

AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION  
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September 23, 2005

William Andrekopolous  
Superintendent  
Milwaukee Public Schools  
5225 W Vliet St  
Milwaukee WI 53208

ALSO TRANSMITTED ELECTRONICALLY & VIA FACSIMILE

*RE: Military Recruiter Access to Private Student Information*

Dear Superintendent Andrekopolous:

I am writing to inform you that on September 16, 2005, the U.S. Department of Education issued new information regarding military recruiters' access to student information, making it clear that students (including those under 18), as well as parents, have the right to opt out of disclosing information to recruiters. Because of that, and because MPS' notices regarding the provision of private information to military recruiters are inadequate, I request that you ensure that the district as a whole, and every school within the district, refrain from providing **any** student information to military recruiters pending the provision of revised, meaningful, adequate notice to students and parents.

The federal "No Child Left Behind" Act of 2001 provides that secondary schools must provide student names, addresses, and phone numbers to military recruiters, unless students or parents have said they do not want the information given. Under the section of NCLB, 20 U.S.C. § 7908(a)(1), titled "Access to student recruiting information:"

. . . each local educational agency receiving assistance under this chapter shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students names, addresses, and telephone listings.

However, under another part of No Child Left Behind, 20 U.S.C. § 7908(a)(2):

A *secondary school student* or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request. . . .

(emphasis added). In an email message issued Friday, September 16, 2005, the Family Compliance Policy Office of the U.S. Department of Education confirmed that:

because the [No Child Left Behind Act] statute also mentions that students may opt out, we have determined that a school must honor a request *made by a student* who took the initiative to tell a school not to disclose his or her name, address, & telephone number to military recruiters.

(emphasis added). A copy of that message is attached.

To be adequate, notice must be:

reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . The notice must be of such nature as reasonably to convey the required information and must afford a reasonable time for those interested to make their appearance . . . The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.

*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950). In addition, entities receiving federal funds - such as MPS - must provide notice in commonly-encountered languages other than English. Under Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, any agency receiving federal funds is prohibited from discriminating on the basis of race or national origin, and federal regulations prohibit actions which have a discriminatory effect, as well as intentionally discriminatory actions. *See, e.g.*, 34 C.F.R. § 300.4(b)(2) (recipients may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”) The U.S. Supreme Court has interpreted these regulations, in the educational context, as prohibiting discrimination against language minority students. *Lau v. Nichols*, 414 U.S. 563 (1974).

Further, the U.S. Department of Education (and its predecessor, the Department of Health, Education and Welfare) have interpreted Title VI to require meaningful access to information for parents who are not proficient in English. *See, e.g.*, OCR Case Number 08011157-D (6/18/02), referencing a 5/25/70 memorandum to school districts, Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595, which:

specifically provides that school districts have the responsibility to adequately notify national-origin minority group parents of school activities that are called to the attention of other parents, and that such notice in order to be adequate may have to be provided in a language other than English.

([www.ed.gov/about/offices/list/ocr/letters/tucsonusd08011157.html](http://www.ed.gov/about/offices/list/ocr/letters/tucsonusd08011157.html)). The 1970 Office for Civil Rights memorandum is available at: [www.ed.gov/about/offices/list/ocr/docs/lau1970.html](http://www.ed.gov/about/offices/list/ocr/docs/lau1970.html)

The notice MPS is currently providing is inadequate to apprise students and parents of their right to opt out of having information given to military recruiters. The only current notice being provided is, apparently, the one on page 33 of the MPS Parent/Student Handbook. There is nothing in particular that draws attention to this page. Rather than a simple, easy to read form - - such as the form allowing a parent to deny access to the internet -- the information on opting out of providing information to recruiters is lengthy, complex, and printed in very small letters. It is also unclear whether the assertion in the notice -- that this information is only provided “on occasion” -- is accurate, or whether in fact the information is routinely given to recruiters. Moreover, the notice wrongly states that only students over age 18 may request to withhold information from recruiters, which, as explained above, the Department of Education has confirmed is not the case. There also does not appear to be any notice provided to students or parents in languages other than English. In addition, the link to the web page<sup>1</sup> with the “Request to Withhold Release of Directory Data and High School Student’s Name, Address, and Telephone Number” has been inoperative the last half-dozen times I checked it (including earlier today).

We therefore request that MPS refrain from providing any information to military recruiters until all the following steps are taken:

1. Preparation of a revised notice which states, in simple language, that a student or parent has the right to deny military recruiters access to a student’s private information (including the student’s name, address, and telephone number) (a draft of such a notice is enclosed);
2. Translation of this notice into languages commonly used by MPS students and parents, including at a minimum Spanish and Hmong (a Spanish language draft is enclosed);
3. Distribution of this notice to all parents and high school students in a manner likely to reach the intended audience, including distribution on multiple occasions and as a stand-alone form;

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<sup>1</sup>[http://www.milwaukee.k12.wi.us/pages/MPS/Parents/Handbook/Requests\\_to\\_Withhold\\_Student\\_Information\\_Forms](http://www.milwaukee.k12.wi.us/pages/MPS/Parents/Handbook/Requests_to_Withhold_Student_Information_Forms)

4. Passage of a reasonable amount of time (no less than 30 days) after receiving the notice, to provide an opportunity for students and parents to decide whether to opt-out and to inform the schools of their decisions; and
5. Ensuring that if students change high schools during the school year, their requests not to disclose personal information to recruiters follows them to the new school.

I anticipate your prompt response.

Sincerely,

Karyn L. Rotker  
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cc: Grant Langley, City Atty.  
Milwaukee Board of School Directors  
Elizabeth Burmaster, State Superintendent  
George Martin, Director, Peace Action-Wisconsin  
Wendell Harris, ACLU of Wisconsin Board of Directors