE PRINCIPAL WITH UNBRIDLED DISCRETION

53. District Policy 220, Administrative Regulation 220-0, and the Student Handbook all give unconstitutional unbridled discretion to the building principals or designee.

54. Policy 220’s time and place restrictions do not specify any time or place other than generically stating:

[T]he board shall require that distribution and posting of non-school materials occur only at the places and during the times set forth in written administrative regulations. Such regulations or procedures shall be written to permit the orderly operation of schools, while recognizing the right of students to engage in protected expression.

Exhibit B.

55. District Administrative Regulation 220-0 gives unbridled discretion to the building principal: “Students may only distribute nonschool materials at the

following times: Thirty (30) minutes before the official start of school; Thirty (30) minutes after the official end of school; *and as otherwise designated by the building principal in writing.*” Exhibit C, Administrative Regulation 220-0 (emphasis added).

56. Neither Policy 220 nor the Student Handbook contain any writing designating any “otherwise designated” times where students would be permitted to distribute literature to classmates.

57. The Student Handbook states in relevant part:

Students are not permitted to distribute outside literature at any time on school property *unless they have the consent of the building principal.* . . . If consent is given, the time and location for distribution will be determined according to district policy.

Exhibit G, High School Handbook, p. 20 (Distribution of Materials).

58. Similar to the unbridled discretion given as to time, the school restrictions on place also give unbridled discretion. The restrictions state in relevant part:

[M]aterials will be permitted only on public sidewalks bordering school property. Building entrance walkways and building lobbies will not be utilized for such distribution. *Distribution of nonschool materials in other places will be permitted only upon receipt of written permission from the building principal or designee.*

Exhibit C, Administrative Regulation 220-0 (emphasis added).

59. Neither Policy 220 nor the Student Handbook contain any writing designating any other “otherwise designated” places where students would be permitted to distribute literature to classmates.
60. The District’s policies lack any guidelines or directives to guide the decisions of District officials when approving or denying literature sought to be distributed by students.
61. The discretion given to District officials in the District’s policies leave censorship of student speech to the whim of District officials.
62. The unbridled discretion given to District officials constitutes a violation of the Free Speech Clause of the First Amendment.
63. The District’s policies and practice impose an unconstitutional prior restraint because they vest District officials with unbridled discretion to permit or refuse protected speech by students.
64. The District’s policies and practice are overbroad because they sweep within their ambit all literature protected by the First Amendment and chill the speech of students who might seek to engage in private religious expression through distribution of literature.

**THE APPLICATION OF THE FACIALLY UNCONSTITUTIONAL POLICIES
AND THE EXERCISE OF UNBRIDLED DISCRETION**

65. Principal Harris has not only been granted unbridled discretion by the school, but he has previously wielded his unbridled discretion in a discriminatory manner.
66. At the beginning of the 2018-19 school year, he denied a request by the Bible Club to post flyers advertising the time and location of their club meetings despite granting requests from other school clubs to post their flyers. Exhibit H, flyer.
67. He told the Bible Club students they would only be permitted to post the flyers if they agreed to remove a Bible verse from the flyer.
68. The verse was Mark 16:15: “Go into all the world and preach the gospel to all creation.”
69. Only after involvement of counsel did Principal Harris rescind his denial.
70. He wielded his unbridled discretion again on or about November 8th.
71. The students in the Bible Club sent a request to their teacher advisor on November 5, 2018, and their teacher adviser, sent the request to Principal Harris on November 8, 2018 requesting permission to offer Bibles to interested fellow students at lunch from their gratefulness table, as the Bible was something the students were thankful for. Exhibit I, request and denial emails.

72. The students had also requested to have a table at lunch for what they called “Gratefulness Week,” where fellow students could come up to the table to sign a poster stating what they are grateful for; the Bible Club students would then offer them a Bible. *Id.*
73. These requests were made well in advance of the planned event.
74. The students were approved to set up a table at lunch, display a poster, and allow students to stop by the table and sign the poster. *Id.*
75. But the request to offer Bibles during that same time and at the same location during lunch was denied by email. *Id.*
76. The building principal, Mr. Harris, not only denied their request to distribute Bibles during lunch, which occurred well in advance of the planned distribution, but went further than the actual request and stated broadly they are “not permitted to handout [sic] Bibles during the school day.” *Id.*
77. Principal Harris’ email denying their request to offer Bibles to classmates at lunch reads in full:

[Bible Club Teacher Advisor],

Please inform him that he is not permitted to handout [sic] Bibles during the school day. Like other literature if he would like to request to distribute them outside of the school day, he may submit a request which will be reviewed in accordance with district policy and case law. At that time, a decision will be rendered. In addition to

relevant case law, district policy #220 provides some guidelines. Please feel free to share this with [the student] or to review it with him as you see fit.

Thank you,

Dave [Harris]

78. The Bible Club teacher advisor provided Principal Harris' denial email to the students as Principal Harris requested and reiterated to the students "[y]our other request to distribute Bibles was not accepted." *Id.*
79. Students distribute literature and other non-school materials with various types of secular messages including, but not limited to, notes, party invitations, and flyers during non-instructional times.
80. Exercising his unbridled discretion, Principal Harris either expressly authorizes such distributions or declines to discipline students for engaging in unauthorized distributions of non-school materials.
81. Students and student groups, including but not limited to the Bible Club, have obtained permission to set up tables during lunch.
82. Other student clubs have sold items such as t-shirts, tickets, candy grams, and handed out items such as candy, stickers, and ribbons. While it's not clear at this point whether the school gave permission to do so, those distributions have not disrupted any school operations.

83. On December 31, 2018, counsel for the students sent a letter to MASD Superintendent, Solicitor, and Board Secretary asking that they permit the students to offer Bibles to classmates during the school day at lunch, a non-instructional time.
84. Mr. Harris' initial denial email and later statements by the school continue to show that the only time they will permit distribution of Bibles is before or after school on the "public sidewalks bordering school property" based on school policy.
85. For example, the Superintendent, Mark Leidy, sent a press release to NBC channel 8, WGAL, which states in relevant part:

MASD respects the rights of students to express themselves and distribute materials. MASD also recognizes that exercise of that right must be limited by the District's responsibility to maintain an orderly school environment and to protect the rights of all members of the school community. Accordingly, students do have the right to distribution of non-school materials *prior to the start of the school day and after the end of the school day* if they develop a plan for time, place and manner of distribution that is reviewed and approved by the administration.

Exhibit J, MASD Press Release January 4, 2019 (emphasis added).

86. One Bible Club student leader, as well as counsel, spoke at the MASD School Board meeting on January 8, 2019, and another Bible Club student

leader had his statement read into the record, requesting the school change the policy and practice and permit them to offer Bibles to classmates during the school day at non-instructional times. Specifically the students explained that they were already given permission to sit at a table at lunch during the Bible Club's Gratefulness Week activity where interested students could come up and sign a gratefulness poster. This was not substantially disruptive to the educational environment. The students told the board they simply wanted to offer Bibles to interested students who came up to the Bible Club's Gratefulness table during lunch.

87. On the chance that MASD might alter its policies and back away from their complete prohibition during the school day, counsel for the Bible Club students sent a letter to the School's attorney on January 10, 2019. The letter asked in relevant part:

A) if what Mr. Harris said is *not* accurate, and students do in fact have the ability to distribute Bibles sometime during the school day, then let us know. We would love to hear from you when those times are, so the students can exercise their free speech rights to distribute Bibles to fellow students.

B) if what Mr. Harris said is accurate, and students are "not permitted to handout Bibles during the school day" then please let us know that as well.

Exhibit K.

88. Counsel for MASD chose not to respond to that request, and instead simply restated that the students can re-apply and distribute non-school materials based on their policies, which, as set forth above, are facially unconstitutional.
89. The Bible Club students continue to desire to offer Bibles to interested students in the cafeteria during non-instructional time.
90. The Bible Club students desire school policies and procedures to be changed so that their speech and other student speech, including distribution of literature, is protected during the school day and protected on school property.
91. The Bible Club students desire the unbridled discretion vested in the principal in Policy 220, its regulations, and student handbooks be eliminated.
92. The Bible Club students also ask that the content and viewpoint prohibition of certain forms of religious speech be eliminated.

ALLEGATIONS OF LAW

93. All of the acts of MASD, Leidy, and Harris were executed and are continuing to be executed under the color of state law.
94. The Bible Club has no adequate or speedy remedy at law to correct the

deprivation of its rights.

95. Unless MASD's literature distribution policy and practice are enjoined, the Bible Club students, as well as all other students in the school, will continue to suffer irreparable injury.
96. The loss of the students' First Amendment freedoms, for even a minimal period of time, unquestionably constitutes irreparable injury.

FIRST CAUSE OF ACTION
FACIAL VIOLATION OF THE FREE SPEECH CLAUSE OF
THE FIRST AMENDMENT TO THE U.S. CONSTITUTION
Narrow tailoring, overbreadth, lack of ample alternatives

97. The above paragraphs are reincorporated as if fully set forth herein.
98. The First Amendment's Freedom of Speech Clause, incorporated and made applicable to the states by the Fourteenth Amendment to the United States Constitution, prohibits the government from banning expression.
99. The Free Speech Clause prohibits schools from limiting student speech unless such speech would substantially interfere with the orderly operation of the school. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969); *K.A. v. Pocono Mt. Sch. Dist.*, 710 F.3d 99 (3d Cir. 2012).
100. Any valid time or place regulations on the distribution of literature may only

be upheld when narrowly tailored to a school's interest in the orderly operation of schools and where ample alternatives to speech are upheld. *See Gregoire v. Centennial Sch. Dist.*, 907 F.2d 1366, 1382 (3d Cir. 1990).

101. MASH's Policy 220 states that

the board shall require that distribution and posting of non-school materials occur only at the places and during the times set forth in *written administrative regulations*. Such regulations or procedures shall be written to permit the orderly operation of schools, while recognizing the right of students to engage in protected expression.

Exhibit B (emphasis added).

102. The *time* restrictions in the Administrative Regulations explicitly prohibit students from any distribution of literature at any time during the school day.

103. District Administrative Regulation 220-0, states:

Students may only distribute nonschool materials at the following times: Thirty (30) minutes before the official start of school; Thirty (30) minutes after the official end of school; and as otherwise designated by the building principal in writing.

Exhibit C, at 2.

104. The principal has not designated any additional times in writing.

105. The *place* restrictions in the Administrative Regulations state that distribution

will be permitted only on public sidewalks bordering

school property. Building entrance walkways and building lobbies will not be utilized for such distribution. Distribution on non school materials in other places will be permitted only upon receipt of written permission from the building principal or designee.

Id.

106. The principal has not designated any additional places in writing.
107. The only place where students may distribute literature is where *every member* of the general public already has the right to offer literature, “public sidewalks bordering school property.” *Id.*
108. In fact, in addition to being overbroad and an unconstitutional time and place restriction for MASD to limit distribution to “public sidewalks bordering school property,” Administrative Regulation 220-0’s requirement that students ask permission and get pre-approval to hand out materials on the public sidewalks bordering school property outside of the school day, MASD has taken away student speech rights in the school and even seeks to regulate their speech rights during non-school hours on public sidewalks that every member of the general public possesses. Given that it is unconstitutional to place prior restraints on the general public on public sidewalks, MASD cannot place such prior restraints on students during non-school hours on those same sidewalks.

109. The policies are overbroad and encompass anything written or printed for general distribution, including cards, notes, messages, invitations to graduation or birthday parties, and even personal websites and internet bulletin boards. Exhibit B.
110. Such restrictions on speech—entirely prohibiting distribution during the school day and entirely prohibiting it anywhere but “public sidewalks bordering school property[,]” at any time of day—is an extremely overbroad restriction on speech that prohibits a substantial amount of protected student speech that is not necessary to prevent substantial disruption or interference with the work of the school or rights of other students. *See Saxe v. State College Area Sch. Dist.* 240 F.3d 200, 216 (3d. Cir. 2001).
111. Prohibiting the distribution of materials at lunch, for instance, which is a non-instructional time, does not advance this interest because such distributions would not create a material and substantial disruption to the operation of the school.
112. This extraordinarily broad prohibition on the distribution of literature is contrary to both caselaw and Pennsylvania law.
113. Schools cannot limit a student’s ability to hand out literature to outside of the school building and outside of school hours. *See Thompson v.*

Waynesboro Area Sch. Dist., 673 F. Supp. 1379, 1380, 88 (M.D. Pa. 1987);
see also Slotterback v. Interboro Sch. Dist., 766 F. Supp. 280, 299 (E.D. Pa.
1991).

114. Pennsylvania law makes clear that schools may limit the “time and place of distribution of materials so that distribution would not materially or substantially interfere with the requirements of appropriate discipline in the operation of the school.” 22 Pa. Code § 12.9(i).
115. “A proper time and place set for distribution is one that would give the students the opportunity to reach fellow students.” § 12.9(i)(1).
116. Entirely prohibiting distribution at any time or place during the school day, and at any place other than the “public sidewalks bordering school property” outside of school hours does not give ample opportunity to reach fellow students. Some students leave early, others go directly to cars and buses. Pushing students to the edge of campus not only fails to give ample opportunity, it almost completely prevents personal interactions.
117. “The place of the activity may be restricted to permit the normal flow of traffic within the school and at exterior doors.” § 12.9(i)(2).
118. The normal flow of traffic within the school will not be impeded by distribution from a table in the school cafeteria, for instance.

119. Nor would the normal flow of traffic at lunch be impeded by an individual offering literature to another student in the cafeteria or in the student commons where students are already permitted to walk around freely, for instance.
120. In fact, distribution of literature is inherently less disruptive than spoken expression. *United States v. Kokinda*, 497 U.S. 720, 734 (1990).
121. Policy 220 in conjunction with District Administrative Regulation 220-0 are facially unconstitutional in that, absent an arbitrary exception granted by the principal, they completely prohibit any distribution in school or even outside of school during school hours.

WHEREFORE, Plaintiffs respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

SECOND CAUSE OF ACTION
FACIAL VIOLATION OF THE FREE SPEECH CLAUSE OF
THE FIRST AMENDMENT AND TO THE U.S. CONSTITUTION
unbridled discretion

122. The above paragraphs are reincorporated as if fully set forth herein.
123. District Administrative Regulation 220-0 grants discretion to the school principal to override its draconian prohibition of any literature distribution in the school or during school hours.

124. This discretion does not solve any constitutional infirmity, but instead vests the school principal with unbridled discretion to ban literature distribution without any standards.
125. It is violative of the free speech clause to grant unbridled discretion to a government official to permit or deny the opportunity to speak. *See Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969); *Slotterback v. Interboro Sch. Dist.*, 766 F. Supp. 280, 299 (E.D. Pa. 1991).
126. Policy 220 in conjunction with District Administrative Regulation 220-0 gives unbridled discretion to the principal to permit distribution of literature he favors inside the school and during school hours or to push literature he dislikes to the sidewalk outside of school hours.
127. Policy 220 in conjunction with District Administrative Regulation 220-0 and the Student Handbook are facially unconstitutional.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

THIRD CAUSE OF ACTION
FACIAL VIOLATION OF THE FREE SPEECH CLAUSE OF
THE FIRST AMENDMENT TO THE U.S. CONSTITUTION
viewpoint discrimination, overbreadth

128. The above paragraphs are reincorporated as if fully set forth herein.

129. Policy 220 and the Student Handbook provide that the board reserves for itself the right to “designate and prohibit” student expression that it deems is “not protected by the right of free expression.” Exhibit A, 2018-2019 Senior High School Student Handbook, at 33; Exhibit B, Policy 220.

130. MASD Policy 220 states that

[s]tudent initiated religious expression is permissible and shall not be prohibited except as to time, place and manner of distribution, or if the expression involved violates some other part of this policy, e.g., because it is independently determined to be unprotected expression under the standard and definitions of this policy.

Exhibit B, Policy 220.

131. Policy 220 and the Student Handbooks prohibit all expression that “violates the rights of others,” and the Student Handbooks all define “expression [that] violate the rights of others” as expressions that “[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view.”

Exhibit A. The Middle School and Elementary School handbooks both include the same discriminatory language.

132. This prohibition of speech is not only content-based but viewpoint-based discrimination in violation of the Free Speech Clause of the First Amendment due to specifically censoring religious messages or points of

view.

133. “Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).
134. “[S]peech discussing otherwise permissible subjects cannot be excluded . . . on the ground that the subject is discussed from a religious viewpoint.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001); *see also Johnston-Loehner v. O’Brien*, 859 F. Supp. 575, 579 (M.D. Fla. 1994) (striking down a policy that allowed school officials to screen out religious materials: “It is also beyond dispute that the restraint is based on content, for only after reviewing content does the school decide whether particular materials may be disturbed.”).
135. This prohibition of speech is also unconstitutional based on its overbreadth.
136. School policies that prohibit expressions that “‘seek to establish the supremacy of a particular religious denomination, sect or point of view’ [are] overbroad.” *Miller v. Penn Manor Sch. Dist.*, 588 F. Supp. 2d 606, 628 (E.D. Pa. 2008); *Slotterback v. Interboro School Dist.*, 766 F. Supp. 280,

296-97 (E.D. Pa. 1991) (such a ban at the elementary level is also unconstitutional on its face).

WHEREFORE, Plaintiffs respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**FOURTH CAUSE OF ACTION
FACIAL VIOLATION OF THE FREE EXERCISE CLAUSE OF
THE FIRST AMENDMENT TO THE U.S. CONSTITUTION**

137. The above paragraphs are reincorporated as if fully set forth herein.
138. The District's prohibition of expressions that "[s]eek to establish the supremacy of a particular religious denomination, sect, or point of view" prevents students from freely exercising their religion in violation of the Free Exercise Clause of the First Amendment.
139. The students in the Bible Club, in light of their sincerely held religious beliefs, desire to express their religious beliefs to interested classmates as being true.
140. The discriminatory prohibition of religious speech is neither neutral nor of general applicability.
141. The policy unconstitutionally burdens the students' right to freely exercise their religion.
142. The policy selectively imposes a burden on expression based on the religious

nature of the expression by singling out the religious expression for discriminatory treatment.

143. The policy chills students' freedom of religious expression and exercise, both of which are fundamental rights guaranteed by the First Amendment.

WHEREFORE, Plaintiffs respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

**FIFTH CAUSE OF ACTION
VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST
AMENDMENT TO THE UNITED STATES CONSTITUTION,
AS APPLIED**

144. The above paragraphs are reincorporated as if fully set forth herein.
145. Read in conjunction, Policy 220, Administrative Regulation 220-0, and the Student Handbook limit the time for student opportunity to distribute literature to classmates to thirty minutes before and after school and limit the place to the public sidewalk bordering school property outside of the school building.
146. These policies, however, vest authority in the principal, in this case Principal Harris, to exercise unbridled discretion to allow distribution of literature at sometime other than the public sidewalks bordering school property 30 minutes before and 30 minutes after school.

147. However, no district policy or MASH policy gives any guidelines to Principal Harris in determining other times, places, or manners for literature distribution.
148. This policy unconstitutionally grants unbridled discretion to Principal David Harris, and other building principals at MASD, to deny or approve any student distribution of written materials.
149. The unbridled discretion given to Building Principals at MASD invites arbitrary and discriminatory enforcement and allows them to grant favorable times and places to favored speech and to relegate speech they do not favor to outside of the school day on the public sidewalks bordering school property.
150. The unbridled discretion also allows officials to conceal such censorship through *post hoc* rationalizations and the use of shifting or illegitimate criteria.
151. Principal Harris, has not only been granted unbridled discretion by the school, but he has wielded his unbridled discretion in a discriminatory manner. To wit, at the beginning of the 2018 school year, he denied a request by the Bible Club to post flyers advertising the time and location of their club meetings despite granting requests from other school clubs to post

their flyers. He told the Bible Club students they would only be permitted to post the flyers if they agreed to remove a Bible verse from the flyer. *See* Exhibit H, Club Flyer.

152. The verse was Mark 16:15: “Go into all the world and preach the gospel to all creation.” Only after involvement of counsel, did Principal Harris rescind his denial.
153. Principal Harris again wielded his unbridled discretion in a discriminatory manner when he denied the Bible Club’s request for permission to offer Bibles to classmates during non-instructional time, specifically lunch. The request was made well in advance of the day the students planned to offer Bibles to classmates. But Principal Harris not only denied the students’ request to distribute Bibles during lunch, he went further than the actual request and stated broadly the students are “not permitted to handout Bibles during the school day.”
154. The principal’s denial email then invited the student to submit another request “if he would like to request to distribute them outside of the school day....”
155. Even though the overbroad policies encompass anything written or printed for general distribution, including include cards, notes, messages, invitations

to graduation or birthday parties, and even personal websites and internet bulletin boards, on information and belief, distributions by students have occurred without intervention or punishment.

156. As alleged previously, the Bible Club's offering Bibles during lunch hour, a non-instructional time of the school day, would not materially and substantially interfere with the orderly conduct of educational activity within the school.
157. Prohibiting the offering of Bibles, or any other written material for that matter, to fellow students during the entirety of the school day and anywhere on the inside of the building is not necessary to protect against any substantial disruption of school operations or necessary to prevent interference with the rights of others.
158. Such an excessive prohibition on speech violates all students' First Amendment rights, not just the students involved in this lawsuit, and does not give the students the opportunity to reach fellow students.
159. These prior denials by Principal Harris, along with the overbreadth of the MASH's literature distribution policy and practice, chills the speech of Plaintiffs and third party students who might seek to engage in private expression through the distribution of written materials during

non-instructional time.

160. MASH's literature distribution policy and practice, as applied, violates the individual student's and Bible Club's right to Free Speech as guaranteed by the First Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully prays that the Court grant the relief set forth hereinafter in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully prays for judgment as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining MASD, its officers, agents, employees, and all other persons acting in active concert with it, from enforcing MASD's literature distribution policy;
- b. That this Court render a Declaratory Judgment, declaring MASD's literature distribution policy and practice unconstitutional, facially and as-applied, pursuant to the First Amendment to the United States Constitution;
- c. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;

- d. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- e. That the Court award the students' costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. § 1988;
- f. That this Court award nominal damages for the violation of the students' constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of the Bible Club; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.



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DECLARATION

We, C.W., E.W., G.W., and N.W., citizens of the United States and residents of the Commonwealth of Pennsylvania, have read the foregoing Verified Complaint and declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct to the best of our knowledge.

Executed this 30 day of January 2019.



C.W., on behalf of G.W. and N.W.



E.W., on behalf of G.W. and N.W.



G.W., individually and as a leader in the Christians in Action Bible Club



N.W., individually and as a leader in the Christians in Action Bible Club

DECLARATION

We, L.B. and B.B., citizens of the United States and residents of the Commonwealth of Pennsylvania, have read the foregoing Verified Complaint and declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct to the best of our knowledge.

Executed this 24 day of January 2019.

 llb
L.B. on behalf of B.B.

 BB
B.B., individually and as a leader in the Christians in Action Bible Club

DECLARATION

We, K.H., C.H., and T.H., citizens of the United States and residents of the Commonwealth of Pennsylvania, have read the foregoing Verified Complaint and declare under penalty of perjury, pursuant to 28 U.S.C. 1746, that the foregoing is true and correct to the best of our knowledge.

Executed this 30th day of January 2019.



K.H., on behalf of T.H.



C.H., on behalf of T.H.



T.H., individually and as a leader in the Christians in Action Bible Club