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Executive Director

By email and mail

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Joel Klein, Chancellor
New York City Department of Education
52 Chambers St.
New York, N.Y.

Dear Chancellor Klein:

The NYCLU has received a number of complaints that the New York City Department of Education (DOE) procedures regarding the release of high school student names, addresses and even unlisted phone numbers to the military for recruiting purposes do not adequately protect the privacy of students and their families.

The “No Child Left Behind Act” mandates disclosure of student contact information to the military on request. But the federal law also affords crucial protections to students and their families which the August 22, 2002 DOE guidelines ignore.

The federal law gives **both students and parents**, the right to decide that their names, addresses and phone numbers can not be disclosed without prior parental approval. The DOE guidelines ignore the students’ rights in this regard. The guidelines also ignore Family Educational Records & Privacy Act (FERPA) which entitles those students who are 18 years of age or older to decide whether to release their contact information.

Moreover, in offering only a parental opt-out, the DOE sets up a system whereby many students and their families will unwittingly and by default, be subjected to the release of personal contact information to the military. Parental opt-outs typically receive little attention and even less response.

In reducing the privacy protections provided by federal law, the DOE guidelines go farther than the federal law requires to disclose student contact information. Instead of requiring written authorization to withhold student information from the military, the DOE could require written permission to release the information. That approach would provide meaningful protection for student privacy.

Disclosure of student names, addresses and possibly unlisted phone numbers without consent raises serious concerns about privacy. It subjects students and their families to the unwanted release of personal information to outside entities as a condition of exercising the right – and obligation -- to attend school. These concerns are magnified when the recipient of the information is the military. In our politically-charged post-9.11 environment, there is a good deal of pressure to engage in patriotic displays. Unsolicited recruiting letters from possibly every branch of the United States military may impose inappropriate pressure to respond. Moreover, for new immigrants, many of whom are particularly vulnerable in the aftermath of last year's terrorist attacks, the potential for intimidation and coercion is even greater.

The New York Civil Liberties Union urges you to protect the privacy of your students by **notifying students and their families** of their rights and by creating procedures that make it easy for them to opt out.

The NYCLU proposes the following corrective measures to protect student privacy:

- 1) Notify **students that they, as well as their parents, can choose to withhold their contact information from recruiters without prior parental consent.** Simple forms can be distributed for students to fill out in class.
- 2) Revise the notices and consent form so that failure to respond does not automatically put students' names and addresses on the lists that are released. For example the form could provide as follows:

If you do not return this form, _____ High School will assume that you do not authorize us to release the requested information and your child's name and contact information will not be released.
- 3) Give parents the opportunity to withhold their child's information from particular entities selectively.
- 4) Translate all forms and notices into other languages for immigrants who may not know English.

Finally, in an era of budget cuts, it is worth noting that the federal law is silent regarding the expenses associated with developing the list of students. The costs of complying with this federal mandate should not be met at the expense of classroom services. Moreover, nothing in the statute would preclude a school from passing along the costs of preparing the lists, including the safeguarding of student privacy rights, to the entity that requests it.

The "No Child Left Behind Act" also requires schools to give military recruiters the same campus access that is offered to representatives of higher education and prospective employers. Accordingly, schools are not required to give preferential treatment to military recruiters. For example, schools that require a forum for students to hear alternative views on controversial issues have the legal right to apply the rule to

military representatives. In addition, the Administrative Code of the City of New York, § 8-107(1), prohibits discrimination in employment based on “age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person.” The New York Court of Appeals has upheld the right of public schools in New York to apply non-discrimination requirements to the military.

Superintendent Albanese De Pinto’s August 22, 2002 memorandum states that “While we are committed to protecting the confidentiality of our students, we must comply with the law.” The current guidelines and practices accomplish neither.

I look forward to your response and would be happy to assist in developing a solution.

Sincerely,

Donna Lieberman

Cc: Rose Albanese-DePinto
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