



Electronic Dispatch

# Higher Education Law Action Memo

August 2005

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## “CONSTITUTION AND CITIZENSHIP DAY” REQUIREMENTS

This Action Memo is a reminder to colleges and universities regarding the impending requirement that all federally-funded educational institutions recognize “Constitution and Citizenship Day” (“Constitution Day”) each year. Institutions that have not taken steps to comply with this mandate should do so immediately.

### Purpose and Requirements

A last-minute addition to the Consolidated Appropriations Act of 2005 (the “Act”) adopted by Congress in December of 2004 imposes a requirement that all federally-funded educational institutions recognize Constitution Day on September 17 of each year, beginning in 2005. The provision, sponsored by Senator Robert C. Byrd of West Virginia, is designed to commemorate the September 17, 1787 signing of the United States Constitution and to increase awareness and knowledge about the Constitution.

The Constitution Day requirement applies to all educational institutions that receive funding from any federal agency. On September 17 of each year, these institutions are required to provide students and employees with an informative program about the Constitution. When September 17 falls on a weekend or a holiday (as it does this year), a Constitution Day program must be scheduled for either the preceding week or the following week. Congress did not authorize additional funding to educational institutions to offset the costs of Constitution Day programs.

The Act does not mandate a specific curriculum for Constitution Day programs, and as a result the requirements for content or duration of such programs are not at all clear. On May 24, 2005, the Department of Education issued a Notice of Implementation concerning the new requirement, but the Notice was essentially a restatement of the law. The Department also provided a list of various Internet resources that may be of use to institutions in developing their Constitution Day programs, but cautioned that these resources are not endorsed or required by the Department.

### Enforcement and Implementation

It is not clear how compliance with the Constitution Day requirements will be monitored or what will happen to an institution that does not implement a Constitution Day program. The Department has indicated that it does not have a specific plan in place to monitor compliance, and has stated that it is too soon to speculate as to the consequences of noncompliance.

While enforcement does not appear to be a priority of the Department, colleges and universities should nevertheless make some form of publicly-accessible educational programming available to their campus communities so as to enable them to demonstrate a good faith effort to comply with the Act’s requirements. We believe that the absence of a specific mandate in terms of content or duration effectively provides institutions with a wide degree of latitude in designing these programs, and that programming may be tailored to meet the needs and preferences of each particular campus. For those institutions which have not yet finalized their Constitution Day programs and are looking for program ideas, the National Association of Student Personnel Administrators has created a “Constitution Day Implementation Guide” which is available at <http://www.naspa.org/policy/guide.pdf>. Among other things, this Guide provides a number of program suggestions.

If you have questions regarding steps your institution might take to comply with these requirements, please contact any of the members of our Higher Education Practice Group:

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# BS&K Higher Education Briefing Series

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**Programs run from 9:00 a.m. to 11:00 a.m.; Registration is at 8:30 a.m.**

## September 27, 2005: Conducting Criminal Background Checks for Faculty and Staff

This program will explore policy issues related to the use of background checks for faculty and staff, as well as the legal restrictions which exist on some types of background checks. The program will also cover potential institutional liability that may arise from using or deciding not to use background checks, how to draft an effective background check policy and the legal implications of responding to background check inquiries from other employers.

## November 17, 2005: Dealing With Students' Mental and Emotional Issues

Among the most difficult challenges confronting college and university staff is the need to deal with students who exhibit signs of mental or emotional issues. Whether it is recognizing the signs of a student in trouble or understanding the legal limits on what can be done to protect the student and/or the institution, administrators must tread carefully. This program will include a discussion of the legal implications of dealing with students who show signs of serious

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