



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE CHIEF INFORMATION OFFICER

SEP 3 2004

Ms. Samantha Liskow  
Electronic Privacy Information Center  
1718 Connecticut Ave., NW  
Suite 200  
Washington, DC 20009

RE: FOIA Request No. OII-04-6257F

Dear Ms. Liskow:

This is in response to your July 21, 2004 letter requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. Your request was forwarded to the Office of Innovation and Improvement (OII) for responsive documents they may have in their files. You were seeking the following agency records from January 1, 2001 to the present concerning:

1. correspondence, communications, reports, statement or memoranda regarding the implementation of, or policy surrounding, Section 1061 of the No Child Left Behind Act, "Student Privacy, Parental Access to Information, and Administration of Certain Physical Examinations to Minors," 107 P.L. 110, amending 20 USCS §1223h. Section 1061 requires that certain materials used in connection with surveys, analyses, or evaluations of students be available for inspection by parents or guardians, and that limits be placed on the use of such devices when they would reveal certain information. Section 1061 also requires schools to develop policies regarding student privacy, which shall include notifying parents of both the policies and of certain activities. See attached 20 USCS §1232h.
2. correspondence, communications, reports, statement or memoranda regarding the implementation of, or policy surrounding, Section 9528 of the No Child Left Behind Act, "Armed Forces Recruiter Access to Students and Student Recruiting Information," 107 P.L. 110. Section 9528 requires secondary schools receiving assistance under No Child Left Behind to provide students' names, addresses, and telephone numbers upon request by military recruiters or institutions of higher education. Student or their parents may request that such information not be released without parental consent. In addition, Section 9528 requires the schools to "provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students".

Enclosed are copies of the documents that are responsive to your request, which were processed by the OII staff. However, personal information on individuals has been withheld under exemption (b)(6) of the FOIA, 5 U.S.C. §552(b)(6) and Departmental regulation 34 CFR §5.71(a). Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy.

You have the right to appeal this decision by writing within 30 days of your receipt of this letter to the Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW, FOB-6-2W311, ATTN: FOIA Appeals, Washington, DC 20202-4500. Your appeal should be accompanied by a copy of your initial letter of request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

Page 2 – Ms. Samantha Liskow  
OII-04-6257F,

If you have any questions regarding this letter, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria-Teresa Cueva".

Maria-Teresa Cueva  
Freedom of Information Act Officer, OCIO/RIMG

Enclosures

**PPRA Model Notice and Consent/Opt-Out for Specific Activities**  
**[LEAs should adopt the following model form as appropriate]**

The Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h, requires [School District] to notify you and obtain consent or allow you to opt your child out of participating in certain school activities. These activities include a student survey, analysis, or evaluation that concerns one or more of the following eight areas ("protected information surveys"):

1. Political affiliations or beliefs of the student or student's parent;
2. Mental or psychological problems of the student or student's family;
3. Sex behavior or attitudes;
4. Illegal, anti-social, self-incriminating, or demeaning behavior;
5. Critical appraisals of others with whom respondents have close family relationships;
6. Legally recognized privileged relationships, such as with lawyers, doctors, or ministers;
7. Religious practices, affiliations, or beliefs of the student or parents; or
8. Income, other than as required by law to determine program eligibility.

This requirement also applies to the collection, disclosure or use of student information for marketing purposes ("marketing surveys"), and certain physical exams and screenings.

Following is a schedule of activities requiring parental notice and consent or opt-out for the upcoming school year. This list is not exhaustive and, for surveys and activities scheduled after the school year starts, the [School District] will provide parents, within a reasonable period of time prior to the administration of the surveys and activities, notification of the surveys and activities and be provided an opportunity to opt their child out, as well as an opportunity to review the surveys. (Please note that this notice and consent/opt-out transfers from parents to any student who is 18 years old or an emancipated minor under State law.)

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*Date:* On or about October 15, 2003

*Grades:* Five and Six

*Activity:* ABC Survey of At-Risk Behaviors.

*Summary:* This is an anonymous survey that asks students questions about behaviors such as drug and alcohol use, sexual conduct, violence, and other at-risk behaviors. The survey also asks questions of a demographic nature concerning family make-up, the relationship between parents and children, and use of alcohol and drugs at home.

*Consent [for ED funded, protected information surveys only]:* A parent must sign and return the attached consent form no later than [insert return date] so that your child may participate in this survey.

**Opt-out [for any non-ED funded protected information survey]:** Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

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**Date:** November 22 - 24, 2003

**Grades:** One through Six

**Activity:** Flu Shots

**Summary:** The County Department of Public Health Services will administer flu shots for influenza types A and B.

**Opt-out:** Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

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**Below are two examples dealing with the collection, use and distribution of personal information for student-based commercial services. Administrators should *particularly* note the difference in the type of consent required for each activity depending on what personal information is being collected, used or distributed.**

***[Survey A: Limited to personal information designated as "directory information"]***

**Date:** 2003-2004 School Year

**Grades:** Nine through Twelve

**Activity:** Student-Based Commercial Services

**Summary:** [School] collects, or allows businesses to collect, use, and disclose personal information on students, including names, addresses, and telephone listings. These businesses provide student-based products and services, such as computer equipment, sports clothing, school jewelry, and entertainment products.

**Opt-out:** Contact [school official] at [telephone number, email, address, etc.] no later than [date] if you do not want your child to participate in this activity.

**[Note to schools: This information – names, addresses, and telephone listings – may be designated and disclosed as "directory information" under the Family Educational Rights and Privacy Act (FERPA). Instead of using this Model Notice format, schools *may* meet PPRA notice requirements for specific marketing activities that involve only designated "directory information" by allowing parents to opt of "directory information" at the start of each school year, which would include all marketing activities.]**

***[Survey B: Collects personal information beyond designated directory information]***

**Date:** 2003-2004 School Year

**Grades:** Nine through Twelve

**Activity:** Student-Based Commercial Services

**Summary:** [School] collects, or allows businesses to collect, use, and disclose personal information on students, including names, addresses, telephone listings and social security

numbers. These businesses provide student-based products and services, such as computer equipment, sports clothing, school jewelry, and entertainment products.

*Consent:* A parent must sign and return the attached consent form no later than [insert return date] so that your child may participate in this activity.

**[Note to schools: While some of the information – names, addresses, and telephone listings – may be designated and disclosed as “directory information” under the Family Educational Rights and Privacy Act (FERPA), schools that permit marketing activities that involve the collection, use, and disclosure of students’ social security numbers may not use an opt-out procedure and must obtain prior written consent in accordance with § 99.30 of the FERPA regulations.]**

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If you wish to review any survey instrument or instructional material used in connection with any protected information or marketing survey, please submit a request to [school official, address]. [School official] will notify you of the time and place where you may review these materials. You have the right to review a survey and/or instructional materials before the survey is administered to a student.

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I [parent's name] give my consent for [child's name] to take the ABC Survey of At-Risk Behaviors on or about October 15, 2003.

\_\_\_\_\_  
Parent's signature

Please return this form no later than [insert date] to the following school official: [Provide name and mailing address.]



## UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202

February 2004

Dear Chief State School Officer:

The No Child Left Behind Act of 2001 (NCLB) amended the Protection of Pupil Rights Amendment (PPRA) to require that the Department of Education (Department) notify annually each State educational agency (SEA) and each local educational agency (LEA) of their obligations under PPRA and under the Family Educational Rights and Privacy Act (FERPA). This letter serves to provide that notification to the SEA. The requirements placed on the SEA by each law are discussed separately below.

### **Family Educational Rights and Privacy Act (FERPA)**

Statute: 20 U.S.C. § 1232g. Regulations: 34 CFR Part 99.

FERPA applies to an "educational agency or institution" that receives funds under a program administered by the U.S. Department of Education. While an SEA may receive funds from the Department, as a practical matter, FERPA generally would not apply to the records of an SEA. This is because FERPA defines "education records" as information directly related to a "student," which itself is defined as excluding a person who has not been in attendance at the educational agency or institution. 20 U.S.C. § 1232g(a)(4) and (a)(6). Since students generally are not in attendance at an SEA, it follows that FERPA does not generally apply to the SEA's records. Parts B and C of the Individuals with Disabilities Education Act, however, apply FERPA's confidentiality provisions to education records maintained by an SEA (under Part B) and by a State's Lead Agency (under Part C). 20 U.S.C. §§ 1417(c) and 1442. Additionally, FERPA does provide parents with the right to inspect and review education records maintained by the SEA within 45 days of receipt of a request. 20 U.S.C. § 1232g(a)(1)(B). **This includes, for example, State assessments administered by LEAs and maintained by the SEA.** The SEA may make the education records available to the parent either directly, by sending them to the LEA for inspection and review, or making other appropriate arrangements. For more information on this provision, see 20 U.S.C. § 1232g(a)(1)(A); 34 CFR § 99.10.

FERPA permits educational agencies and institutions, such as LEAs and their constituent schools, to disclose education records to SEAs and other State educational authorities without a parent's prior consent under certain conditions. For a review of the exceptions to the general prior consent rule in FERPA, see 34 CFR § 99.31. The most common exception that relates to disclosure to a State educational authority is found in 34 CFR § 99.31(a)(3) and § 99.35.

- The disclosure must be in connection with:
  - ◆ Audit or evaluation of Federal or State supported education programs; or
  - ◆ Enforcement of or compliance with Federal legal requirements relating to such programs.

- Information collected under this provision must be:
  - ◆ Protected so that information is not disclosed to anyone other than the authorized representatives of the State educational authority (34 CFR § 99.35(b)(1)); and
  - ◆ Destroyed when no longer needed for the purposes listed above (34 CFR § 99.35(b)(2)).

## **New NCLB Requirement for SEAs**

Section 4155 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. § 7165, as amended by the NCLB, requires a State that receives funds under the ESEA to assure the Secretary that no later than January 8, 2004, it "has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school." FERPA provides specifically that an educational agency or institution may disclose education records, without parental consent, to a school in which the student seeks or intends to enroll, subject to conditions set forth in 34 CFR § 99.34. FERPA also allows disclosure of appropriate information regarding specified disciplinary actions to teachers and school officials, including those in other schools, who have legitimate educational interests in the behavior of the student. See 34 CFR § 99.36(b).

## **Protection of Pupil Rights Amendment (PPRA)**

Statute: 20 U.S.C. § 1232h. Regulations: 34 CFR Part 98.

PPRA applies to the programs and activities of an SEA, LEA, or other recipient of funds under any program funded by the U.S. Department of Education. It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

1. political affiliations or beliefs of the student or the student's parent;
2. mental or psychological problems of the student or the student's family;
3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. religious practices, affiliations, or beliefs of the student or student's parent; or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors.

The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under State law.

LEAs must provide parents and eligible students effective notice of their rights under PPRA. The notice must explain that an LEA is required to obtain prior written consent from parents before students are required to submit to a survey that concerns one or more of the eight protected areas listed above, if the survey is funded in whole or in part by Department funds. For surveys that contain questions from one or more of the eight protected areas that are not funded in whole or in part with Department funds, LEAs must notify a parent at least annually, at the beginning of the school year, of the specific or approximate date(s) of the survey and an opportunity to opt his or her child out of participating. LEAs must also notify parents that they have the right to review, upon request, any instructional materials used in connection with any survey that concerns one or more of the eight protected areas and those used as part of the educational curriculum.

PPRA requires LEAs to work with parents to develop and adopt policies on the following items unless the LEA or SEA had established comparable policies on or before the date of enactment of NCLB on January 8, 2002:

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students and the procedure for granting a request by a parent for such access.
- Arrangements to protect student privacy that are provided by the LEA in the event of the administration of a survey to students containing one or more of the eight protected items of information noted above (including the right of parents to inspect, upon request, a survey that concerns one or more of the eight protected items of information).
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access.
- Administration of physical exams or screenings of students;
- The collection, disclosure, or use of personal information (including items such as a student's or parent's first and last name, address, telephone number or social security number) collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes, including the LEA's arrangements for protecting student privacy in the event of collection, disclosure, or use of information for these purposes.
- The right of parents to inspect, upon request, any instrument used in the collection of personal information for marketing or sales purposes before the instrument is administered or distributed to a student and the LEA's procedure for granting a parent's request for such access.

LEAs must notify parents of their rights under PPRA and of these policies at least annually and at the beginning of the school year. LEAs must also notify parents within a reasonable period of time if any substantive change is made to the policies.

In addition, an LEA must "directly" notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys listed below



and provide an opportunity for parents to opt their child out of participation in the specific survey or activity. An LEA may make this notification to parents at the beginning of the school year if the LEA has identified the specific or approximate dates of the activities or surveys at that time. Thereafter, parents should be provided reasonable notification of the planned activities and surveys and be provided an opportunity to opt their child out, as well as an opportunity to review any pertinent surveys. A model specific notification for use by LEAs is attached and may also be obtained on the Web site noted at the end of this guidance. LEAs must offer an opportunity for parents to opt their child out of participating in the following activities:

- The administration of any survey concerning one or more of the eight protected areas listed above if it is not funded in whole or in part with Department funds. (LEAs must obtain active consent, and may not use an opt-out procedure, if the survey is funded in whole or in part with Department funds.)
- Activities involving the collection, disclosure, or use of personal information collected from students for marketing purposes, or to sell or otherwise provide the information to others for marketing purposes.
- Any non-emergency, invasive physical examination or screening that is 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and 3) not necessary to protect the immediate health and safety of the student, or of other students. This law does not apply to any physical examination or screening that is permitted or required by State law, including physical examinations or screenings permitted without parental notification.

NCLB does not preempt applicable provisions of State law that require parental notification. Also, requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as the following:

- 1) College or other postsecondary education recruitment, or military recruitment.
- 2) Book clubs, magazines, and programs providing access to low-cost literary products.
- 3) Curriculum and instructional materials used by elementary schools and secondary schools.
- 4) Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.
- 5) The sale by students of products or services to raise funds for school-related or education-related activities.
- 6) Student recognition programs.

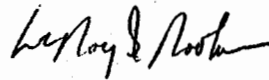
An SEA or LEA may use funds provided under part A of title V of the ESEA to enhance parental involvement in areas affecting the in-school privacy of students, such as reimbursement for costs associated with this direct notification.

The Department will issue regulations to reflect the changes in FERPA and PPRA. The Family Policy Compliance Office (FPCO) in the Department of Education administers both FERPA and PPRA. The address and telephone number are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-5901  
(202) 260-3887

Informal inquiries may be sent to FPCO via the following email addresses:  
[FERPA@ED.Gov](mailto:FERPA@ED.Gov) and [PPRA@ED.Gov](mailto:PPRA@ED.Gov). The FPCO Web site address is:  
[www.ed.gov/policy/gen/guid/fpcO](http://www.ed.gov/policy/gen/guid/fpcO).

Sincerely,

A handwritten signature in black ink, appearing to read "LeRoy S. Rooker".

LeRoy S. Rooker  
Director  
Family Policy Compliance Office

October 28, 2002

## Recent Changes Affecting FERPA & PPRA

The following document presents a general explanation of the recent changes to the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) made by Congress. It also provides a general description of the two U.S. Supreme Court cases involving FERPA, and a recent decision by the U.S. Court of Appeals for the Sixth Circuit. The Department will issue guidance and/or regulations to provide the public with interpretations of these changes, as necessary.

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### U.S. Supreme Court Ruling

On February 19, 2002, the U.S. Supreme Court ruled in Owasso ISD v. Falvo that peer grading does not violate FERPA. The Department is currently reviewing the Court's ruling and may issue additional guidance or regulations to further clarify the scope of the term "education records."

### U. S. Supreme Court Ruling

On June 20, 2002, the U.S. Supreme Court ruled in Gonzaga University v. John Doe. In the Gonzaga case, a student brought litigation against the University for disclosing personally identifiable information, without his consent, in violation of FERPA. The Supreme Court ruled that students and parents may not sue for damages under 42 U.S.C. § 1983 to enforce provisions of the Family Educational Rights and Privacy Act (FERPA).

### U.S. Court of Appeals for the Sixth Circuit

On June 27, 2002, the 6<sup>th</sup> Circuit Court of Appeals unanimously affirmed a lower court's ruling that university disciplinary records are "education records" under FERPA and that disclosing such records without students' consent constitutes a violation of FERPA. In 1998, the Department asked a federal district court in Ohio to enjoin Miami University and the Ohio State University from disclosing records containing the names of student victims and accused students as prohibited under FERPA. On March 20, 2000, the U.S. District Court for the Southern District of Ohio permanently enjoined the two Ohio universities from disclosing their on-campus disciplinary records to the public under the State's open records law.

In affirming the ruling, the circuit court concluded that continued release of student disciplinary records "will irreparably harm the United States" and the Department. This is important for three reasons: 1) the court agreed with the lower court that the Student Right-to-Know and Campus Security Act provides parents and students with statistical information about the type and amount of crimes on campus; 2) the court reaffirmed the Department's broad reading of the term "education records" and stated that Congress, in amending FERPA in 1998 to allow

postsecondary institutions to disclose the final results of disciplinary proceedings, must have intended that disciplinary records be education records or this amendment would be “superfluous”; and 3) the court held that the Department was within its right in seeking an injunctive relief in this case because none of the administrative remedies authorized by FERPA would have stopped the violations. In effect, the court held that the Department can take preemptive actions in enforcing FERPA, rather than only after violations occur.

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## **Background on FERPA**

FERPA is a federal law that applies to educational agencies and institutions that receive federal funds under any program administered by the Secretary of Education. Generally, FERPA prohibits the funding of an educational agency or institution that has a policy or practice of disclosing a student’s “education record” without the consent of the parent or eligible student. The FERPA statute is found in 20 U.S.C. § 1232g and the regulations (not yet amended to reflect the most recent legislative changes) are found in 34 CFR Part 99.

## ***No Child Left Behind Act of 2001***

### **Sec. 1061 Annual Notification Requirements for the Secretary of Education**

The Secretary is now required to annually inform each SEA and each LEA of their obligations under both FERPA and PPRA. This provision is found in § 1061(c)(5)(C), which are the amendments to PPRA, discussed below. The Family Policy Compliance Office (FPCO) is in the process of finalizing the notices to be provided to SEAs and LEAs. The information will also be posted on our Web site.

### **Sec. 4155 Transfer of School Disciplinary Records.**

FERPA currently permits schools to transfer any and all education records, including disciplinary records, on a student who is transferring to another school. See § 99.31(a)(2) and § 99.34 of the FERPA regulations. This new provision requires States that receive funds under the Elementary and Secondary Education Act (ESEA), within two (2) years, to provide an assurance to the Secretary that the State “has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the school.”

FPCO is including an announcement in the notice to SEAs and LEAs about this new provision so that SEAs and LEAs can start to implement the new requirement.

### **Sec. 9528 Armed Forces Recruiter Access to Students and Student Recruiting Information.**

FERPA currently allows schools to designate and disclose without consent certain items of information as “directory information.” The FERPA regulations define “directory information”

under § 99.3 of the regulations and set forth the requirements for implementing a "directory information" policy under § 99.37 of FERPA. Generally, "directory information" may be disclosed by a school to any party, provided the requirements of FERPA are followed.

Congress passed a provision in the *No Child Left Behind Act* that addresses the disclosure of directory-type information (students' names, addresses, and telephone listings) to military recruiters. Congress also included similar language in the *National Defense Authorization Act for Fiscal Year 2002*. Both laws, with some exceptions, require schools to provide directory-type information to military recruiters who request it. Typically, recruiters are requesting names, addresses, and telephone listings on junior and senior high school students that will be used for recruiting purposes and college scholarships offered by the military.

The Department, in consultation with the Department of Defense, has developed guidance on the provisions contained in these two laws. The guidance has been made available to SEAs and LEAs, as well posted on our Web site: <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02.html>.

#### **Sec. 1061 Student Privacy, Parental Access to Information, and Administration of Certain Physical Examinations to Minors.**

The *No Child Left Behind Act* contains a major amendment to PPRA that gives parents more rights with regard to the surveying of minor students, the collection of information from students for marketing purposes, and certain non-emergency medical examinations. PPRA has been referred to as the "Hatch Amendment" and the "Grassley Amendment" after authors of amendments to the law. Now, school officials may hear the law referred to as the "Tiahrt Amendment" after Congressman Todd Tiahrt, who introduced the changes regarding surveys to the PPRA. The statute is found in 20 U.S.C. § 1232h and the regulations (not yet updated) are found in 34 CFR Part 98.

#### **U.S. Department of Education Surveys**

Subsection (a) of the legislation was not changed. Subsection (b) added an additional category (see bold below) and made minor changes to the existing seven categories. This provision applies to surveys funded in whole or part by any program administered by the U. S. Department of Education (ED). PPRA provides:

- that schools and contractors make instructional materials available for inspection by parents if those materials will be used in connection with an ED-funded survey, analysis, or evaluation in which their children participate; and
- that schools and contractors obtain prior written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation that reveals information concerning:
  1. political affiliations or beliefs of the student or the student's parent;
  2. mental and psychological problems of the student or the student's family;

3. sex behavior or attitudes;
4. illegal, anti-social, self-incriminating, or demeaning behavior;
5. critical appraisals of other individuals with whom respondents have close family relationships;
6. legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
7. **religious practices, affiliations, or beliefs of the student or student's parent;**  
or
8. income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

Subsections a and b of PPRA generally apply when a survey is funded, at least in part, by any program administered by the Secretary of Education.

### **Surveys Funded by Sources Other than U.S. Department of Education**

The new provisions (contained in subsection c) apply (as does FERPA) to educational agencies or institutions that receive funds from any program of the Department of Education. Thus, public elementary and secondary schools are subject to the new provisions of PPRA. Here are the new requirements:

- Schools are required to develop and adopt policies – in conjunction with parents – regarding the following –
  1. The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students.
  2. Arrangements to protect student privacy in the event of the administration of a survey to students, including the right of parents to inspect, upon request, the survey, if the survey contains one or more of the same eight items of information noted above.
  3. The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students.
  4. The administration of physical examinations or screenings that the school may administer to students.
  5. The collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling, or otherwise providing the information to others for that purpose.
  6. The right of parents to inspect, upon request, any instrument used in the collection of information, as described in number 5.
- Local educational agencies (LEAs) must “directly” notify parents of these policies and, at a minimum, shall provide the notice at least annually, at the beginning of the school year. The LEA must also notify parents within a reasonable period of time if any substantive change is made to the policies.
- In the notification, the LEA shall offer an opportunity for parents to opt out of (remove their child) from participation in the following activities:

- Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
  - The administration of any third party (non-Department of Education funded) survey containing one or more of the above described eight items of information.
  - Any non-emergency, invasive physical examination or screening that is: 1) required as a condition of attendance; 2) administered by the school and scheduled by the school in advance; and not necessary to protect the immediate health and safety of the student, or of other students.
- In the notification, the LEA shall notify parents the specific or approximate dates during the school year when these activities are scheduled.
  - An LEA is not required to develop and adopt new policies if the State educational agency (SEA) or LEA has in place, on the date of enactment of the *No Child Left Behind Act of 2001*, policies covering the requirements set forth in this law.
  - The requirements concerning activities involving the collection and disclosure of personal information from students for marketing purposes do not apply to the collection, disclosure, or use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, students or educational institutions, such as the following:
    - College or other postsecondary education recruitment, or military recruitment.
    - Book clubs, magazines, and programs providing access to low-cost literacy products.
    - Curriculum and instructional materials used by elementary schools and secondary schools.
    - Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude, or achievement information about students.
    - The sale by students of products or services to raise funds for school-related or education-related activities.
    - Student recognition programs.
  - This law is not intended to preempt applicable provisions of State law that require parental notification.
  - This law does not apply to any physical examination or screening that is permitted or required by State law, including such examinations or screenings permitted without parental notification.

- The requirements of PPRA do not apply to a survey administered to a student in accordance with the Individuals with Disabilities Education Act (IDEA).
- These requirements do not supersede any of the requirements of FERPA.
- The rights provided to parents under PPRA transfer from the parent to the student when the student turns 18 years old or is an emancipated minor under applicable State law. The law applies to LEAs, but does not apply to postsecondary institutions.
- An SEA or LEA may use funds provided under part A of title V of the ESEA to enhance parental involvement in areas affecting the in-school privacy of students.

**Definition of some terms used in PPRA –**

“Instructional Material” – instructional material that is provided to a student, regardless of format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments.

“Invasive Physical Examination” – any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

“Personal Information” – individually identifiable information including: 1) a student or parent’s first and last name; 2) home address; 3) telephone number; or 4) social security number.

The Department will issue regulations to reflect the changes in FERPA and PPRA. The Family Policy Compliance Office (FPCO) in the Department of Education administers both FERPA and PPRA. Informal inquiries may be sent to FPCO via the following email addresses: [FERPA@ED.Gov](mailto:FERPA@ED.Gov) and [PPRA@ED.Gov](mailto:PPRA@ED.Gov).





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.<sup>1</sup> 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/policy/gen/guid/fpc/hottopics/ht10-09-02.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.<sup>2</sup> 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"

<sup>1</sup> § 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).

<sup>2</sup> 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