

# Office of the Attorney General

State Of Alabama

July 21, 2000

## MEMORANDUM

TO: All City and County Superintendents of Education

FROM: Bill Pryor, Attorney General  
Michael R. White, General Counsel, State Department of Education

RE: Updated Guidelines for Religious Activities in Schools

A joint memorandum to all superintendents regarding permissible religious activities in public school settings was sent to you on December 8, 1997. On April 13, 1998, you received Guidelines for Graduation Exercises and Baccalaureate Services. On July 29, 1999, after the decision by the United States Court of Appeals in *Chandler v. James*, we wrote a joint memorandum to update the Guidelines based upon the decisions of the United States Supreme Court and the Eleventh Circuit Court of Appeals. We now write again to update the Guidelines based upon the Supreme Court's recent decision in the case of *Santa Fe Independent School District v. Doe*.

In *Santa Fe Independent School District v. Doe*, the Supreme Court ruled that a Texas school district could not organize a student election to select a student to give an invocation before high school football games. Our Guidelines already indicated that "[o]rganization or direction of a prayer by a school official would not be appropriate," so this new decision has not required a change to the Guidelines. We have merely added statements to explain that the prohibition on "organization or direction of a prayer" means school officials should not hold a student election for the purpose of selecting a student to give a prayer at school-sponsored sporting events. We advise that this same rule should apply to school-sponsored activities generally, including commencement/graduation exercises. This does not, however, prohibit regularly scheduled student speakers, such as a valedictorian or class president, from praying, reading scripture, or making religious comments in the course of their speeches. As the Eleventh Circuit Court of Appeals held in *Chandler v. James*, such "genuinely student-initiated religious speech" is protected by the First Amendment.

As you may remember from our July 29, 1999, Memorandum, the Permanent Injunction issued by Judge DeMent against the DeKalb County school system in the *Chandler v. James* case was vacated and remanded by the Eleventh Circuit Court of Appeals. The Court found that "genuinely student-initiated religious speech" may not be suppressed nor restrictions applied "on the time, place, and manner of that speech which exceed those placed on students' secular speech." The Supreme Court has vacated that decision and ordered the Eleventh Circuit to reconsider the case in the light of its new decision in the *Santa Fe* case. We believe the Eleventh Circuit's decision is consistent with the outcome in *Santa Fe*, and that the Court's opinion will not be significantly modified. In any event, we will inform you as soon as the Eleventh Circuit rules.

As before, we believe these Guidelines should enable you to ensure that students can fully exercise their First Amendment rights in an environment that does not conflict with the Establishment Clause.

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### GUIDELINES FOR RELIGIOUS ACTIVITIES IN SCHOOLS

#### **INTRODUCTION**

The following guidelines are issued to provide assistance to public school administrators and teachers. These guidelines are based on the rules reiterated by the Eleventh Circuit Court of Appeals in *Chandler v. James* and in opinions of the United States Supreme Court. These guidelines are intended to be instructive and not all-inclusive.

### ***PERMISSIBLE ACTIVITIES IN GENERAL***

- Students may voluntarily engage in individual or group prayer during non-instructional time or at school-sponsored events. This includes individual or group prayer before or after athletic events. School officials (e.g. coaches) should neither encourage nor discourage individual or group prayer. Organization or direction of a prayer by a school official would not be appropriate; this also means that school officials should not hold a student election for the purpose of choosing a student to give a prayer at a school-sponsored event.
- Students may voluntarily engage in religious discussions during non-instructional time or at school-sponsored events. Students may speak to and attempt to persuade their peers about religious topics just as they do with regard to political or other topics.
- Students may express religious beliefs in reports, homework, artwork, and other written and oral assignments, which should be judged by ordinary academic standards of substance and relevance.
- Private citizens (including students) may distribute religious literature in accordance with all applicable time, place and manner restrictions applicable to the distribution of literature that is unrelated to school curriculum activities.
- Students may display religious messages or symbols on items of clothing (e.g., cross, menorah, Star of David, etc.) to the extent that they may display comparable non-religious messages or symbols on items of clothing. Students also may wear particular attire (e.g., yarmulkes, head scarves, etc.) during the school day or at school-sponsored events as part of the students' religious practices consistent with board policies and State law.
- Private citizens and student groups must be allowed access to school facilities for meetings of a religious nature, subject to the same limitations placed on non-religious meetings.
- Students in secondary schools may have announcements of meetings of a religious nature conveyed in the same manner that announcements are made for meetings of other non-religious groups (e.g. public address system, school newspaper, etc.).
- Teachers may teach about religion, including the Bible and other scripture, provided that such teaching concerns the history of religion, comparative religions, the Bible (or other scripture) as literature, and/or the role of religion in the history of the United States. The use of religious symbols (e.g., cross, menorah, symbols of Native American religions) is permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious subject being taught.
- A fixture or symbol that is traditionally associated with a particular religion (e.g., nativity scene, menorah, etc.) may be included as a "prop" in a school holiday production to the same degree that non-religious props are used in school productions, provided such symbols are displayed as an example of the cultural and religious heritage of the holiday.
- Traditional holiday music may be included in school productions (e.g., choral events, band activities, etc.) in keeping with the cultural or religious heritage of the holiday.

### ***SPECIAL CONSIDERATIONS FOR COMMENCEMENT/GRADUATION***

#### **BACCALAUREATE SERVICES**

- If a school by policy and practice rents out its facilities to private groups, it must rent them out on the same terms and conditions, and on a first-come first-served basis, to organizers of privately sponsored religious baccalaureate services.
- Teachers and school administrators must demonstrate and observe neutrality with regard to private baccalaureate services and school officials may neither encourage nor discourage student attendance at such events.

- Teachers and school administrators may attend such functions in their individual capacities.
- Baccalaureate services are to be announced or advertised in the same manner as other non-religious meetings, such as notices in the school newspaper or use of the public address system and bulletin boards.

#### **COMMENCEMENT EXERCISES**

- Student-initiated religious speech is permitted; however, school officials are not to encourage, organize, or direct such speech. This also means that school officials should not hold a student election to choose a student to give a prayer at school-sponsored commencement exercises.
- Regularly scheduled student speakers (e.g., valedictorian, salutatorian, class president) may make religious comments during their speeches. School officials are not to encourage or direct such speech.
- Religious persons and/or organizations are entitled to advertise in school commencement programs/directories on the same terms as other persons or community organizations.

The intent of these Guidelines is to outline a course of study, conduct, and related activities that does not prescribe directly or indirectly a single religion, belief, or observance and that is consistent with the prevailing decisions by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Any questions regarding the above Guidelines or conduct that is not specifically detailed above should be directed to the Office of the Attorney General, or the General Counsel for the Department of Education, Mike White.