

No Child Left Behind

Armed Forces Recruiter Access to Secondary School Students

Action Guide for Parents and Communities

PUBLIC
EDUCATION
NETWORK

Public involvement. Public education. Public benefit.

Overview

NCLB Title IX, Section 9528;

Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99)

National Defense Authorization Act of 2002, Section 544

Joint Letter from Secretary Paige and Secretary Rumsfeld, October 2, 2002

US Department of Education Policy Guidance Questions and Answers, October 2, 2002

Note: Section 9528 and related provisions in the National Defense Authorization Act for Fiscal Year 2002 constitute less than four paragraphs of the over 700-page NCLB law. However, it has become a contentious issue in many communities and for many parents. Many of the community debates focus on the following aspects of the provisions raising issues of local control, patriotism, privacy and community engagement:

- Lack of community and parental knowledge about the provisions of Section 9528, and how Section 9528 relates to prior laws such as the Family Educational Rights and Privacy Act along with the Policy Guidance that has been developed by the US Department of Education;
- Objections to the strong federal mandate by citizens who believe that policies related to military recruitment and sharing of student information should be controlled at the state and local level, and not through a federal law;
- Debates in many communities, both pro and con, about military access to student information, and the role of the public school in providing that access;
- Requiring parents to “opt-out” of having student records disclosed to the military—that is, allowing school districts to disclose student information to the military unless parents provide the school with a written request that information not be disclosed---is much weaker than the “opt-in” provisions of FERPA—which prohibits a school district to disclose student directory or records information unless a parent gives permission to do so.

It is possible that these or other issues related to the Section 9528 provisions of NCLB will raise questions and concerns. Community, parent and student leaders, along with their school officials, have a special role to play in being aware that these “hot button” issues may exist in their communities. Since Section 9528 is a federal mandate that supercedes state and local policies, to the contrary, there is little the local school district can do in the short term but to implement the law. However, it is crucial that parents, students and the community be educated about the provisions of the law, and be involved in developing the processes for implementation. This Action Brief is NOT designed to provide legal answers to Section 9528 provisions. For that, each local community is advised to contact legal counsel in their state and/or local communities. But this Brief is designed to review the major premises as raised by the Section 9528 provisions and related laws, and to provide suggestions for community, parental and student action.

Did You Know ...

- That to fully understand the military recruitment provisions of NCLB Title IX, Section 9528, parents and community leaders should also refer to FERPA, to the October 2, 2002 Joint Letter from US Secretary of Education Rod Paige and US Secretary of Defense, Donald Rumsfeld, and to the October 2, 2002 U.S. Department of Education Policy Guidance Questions and Answers.
- That one of the provisions in Section 9528 requires school districts that receive NCLB assistance to share student information such as names and addresses of students to military recruiters. Another provision in Section 9528 allows parents and students to protect this information by requesting that it not be released.
- That schools must notify parents of their right to request that personal student information not be released.
- That NCLB requires school districts to provide military recruiters the “same access to secondary school students as is provided generally to postsecondary education institutions or prospective employers.”
- That many states and school districts also have policies that regulate the privacy of student information, in addition to the NCLB requirements.
- That because some school districts may not know about the NCLB provisions, or may not reach all parents informing them about their rights under this provision, parents may have to secure information about the provisions from other sources such as parent groups or community-based organizations.
- That with their parent’s written consent to the school district, a student may request that their name, address and telephone not be released to military recruiters, institutions of higher education or both.
- That while not required by the law, many school districts do allow parents the option of having the school disclose some, but not all, of the student information. For instance, parents may wish to have a student’s name and address disclosed, but not their phone number.

Understanding the Military Recruitment Provisions

The Link Between NCLB and the Family Education Rights and Privacy Act (FERPA)

The new provision under Title IX of NCLB, known as Section 9528, is inextricably related to a 1974 law entitled the Family Education Rights and Privacy Act (FERPA). Section 9528 requires local education agencies that are receiving assistance under NCLB to provide military recruiters or institutions of higher education access to secondary school student’s names, addresses and telephone numbers. The NCLB Act allows military recruiters the same access to schools that college and company recruiters have. A student or parent can request that such information not be released without prior written parental consent. The LEA or private school “shall notify parents of the option to make a request and shall comply with any request.” Schools that maintain a religious objection to service in the Armed Forces however, as long as it is verifiable through documents or materials, are an exception to the requirements.

FERPA is a Federal law that protects the privacy of student's education records, including "directory information"(defined below) about the student. FERPA applies to all schools that receive funds administered by the U.S. Department of Education. It gives parents and eligible students, defined by law as being eighteen years or older, the right to inspect and review the student's education records kept by the school. Except for certain parties and conditions, schools generally must have written permission from the parent or eligible student in order to release any information from a student's education record. Each school decides how they will inform parents. Examples of this notification could include: a letter, an article in the PTA bulletin, inclusion in the student handbook, or newspaper article.

What is student "directory information" and how does it differ from an "education record" that could be disclosed to military & higher education recruiters?

General student directory information includes the long list of items that is part of the student's records. Among other data, the directory includes such items as student name, address, phone number, email address, graduation year, school activities, photo, and other information typically found in school yearbooks. Information that must be provided to recruiters constitutes only the student's name, address and phone number.

What You Need to Know ...

NCLB Section 9528, US Department of Education Policy Guidance* and National Defense Authorization Act for Fiscal Year 2002:

- Allows military recruiters access to secondary school students names, addresses, and telephone listings (Section 9528)
- Gives the students or parents the right to request that this information not be released to military recruiters without prior written parental consent (Section 9528)
- Requires that the local education agency or private school shall notify parents of their option to make this request (Section 9528)
- The notification must advise the parent on how to opt out, including a timeline in which to do so (Policy Guidance)
- Parents must be notified of this option through a letter, within a student handbook, or by any means that is "reasonably calculated" enough to inform them (Policy Guidance)
- The local education agency or private school shall comply with any request (Section 9528)
- The same information that is generally provided to post secondary educational institutions or to prospective employers can be shared with military recruiters, and must be if the LEA is receiving any assistance under the NCLB Act (Section 9528)
- Schools that do not comply with Section 9528 of the NCLB Act could jeopardize their receipt of the NCLB Act funds. In addition, a provision in the National Defense Authorization Act for Fiscal Year 2002 requires a senior military officer to visit the school district within 120 days of the denial of recruiter access. If the problem is not resolved, the US Department of Defense then notifies the Governor of the district's state. Unresolved problems over one year old are reported to Congress. (Policy Guidance and National Defense Authorization Act for Fiscal Year 2002)

- Schools that maintain a verifiable religious objection to service in the Armed Forces are an exception to the Section 9528 requirements (Section 9528)
- * *Policy Guidance is not binding and does not have the force of law*

FERPA

- Requires that a school district obtain written parental consent before releasing “personally identifiable information” from a child’s education records
- Designated “directory information” however, may be released without written consent, unless the parent has followed the correct District procedures asking that this information be kept private
- If a parent does not want a school district to release their child’s directory information, the parent must notify the District in writing by a designated deadline
- Requires a school district to notify the parent or eligible student (age 18+) when a record request has been made
- Gives parents and eligible students the right to inspect and review the student’s education records within 45 days of the date the school receives a request for access and the right to request changes be made to any information they consider inaccurate or misleading
- Gives parents and eligible students the right to file a complaint with the U.S. Department of Education regarding any alleged failures by the school in order to fulfill the FERPA requirements:

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

Action Opportunities for Community Leaders

- Be informed about the law. Read Section 9528 and the Family Educational Rights and Privacy Act (FERPA).
- In addition to knowing the provisions of the law, check with your school district and/or your state department of education to determine if they have their own policies related to confidentiality of student records and parental consent procedures.
- A major role for community organizations is to work with parent leaders and students in assuring that all parents are informed about the law and that parents understand their rights under the law, as well as the responsibilities of public school districts, private schools, military recruiters, and representatives of higher education.
- Community organizations should also help in widely disseminating information so that every parent receives information about the law. While the law only requires that a single notice be sent to parents related to their consent, it is recommended that school districts contact parents at least two, and perhaps three times to assure that every parent be reached. In addition, the school should also be encouraged to use more than one method of dissemination, and move beyond the use of the US mail system to include information on their web-sites, take home notices, etc.

- Work with parents, students and the school district in developing the procedures and processes in implementing Section 9528 and FERPA where none may exist. This process should include the development of the school district parental consent form, how often during the year the form is sent to parents, when during the school year the forms are sent, how long the parents have to complete the form before they have to return it to the school, and the method of distribution of the notice.
- Community organizations may also help in translating information about the law in languages other than English-to make sure that parents understand.
- Monitor the school districts implementation of the law to assure that all parents receive notices, in a language that they can understand, and be provided the appropriate amount of time to complete the denial of consent form and return it to the school, if parents should not want student information disclosed.
- Not everyone may agree with Section 9528 provisions. In that case, work with community leaders, students, and school officials in organizing town meetings and community dialogues in those schools and communities where opposition to the law may occur, or where conflicting viewpoints about the implementation of the law may arise.

Action Opportunities for Parent Leaders

- All high school parent leaders should be informed about the law. They should read Section 9528 and the Family Educational Rights and Privacy Act (FERPA), understand the provisions of the law, and be prepared communicate to all parents in their school and community the rights and responsibilities that parents have under the law, as well as those responsibilities of public school districts, private schools, military recruiters, and representatives of higher education.
- In addition to knowing the provisions of the law, check with your school district and/or your state department of education to determine if they have their own policies related to confidentiality of student records and parental consent procedures.
- Work with the school district in developing its procedures and processes related to implementing Section 9528 and FERPA where none may exist. This process should include the development of the school district parental consent form, how often during the year the form is sent to parents, when during the school year the forms are sent, how long the parents have to complete the form before they have to return it to the school, and its method of distribution.
- In cases where school districts have procedures in place, know what those procedures are and evaluate their effectiveness. For instance, are all parents and students being informed about the law? Is the school district making a reasonable attempt at making sure parents receive and return the consent forms? Are the forms in a language and format that all parents are able understand? Are parents involved in making recommendations about improving the effectiveness of the process? Are parents given adequate time to complete the denial of consent form and return it to the school?
- While it is not required by law, the school district should be encouraged to allow parents to “pick and chose” the information they would like made available to recruiters among the three categories of student name, address and phone number. For instance, the parents may only wish to release the student’s name and address, but not phone number. They should be allowed to do so.

- Don't forget the students. Determine if there is a process for informing students about Section 9528 and FERPA, and their rights and responsibilities under the law. If not, work with the school district and high school staff in establishing the means of communicating with high school students about law.
- Get a copy of your school's student manual and/or orientation packets schools release at the beginning of each school year; review the material carefully to ensure that it includes thorough and updated information on the rights of students and parents to request that a student's contact information not be released to military recruiters.
- Determine who the school contact person is that can answer parent questions about the Section 9528 provisions.
- Not everyone may agree with Section 9528 provisions. If that is the case, community leaders, students, and school officials should organize town meetings and community dialogues in those schools and communities where opposition to the Section may occur, or where conflicting viewpoints about the implementation of the law may arise.

Action Opportunities for Students

- Be informed about the law. Read Section 9528 and the Family Educational Rights and Privacy Act (FERPA).
- Know the role that the armed forces recruiters, higher education, public and private schools, parents and students play in contacting students and having access to student information as stipulated by federal law.
- Understand that students and parents have the right to allow the school to release student information to armed services recruiters and higher education institutions, or they may request that their student's information not be released without prior written parental consent.
- Make sure that the option to have information released to colleges and employment agencies, yet while not to military recruiters, or vice-versa, is abundantly clear.
- Educate other students about Section 9528 and FERPA using channels such as the student council, school newsletter, student websites, college and career centers, counselor's offices, public announcements, and flyers placed in libraries and other public places students frequent.
- Know the process the school district and private schools use to notify parents about their option to request that student information not be released. Determine how the school district or private schools educate parents and students about the law (by letter, parent meetings, email, etc); when this information is released; the consent form that the school district or private school may send to parents allowing them to request that student information remain private; and how much time parents have to return the form to the school.
- Get a copy of your student manual and/or orientation packets generally released to students and parents at the beginning of each school year. Review the material carefully to ensure that it includes thorough and updated information about Section 9528 and FERPA.
- Ask your college and/or career counselors to place announcement letters or consent forms in nearby areas where military recruiters display their information.
- If your school district is not aware of the Section 9528 provisions, students should set up a meeting with the superintendent or school principal to discuss the provisions of the law, and ways that students can work with the school, parents and the community in making the information public.

Sample Consent Forms Used by Several Public School Districts in English and Spanish

Adapted From Churchill High School
Eugene, Oregon

*Armed Forces Recruiting
Important Notice to Parents— Armed Forces Recruiter
Access to Students & Student Recruiting Info*

The "No Child Left Behind Act of 2001" passed certain new requirements with respect to Armed Forces Recruiter Access to Students and Student Recruiting Information:

- Duty to Provide Information to Military Recruiters. Unless the parent request otherwise, the District must provide upon request by military recruiters access to high school student's names, addresses and telephone listings.
- Consent. Either the high school student or the parent of the student may request that the student's name, address and telephone listing not be released without the prior parental consent. Schools are required to notify parents of this option to make a request and shall comply with the request.
- Access to Students. Each district shall provide military recruiters the same access to high school students as is provided generally to higher education institutions, community colleges, and prospective employers.

If you do not want your student's name, address and telephone listing released to Armed Forces recruiters, YOU MUST SIGN AND RETURN THIS FORM, YOU CAN WRITE A LETTER TO THIS EFFECT, or YOU CAN SEND AN EMAIL TO _____.

Your statement of objections will be placed in your child's records, and we will not release this information to military recruiters without your written consent.

DO NOT RELEASE MY STUDENT'S INFORMATION

As parent/guardian of _____ I do not give permission for (Name of High School) to release any information regarding the above student to any branch of the US Military.

Date: _____

Signature: _____

Adapted From Fairfax County (Virginia) Public School

DENIAL OF ACCESS TO MILITARY RECRUITERS OPT-OUT FORM

TO: _____, Principal
_____ High School

I object to the release of the name, address, or telephone number of _____ [print name of student] to military recruiters during this school year. I understand that once this form has been signed by either the student or a parent, only a parent may change it. I also understand that if I want to change it, the parent must notify the principal in writing that the form is no longer in effect and that student information may be released.

Signature of student or parent: _____

Name of signing student or parent—please print: _____

Date: _____

Adapted from Los Angeles Unified Independent School District

LAUSD FORMATO DE OPCION DE NO PATICIPACION con respecto al DESCARGO DE

NOMBRE, DIRECCIÓN, Y NÚMERO del TELÉFONO

Escuela _____ Fecha _____

El estudiante Name _____

Date de Nacimiento _____

Como estudiante usted tiene el derecho de pedir que su información privada no sea revelada a los organismos de reclutamiento del ejercito y otros. Complete este formato de Opcion de No Participacion y entregueselo al director de la escuela o al Administrador de la misma antes del 22 de octubre de 2004.

___ Solicito que el nombre, direccion y telefono de este estudiante, no sea revelado a las Fuerzas Armadas y a los encargados de reclutamiento del ejército o las escuelas militares.

___ Solicito que el nombre, direccion y telefono de este estudiante, no sea revelado a colegios comunitarios, universidades, o compañías en buscan de empleados.

Firma de estudiante _____

Firma de padre o protector _____

Le federal publica 107-110, sección 9528 del ESEA, que "No Child Left Behind Act" requiere que los distrito escolares revelen el nombre, la direcciones y los números de teléfono de los

estudiantes a los encargados de reclutamiento del ejército cuando sea solicitado por ellos. Los estudiantes son llamados a sus casas por los oficiales de reclutamiento y presionados a enlistarse en el ejército. La ley también requiere que el distrito escolar le informe sobre su derecho de No Participación en este programa, mediante la solicitud al distrito de no revelar su información a los oficiales de reclutamiento. Llenar esta forma y entregarla a los funcionarios a los respectivos encargados, sirve como perdido para no revelar su información. Entregue esta forma llena antes de 22 de octubre de 2004.

Resources

- US Department of Education
No Child Left Behind Act of 2001 Legislation
Public Law 107-119: No Child Left Behind Act of 2001:
<http://www.ed.gov/policy/elsec/leg/esea02/index.html>
- US Department of Education
No Child Left Behind Overview, Guidance and Resources
<http://www.ed.gov/nclb/landing.jhtml?src=fb>
- US Department of Education
Family Educational Rights and Privacy Act (FERPA)
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Churchill High School
Sample Letter and Release Form to Parents
<http://www.chs.lane.edu/home/glancer/augsept03/armedforcesrecruiting.html>
- US Department of Education
Model Release of Student Directory Information
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html?exp=0>
- Fairfax County (Virginia) Public Schools
Opt-Out Policies and Forms Including Military Recruiters
<http://www.fcps.edu/mediapub/publicat/optoutforms.pdf#xml=http://www.fcps.edu/cgi>
- Nuclear Age Peace Foundation
http://www.wagingpeace.org/articles/2002/11/24_rivera_recruiting-law.htm
- American Civil Liberties Union
<http://www.aclu.org/Files/OpenFile.cfm?id=10901>
- National Association of Secondary School Principals
http://www.nassp.org/services/issues_nclb.cfm
- Central Committee for Conscientious Objectors
<http://sover.net/~alipsitt/nochild.htm>
- Kansas National Education Association
<http://www.knea.org/schools/pdf/militaryfocus.pdf>

Our Vision

Every day, in every community, *every* child
in America benefits from a quality public education.

Our Mission

To build public demand and mobilize resources for
quality public education for *all* children through a national
constituency of local education funds and individuals.



Public involvement. Public education. Public benefit.

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