



Rochester Free Academy

**Rochester City School District**  
Superintendent of Schools  
Manuel J. Rivera

**Michael J. Looby**  
Chief Legal Counsel

To: Principals, Program Administrators, Vice Principals & Guidance Counselors  
From: Michael J. Looby, Chief Legal Counsel  
Date: January 24, 2003  
Re: Educational & Employment Recruiters – Board Policies 1240 & 1240.1

As you know, the Board of Education has revised the two attached policies, bringing them into compliance with two new federal laws, one of which is part of the No Child Left Behind legislation, and the other being the National Defense Authorization Act. I know that you have questions about implementation, and I have both reviewed my file, and consulted with Dr. Bowers, the author of amendments to the original proposal relative to the issue of access for recognized advocacy groups. I hope that the following Q&A format will answer some of your questions.

Federal law requires us to treat military recruiters **no differently than other recruiters**, and also requires us to provide to them **the same level of access** that we would provide to other potential employers or educational institutions. Meeting that mandate required us to do a complete redraft of the former Policy 1240.1 “Military Recruiters” since, by definition that policy did NOT afford equal treatment; and to modify the “recruiter” language in policy 1240 “Visitors to the Schools.” The changes are expressly designed to **keep the discretion** to make decisions regarding access to recruiters of all types **at the school level**, without creating significant red tape. The Board wanted to respect the values of recognized organizations who have objections to the recruiting or employment policies of certain organizations (including, but not necessarily limited to the armed forces), at the same time complying with federal law and providing to our students as many viable employment and education options as possible.

- Q. What is the school-level responsibility for “directory information” requests from the military under FERPA?
- A. If the school receives a request from the armed forces for “directory information” you may forward that request to the Communications Office (Barbara Jarzyniecki) for response. Federal law protects the requests for such information by the military, but we can respond most efficiently from a central point. You should know that we have, for several years, provided information to parents and

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guardians in the annual calendar as to how to exercise an election to “opt out” from the release of directory information. You may refer to the calendar if asked for information about that process by any parent or guardian.

Q. How do we know if a potential recruiter is entitled by law to restrict its hiring or membership practices?

A. The burden is on the recruiter to tell you if they have such a legal right (which may exist by statute, or by court decision. You have two resources for verification: (a) check the District website, where we will include (and from time to time update) the list of organizations known to have such a right, or (b) ask the Office of Legal Counsel to verify the applicant’s representation. As a practical matter, however, you should understand that the United States Armed Services (Army, Navy, Air Force, Marines, Coast Guard, and Merchant Marine) are covered by federal statute. You can provide equal access to them without further checking. At the same time, we know that the Gay Alliance of the Genesee Valley ([www.gayalliance.org](http://www.gayalliance.org)) has made known its concern about the Defense Department policy regarding military service for gay and lesbian individuals, and you can provide alternative access to them without further notice. As you learn of recognized advocacy groups who have objections to the legally permissible hiring or membership practices of various educational or employment recruiters, please pass that information along to the Communications Office or the Office of Legal Counsel, so we can include such organizations on the website lists, as well.

Q. Can a recruiter, military, vocational or educational, *require* the access to students *in a particular manner or particular time* (e.g., “I want to set up a table in your cafeteria on Thursday and Friday next week.”)?

A. No. The requirement of the law is simply that the access rules be applied equitably. **The form and manner of access is one of discretion for the school, subject to the duty of equitable application.** All of our schools arrange through the guidance departments for meetings between recruiters and students. The same access should be granted to entities that qualify under Policy 1240.1, including the armed forces. In addition, many of our high schools hold “career night” or “school night” programs, or allow other times for open, general access to students. If that is the case at your building, you should make certain that the armed services or other “protected” groups who ask for that access are given the same opportunity. If, for example, you do not allow colleges or civilian employers to set up in your cafeteria, library, gym, or to make visitations to classrooms etc., you do not have to make special arrangements for the armed forces. You may chose to expand your options, but in that event, similar access should also be made available to other employment and educational recruiters as well.

- Q. What is the test to decide whether “recognized advocacy groups” may be given access similar to recruiters, in order for them to provide information pertinent to the legally permissible discriminatory policy of that recruiter?
- A. Under the Board policy, the practical test is whether the educational or employment recruiter is gaining open and general access to students collectively. If the recruiter has unrestricted access—as in a cafeteria, library or other open area, or arrangements have been made for a classroom presentation, or at a general event such as a career night, then those recognized advocacy groups opposed to the legal but discriminatory practice may seek similar access. The key is that the recruiter has been given access to the students generally, without a conscious election on the part of individual students to seek out the recruiter. If, on the other hand, the student must elect to come to a relatively private area to meet an educational or employment recruiter, such as the guidance office or an available empty office, then the policy does not require you to provide space to opposing groups. **Example one:** You have a career night with multiple recruiting schools, companies, military, etc. In that case, give access to recognized advocacy groups that want to counter the discriminatory policy of the recruiter. **Example two:** You decide that colleges and employers may set up tables in your cafeteria to provide information to students during lunch, and a recruiter with a discriminatory policy elects to use that opportunity. In that case, give access to recognized advocacy groups that want to counter the discriminatory policy of the recruiter. **Example three:** You decide that colleges and employers may visit classrooms to make presentations to the entire class, and a recruiter with a discriminatory policy elects to use that opportunity. In that case, give access to recognized advocacy groups that want to counter the discriminatory policy of the recruiter. **Example four:** You permit colleges and employers to use the guidance office, or a vacant office to meet with students privately, and the option to visit is left to the students. In that case, the policy does not require you to offer similar access to recognized advocacy groups, since open and unrestricted access to students has not been given to the recruiter.

In the event that a recruiter with a restrictive membership or hiring practice allowed by law does seek access to students in a manner which falls into the category of a school event of a type analogous to any of the first three examples above, our policy does require that you notify the Communications Office so that a press release can be issued, and recognized advocacy groups have a chance to request appropriate access. You retain the ability to give such additional notice of visitations, as you would normally use to reach your various constituencies—your newsletter or bulletin, posters, etc. Over time, you will probably become aware of recognized advocacy groups that have an interest in activities in your school. That information can certainly be shared among schools. Nothing in the Policy

prevents you from informal contact with such organizations, or from affording access for the purposes noted in the next section, when such organizations make direct contact with the schools. Recognized advocacy groups may choose to visit or not, but it is important to our Policy goals that such groups have the opportunity to make that election, and that the schools be cooperative when the election to come is made.

Q. For what purpose may “recognized advocacy groups” come into school under the revised recruiting policies?

A. The limited public forum envisioned under the revised policies relates to recruiting for employment and/or educational opportunities only. The Board recognized that when a recruiter who has a legal right to restrict hiring or membership practices seeks unrestricted access to the student body, legitimate groups who are offended or injured by that legal right may want an opportunity to peacefully offer an alternative point of view [for example, the federal government policy on homosexuality in the military is highly problematic for gay rights organizations, which may legitimately want the chance to let students know their point of view on the matter]. Accordingly, the revisions to Policy 1240 provide that when such a recruiter is given general access to the “general school population, as in the case of a ‘career night’ or similar group event” the stage is set for a **recognized advocacy group** to ask for the opportunity to attend and provide alternative information. The policy does not extend the limited public forum to subjects other than the hiring or membership practice of the recruiter being opposed by the advocacy group. If, for example, the recruiter’s protected practice was to hire only members of a specific religion, the opposing advocacy group could protest that practice under this policy, but would not have a license to use our school forum to protest a policy issue relating to the employer other than the hiring or membership practice. Similarly, an advocacy group might protest the Defense Department ban on homosexuals in the military, but could not use the recruiting policies as a basis for attacking another issue, such as the training of foreign military officers by the US Armed Forces, or our military presence in a particular country or region.

The “recognized advocacy group” provision of Policy 1240 was designed to address a single phenomenon: the possibility that education or career recruiters may represent organizations which have legally protected limitations upon hiring or membership practices, which are not easily reconciled with our District’s diversity values. That provision, therefore, addresses only the right to offer comment germane to the discriminatory practice.

If a group seeks access to address issues of community concern other than the restrictive practices of a visiting recruiter, the each school has the authority to determine if the applicant meets the standards and requirements of the Community Use Regulations (see Board Policy 1500 and accompanying regulations and forms). You may in your discretion approve applications under that policy, which is broader in scope and intent than the provisions of Policy 1240.

Finally, for purposes of Policy 1240, “recognized advocacy group” does not mean individuals, or ad hoc collections of individuals. The term “recognized advocacy group” connotes some degree of established form and ongoing public purpose. It is reasonable for you to seek from an applicant some tangible proof of organizational status, such as proof of tax-exempt status; or proof of an established office, adoption of bylaws, etc. Where there is an issue on which you need assistance, you may call the Office of Counsel for advice.

- Q. Once it is known that a recruiter has a legal but discriminatory hiring or membership policy, does the Board Policy envision any action by guidance offices **apart from the actions relating to physical visits** to the schools?
- A. Yes. Board Policy 1240.1 states that when a recruiter has given notice of its legal authority to restrict membership or hiring, then “.... the administration of each school shall make the restrictive information available to all interested persons, in a manner reasonably intended to give fair notice, at the time and place of any recruiting activity by the organization....”

Since recruiters who have an active interest in our students will in all probability leave promotional literature at the guidance office (whether or not they have already made a campus visit or visits), I recommend that at the same place that such literature is available, you also keep equally available information regarding the discriminatory policy of the recruiter. This could be done with a document you create which states what we know about the restrictive policy; and/or it could easily be done by accepting a supply of materials from recognized organizations concerned about the policy, and making that literature available as well. Two examples may be of help. Supposing that a hospital with a particular religious affiliation provides employment literature, but also provides evidence that it is legally entitled to hire only those who adhere to the tenets of the religious group. A group such as the New York Civil Liberties Union or the ACLU, may very well have literature which presents an opposing view, and may offer that literature to you. Accepting the literature of both groups, and making that literature available to students in your guidance office would be meet the

expectation of fair notice. Locally, we know that the Gay Alliance of the Genesee Valley has worked to persuade a variety of organizations (including but not limited to the armed forces) to rescind policies which prevent gay and lesbian individuals from membership. That organization would certainly constitute a convenient source for information which could be made available to students at the same place that we maintain information regarding the armed services. If we welcome such organizations to provide such responsive information regarding the legal but discriminatory practice, then it will be accessible to students when they pick up literature, and also when recruiters visit schools, irrespective of the format of the visit.

Q. How will the District monitor compliance with the revised policies?

A. The revised Board policies are intended to be self-operative, with a minimum of bureaucratic oversight. It is anticipated that over a short time, each of the schools will have a reliable knowledge of both recruiters which fall within the policies, and the recognized advocacy groups which have a concern about legal but discriminatory hiring or membership practices and wish to provide alternative perspectives in person and/or by literature. As noted above, each school should feel free to directly and informally provide information about upcoming recruiting visits to such groups known to them, as one method of assuring that the spirit of our policy is respected.

Each school is requested, however, to forward by email to the Office of Counsel and to the managing principal at least quarterly, a list of the organizations which have visited the school and which have a legal discriminatory policy; a short notation of how the visit was communicated to the school's community and to Communications; and if the visit included open, unrestricted access to the students the identity of the recognized advocacy group(s) who asked for similar access.

It is our hope that the new revisions to the recruiting policies will prove to be simple and straightforward in practice, and that as we all become accustomed to the revisions, it will be a simple matter to administer them at the school level, without much bureaucratic overlay. The role of Central Offices will be primarily to provide advice to you as needed; to maintain the website; and to handle the press releases that you refer to the Communications Office. Please feel free to contact me if further information is needed.

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Michael J. Looby  
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