

ACCESS TO MILITARY RECRUITERS

Federal laws require local educational agencies that receive federal funding under the Elementary and Secondary Education Act of 1965 (ESEA) to provide access to secondary school student names, addresses, and telephone listings upon a request made by military recruiters. Under both laws, a secondary school student or a parent of the student may request that such information not be released without prior written parental consent. Local educational agencies are required to notify parents of the option to make such a request and are required to comply with any such request.

However, a preexisting provision within 10 U.S.C. §503 allows local educational agencies to deny access to student directory information if they have a policy in place, approved by a majority of its governing body, to deny recruiting access to students or to such directory information (10 U.S.C. §503(c)(5)(A)). There is no comparable provision contained in §9528 of the No Child Left Behind Act (20 U.S.C. §7908) that would exempt a school district or other local educational agency whose governing board adopts a policy of denying military recruiter access.

Because there is no exception in the NCLBA for local educational agencies whose board of education or other governing body have adopted a policy to deny recruiting access, every local educational agency that has not already done so must take immediate steps to come into compliance with the Federal law.

Under §9528 of the NCLBA, parents must be notified of their option to request that a student's name, address and telephone listings not be released without prior written parental consent. No time frame is specified in the Federal law, though we recommend that the parent notification be provided as soon as possible, so that parents are given a reasonable time to request that the directory information not be released and timely access to such directory information is provided to military recruiters and institutions of higher education.

SCHOOL SAFETY AND SECURITY

The State Education Department is encouraging all schools to be vigilant to ensure the safety of students, faculty and all personnel. It is recommended that building level safety plans be reviewed to ensure that all levels of threats have been defined and that corresponding protective measures and responses are in place. As events unfold on the national level school staff and parents should watch for signs of stress and anxiety in students of all ages.

NEW TELEVISION SERIES

The US Department of Education is airing a new television series to help parents understand the NCLBA. The program will be live, provide for call-ins and opportunities for discussion. It will broadcast on the third Tuesday of each month during the school year. A schedule of topics for the year is available at <http://registerevent.ed.gov>. Live and archived webcasts of each show will be available at: www.connectlive.com/events/edtownmeetings. For information on how you can watch EDUCATION NEWS in your community call 1-800-872-5327.

STATE BLAINE AMENDMENTS

Now that the *Zelman v. Simmons - Harris* decision of the Supreme Court has upheld the federal constitutionality of the Cleveland educational voucher program, the inevitable question is "what next?". The legal battle is far from over and supporters and opponents of vouchers and other programs which support school choice are carefully planning the future. Education is the primary responsibility of the state. As articles, editorials, speeches and analyses proliferate, it becomes apparent that the Blaine Amendments in the State Constitutions are the new challenge. Since some 37 states have some form of the amendment in their constitutions, it is important that we be conversant about them.

The Blaine amendments stem from an unsuccessful attempt by Congressman James Blaine to add an amendment to the US Constitution which would prohibit states from using public funds to benefit any religious institution. In the years since the 1870's, efforts were successful in incorporating similar amendments in state constitutions. The different wordings of the amendments in the state documents have led to a variety of opinions by state courts and interpretations by attorneys general. Our principal interest is in New York.

New York's Blaine Amendment is found in Article 11, #3 of the State Constitution. It reads:

"Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning."

The original amendment did not include the last clause reference to transportation. It was added by the electorate in the state after the New York Court of Appeals held that a school busing law which provided students with transportation to parochial schools was a violation of the Blaine Amendment. (*Judd v. Board of Education* 278 N.Y. 200 (1938)). In 1968 the *Board of Education v. Allen*, 20 N.Y.2d 109 (1967) the Court of Appeals upheld the constitutionality of a textbook assistance statute that benefited both public and nonpublic students. The Blaine Amendment can certainly be challenged in the courts.

As the reasoning in court cases is followed, it appears that certain criteria emerge which support parental choice and assistance programs. Those that are truly directed to benefit the child, those that provide real choice for all parents and children in all schools both public and private, those that do not advance nor interfere with the free exercise of specific religious beliefs can present real challenges to Blaine.

The enactment of NCLB and Attorney General Spitzer's "Report on Nonpublic Education" do not directly address vouchers or tax credit programs. However, as they stress the importance of educational improvement, they conclude that the Blaine Amendment would not preclude certain programs of assistance. Efforts to challenge existing Blaine Amendments in the 37 states will, if successful, pave the road to a true realization of parental choice.