



New York Civil Liberties Union, 125 Broad Street, 17th Floor, New York, NY 10004 Telephone (212) 344-3005 Fax (212) 344-3318

TO: School Officials and Interested Parents

From: Donna Lieberman

Date: October 11, 2002

Re: Threat to privacy posed by Military Recruitment Access provisions of the “No Child Left Behind Act”

We write to share information that can help preserve the individual privacy rights of high school students in your district. The “No Child Left Behind Act” passed in January 2002 requires that school districts receiving certain federal funding provide student names, addresses and phone numbers on request to various branches of the United States military for recruiting purposes. In addition, schools must allow military recruiters the same access to students as they do institutions of higher education and employers.

The law also requires that schools give both **students and parents** the opportunity to insist on affirmative parental consent before their contact information is disclosed.¹

Disclosure of student names, addresses and possibly unlisted phone numbers without consent raises serious concerns about privacy. It subjects students and their families to 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.

We realize that most schools have already begun the process of complying with the federal mandate, but we are concerned that many have failed to afford students the opportunity to exercise their right to insist on affirmative parental consent before contact information is disclosed.

¹ In addition, under the Family Educational Records & Privacy Act (FERPA) students over the age of 18 must be permitted to make the decision themselves.

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.

School districts can take the following steps to accomplish these goals:

- 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 or to bring home to a parent.
- 2) School districts can word the notification 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.

In addition, the federal law is silent regarding the expenses associated with developing the lists. Nothing in the statute would preclude a school district 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. Schools that exclude employers that practice discrimination have the legal right to also apply that policy to the military, which engages in discrimination based on sexual orientation. The New York Court of Appeals has upheld the right of public schools in New York to apply non-discrimination policies to the military.

To assist you in addressing these issues we have prepared the enclosed consent form and summary of the applicable law.

We would be happy to answer any questions you may have on this topic. We can be reached at: 212-344-3005 x225 (Beth Haroules), x245 (Michael Chait), or x232 (Donna Lieberman). You can also contact us at the special email address we have set up to address this issue: studentprivacy@nyclu.org.

Summary of the Military Recruiter Access Provisions of the *No Child Left Behind Act*.

No Child Left Behind Act

On January 8, 2002, President Bush signed into law the No Child Left Behind Act ("NCLB"), Public Law 107-110. This legislation addresses academic standards, teacher quality and school safety, and expands federal involvement in the design of state testing and accountability systems.² It also imposes requirements regarding the disclosure of student contact information to military recruiters.

Release of Student "Directory" Information

Under section 9528 of the NCLB,³ local school districts are required to disclose the names, addresses, and telephone numbers of high school students upon request by

² There is a NCLB website devoted exclusively to information on the reauthorization of the Elementary and Secondary Education Act. See <http://www.nclb.gov>.

³ Specifically, section 9528 provides as follows:

SEC. 9528. ARMED FORCES RECRUITER ACCESS TO STUDENTS AND STUDENT RECRUITING INFORMATION.

(a) POLICY-

(1) ACCESS TO STUDENT RECRUITING INFORMATION- Notwithstanding section 444(a)(5)(B) of the General Education Provisions Act and except as provided in paragraph (2), each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

(2) CONSENT- **A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent**, and the local educational agency or private school shall not ify parents of the option to make a request and shall comply with any request.

(3) SAME ACCESS TO STUDENTS- Each local educational agency receiving assistance under this Act shall provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

(b) NOTIFICATION- The Secretary, in consultation with the Secretary of Defense, shall, not later than 120 days after the date of enactment of the No Child Left Behind Act of 2001, notify principals, school administrators, and other educators about the requirements of this section.

(c) EXCEPTION- The requirements of this section do not apply to a private secondary school that maintains a religious objection to service in the Armed Forces if the objection is verifiable through the corporate or other organizational documents or materials of that school.

(d) SPECIAL RULE- A local educational agency prohibited by Connecticut State law (either explicitly by statute or through statutory interpretation by the State Supreme Court or State Attorney General) from providing military recruiters with information or access as required by this section shall have until May 31, 2002, to comply with that requirement.

military recruiters and institutions of higher learning, **unless** individual students or their parents request that the information not be released without prior written consent. Your school district must inform your students and their parents of their “opt-out” rights under this section and your school district must comply with any request for non-disclosure received.

Section 9528 of the NCLB does not require disclosure of any information that is not considered directory information under the Family Educational Rights & Privacy Act of 1974 (FERPA), or the Buckley Amendment, 20 USC 1232g, and, in fact, mirrors the provisions of FERPA insofar as it requires a mechanism by which parents/student may withhold consent to the disclosure of directory information to military recruiters.⁴

School Access to Military Recruiters

In addition, the school districts are obligated to provide military recruiters with the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students. NCLB §9528(a)(3). This provision is similar to N.Y. Educ. Law §2-a. Under New York’s Education Law §2-a, districts that release “directory information relating to pupils” or provide access to school grounds and facilities “to persons who inform pupils of educational, occupational or career opportunities” must provide the military with the same access.

Two New York state courts, including the Court of Appeals, have ruled that a district may restrict military recruitment based on the military’s failure to adhere to a school’s non-discrimination policies. *See, e.g., Lloyd v. Grella*, 83 N.Y.2d 537 (1994)(Rochester City School Board non-discrimination policy); *Doe v. Rosa*, 606 N.Y.S. 2nd 522 (Sup. Ct. N.Y. Co. 1993).

The courts specifically rejected the argument that N.Y. Educ. Law §2-a, directing institutions to grant military recruiters access "on the same basis" as other recruiters, means that the military can receive preferential treatment or have an automatic right of access to the student body and determined that the military recruiters were obligated to adhere to the same anti-discrimination policies as other institutions recruiting in the schools – if the recruiters could not comply, they could be denied access to the student body. According to the American Friends Service Committee National Youth & Militarism Program web site, few school districts have policies that regulate recruitment behavior at all, much less establish non-discrimination policies.⁵ If your school district does not have such policies, you may wish to consider promulgating them.

⁴ §1232g(b)(1), (2); §1232g(a)(5)(B).

⁵ See <http://www.afsc.org/youthmil/html/news/june00/hsrecr%5Fp1.htm>

PARENT CONSENT FORM
for
RELEASE of STUDENT NAME, ADDRESS and PHONE NUMBER

Our school may be requested to provide the names and addresses of high school students to military recruiters, colleges and other groups. **You do not have to participate in this program.**

Please check below to indicate whether you wish to have your child's name, address and telephone number disclosed to the groups that may request it.

_____ DO NOT DISCLOSE my child's contact information without my prior permission.

or

_____ DO NOT DISCLOSE my child's name, address and telephone number to the entities checked below without my prior permission:

_____ US military (Army, Navy, Air Force, Marines, etc.)

_____ Colleges and other educational institutions

_____ Prospective employers

or

_____ I authorize _____ School to disclose my child's name, address and phone number as part of the school directory.

If you do not return this form, _____ High School will assume that you do not authorize us to release the requested information and the student's name, address and phone number will not be released.

NAME _____

Student's Name _____

Signature _____

Date:

STUDENT CONSENT FORM
For
RELEASE of NAME, ADDRESS and PHONE NUMBER

Our school may be requested to provide the names and addresses of high school students to military recruiters, colleges and other groups.

As a student you have the right to request that the information not be released without prior written consent from your parents or from you if you are 18 or older.

Please check below to indicate whether you wish to have your name, address and telephone number disclosed to the groups that may request it.

_____ DO NOT DISCLOSE my contact information without prior permission.

or

_____ DO NOT DISCLOSE my name, address and telephone number to the entities checked below without prior permission:

_____ US military (Army, Navy, Air Force, Marines, etc.)

_____ Colleges and other educational institutions

_____ Prospective employers

or

_____ I authorize _____ School to disclose my name, address and phone number as part of the school directory.

If you do not return this form, _____ High School will assume that you do not authorize us to release the requested information and the student's name, address and phone number will not be released.

NAME _____

Signature _____

Date:

Check here is you are over 18 []