



UNITED STATES DEPARTMENT OF EDUCATION
UNITED STATES DEPARTMENT OF DEFENSE



July 2, 2003

Dear Chief State School Officer:

It has come to our attention that some of your State's local educational agencies (LEAs) may have policies regarding the release of student information to military recruiters that are contrary to the law.¹ The Family Policy Compliance Office (FPCO) within the Department of Education is responsible for ensuring that the military recruiter provisions of the *No Child Left Behind Act of 2001* are carried out in accordance with the intent of the statute and looks forward to working with you.

As you know, Congress has passed two statutes that require LEAs receiving assistance under the *Elementary and Secondary Education Act of 1965* (ESEA) to afford military recruiters the same access to secondary school students as they provide to postsecondary institutions or to prospective employers. These laws also generally require LEAs to provide secondary school students' names, addresses, and telephone listings to military recruiters, when requested.

In October 2002, Secretary Rod Paige and Secretary Donald Rumsfeld jointly issued guidance to our Nation's schools. Enclosed is a copy of that guidance. It is also available on FPCO's Web site at http://www.ed.gov/offices/OII/fpc0/hot_topics/ht_10-09-02.html. Our guidance assists schools as they inform parents about the new requirements. It is important to note that under the statutes parents may "opt out" of allowing schools to provide information about their children to military recruiters.

Some LEAs may be confused by the application of 10 U.S.C. § 503, which allows LEAs, by majority vote of the LEA governing body, to have a policy that denies military recruiters access to students or "directory information" about those students.² However, the subsequently enacted *No Child Left Behind Act of 2001* does not include such an exception. Therefore, while a school board enacting such a policy would be exempt from the intervention provisions of 10 U.S.C. § 503, the LEA could still be subject to potential Department of Education enforcement actions. The *No Child Left Behind Act of 2001* makes it clear that, even if an LEA does not have a policy of disclosing "directory information" under the *Family Educational Rights and Privacy Act* (FERPA), the LEA must still comply with a request from a military recruiter for names, addresses, and telephone listings of students.

A second apparent area of confusion for LEAs has involved the "opt out" provision of the law. Our Departments have received copies of school district letters and newspaper accounts of some LEA actions that misapplied the law by conditioning the disclosure of student information to military recruiters upon first receiving a parent's written consent – essentially establishing an "opt-in" notification process. Contrary to an "opt-in" process, the referenced laws require an "opt-out"

¹ § 9528 of the *Elementary and Secondary Education Act* (20 U.S.C. § 7908), as amended by the *No Child Left Behind Act of 2001* (P.L. No. 107-110); 10 U.S.C. § 503, as amended by § 544 of the *National Defense Authorization Act for Fiscal Year 2002* (P.L. No. 107-107).

² 10 U.S.C. § 503(c)(5)(A).

notification process whereby parents are notified and have an opportunity to request that the information not be disclosed without their consent, similar to the “directory information” provisions under FERPA. The referenced laws do not permit LEAs to institute a policy of not providing the required information unless a parent has affirmatively agreed to provide the information.

While the Department of Education is committed to working with LEAs to achieve voluntary compliance with the law, a number of options are available to help ensure that State Educational Agencies (SEAs) monitor LEAs and ensure compliance. Those options include the ability to withhold payments, issue cease and desist orders, and recover funds. *See* 20 U.S.C. § 1234c, et. seq.

We are asking you to review your State’s LEA actions and report to the FPCO at the Department of Education, within three weeks of the date of this letter, on the steps your agency has taken or will take to ensure that your State’s LEAs are in compliance with these laws. If some of your State’s LEAs are not then in full compliance, please include in your response a compliance action plan and schedule. We are enclosing a list of your State’s LEAs that may have policies that are inconsistent with the referenced statutes.

Please note that the FPCO routinely provides training sessions on the requirements of FERPA, the Protection of Pupil Rights Amendment, and the military recruiter provisions of the *No Child Left Behind Act of 2001*. These sessions are a service of the Department of Education designed to assist you by providing LEA and SEA officials an enhanced understanding of the laws administered by FPCO, as well as advice and guidance for complying with those laws. If your State department of education is interested in sponsoring such compliance training sessions, please let FPCO know, and that office can work with the appropriate officials in making arrangements for the training on either a statewide or regional basis.

If you have any questions about this matter, please do not hesitate to contact FPCO at the following address or telephone number:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4605
(202) 260-3887.

We appreciate your attention to this important matter.

Sincerely,

/s/

William D. Hansen
Deputy Secretary of Education

/s/

David S. C. Chu
Under Secretary of Defense
(Personnel and Readiness)

Enclosures