


State of Alaska

Department of Labor and Workforce Development

Division: Business Partnerships	Policy No.: 498.00
Subject: WIA Sectarian/Religious Activity Policy	Pages: 6
References: Workforce Investment Act (WIA) Section 188(a)(3); 20 CFR Parts 667 & 670, 20 CFR 667.266, 667.275; 29 CFR Parts 2 & 37, 29 CFR 37.6(f), 37.6(f)(1), 37.6(f)(2); TEGL 1-05	Effective Date: February 3, 2006
	Revised: January 31, 2006
Approved:  Corine Geldhof, Acting Director	February 3, 2006 Date

1) Applicability

State of Alaska, Department of Labor and Workforce Development (DOLWD) workforce development professionals, Workforce Investment Act (WIA) grant recipients and participants in the following WIA programs:

- a) Adult Program
- b) Dislocated Worker Program
- c) Youth Program
- d) National Emergency Grant (NEG) Program
- e) Additional Assistance as part of the Rapid Response Program

2) Purpose

The purpose of this policy is to provide guidance concerning faith-based and sectarian/religious organizations and activity under the Workforce Investment Act (WIA) and to establish the permissible uses of Federal financial assistance for faith-based and sectarian/religious organization services or programs and the conditions for receipt of such support.

3) Definitions

- a) The term *sectarian or religious organization* refers to any organization that provides a framework for worship or that has an established theological or spiritual purpose or perspective.
- b) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction or exemption.

- c) The term *social service program* means a program that is administered or supported by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:
 - i) Child care services and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);
 - ii) Job training and related services, and employment services;
 - iii) Information, referral, and counseling services;
 - iv) Literacy and mentoring programs; and
 - v) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of domestic violence.
- d) The term *DOL* means the U.S. Department of Labor.
- e) The term *DOL social service provider* means any non-Federal organization, other than a State or local government that seeks or receives DOL support as defined in paragraph (g) of this section, or participates in DOL programs other than as the ultimate beneficiary of such programs.
- f) The term *DOL support* means Federal financial assistance, as well as procurement funding provided to a non-Federal organization, including a local government, to support the organization's administration of or participation in a DOL social service program as defined in paragraph (c) of this section.

4) Background

- a) Revisions to WIA Final Regulations effective July 12, 2004, outline the possible role of sectarian/religious organizations as service providers. The revised regulations:
 - i) Provide the criteria by which sectarian/religious organizations may be eligible as service providers and/or training facilities;
 - ii) Prevent direct use of public money for sectarian/religious purposes; and
 - iii) Protect faith-based and sectarian/religious organizations from discrimination.
- b) The federally established distinction between 'direct funding' and 'indirect funding' provides the means to balance the above factors while also allowing for participant choice. Direct funding or direct support occurs when DOLWD or DOL obtains needed services by means of contract, grant, cooperative agreement, or other similar and legally binding funding device. Indirect funding occurs when a WIA participant, in concert with their case manager, determines where and how to expend WIA funding through a Training Authorization voucher, Individual Training Account (ITA), Individual Service Strategy (ISS), Authorization for Support Services or other similar voucher/form tied to the participant's voluntary choice. (In this context, the terms 'direct funding' and 'indirect funding' do not pertain to cost allocation plans but to the monetary means by which services are provided to WIA participants.) This means:

- i) Direct DOL support may not be used for inherently religious activities such as worship services or prayer meetings.
 - ii) Service providers receiving direct DOL support may offer inherently religious activities such as worship services or prayer meetings only when provided separately in time or location from DOL funded activities.
 - iii) WIA participants engaging in inherently religious activities must be entirely voluntary.
- c) Section 188(a)(3) of the Workforce Investment Act stipulates: Prohibition on Assistance for Facilities for Sectarian Instruction or Religious Worship - Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants). See also 29 CFR 37.6(f)(2)
- d) 20 CFR Part 667.266 of the Final Regulations stipulates: Limitations related to sectarian activities are set forth at WIA Section 188(a)(3) and 29 CFR 37.6(f). Under these limitations:
- i) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may provide participants employment or training in religious activities. Under that subpart, participants may receive assistance such as employment or training only when the assistance is indirect within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through a Training Authorization voucher, ITA or ISS is generally considered indirect. See also 20 CFR 667.275 and 29 CFR 37.6(f)(1).
 - ii) 29 CFR part 2, subpart D also contains requirements related to equal treatment in DOL programs for religious organizations, and to protecting the religious liberty of DOL social service providers and beneficiaries.

5) Policy

- a) DOLWD workforce development professionals, grant recipients and WIA participants will observe the following sectarian/religious activities policy guidance in these three situations:
- i) Participants Attending Sectarian/Religious Training Institutions
WIA participants may attend sectarian/religious institutions using a Training Authorization voucher, ITA or ISS. Training programs must have approval to operate a postsecondary institution in Alaska by the Commission on Postsecondary Education. Additionally, for those services provided as an ITA, the vendor providing such service must apply for and satisfy the eligibility requirements of the Eligible Training Provider List (ETPL) program/process. A statement signed by the participant must be in the case file to establish the voluntary nature of the WIA client's choice to attend the training. Unlike the situation with directly funded WIA activities, there is no need to separate an organization's sectarian/religious activities physically or chronologically from voluntary WIA funded activities.

ii) Participants using Sectarian/Religious Day Care Facilities for Childcare

If selected for use by a WIA participant, a sectarian/religious childcare facility may provide childcare for the participant's children. As such, the sectarian/religious childcare facility may receive reimbursement from WIA funding for the supportive service provided using an Authorization for Support Services or other similar voucher/form.

iii) Sectarian/Religious Organizations Serving as Service Providers and/or Training Facilities

WIA allows for the use of facilities owned and/or operated by sectarian/religious organizations as service providers and/or training facilities for non-sectarian/religious training activities. DOLWD recognizes the importance of these sites as one means to serve and train participants. The procedures and standards by which a sectarian/religious organization qualifies to be a service provider may not differ significantly from those the Alaska Workforce Investment Board (AWIB) specifies for a non-sectarian organization.

b) The following are questions that may arise as a result of this policy and appropriate responses:

i) *When can a sectarian/religious organization be used as a service provider and/or training facility?*

A sectarian/religious organization may be used as a service provider and/or training facility if there is a division between "church and State." In other words, there is to be a clear and obvious separation either physically or chronologically between any directly funded WIA participant activities on-site and the organization's sectarian/religious activities.

In addition, separate facilities operated by a sectarian/religious organization which are not of a sectarian/religious nature (such as a hospital) and which do not discriminate on the basis of religion (or other means) when providing services, are allowable training sites. For example, the purpose of a hospital is to provide medical care. In most cases, the sectarian/religious activities are clearly defined and limited to the chapel area. The hospital can easily be divided into religious and non-religious areas. The division is easily identified and will remain as identified. There is a clear separation of church from State.

ii) *How is the division between "church and State" documented?*

A site owned by a sectarian/religious organization can only be used as a training facility if the location is neither primarily for sectarian/religious purposes nor used for any such activities during the hours of WIA program activity (29 CFR 37.6(f)(2)). No greater documentation may be required of the separation of sectarian/religious activities from WIA activities than is required of non-sectarian organizations to document any other separations.

iii) Must a sectarian/religious organization alter or disguise its physical appearance in anyway to be eligible as a service provider and/or training facility?

No. It is not necessary for a sectarian/religious organization to remove or alter its religious art, icons, scriptures, sculptures, or other spiritual symbols or objects in order to be used as a WIA service provider and/or training facility.

iv) What if the sectarian/religious organization charges fees for some of its services? Is the site still eligible to be a training site?

The organization may not profit from the WIA activity in which the participants are involved. If any fees are charged WIA participants for childcare, for example, they may be no more than sufficient to cover costs. Also, the facility may not be additionally rented to other organizations during the hours of WIA program activity.

v) May WIA participants at training sites in sectarian/religious facilities perform janitorial/ maintenance work?

Any maintenance performed by WIA participants on training facilities may only be to clean up or repair the site from WIA activity. Participants are not allowed to paint the facility or perform other maintenance that would “up-grade” it.

vi) May WIA participants perform the tasks normally done by employees at the sectarian/religious facility as part of their assignment?

WIA participants may not replace employees, perform sectarian tasks, nor do any other tasks that would enable facility employees to perform additional sectarian activities themselves. WIA participants may perform nonsectarian tasks that enable facility employees to perform additional nonsectarian activities if participant tasks may reasonably be expected to contribute to their job placement or retention.

vii) How does this policy apply to any voluntary staff or mentors at the sectarian/religious organization?

Every entity receiving WIA funding is responsible for the actions of anyone acting for it, whether that person is a paid employee or a volunteer. In other words, an unpaid volunteer is not to act in any way prohibited to a paid employee. The same restrictions apply to both.

viii) Must participants be of the same faith as the sectarian/religious organization?

No. Matching of WIA participants for the support service or training program must be done without regard to religious belief. Also, the sectarian/religious organization must provide its services on a non-discriminatory basis in order to be eligible for WIA, whether the activity is funded directly or indirectly. For example, a non-profit day care center operated at a sectarian/religious school may be used as a training facility for youth during the summer months. The location is allowable for directly funded WIA activities if the following conditions are met:

- (1) The site is used when no school is in session and a signed statement from the school is on file with the service provider or Alaska Workforce Investment Board (AWIB). Also, the signed statement from the school indicates that no sectarian/ religious activities will occur there during the hours of WIA program activity.

- (2) Any maintenance duties performed by WIA participants are only to clean up or repair from WIA activity. Participants would not be allowed to paint the facility or perform other maintenance that would be considered “up-grading” it.
- (3) The provision of childcare services is on a non-discriminatory basis and no sectarian/religious activities may occur during the WIA service provision.
- (4) The sectarian/religious organization may not profit from WIA money. In other words, the use of the childcare facility for WIA activities may not financially benefit the sectarian/religious organization beyond the fees or rent sufficient to cover the costs of operation.

6) **Responsibility**

- a) ***Eligible Training Provider Listing (ETPL)***. The ETPL includes all approved programs submitted by training providers to receive funds under the Workforce Investment Act (Public Law 105-220) Title I-B Individual Training Accounts. Each program is listed, along with the program’s performance, relative to criteria established by the AWIB. If a program meets these performance criteria, then WIA participants may be sent to those programs for training. Although some programs are exempt from meeting minimum performance criteria and inclusion on the ETPL, occupation or occupation group specific training courses of instructional programs, or individual programs of instruction, must meet minimum ETPL standards in order for WIA participants to engage in those training programs with WIA funding. Training programs must have approval to operate a postsecondary institution in Alaska by the Commission on Postsecondary Education prior to placement on the ETPL to receive grant funding. *AS 14.48.020*
- b) ***Non-Discrimination***. DOLWD workforce development professionals and grant recipients must be mindful of their responsibilities under the nondiscrimination provisions of WIA Section 188, and must not unfairly exclude individuals from opportunities or otherwise make decisions based upon race, color, religion, sex, national origin, age, political affiliation or belief, disability status, or citizenship. Comprehensive regulations implementing WIA Section 188 are stipulated in 29 CFR, *Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Final Rule*, to ensure non-discrimination under WIA Section 188.