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NEWS

HIGH SCHOOLS MUST GIVE ACCESS TO MILITARY RECRUITERS

By Amanda Strainis-Walker

"Parents and other interested parties, such as the American Association of School Administrators and the American Civil Liberties Union, view the new provision as a clear departure from student’s privacy rights and worry whose hands a student’s information could end up in."

The military is turning to high schools for a less challenging source of potential recruits for the Armed Forces of our Nation. Military recruiters are entitled to receive the name, address, and telephone listing of all junior and senior high school students from their school district. If the school refuses or neglects to comply, the district may lose federal funding. These new requirements override previous restrictions imposed on schools to protect the integrity of students’ information.

The new requirements became effective under the new No Child Left Behind Act, President George W. Bush’s proposal to improve primary and secondary schools enacted in 2001. No Child Left Behind Act, 20 U.S.C.A. § 7908 (2002). Buried within the 670 pages of law regarding the proposal, is a provision requiring public secondary schools to provide military recruiters not only with access to facilities, but also with contact information for every student. Military officials pushed for the new provision to counter a steady decline in the number of people inquiring about enlisting in the military.

"There are great opportunities for these kids in the military," said Donna Green, a retired Navy commander whose son, Kyle, is a senior at West Potomac High School in Fairfax, Virginia in a Washington Post article. "A lot of times, kids don’t find out about the scholarships they offer if schools are not allowed to share this information. I don’t see any downside to this." Elaine Rivera, Military Recruiting Law Puts Burden on Parents, WASH. POST, Nov. 24, 2002 at C 01.

All do not share Ms. Green’s sentiments. Parents and other interested parties, such as the American Association of School Administrators and the American Civil Liberties Union, view the new provision as a clear departure from student’s privacy rights and worry whose hands a student’s information could end up in. Others view it as a way for the military to have unimpeded access to underage students who are ripe for solicitation by the military, fearing too many students will be enticed by the siren songs of military service without the mental requisite to recognize they might be on the front line of the war on

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When the Supreme Court decided Sutton, it also ruled on two companion cases raising similar issues. Murphy v. United Parcel Service, 527 U.S. 555 (1999), and Albertsons, Inc. v. Kirkingberg, 527 U.S. 555 (1999). Since the majority of the Supreme Court's ADA analysis was set forth in the Sutton opinion, this article will only focus on that case.


5 Id. at 2147-49.


8 The National Council on Disability published a policy paper on this issue and rejects that Congress intended the 43 million people reference to have any exclusionary effect. See www.ncd.gov/newsroom/publications/43million.html.


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- in domestic violence programs in which they are taught how to handle victims of battered man/woman syndrome. If that particular shelter does not assist battered men, they should be equipped with the information to refer them to a facility or organization that can help them. There are currently a few battered men help lines that provide crisis lines and referral services but these agencies are few and far between and are difficult for a male victim to find without access to the Internet.

Finally, law enforcement officials should also be required to be educated and trained on how to handle a domestic violence call in which the male is the victim. The reaction from police officers that are called to handle a domestic violence dispute is critical to the prosecution of the offender and the safety of the victim. It can also affect the self-esteem of both a male and female victim. If law enforcement officers learn how to handle themselves in a professional and responsible manner, perhaps more men would be willing to report their batterers without fear of ridicule from the responding officers.

CONCLUSION

Although this article has only addressed the specific problem of abused men, one should not overlook the fact that women make up the majority of the abused in this country. Although battered men are a small minority in society, there is no justice in overlooking a group of people who suffer from this very serious problem because they are not as large in number. The truth is that the cycle of domestic violence is an easy trap for anyone to fall into, including men. Education and public awareness of the repeated abuse that both sexes endure will help both battered men and women.


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3Cook, supra note 1, at 60-87.


5 Id. at A1.

6 Cook, supra note 1, at 3.

7 Cook, supra note 1, at 134.

8 Cook, supra note 1, at 84-5.


10 Cook, supra note 1, at 154.

Death Row, Continued from Page 11.

impact is more likely to be felt by those states that have struggled with the system. George Kendall, of the National Association for the Advancement of Colored People Legal Defense Fund said, “If you’re in North Carolina and you grant clemency, it’s going to look like small potatoes. This will allow governors to use that [clemency] power.” Steve Mills and Maurice Possley, Clemency Adds Fuel to Death Penalty Debate, Chi Trib., Jan. 13, 2003, at A1, A20.

In Illinois the debate is not over. Cook County prosecutors are exploring the possibility of raising old murder charges that were put aside by prosecutors after an inmate was sentenced to death. In addition prosecutors in Livingston County will seek the death penalty in the murder trial of Andrew Urdiales, a man who was just granted clemency from a death sentence in Cook County.

The State’s Attorney Office of Cook County has filed with the Illinois Supreme Court seeking to void the commutations of ten inmates, arguing that Ryan went beyond his power in granting clemency to individuals when their cases had been scheduled for re-sentencing.

At congressional hearings in Chicago called by U.S. Rep. Bobby Rush (D-IL), Illinois State Senate President Emil Jones vowed to bring bills seeking reform or abolition of the state’s capital punishment system. Rush called the hearings, which took place on February 3, 2003, in an attempt to use Ryan’s decision as support for national dialogue for a change in the use of capital punishment.

There are currently two individuals in Cook County, Christopher Parker and Michael Key, already convicted of murder and awaiting sentencing hearings in February of 2003 in which a death sentence is a possibility. Additionally there are more than 60 Illinois cases – 50 of which are in Cook County – where prosecutors are seeking the death penalty.

The current Governor of Illinois, Rod Blagojevich, has called the decision of Ryan to issue blanket clemency a mistake. During his campaign Blagojevich supported the concept of capital punishment, but also supported the need for reform.

The current Attorney General of Illinois, Lisa Madigan, still believes that capital punishment is appropriate for heinous crimes, and hopes the reform process will continue. She said, “Our [the Attorney General’s Office] goal is to be the reasonable moderate voice…” Eric Zorn, Death Row Issue to be ‘Gut Check’ for New Leaders, Chi Trib., Jan. 28, 2003, at B1. It is still unknown what these two newly elected officials will do concerning the capital punishment system in Illinois.
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Clemency, Continued from Page 14.

cases that require a clemency and those that necessitate only an expungement. For instance, one woman who recently petitioned the governor and the Prisoner Review Board for a clemency fits Ms. Nielsen’s clemency profile perfectly. The woman, who is now in her fifties, was convicted of manufacturing and delivering cocaine when she was in her early twenties. Back then, she was romantically involved with a drug dealer. Their apartment was raided and she was charged with possession of a large amount of drugs. Twenty years and a lifetime later she is employed, a regular churchgoer and a proud mother. In her clemency petition, she was able to gather 20 letters of recommendation from present and past employers, ministers, volunteer coordinators and even her alderman. Her reason for seeking a clemency is that she wants to organize a daycare and transportation center to help single parents. In the past 20 years she has been a productive member of her community, but it is far from certain that her petition will be granted as it has been nine months since she sent in her petition and she hasn’t received any word of its progress.

Contrast this with a man who has been charged with 36 different offenses over a period of 20 years. These charges vary from theft to gambling to possession to mob action. However, whether by stroke of luck or wit he has never been convicted. Either every case has been dismissed, he has received court supervision or he has received a finding of no probable cause. Therefore, despite 20 years as a ne’er do well he was able to obtain an expungement and have his record cleared.

In this age of record keeping and background checks, such unjust treatment of criminal records is inexcusable. What was once simply a clerical matter is now of real importance, both in an individual life and for society. Having a criminal record can mean the difference between a prosperous future and no future at all. We need to carefully consider who we brand with the mark of a criminal, and for how long. The clemency power can be a solution, but its current purpose and scope should be rethought and reapplied. Rather than casting the convicted aside, the clemency power can welcome them back into a productive life.

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The FDA proposal asserts that innovation will not be infringed upon because Brands will still be free to litigate patent infringements. According to the FDA, the proposal would just change the rules. However, the litigation itself is an issue for the Brands and consumers, as well. Brands must dedicate significant time, energy, and money to court battles, all of which could otherwise be spent developing new pharmaceuticals.

In “‘Napsterizing’ Pharmaceuticals: Access, Innovation, and Consumer Welfare,” by researchers from Bates College, University of Virginia Darden School, and University of Chicago Graduate School of Business, research indicated that consumers would suffer a negative impact from reduced intellectual property rights of Brands. Specifically, if patent rights on the Brand drugs were eliminated, greater consumer access to pharmaceuticals would result through generics, but the flow of new pharmaceuticals would be significantly reduced. The researchers’ model indicated that for every dollar gained by generic access, three dollars would be lost due to lack of pharmaceutical innovation.

THE ARGUMENT FOR REDUCING CURRENT PATENT ALLOWANCES

In response to the FDA proposal, the Academy of Managed Care Pharmacy, a professional association of pharmacists,

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Loyola's Tradition

Clinical Educ., Continued from Page 20.

Professor Christian Johnson and is entitled “The Tax Law Clinic: Loyola Chicago's Decade of Experience” at 50 J. LEGAL EDUC. 376 (2000).

In the early 1990s, the law school developed an important initiative in child law. This initiative was the brainchild of Dean Appel, Professor Geraghty and alum, Jeffrey Jacobs ('74). Their collaboration led to the creation of the Civitas Childlaw Center in 1993. A generous donation from Mr. Jacobs in the mid-1990s supported another new clinic, the Child and Family Law Clinic. This clinic allows students to develop the skills that are necessary to effectively represent children. The Child and Family Law Clinic has been directed by Professors Michael Dsida, Paul Holland and Bruce Boyer. Clinical faculty members have included Professors Raymond Chao, Kelly Browe Olson, Stacey Platt and Anita Weinberg. In addition to representing children in court proceedings, clinic students advocate on behalf of the interest of children in administrative and legislative forums as well. One of the Child and Family Law Clinic’s major cases involved a successful challenge to the constitutionality of provisions of the Illinois’ adoption statute relating to parental unfitness. See In Re H.G., 197 Ill.2d 317 (2001).

In 1999, the law school faculty decided to diversify its clinical offerings to include transactional legal work. Professor Joseph Stone, a retired business and tax attorney at D’Ancona & Pfiaum in Chicago, opened the Business Law Center Clinic. This clinic is designed to provide assistance to persons who are starting up businesses that may provide jobs to low and middle income persons. Professor Stone, assisted by Professors Rachel Fardon and Iris Sims, demonstrated to their students that not all of a lawyer’s work is done in the courtroom. These students help their clients incorporate and organize their businesses and anticipate the tax and other legal issues that a fledgling business faces. One of the unique aspects of the Business Law Center Clinic is its collaboration with Loyola’s Business School which also provides assistance to new businesses serving disadvantaged areas of Chicago.

As the babyboom generation ages, the legal problems of elderly Americans will only grow in importance. Recognizing this emerging need, Loyola Law School in 1999 created an elderlaw clinic to meet the needs of senior citizens in Chicago. The Elder Law Clinic, headed by Professor Marguerite Angelari and her assistant Professor Angie Ristanovic, supervise law students who provide legal assistance to seniors. The Elderlaw Clinic has been funded by a substantial donation from alum John Goedert ('40), and grants from the Retirement Research Foundation and the State of Illinois. The clinic allows students to represent elderly persons before administrative agencies and in court but it also allows the students to provide public education through presentations at senior citizen sites and through the creation of informational materials.

Loyola’s clinics have also been blessed with talented and committed administrative staff who have assisted in their smooth operation. Included in this function have been Brian Barry, Irma Bueno, Sylvia Bravo, Sandra Constantine, Paula Gee, Pam Kentra, Antoinette Mcconnell, Cora Ortiz, Sylvia Rodriguez, Alicia Vega, Ruth Webb and Clarice Zemnarski.

Loyola’s clinics have served two important purposes since their inception - to prepare hundreds of law students to be effective practitioners and to provide legal assistance to thousands of persons who otherwise could not have afforded legal representation. For more than 20 years, Loyola Law School faculty and students have ably fulfilled these purposes through their work at our various clinics. With the future support of alumni and the university, Loyola Law School clinics will continue to promote the Jesuit ideal of education for the service of others.
approved the proposal in a letter to the FDA, and even suggested that the 30-month stay should be eliminated altogether. Their reason for this additional proposal was that litigation usually resulted from the 30-month stay and eliminating it would reduce such litigation. See FDA Docket No. 02N-0417 (Dec. 20, 2002). Families USA, a consumer advocacy organization, responded to the FDA proposal by asserting the list of patents that would not be entered in the FDA Orange Book was not extensive or clear enough. See FDA Docket No. 02N-0417 (Dec. 23, 2002).

Financial reporters have presented perhaps the simplest proposal. One Forbes.com article suggested that a pharmaceutical patent should have a definite term, such as 15 years. Matthew Hepner, Solving the Patent Problem, Matthew Hepner, Forbes.com, May 2, 2002 at http://www.forbes.com/2002/05/02/0502patents.html. Thus, litigation could be reduced if both the Brands and the generics had a clear view of each other’s patent game plan. Then perhaps both goals of promoting consumer interests while upholding the value of intellectual property and innovation would be realized.

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had asked the justices to restrain the California court. Olson said keeping this power in the executive branch is crucial for the federal government to enforce its immigration laws. He accused the judges of the Ninth Circuit of usurping the BIA’s authority in this case and thus, creating a major loophole in the country’s immigration enforcement. Charles Lane, High Court to Rule In Psychiatric Case; Justices Will Decide If Defendants May Be Forcibly Medicated to Be Made Fit For Trial, The Wash. Post, at A03, Nov. 5, 2002.

Without hearing arguments, the Supreme Court Justices stated that the San Francisco-based Ninth U.S. Circuit Court of Appeals “seriously disregarded” federal immigration officials’ role in deciding such cases when it took it upon itself to decide that a Guatemalan immigrant should be allowed to stay in the country rather than remand the issue back to the BIA. I.N.S. v. Ventura, 2002 WL 31444297 (U.S. 2002).

Therefore, the Supreme Court reversed the court of appeals decision insofar as it denied remand to the agency. The Supreme Court stated that, generally speaking, a court of appeals should remand a case to an agency for decision on a matter that statutes place primarily in agency hands.

The Supreme Court specifically decided that the Appellate Court was required to remand the case to the BIA for consideration of the alien’s eligibility for asylum since the BIA did not consider the changed circumstances issue in regard to the asylum application based on well-established principles of administrative law. The Court stated that the BIA could bring its expertise to bear upon the matter, evaluate the evidence, make an initial determination, and through informed discussion and analysis, help a later court determine whether its decision exceeded the leeway that the law provided.

The Supreme Court concluded that the court of appeals committed clear error. The court seriously disregarded the agency’s legally mandated role. Instead, the court independently created potentially far-reaching legal precedent about the significance of political change in Guatemala, a highly complex and sensitive matter. The court did so without giving the BIA the opportunity to address the matter in the first instance in light of its own expertise.

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The court of appeals rested its conclusion on its belief that the basic record of evidence on the matter, almost solely the 1997 State Department report, compelled a finding of insufficiently changed circumstances. But that foundation was legally inadequate.

The U.S. Supreme Court rebuked the Ninth Circuit and reminded federal courts that the power lies within the executive branch, not the judiciary, to decide the fate of immigrants seeking political asylum in the United States.

The case of Ventura now goes back to the INS, where federal immigration officials will decide whether Ventura should be sent home or granted asylum and allowed to stay in the United States.

The Justice Department declined to comment on the decision.

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times. Since diabetes has a tremendous impact on the human body and everyday life, people with diabetes are protected by the ADA.

The DOJ argues that disallowing individuals with diabetes to carry their medication into a place of public accommodation is a flagrant violation of the ADA. “Individuals with diabetes are entitled to attend or enjoy community events, like everyone else, without putting their lives at risk,” says Ralph F. Boyd, Jr., Assistant Attorney General for Civil Rights. “SFX’s policy is unnecessary and reflects outdated fears about individuals with disabilities. Our goal is to foster integration of the disabled into society at large, and this suit will further that goal.” Department of Justice Press Release, April, 2002 at http://www.usdoj.gov.

SFX employees counter that they are attempting to keep the public safe while welcoming people with diabetes into their venue. SFX has medical tents at their venues where they offer to keep diabetic equipment and welcome people to return if they need assistance. SFX also employs medics at all events in case of an emergency.

Unfortunately, the diabetics involved in the lawsuit say that the efforts of SFX are not helpful. Susan Price was forced to leave both her insulin and her blood testing kit at the medical tent when she attended a Santana concert in Pennsylvania at an SFX location. The medical tent was a ten-minute walk from her seat. Another man was faced with a similar situation when he waited 45 minutes suffering from low blood sugar before a medical cart arrived to take him to the medical tent. These diabetics claim that their medicine and testing kits are to prevent any emergency while SFX claims that they are prepared for any emergency that may occur in their venues.

The government charged SFX with forcing diabetics to choose between being barred from concerts or taking unreasonable health risks. Another SFX spokesman responds that they have reviewed and reconfirmed their medication policy and, while rules change from show to show, “The policy regarding medical supplies will not vary.” www.northeasttimes.com/2002/1016/tweeter.html.

Torture, Continued from Page 29.


Geoffrey Mock, Amnesty International’s USA Country Specialist for Egypt comments, “The systematic use of torture in Egypt is one of the key influences corrupting the country’s political and legal systems, indeed even its social fabric. All strata of Egyptian society is subject to torture. It is at the heart of nearly every other major human rights abuse Amnesty

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International has documented, from the use of unfair trials in state security and military courts; to ‘disappearances’ and use of prolonged administrative detention; to the silencing of human rights defenders and political opponents…”

Terrorist activity in Egypt began in 1981 after Islamic extremists assassinated the peacemaking President Sadat. After a lull in the late 1980s, Islamic extremists began terrorist attacks in the early 1990s. In 1993 alone, there were more than 250 terrorist attacks. Egyptian officials started taking counter-terrorism measures, including trying terrorist cases in military courts. By 1995, terrorist attacks decreased. An Egyptian State Department official commented on Egypt’s counter-terrorism measures before September 11, 2001, “Egypt’s strategy creates new problems while solving old ones…If you deter the threat inside the country, they end up going elsewhere.” Time Europe, The Egyptian Way of Fighting Terror, at http://www.time.com/europe/af/printout/0,9869,186794,00.html.

Amnesty International has reported that there is overwhelming evidence that torture is rampant in Egypt. Mock comments, “Islamist political prisoners, both those who are part of armed groups and members of non-violent political parties…have been particularly targeted for torture. Amnesty International repeatedly has documented cases in which Islamists have been subject to beatings, hangings and electric shocks. Evidence taken during these sessions have been used against the prisoners, particularly in state military and security courts, which are less independent than the regular Egyptian judiciary. Death sentences have been issued against Islamists after trials in which significant evidence appears to have been extracted through torture…”

Nisbet was studying Arabic in Cairo at the time of his arrest. Nawaz was on a foreign exchange program at Alexandria University. Pankhurst was working at a computer company as an Internet expert. The leader of the Islamic Liberation Party said the three Britons were not in Egypt in an official capacity.

The trial of the party members opened on October 20, 2002. The three men could face up to 25 years of imprisonment for being members of this Islamic Liberation Party. Nisbet’s wife commented on the trial, “The detention has been unfair, the arrest was unfair, how can we expect a fair trial?” BBC News, Fear for Londoners on trial in Egypt, at http://news.bbc.co.uk/2/hi/uk_news/england/2341049.stm.

Many Egyptians approve of trying terrorists in front of military courts as a deterrent. Egyptians feel that the sentiments against this, specifically those of the United States, are contradictory since recently the U.S. has also

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the CDC, stated, “it makes perfect sense to integrate these two important committees. As a former AIDS clinician, I fully appreciate the close interrelationship between prevention and treatment.” Her support for the collaboration was echoed by Elizabeth Duke, an administrator at the HRSA, “combining these committees will make us more efficient, more innovative, and more accurate in targeting our efforts against HIV/AIDS. We applaud the Secretary’s decision and are delighted to join CDC in this enterprise.” United States Health and Human Services Press Release, HHS Creates Unified HIV/AIDS and STD Advisory Committee to Strengthen Prevention and Treatment Efforts, November 14, 2002, available at : http://www.hhs.gov/news/press/2002pres/20021114.html.

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Critics view the collaboration as being motivated primarily by political pressures, not legitimate concerns over HIV and AIDS prevention and treatment. They cite Republicans’ preference of supporting abstinence over safe-sex as being one of the main motivations in making changes at the CDC. Critics also disapprove of the government’s failure to consult with AIDS organizations prior to the merger.

David Ernesto Munar, Associate Director of Policy & Communications, AIDS Foundation of Chicago states, “[G]reater coordination between national HIV prevention and care strategies is essential. The decision to merge the two advisory committees was made with no community consultation whatsoever, which I believe is problematic as the intent of these groups is to foster greater public and private coordination in efforts against AIDS.”

William Pierce, the Health and Human Services spokesman, denied allegations that these changes were politically motivated. “None of this is out of the ordinary for a change in administrations,” Pierce said. “These [new members] fit into the way [Health and Human Services Secretary Tommy Thompson] wants those committees to be structured. He thinks that diversity of opinions is important to having good advice and counsel.” M.A.J. McKenna, Political Shift Felt as CDC Endures Change, THE ATLANTA JOURNAL AND CONSTITUTION, Nov. 23, 2002.

It is too soon to tell how these changes will affect the future of AIDS prevention and treatment, as the merger only occurred in January of 2003. Ideally, the collaboration among the agencies and the leading experts in the various fields will ultimately lead to new treatments and a cure for AIDS in the near future.
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The new law does, however, give parents the right to submit a written note to the school district requesting their child’s name and information not be released without prior written parental consent. School officials have considerable deference in how to implement the parental notification aspect of the law. Essentially, if a military recruiter shows up at a school unannounced requesting a list of juniors and seniors, he or she is entitled to it, as long as no prior parental objection is noted on a student’s record. The new law puts the burden on school districts to inform parents of the provision and provide a mechanism in which parents can object to the disclosure of their child’s information.

“The new law has required we take time away from our regular tasks to draft notification material for parents,” said Anthony D’Amato, an attorney with the Chicago Public School District. The Chicago Public School District has notified parents of the new law by publishing an article in the district’s monthly paper, posting a notice on the district’s web site, and sending a letter home with students at the beginning of the school year. Despite efforts to notify parents, the school district has received no requests from parents asking that their child’s information be withheld from military recruiters, according to Wilfredo Oritz, Office of High School Development, Chicago Public School District.

The Department of Defense acknowledges that the number of military enlistees has remained fairly constant, but justifies the need to recruit in high schools because the pool of prospective recruits continues to shrink. In the past, the number of high school graduates who said they intended to join the military dropped from 32 percent to 25 percent, according to the Department of Defense. Furthermore, at the same time, one-third of the nation’s 22,000 high schools refused recruiters’ requests for students’ information or access to campus, and the cost of recruiting one person rose from $6,000 to $12,000. Congress, persuaded by the Department of Defense’s struggles for new, higher quality recruits, inserted the military disclosure amendment into the No Child Left Behind Act.

Prior to the amendment in the No Child Left Behind Act, the military recruiters maintained access to campuses on the same basis as provided to post secondary educational institutions or to prospective employers of those students. Military recruiters, however, were subject to an increasing amount of protest due to their policy on gays in the military because of its discriminatory nature. Schools denied military recruiters access to campuses stating that the military could not receive preferential treatment and must adhere to the same anti-discrimination policies as other institutions recruiting on the campus. Since the military left their policy on gays in the military the same, schools were able to deny recruiters access to campus based on anti-discrimination policies.

The effectiveness of the new law is unclear, since this is the first academic year the disclosure requirements have been in place. Nonetheless, early indications show these new recruiting tactics may be less troublesome than others attempted, as school districts stand ready to comply with requests from military recruiters and few, if any, parents have submitted written requests to withhold their child’s information.

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