

U.S. Department of Education Issues Guidance on Constitutionally Protected School Prayer

February 18, 2003

Section 9524 of the No Child Left Behind Act ("NCLB") required that, beginning October 1, 2002, in order to be eligible to receive funds under the NCLB, a local school district must certify that it does not deny participation in constitutionally protected school prayer. Local school districts were to have provided a certification to their state education agency ("SEA") each year by October 1. The certification was to state that the local educational agencies ("LEA") have no policies that would prevent or deny participation in constitutionally protected prayer as defined in the secretary's guidance.

The U.S. Secretary of Education was to have issued guidance to state educational agencies, local educational agencies, and the public concerning this issue no later than September 1, 2002, and every two years thereafter. The long awaited guidance finally arrived on February 7, 2003. The guidance extends the original LEA compliance certification date from October 1, 2002, until March 15, 2003. The yearly LEA compliance certification date remains October 1 each year thereafter.

The guidance further states that each SEA "should establish a process by which the LEAs may provide the necessary certification," consistent with Section 9524. The certification "must be in writing and clearly state that the LEA has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools."

SEAs were to have reported to the U.S. Secretary of Education by November 1, 2002, all of the constituent LEAs that failed to provide the required certification or that have been the subject of compliance complaints to the SEA. However, the original list is now due on April 15, 2003, with yearly lists being due each November 1 hereafter. Each SEA is required to investigate any problems with non-compliance or complaints regarding non-compliance regarding LEAs and also to report any enforcement action it has taken as well as the status of all such investigations and actions. The U.S. Secretary of Education can then initiate administrative enforcement action, including denial of funds, to secure compliance. The U.S. Secretary of Education has specific authority to take action against LEAs that fail to provide the required certification to its respective SEA or who files the required certification in bad faith.

The rest of the February 7, 2003, guidance provides an overview of constitutionally protected prayer in elementary and secondary schools as well as examples of issues faced by schools in different situations such as prayer during noninstructional time, moments of silence, and organized prayer groups and activities.

To discuss any questions or related issues, please contact Labor Group or: Beverly Hall Burns at (313) 496-7508.