

Privacy Concerns in Cases of Sexual Harassment/Violence

Confidentiality Requests by Reporting Students

According to Office on Civil Rights (OCR), Title IX requires that a school with notice of sexual harassment or violence take action to end and remedy that harassment or violence. Notwithstanding this obligation, OCR has made clear that it “strongly supports” a student’s interest in confidentiality. While OCR recognizes that there may be instances where a school must deny a student’s request for confidentiality in order to meet its Title IX obligations, those instances are “limited,” and even then information should only be shared with those individuals responsible for handling the school’s response to the situation.

When confronted with a student request for confidentiality:

- The school must inform the student that honoring that request may impair the school’s ability to fully investigate and respond to the incident.
- The school needs to explain to the student Title IX’s prohibition against retaliation, that it will take steps to prevent retaliation, and that it will take “strong responsive action” if retaliation occurs.

If a student still insists upon confidentiality:

- The school is required to balance that request against its obligation to provide a safe and nondiscriminatory environment for all students, including the reporting student.
- The school can consider numerous factors including other complaints against the alleged perpetrator, future threats, multiple perpetrators, weapon involvement, and other means of obtaining information.

If a school determines that it cannot provide confidentiality:

- It should inform the student prior to making any disclosure.
- Must consider interim measures necessary to protect the student and ensure the safety of other students.
- If the reporting individual asks the school to inform the alleged perpetrator that he or she had asked the school not to investigate or seek discipline, the school should honor that request.

Where a school determines that it can honor a request for confidentiality:

- The institution is NOT relieved of its duty to act.
- There may be actions that the school can and should take, without identifying the reporting individual or commencing disciplinary proceedings.
- Ex: increased monitoring, supervision or security at locations or activities where the misconduct occurred; provide training and educational materials for students and staff; change or publicize the school’s policies on sexual harassment and violence; and conduct climate surveys on sexual harassment and violence.

Finally, even where confidentiality is provided, schools must take other steps necessary to protect the reporting individual, including providing support services and/or changing living arrangements, course schedules, assignments or tests.

FERPA & Title IX

FERPA is the Family Educational Rights and Privacy Act of 1974. The intent of the Act is to protect the rights of students and to insure the privacy and accuracy of education records. The Act applies to all institutions that are recipients of federal aid administered by the Secretary of Education.

A student's primary rights under FERPA include:

- The right to inspect and review his or her education records.
- The right to request an amendment to his or her education record that he or she believes to be inaccurate or misleading.
- The right to consent to disclosures of personally identifiable information contained in his or her education records, except to the extent that FERPA authorizes disclosure without consent.
- The right to file a complaint with the United States Department of Education concerning alleged failures by an institution to adhere to FERPA.

A complainant has the right to be informed of:

- Whether or not the school found that the alleged conduct occurred;
- Any individual remedies offered or provided to the complainant;
- Any sanctions imposed on the perpetrator that directly relate to the complainant, and
- Other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence.

The alleged student perpetrator has the right to:

- Request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record.
 - The school *must* either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect the complaint that relate to him or her, OR must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator.
 - The school *should* also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.