

October 9, 2002

Access to High School Students and Information on Students by Military Recruiters

Q. What are the recent changes made by Congress concerning military recruitment of high school students?

A. Congress has passed two major pieces of legislation that generally require local educational agencies (LEAs) receiving assistance under the *Elementary and Secondary Education Act of 1965* (ESEA)¹ to give military recruiters the same access to secondary school students as they provide to postsecondary institutions or to prospective employers. LEAs are also generally required to provide students' names, addresses, and telephone listings to military recruiters, when requested.

Q. Where are these statutory requirements found?

A. These requirements are contained in § 9528 of the ESEA (20 U.S.C. § 7908), as amended by the *No Child Left Behind Act of 2001* (P.L. No. 107-110), the education bill Congress recently passed.

These requirements are also contained in 10 U.S.C. § 503, as amended by § 544 of the *National Defense Authorization Act for Fiscal Year 2002* (P.L. No. 107-107), the legislation that provides funding for the nation's armed forces in fiscal year 2002.

Q. What is the effective date for these military recruiter access requirements?

A. While there are differences in the effective date provisions for 10 U.S.C. § 503 and § 9528 of the ESEA, both provisions apply to all LEAs receiving ESEA funds by not later than July 1, 2002.

Q. What are the requirements of § 9528 of the ESEA?

A. Each LEA that receives funds under the ESEA must comply with a request by a military recruiter or an institution of higher education for secondary students' names, addresses, and telephone numbers, unless a parent has "opted out" of providing such information. (See below for additional information.)

Section 9528 also requires LEAs that receive funds under the ESEA to provide military recruiters the same access to secondary school students as they generally provide to postsecondary institutions or prospective employers. For example, if the school has a policy of allowing postsecondary institutions or prospective employers to come on school property to provide information to students about educational or professional opportunities, it must afford the same access to military recruiters.

¹ If the LEA receives funds under the ESEA, all the secondary schools in that LEA are subject to the requirements in these laws.

- Q. Under § 9528 of the ESEA, what notification must LEAs provide to parents before disclosing names, addresses, and telephone numbers of secondary students to military recruiters and officials of institutions of higher education?
- A. Under FERPA, an LEA must provide notice to parents of the types of student information that it releases publicly. This type of student information, commonly referred to as “directory information,” includes such items as names, addresses, and telephone numbers and is information generally not considered harmful or an invasion of privacy if disclosed. The notice must include an explanation of a parent’s right to request that the information not be disclosed without prior written consent. Additionally, § 9528 requires that parents be notified that the school routinely discloses names, addresses, and telephone numbers to military recruiters upon request, subject to a parent’s request not to disclose such information without written consent. A single notice provided through a mailing, student handbook, or other method that is reasonably calculated to inform parents of the above information is sufficient to satisfy the parental notification requirements of both FERPA and § 9528. The notification must advise the parent of how to opt out of the public, nonconsensual disclosure of directory information and the method and timeline within which to do so.
- Q. If an LEA has not provided notice relating to “directory information,” may it release a student’s name, address, and telephone number when requested by a military recruiter?
- A. As noted above, an LEA may provide a single notice regarding both directory information and information disclosed to military recruiters. If an LEA does not disclose “directory information” under FERPA, then it must still provide military recruiters access to secondary students’ names, addresses, and telephone listings. In addition, the LEA must notify parents that they may opt out of this disclosure. In other words, an LEA that does not disclose “directory information” must nonetheless provide a notice that it discloses information to military recruiters. The notice must be reasonably calculated to inform parents.
- Q. If a parent opts out of the public, nonconsensual disclosure of directory information (or any subset of such information), must the three data elements be released to military recruiters upon their request?
- A. If a parent opts out of providing directory information to third parties, the opt-out relating to name, address, or telephone number applies to requests from military recruiters as well. For example, if the opt-out states that telephone numbers will not be disclosed to the public, schools may not disclose telephone numbers to military recruiters.
- Q. If the school does not list one or more of the three data elements (e.g., telephone number) among its directory information, may it release that information to military recruiters?
- A. If a school does not designate one or more of the three items as “directory information” under FERPA, it still must provide all three items to military recruiters upon request. Also, in that case, the school would have to send a separate notice to parents about the missing “directory information” item(s), noting an opportunity to opt out of disclosure of the information to military recruiters. An easier method, of course, would be for the school to designate all three items – name, address, and telephone listing – as “directory information.”

- Q. How are the requirements under § 9528 of the ESEA enforced?
- A. Schools that do not comply with § 9528 of the ESEA could jeopardize their receipt of ESEA funds.
- Q. How does § 544 of the *National Defense Authorization Act for Fiscal Year 2002* amend the former requirements under 10 U.S.C. § 503?
- A. Section 544 of the *National Defense Authorization Act for Fiscal Year 2002* revises Title 10, Section 503(c) in several important ways. First, the recruiting provisions now apply only to LEAs (including private secondary schools) that receive funds under the ESEA. Second, these provisions now require access by military recruiters to students, under certain conditions, and to secondary school students' names, addresses, and telephone listings. Third, as discussed earlier, they require LEAs to notify parents of their right to opt out of the disclosure of their children's names, addresses, and telephone numbers and to comply with any such requests from the parents or the students.

- Q. How are these requirements under 10 U.S.C. § 503 enforced?
- A. In addition to the potential for loss of funds under ESEA noted above for failure to comply with § 9528 of the ESEA, an LEA that denies a military recruiter access to the requested information on students after July 1, 2002, will be subject to specific interventions under 10 U.S.C. § 503.

In this regard, the law requires that a senior military officer (e.g., Colonel or Navy Captain) visit the LEA within 120 days. If the access problem is not resolved with the LEA, the Department of Defense must notify the State Governor within 60 days. Problems still unresolved after one year are reported to Congress if the Secretary of Defense determines that the LEA denies recruiting access to at least two of the armed forces (Army, Navy, Marine Corps, etc.). The expectation is that public officials will work with the LEA to resolve the problem.

Additionally, the Department of Defense has developed a national high school data base to document recruiter access. Presently, 95 percent of the nation's 22,000 secondary schools provide a degree of access to military recruiters that is consistent with current law.

- Q. Are private schools subject to the military recruiter requirements?
- A. Private secondary schools that receive funds under the ESEA are subject to 10 U.S.C. § 503. However, private schools that maintain a religious objection to service in the Armed Forces that is verifiable through the corporate or other organizational documents or materials of that school are not required to comply with this law.
- Q. Where can I get more information on the requirements of 10 U.S.C. § 503?
- A. The Office of the Secretary of Defense may be contacted for copies of the statute, or questions relating to it. Please contact the Accession Policy Directorate as follows:

Director, Accession Policy
4000 Defense Pentagon
Washington, DC 20301-4000
Telephone: (703) 695-5529

- Q. Where can I get more information on the requirements of § 9528 of the ESEA?
- A. The Family Policy Compliance Office (FPCO) in the Department of Education administers FERPA as well as § 9528 of the ESEA, as amended by the *No Child Left Behind Act of 2001*. School officials with questions on this guidance, or FERPA, may contact the FPCO at FERPA@ED.Gov or write to the FPCO as follows:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605
Telephone: (202) 260-3887
Fax: (202) 260-9001
www.ed.gov/offices/OM/fpc

A model “directory information” notification for use by LEAs incorporating the changes under § 9528 of the ESEA and 10 U.S.C. § 503 is attached. The model notification may also be obtained on the FPCO’s Web site.