



August 10, 2005

Dear School Superintendent,

Re: Rights of parents and students to opt out of disclosure of information under the Family Educational Rights and Privacy Act ("FERPA") and the No Child Left Behind Act ("NCLB")

We write to offer our assistance and to share information that can help preserve the privacy rights of students in your district.

As you know, FERPA makes student records confidential but permits schools to release directory information. ¹ FERPA also requires schools to honor a parent's request that any or all of that information not be released without the parent's prior consent. (A copy of the relevant FERPA sections, 20 U.S.C. §1232g(a)(5)(A & B), is enclosed.)

Notwithstanding FERPA's right to opt out of having any or all of the directory information made publicly available, the NCLB requires that schools provide military recruiters and institutions of higher education students' names, addresses, and telephone listings. (A copy of the relevant NCLB section, 20 U.S.C. §7908(a) is enclosed.)

NCLB also requires that schools provide students and parents with the opportunity to opt out of a school's disclosure of that information to military recruiters and/or institutions of higher education.

Each right to opt-out may be exercised independently. FERPA allows a specific opportunity to opt-out from disclosure of information so that a parent or student can bar disclosure of any or all directory information. In addition, the NCLB Act allows parents to bar disclosure of name, address and phone number in accordance with their choice, i.e., barring disclosure to military recruiters without barring disclosure to institutions of higher education, or vice versa.

FERPA and the NCLB Act require that schools inform students and parents of the opportunity to protect the privacy of student directory information generally, and to military recruiters and institutions of higher education specifically.

¹ "Directory information" includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

In order to provide meaningful notification, the ACLU recommends that schools take the following steps:

- The required notice of the opportunity to opt out should be provided in a communication separate from other school directives and regulations. School districts around the country have found that putting the notice in the school handbook leads to parents and students overlooking this information.
- The notice should include a simple form for opting out.
- School officials must provide parents and students with a reasonable period of time to exercise their right under federal law to opt-out of the disclosure of student information.
- School officials should clearly inform parents and students of any deadline to opt-out and that student information may be disclosed if an opt-out response is not received by the specified deadline.
- School officials should honor any opt-out form received from parents or students after the deadline to prevent future disclosure of student information.
- The information should be translated for the benefit of non-English speaking families.
- Steps should be taken to make the information available to high school juniors and seniors separately from notification to their parents, since they are directly affected by the military or college recruitment aspects of this issue. Revising student Emergency Cards to include this opt-out information is an additional method that has worked effectively elsewhere.

To assist you in addressing these issues we have prepared a form for parents and students to use if they choose to opt out. We recommend that this form be provided to students and to parents separately so as to allow families to make the most informed decision about this matter.

For further information, please feel free to contact me (at 305 – 576 – 2337, ext. 14 or email me at HSACLU@aol.com) or Rosalind Matos, South Florida Staff Counsel of the ACLU of Florida at (305) 576-2337, 20 or email at rmatos@aclufl.org

Thank you for your attention to this important matter.

Sincerely,



Howard L. Simon
Executive Director
American Civil Liberties Union of Florida