

September 22, 2003

To All Principals, Albany County High Schools, Columbia County High Schools, Greene County High Schools, Rensselaer County High Schools, Saratoga County High Schools, Schenectady County High Schools, Warren County High Schools and Washington County High Schools

Re: Military Recruitment of Your Students

We understand that over the summer you may have received a letter from a local Department of the Army official demanding that you provide the military with information about current and past students of yours. That letter, a copy of which we enclose, contains many inaccuracies and calls for actions on your part that would violate student privacy rights.

We therefore write to provide you with accurate information about your obligations when it comes to military recruiting and to inform you of various options available to you and your staff to protect the privacy interests of your students. We also are available to answer questions or to provide you with additional assistance.

As you presumably know, two recently enacted federal statutes do require school districts to take certain actions with respect to efforts by the United States military to recruit high-school students. (Those statutes are the "No Child Left Behind Act" ("NCLB"), and the "National Defense Authorization Act for Fiscal Year 2002" ("NDAA")). Unfortunately, the letter you received from Commanding Officer Lawrence Mullany misstates the obligations imposed on school officials by these statutes in a number of important respects:

1. Schools Cannot Release Any Information Before Offering Students and Families the Opportunity to Object- The Army letter directs schools to release student information before notifying parents and students of their rights to object. Instead, the letter promises to purge the names of those students who have objected after the fact. [paragraphs 3 and 4]. This directive violates both NCLB and NDAA.

Prior to any disclosure of directory information under NCLB and NDAA, a school must advise students and their parents that they may object to the disclosure of directory information without written parental consent and the school may not release student directory information if the student or parent objects.

2. Schools Cannot Release Information about Former Students- The Army letter directs schools to release information pertaining to former students [paragraph 1]. NCLB and NDAA do not authorize the release of directory information except with respect to those students who are currently enrolled in your high school.

3. Schools Cannot Release Information about any Student Who Is Not a Senior or Junior- The Army letter directs recipient schools to provide information pertaining to all students, regardless of age or grade level [paragraph 1]. The U.S. Department of Education and the U.S. Department of Defense have restricted NCLB and NDAA military recruiter access to information concerning only those students who are seventeen years of age or older or are in the eleventh grade or higher.
4. Schools Cannot Release Students E-mail addresses, Ages or Birthdates- The Army letter directs recipient schools to provide this information as well as student email addresses, ages or dates of birth, and class levels [paragraph 1]. NCLB and NDAA permit military recruiter access only to “student names, addresses and telephone numbers.”
5. Schools Are Not Required by the Statutes to Employ an “Opt-Out” Procedure- The Army letter states that NCLB and NDAA prohibit schools from establishing an “opt in” procedure for disclosure [paragraph 2]. While it is true that these statutes direct schools to comply with a request for student directory information, they are silent as to how a school must comply.

Though many schools have chosen an “opt-out” approach to military recruitment, some have implemented “opt-in” procedures. The NYCLU believes that the laws permit school personnel to choose either procedure.

Whether it chooses an “opt-in” or an “opt-out” procedure, every school must notify students and/or parents of their rights and give them the opportunity either to permit or to block disclosure of student directory information to military recruiters. The school must then compile the positive responses and give the information to the arm of the military that has requested it. As long as the school provides a list of names, addresses and phone numbers to the military, it is in compliance with NCLB and NDAA.

6. Schools Are Not Required to Adopt an “All or Nothing” Approach to Disclosure of Student Directory Information- The Army letter states that NCLB and NDAA require that when a student opts out of military recruiting, the student must be excluded from all student contact lists, including those provided to colleges and yearbook companies [paragraph 2]. Federal law requires only that parents and students be given the opportunity to withhold their information from military recruiters and does not address the issue of disclosing student directory information to any other third party -- including colleges. Accordingly, even schools employing opt-out procedures can and should allow students to opt-out of only military recruiting.
7. Schools Are Not Required to Provide Student Information Within 5 Days- The Army letter states that school officials must provide student information within five business days of receipt of the letter (or within ten business days if the school does not “intend to comply with current federal and state laws”) [paragraph 3]. There is no legal basis for these directives, as neither statute sets forth any timeframe for response. Accordingly,

schools should respond within a reasonable time that permits notice and exercise of students' and parents' rights to opt into or out of disclosure.

The New York Civil Liberties Union urges you to protect the privacy of your students by setting up user-friendly procedures that notify students and their families of their rights under NCLB and NDAA and makes it easy to for them to control the disclosure of their student directory information. The following measures would go a long way towards accomplishing these goals:

- Students should be notified that students, as well as their parents, can choose to withhold their contact information from recruiters without prior written parental consent. Simple forms can be distributed for students to fill out in class. Students should also be given forms to bring home to a parent.
- School districts can set up a procedure whereby students' names and addresses are put on the lists that are released only when there is affirmative consent. For example the form could provide as follows:

If you wish to opt-out, do not return this form. Your decision not to return the form will be taken as an instruction to _____ High School not to release the requested information and your child's name and contact information will not be released.

- If a school pursues an "opt out" procedure, the school should inform students and their parents that contact information will be disclosed unless they object. For example the form could provide as follows:

If you decide not to opt-out and indicate that you object to the disclosure of your/your child's name and contact information to military recruiters, _____ High School must release that information.

- Parents should be given the opportunity to withhold their child's information from various entities selectively.
- All forms and notices should be translated into other languages for members of immigrant communities attending the schools in your district. The federal law is silent regarding the expenses associated with developing the list of students. 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.

Finally, though NCLB and NDAA require schools to give military recruiters the same campus access that is offered to representatives of higher education and prospective employers,

schools are not required to give preferential treatment to military recruiters.¹ For example, schools that require a forum for students to hear alternative views on controversial issues should apply the rule to military representatives. Schools that exclude employers that practice discrimination, should 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.

We would be happy to answer any questions you may have on this topic, and we have a more extensive analysis of the federal law available if you would like to have it. Please contact Beth Haroules or Alan Silver at 212-344-3005. You can also e-mail them at bharoules@nyclu.org or asilver@nyclu.org.

Sincerely,

Donna Lieberman
Executive Director

Beth Haroules
Alan Silver
Staff Attorneys

¹ The Albany Recruiting Battalion has offered to provide “the Armed Services Vocational Aptitude Battery (ASVAB) ... [and other] tools such as student achievement awards, physical fitness programs [...] chaperones [and] mentors” to the students in the recipient schools. A school that accepts such offers of assistance from the military may very well be found to have afforded the military preferential access to the student body.

**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.

Your decision not to return the form will be taken as an instruction to _____ High School not to release the requested information and your child’s name and contact information will not be released.

NAME [please print] _____

Student’s Name [please print] _____

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.

Your decision not to return the form will be taken as an instruction to _____ High School not to release the requested information and your name and contact information will not be released.

NAME [please print] _____

Signature _____

Date _____

Check here if you are over 18 []