

5th-Grader Free to Invite Classmates to Church Party

The U.S. Court of Appeals for the 3rd Circuit Tuesday unanimously affirmed a lower court's order that found two policies at a Pennsylvania school district unconstitutional after they were used to prevent a fifth-grade student from distributing invitations to a Christmas party at her church.

"Public schools should encourage, not shut down, the free exchange of ideas," said Senior Counsel David Cortman, who argued before the court in October of last year. "Those ideas include a 5th-grader's invitations to a religious event. The 3rd Circuit was correct in striking down the school district's unconstitutional ban."

"America's public schools should recognize the constitutionally protected freedom of students who wish to hand out these kinds of fliers," said Legal Counsel Matt Sharp. "A flier cannot be banned just because some element of religious faith is a part of it. On the contrary, the First Amendment specifically protects religious speech."

Alliance Defending Freedom attorneys filed suit in March 2011 on behalf of the Barrett Elementary Center student, identified in the lawsuit as "K.A."

The school district relied on two literature distribution policies, numbers 220 and 913, to justify its ban on the student's fliers. It attempted to argue that the First Amendment freedoms of elementary-age students can be severely limited, but the 3rd Circuit rejected that argument, finding that "it is difficult to identify a constitutional justification for cabining the **First Amendment** protections ... to older students." The court concluded, "The fact that K.A.

was only in the fifth grade and the invitation originated from her church does not mandate a different approach.”

The court also noted in its opinion that “the School District’s failure in this appeal to identify any disruption caused by K.A.’s invitation, makes it reasonably likely that K.A. will prevail in this litigation. ... We also hold that the original and revised versions of Policy 220 and 913 are unconstitutional as applied to the form of student expression at issue here.”