



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.344.3005
212.344.3318
www.nyclu.org

Donna Lieberman
Executive Director

September 20, 2005

Karen McNamara
Deputy Director for Policy Services
New York State School Boards Association
24 Century Hill Drive, Suite 200
Latham, New York 12110-2125

*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"*

Dear Ms. McNamara:

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 initiative to tell a school **not to disclose his or her name, address, & telephone number to military recruiters**. The confusion over this issue is

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).

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 NYSSBA sample policy, *Opt-out of Information to Military Recruiters*,⁴ does note “the right of their child to request that the district not release such information without prior written parental consent.” However, the “Note to the Board” and the “Withholding Consent” form indicate only a parental right to withhold consent. We respectfully urge that you revise your “Note to the Board” and attached consent form immediately to reflect the student’s right to request that the district not release student contact information without prior written parental consent.

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

cc: Jay Worona, General Counsel

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 This sample policy is located on your website at http://www.nyssba.org/ScriptContent/VA_Custom/va_cm/ContentPageDisplay.cfm?content_id=1652.