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BECAUSE FREEDOM CAN'T PROTECT ITSELF

July 15, 2009

Dear School Administrator:

Since the fall semester is approaching, we 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, the No Child Left Behind Act (NCLB) requires school districts to take certain actions with respect to efforts by the United States military to recruit high-school students.

1. Schools Cannot Release Any Information Before Offering Students and Families the Opportunity to Object- Prior to any disclosure of directory information under NCLB, 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- NCLB does 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 U.S. Department of Education and the U.S. Department of Defense have restricted NCLB 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- NCLB permits 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- Though many schools have chosen an "opt-out" approach to military recruitment, some have implemented ""opt-in"" procedures. The ACLU Nebraska 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 ACLU Nebraska.

6. Schools Are Not Required to Adopt an "All or Nothing" Approach to Disclosure of Student Directory Information- 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 Must Allow a Reasonable Amount of Time to Respond - 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 ACLU Nebraska 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 makes it easy for them to control the disclosure of their student directory information. The following measures would go a long way towards accomplishing these goals:

8. Students May Opt Out, Not Just Parents - 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.

Parents report that they find it most effective if they are sent an actual form to advise them of their privacy rights. We urge you to affirmatively provide the information to parents in a manner that is designed to draw attention to their rights rather than simply "burying" the information. A sample form is included with this letter as a model.

Finally, I should advise you that a school that releases private student information against the wishes of a parent who has completed an "opt out" form runs the risk of liability under both civil rights and tort law. Therefore, we strongly encourage you to review procedures to ensure that the information conveyed to military recruiters is limited as described above and omits all families who have requested an "opt out."

Please feel free to contact us if you have questions.

Very Truly Yours,

Amy A. Miller
Attorney at Law

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Student Refusal Form for Military Recruiter Information Requests

Unless you or your parents request otherwise, our school is required by federal law to give your name, address, and phone number to any military recruiter who asks. Nebraska schools usually receive several requests like this each school year.

If you are under 18 years old, you can ask that your information NOT be released to military recruiters unless your parents consent. This means that your parents need to formally approve any release. If your school can't reach your parents, or if they don't respond, your information will not be released.

If you do not make this request, release of your information is automatic when recruiters ask, with no approval from you or your parents required.

Please sign below if you wish to require parental approval:

Please DO NOT release my information to military recruiters unless my parents are contacted and provide written permission.

(Signature)

(Your Name and Grade)

Date

If you are 18 years old or over, you can ask that your information NOT be released to recruiters unless YOU consent to the specific request. Please sign below if you wish to require your own consent:

Please DO NOT release my information to military recruiters unless I consent. I am 18 years old or above.

(Signature)

(Your Name and Grade)

Date

RETURN THIS FORM TO SCHOOL PERSONNEL AS SOON AS POSSIBLE.