



Board of Education  
Toledo Public Schools  
420 East Manhattan Blvd.  
Toledo, Ohio 43608  
Fax: [REDACTED]

April 15, 2009 - Sent via U.S. Mail and facsimile to the school board office and via email to individual board members

Re: Privacy rights of students under the Family Educational Rights and Privacy Act ("FERPA") and the No Child Left Behind Act ("NCLB").

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO FOUNDATION  
4506 CHESTER AVENUE  
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WWW.ACLUOHIO.ORG  
contact@acluohio.org

Dear Members of the Board of Education:

Local ACLU members have alerted us to concerns about the preservation of student privacy in Toledo Public Schools.

We are concerned with the following three issues:

1. Your current military opt-out notification procedures,
2. The personal information contained on student emergency cards, and
3. Privacy and consent issues within the Armed Services Vocational Aptitude Battery ("ASVAB")

#### Military Opt-Out Procedures

As you know, FERPA mandates that student records be kept confidential. One exception to FERPA permits schools to release directory information, such as the student's name and address, to certain parties. The NCLB expands on this FERPA exception by requiring schools to provide students' information, upon request, to military recruiters.

It is important to note that both FERPA and the NCLB have consent and opt-out provisions. Under FERPA, the school is required to notify parents *and* students of their right to consent to "disclosures of personal identifiable information". 20 USC 1232g(b)(2) and (e). The school is required to honor a parent's request that the student's information not be released without the parent's consent. 20 USC 1232g(b)(1) and (b)(2)(A).

The NCLB requires that the school must provide parents *and* students the opportunity to opt out of the school's disclosure to military recruiters. 20 USC 7908(a)(2). Furthermore, the NCLB mandates that the student's information may not be released "without prior written parental consent, and the local educational





agency...shall notify parents of the option to make a request and shall comply with any request." 20 USC 7908(a)(2).

Our members are concerned that your current military opt-out procedures are inadequate to give families a meaningful opportunity to exercise their right to opt-out. We recommend that you send the required notice to parents *separate* from other school information. In addition, we suggest that you send a revised and simple opt-out form each year along with the required notice, such as the sample form enclosed herein. Providing this form, or one that is substantially similar, to students and parents will allow them to make an informed decision as to whether they would prefer to opt-out of the information disclosures.

### Student Emergency Cards

Second, as illustrated above, the federal government is concerned with the protection of student privacy. It has come to our attention that your current student emergency cards contain students' social security numbers and other personal information that is not always secured. It is our understanding that these cards are frequently taken out of the school building and carried by school staff during student outings. We are concerned that having the students' social security numbers on emergency cards that are taken off school premises is a privacy risk to the students. Although R.C. 3313.712 mandates an emergency medical card for each student, the statute does not require, nor even suggest, that the student's social security number be placed on the card. Thus, we recommend that the student social security numbers be removed from all emergency cards if those cards are to be taken off school property.

### ASVAB Consent and Privacy Issues

Finally, it has been brought to our attention that the ASVAB which you have administered or could administer in the future to your students contains a privacy statement where the student may sign his/her consent, but there is no opportunity for the parent to consent. It is important for the protection of a minor's privacy interest that the parent is given the opportunity to consent to any disclosure of a minor student's private information.

There is a fundamental student privacy problem with the ASVAB, which allows the school, instead of the parent, to control the student information taken from the completed test. Because of the privacy issues inherent in the ASVAB, we recommend that you never administer it in your schools. If you give the exam, we recommend that you adequately notify students and parents that the ASVAB is a *non-mandatory* military test, and that neither the parent nor student has control over the dissemination of the information extracted from the completed test. We

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strongly recommend that, as the gatekeeper for student privacy on the test materials, all schools in the district use a test administration function known as "Option 8" when all tests are collected and sent to the military for processing. Option 8 is the only privacy choice that prevents release of information to military recruiters and others absent specific parental consent.

The ACLU of Ohio and its Northwest Ohio Chapter look forward to a timely response from you regarding this matter. Should you have any questions or concerns regarding this matter, please contact local chapter member Peggy Daly-Masternak at [REDACTED]

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Sincerely,

Carrie Davis  
Staff Attorney

American Civil Liberties Union of Ohio.

SHARES

## Sample Parent Refusal Form for Military Recruiter Information Requests

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

As a parent, you can ask that your child's information NOT be released to military recruiters unless you formally consent. If the school can't reach you, or if you don't respond, your child's information will not be released.

If you do not make this request, release of the information is automatic when recruiters ask. Please sign below if you wish to require parental approval:

Please DO NOT release my child's information to military recruiters unless I am contacted and provide written permission.

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Your Name)

\_\_\_\_\_ (Your Child's Name and Grade)

\_\_\_\_\_ Date

**RETURN THIS FORM TO SCHOOL PERSONNEL AS SOON AS POSSIBLE.**

## Sample 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. Ohio 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.**