



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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Donna Lieberman
Executive Director

September 23, 2005

Richard P. Mills, Commissioner
James A. Kadamus, Deputy Commissioner
Office for Elementary, Middle, Secondary and Continuing Education
The State Education Department
The University of the State of New York
Room 875 EBA
Albany, New York 12234

*Re: United States Department of Education Confirms that Students **are Permitted to “Opt Out”** from Military Recruitment Access provisions of the “No Child Left Behind Act”*

Gentlemen:

As you know, 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 **students and parents** the opportunity to insist on affirmative parental consent before their contact information is disclosed.¹

On Friday, September 16, 2005, the Family Policy Compliance Office of the United States Department of Education (FPCO), which administers the military recruiter provisions of the No Child Left Behind Act², confirmed that **students** are permitted to exercise opt out rights under No Child Left Behind.

Under the military recruiter provisions, a school is required to notify parents and provide them with an opportunity to opt out. However, **because the statute also mentions that students may opt out**, we have determined that **a school must honor a request made by a student** who took the

¹ Students over the age of 18 must be permitted to make the decision themselves. *See* 20 § 1232g(d).

² FPCO is also charged with administering the Family Educational Rights and Privacy Act, or FERPA.

initiative to tell a school **not to disclose his or her name, address, & telephone number to military recruiters.** The confusion over this issue is due to the fact that the question has only recently been raised to us and we have not issued any guidance on this matter (emphasis supplied).³

The New York State Department of Education September 24, 2002 “field memo,” *Access of Military Recruiters to Student Recruiting Information*,⁴ does briefly note “a secondary school student or a parent of the student may request that such information not be released without prior written parental consent.” However, the “field memo” fails to indicate that local educational agencies are required to comply with any such request made by a student. We respectfully urge that you revise your “field memo” immediately to reflect this fact.

In the past, the New York Civil Liberties Union has objected to the opt-out process because it overwhelmingly results in students being retained on the lists involuntarily by default. Parental opt-out notices often fail to get home or, if they do, are rarely returned. A properly administered student opt-out procedure would address much of our concern if administered in class and collected on the spot, with an option to submit the form for a reasonable period thereafter. Parents, of course, would still be offered the opportunity to overrule their minor child’s decision. The New York City Department has adopted such a policy and the NYCLU will be monitoring its implementation this fall.

Time is of the essence with respect to this issue – as you are, no doubt, aware, many school districts are in the process of formulating their “opt out” lists and assembling student contact information requested by the various recruiting branches of the United States military.

We would be happy to answer any questions you may have on this topic. We can be reached at: 212-344-3005 x 232 (Donna Lieberman), x 263 (Jeffrey Fogel), or x265 (Maggie Gram). You can find out more about these issues at our website: www.nyclu.org. You can also contact us via email: mgram@nyclu.org

Very truly yours,

Donna Lieberman
Jeffrey Fogel

enclosure

³ The confirmation is not yet contained in an official “Guidance.” See email from Ellen Campbell, Family Policy Compliance Office, United States Department of Education, ferpa@ed.gov, dated September 16, 2005, 10:50 a.m., to Mike Dedrick. Copy attached.

⁴ The field memo is located on your website at <http://www.emsc.nysed.gov/deputy/Documents/militaryrecruiters-fm.html>.