



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/fpc/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



UNITED STATES DEPARTMENT OF EDUCATION
UNITED STATES DEPARTMENT OF DEFENSE



October 9, 2002

Dear Colleague:

For more than 25 years, the Armed Forces of our Nation have been staffed entirely by volunteers. The All-Volunteer Force has come to represent American resolve to defend freedom and protect liberty around the world. Sustaining that heritage requires the active support of public institutions in presenting military opportunities to our young people for their consideration.

Recognizing the challenges faced by military recruiters, Congress recently passed legislation that requires high schools to provide to military recruiters, upon request, access to secondary school students and directory information on those students. Both the *No Child Left Behind Act of 2001* and the *National Defense Authorization Act for Fiscal Year 2002* reflect these requirements.

In accordance with those Acts, military recruiters are entitled to receive the name, address, and telephone listing of juniors and seniors in high school. As clarified in the enclosure, providing this information is consistent with the *Family Educational Rights and Privacy Act*, which protects the privacy of student education records. Student directory information will be used specifically for armed services recruiting purposes and for informing young people of scholarship opportunities. For some of our students, this may be the best opportunity they have to get a college education.

The support by our Nation's educational institutions on behalf of the U.S. Armed Forces is critical to the success of the All-Volunteer Force. It can be, and should be, a partnership that benefits everyone. As veterans, and as Cabinet Members serving the President, we can attest to the excellent educational opportunities the military affords, as well as an environment that encourages the development of strong character and leadership skills.

The Department of Education and Department of Defense have worked together to provide you the enclosed guidelines for compliance with these new laws. We encourage you to examine the enclosed information carefully and to work closely with military recruiters as they carry out their important public responsibilities.

Sincerely,

Rod Paige
Secretary of Education

Donald H. Rumsfeld
Secretary of Defense

Enclosure

MEMORANDUM OF UNDERSTANDING
BETWEEN THE DEPARTMENT OF DEFENSE
AND THE DEPARTMENT OF EDUCATION
REGARDING ENFORCEMENT OF
RECRUITER ACCESS TO HIGH SCHOOLS

I. Purpose and Authorities

A. This Memorandum of Understanding (MOU) between the Department of Defense (DoD) and the Department of Education (DoED) sets forth the terms and conditions under which the legislation providing military recruiter access to high schools will be enforced by both Departments.

B. This MOU implements Title 10 U.S.C. § 503, as amended by section 544 of the *National Defense Authorization Act (NDAA) for Fiscal Year 2002* (Pub. L. No. 107-107), and as further amended by section 543 of the *NDAA for Fiscal Year 2004* (Pub. L. 108-136); and section 9528 of the *Elementary and Secondary Education Act* (Title 20 U.S.C. § 7908), as amended by the *No Child Left Behind Act of 2001 (NCLB)* (Pub. L. No. 107-110).

II. Background

A. In section 571 of the *NDAA for Fiscal Year 2000* (Pub. L. No. 106-65), Congress included a provision to require high schools to allow military recruiters the same access to campuses as that provided to university recruiters or other prospective employers' representatives and to provide student directory information (name, address, and telephone listing) to military recruiters upon request for the purpose of military recruiting. In section 563 of the *NDAA for Fiscal Year 2001* (Pub. L. No. 106-398), Congress further modified Title 10 U.S.C. § 503 establishing:

1. Exemptions for (a) private religious schools based on religious beliefs which historically are in opposition to the use of force, and (b) school districts whose school boards have adopted a policy that prevents the entry of military recruiters to campuses or the release of student directory information.

2. Consequences for offenders include visits by senior military officers followed by notification to the State governor, and if non-compliance continues, notification to the appropriate Congressional committee.

B. The *NCLB*, which was enacted in 2001, included language matching that previously included in the *NDAA* to require high schools to allow military recruiters access to campuses and to provide student directory information, with two differences:

1. No exemption afforded to school districts with a local policy preventing recruiter access.

2. Consequences for schools not in compliance may include loss of DoED funding.

C. In the *NDAA for Fiscal Year 2002* (Pub. L. No. 107-107), Congress amended the first paragraph of Title 10 U.S.C. § 503, adding a subparagraph that prohibits a local educational agency (LEA) from releasing student directory information without prior written consent of the parent of a

student if the student or parent of the student has requested the information not be released without prior written parental consent. Each LEA is required to notify parents of this right, which is known as the "opt out" provision.

D. In the *NDAA for Fiscal Year 2004* (Pub. L. No. 108-136), Congress removed the exemption for school districts with a school board policy from Title 10 U.S.C § 503, thus standardizing the affected population of schools under both Acts.

E. As the DoD and the DoED are jointly charged with enforcing military recruiter access standards, and each Department has a significant interest in enforcing those standards, this MOU outlines the process by which their actions may be coordinated.

III. Allocation of Responsibilities

A. Military Recruiters and Recruiting Commands – Request visits to public high schools in their area of responsibility as well as lists of student directory information as identified in statute.

1. In cases where visits or student directory information lists are denied, reflect this information in the Recruiter Access to High Schools (RAHS) database maintained by the Defense Manpower Data Center (DMDC). Service Recruiting Commands should ensure that access as experienced by their recruiters during the Fall school term is accurately reflected in the RAHS database no later than December 31, and further updates based on access changes during the Spring term are entered no later than June 30.

2. Complete visits by senior military officers, as required, and annotate in RAHS.

B. Defense Manpower Data Center – Maintain the RAHS database under guidance of the Office of the Deputy Under Secretary of Defense (Military Personnel Policy) (Accession Policy Directorate).

C. Deputy Under Secretary of Defense (Military Personnel Policy), under the Under Secretary of Defense (Personnel and Readiness):

1. Review the status of school access twice each year, in January and July, by pulling reports from the DMDC database identifying schools that deny either campus access or access to student directory information to military recruiters of two or more Services. Coordinate the report with Service Recruiting Commands to verify accuracy prior to action.

2. In cases of continued denial of access, carry out appropriate notifications by preparing correspondence to State Governors at the 120-day point, and to congressional committees at the 1-year point, as appropriate. Correspondence should be from the Secretary of Defense or his designated representative.

3. Provide the list of noncompliant schools to the DoED representatives within 14 days of verification.

D. Department of Education (Family Policy Compliance Office (FPCO)):

1. Using the list provided by the DoD in January and July each year, and after receiving signed and dated copies from DoD officials affirming noncompliant LEAs, the FPCO will notify via certified mail the chief State school officers who represent any noncompliant LEAs, as well as the superintendents of the noncompliant LEAs. Notice to any noncompliant State and the respective noncompliant LEAs shall include information about the NCLB's military recruiter access provision and its associated compliance issues, the list of noncompliant LEAs, and copies of the DoD documents to verify the non-compliance. Such notification shall also include: (a) the ramifications of the State's continued non-compliance; (b) a response date (21 calendar days from the State's receipt of the notice); (c) a description of information needed to confirm the State's compliance, including a written assurance that the State and its LEAs will comply with this provision of NCLB; and (d) a description of a State's compliance action plan, which assures compliance within not more than 30 days beyond the 21-day due date after the State response, if the State is unable to comply within 21 days.

2. At the end of the 21-day period, the FPCO will review all State responses to confirm that appropriate information has been received by each noncompliant State or contact the State to discuss the need for additional information. To confirm the State's compliance, the FPCO will confer with DoD staff. Alternately, if no response is received from the chief State school officer in a noncompliant State after the original 21-day deadline, the FPCO staff will resend its original letter along with a second notice to the chief State school officers, the superintendent(s) of the noncompliant LEA(s), and the respective Governor's office by certified letter informing those officials of the non-compliance. If after receipt of the Department's second notice, the noncompliant State fails to respond as described above or otherwise fails to comply, the FPCO will notify DoD to consider further action as authorized by law.

IV. Points of Contact – Unless otherwise specified, the point of contact for the implementation of this MOU within the DoD shall be the Accession Policy Directorate within the Office of the Deputy Under Secretary of Defense (Military Personnel Policy). The point of contact within the DoED shall be the Family Policy Compliance Office.

VI. Implementation and Termination

A. This MOU shall become effective immediately upon the later date of signature below. It shall remain in effect until terminated. While in effect, performance under this MOU by both parties is mandated.

B. This MOU may be terminated by either party. Termination shall occur 60 days after a party gives written notice to the other party of its intention to terminate, unless the parties agree in writing to a different notice period.

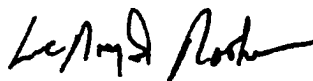
Department of Defense



William J. Carr
Acting Deputy Under Secretary
(Military Personnel Policy)

Date: APR 11 2005

Department of Education



LeRoy S. Rooker
Director, Family Policy Compliance Office

Date: APR 14 2005