



EDUCATION & TITLE IX

## ACTUALLY, YOU CAN DISCLOSE THAT: TRANSPARENCY IN SEXUAL ASSAULT REPORTING & THE FAMILY EDUCATIONAL RECORDS PRIVACY ACT (FERPA)

The Family Educational Records Privacy Act (FERPA) says schools have to keep some student records private. This means that schools cannot disclose records that have personally identifiable information (e.g., name, address) without a student's or parent's consent. But FERPA does not restrict a school's duty to prevent and address sex discrimination under Title IX. FERPA also does not block a school's ability to provide accurate stats on campus safety as required by the Clery Act.<sup>1</sup>

Still some schools misuse FERPA to deny basic requests made by survivors for information about their sexual assault. Some schools also use FERPA to keep things that affect campus safety secret. That's why if students and parents want schools to address sexual violence that can disrupt student learning, they need know the facts about FERPA. This fact sheet highlights how FERPA works with Title IX and Clery to allow public reporting of sexual violence and other campus crimes.

### ***FERPA REQUIRES Schools to Disclose:***

- An individual student's records to
  - The parent of the student if the child is not yet 18 years old; and
  - The individual student, if the student is at least 18 years old or enrolled in college.<sup>2</sup>

### ***FERPA ALLOWS Schools to Disclose:***

- The final results of any college disciplinary proceeding to a victim<sup>3</sup> involved in a violent crime or sex offense.<sup>4</sup>
  - "Final results" means:
    - The name of the accused student;
    - Any college rule or code that was broken and key findings that support the conclusion; and
    - A description of disciplinary action taken, when it starts, and how long it lasts.
  - "Final results" may also include the name of other students **that consent in writing** to have their names disclosed. Examples of such students include the victim or witnesses.
  - The Clery Act says the school **must tell the victim and the accused about the final results at the same time**. The Clery Act requires this disclosure even if the school decides that the accused did not break school rules or policies.<sup>5</sup>
- The final results of any college disciplinary proceeding for a violent crime or sex offense *that concludes the accused broke a school rule or policy* to a third party.<sup>6</sup> Examples of third parties include witnesses, student groups, or reporters.
  - "Final results" may also include the name of other students that consent in writing to have their names disclosed. Examples of such students include the victim or witnesses.

**NOTE—Schools cannot use FERPA to impose gag orders** or nondisclosure agreements on victims or accused students. Victims and accused students have a right to talk to anyone they choose about the proceeding.



**NOTE—Schools cannot stop or hold up** the investigation, services, accommodations, or the release of final results because a student refuses to agree to a gag order.

- Any record from a college—including disciplinary or investigation/proceeding records—to another school where the student plans to transfer, if:
  - The student had a chance to review the records **OR**
  - The transferring college decides that there is a threat to the health and safety of the student or others.<sup>7</sup>
- Any record to teachers, professors, or staff with a valid educational interest in such record.<sup>8</sup> For example, a school could notify staff about an ongoing investigation if there is a risk to the safety of that student, other students, or other members of the school community.
  - Under this provision, disclosure can be made to any school—even one that the student does not or is not seeking to attend. But disclosure must serve a valid educational interest to that school, such as campus safety.<sup>9</sup>

- Any needed information to warn students of an immediate threat to health and safety on campus.<sup>10</sup>
  - **If reports to campus security authorities<sup>11</sup> or police show a serious or ongoing threat on campus**, the Clery Act **requires** colleges to disclose information that could promote safety and help prevent similar crimes.

### ***FERPA Does Not Change What Schools Must Report under Title IX, Clery & Other Laws***

- Responsible employees<sup>12</sup> still must report incidents of sexual violence to the Title IX coordinator.
- Campus security authorities must still report instances of sexual violence to the school official or office that collects crime information.
- Colleges must still produce an Annual Security Report, which compiles data about the number of sexual violence incidents on- or off-campus, as well as other crime statistics.
- Elementary and secondary schools must still transfer records of suspensions or expulsions to any elementary or secondary school in which a student seeks to enroll.<sup>13</sup>

1 Title IX applies to any school that receives federal funding, including K-12 schools, career and technical education programs, colleges, universities, and other institutions of higher education. The Clery Act only applies to institutions of higher education.

2 20 U.S.C. § 1232g(a)(1)(A)-(B) & (d).

3 FERPA and its regulations use the term “victim” rather than “complainant” or “survivor.” See, e.g., 20 U.S.C. § 1232g(b)(6)(A).

4 20 U.S.C. § 1232g(b)(6)(A); 34 C.F.R. § 99.39.

5 34 C.F.R. § 668.46(k)(3)(iv).

6 20 U.S.C. § 1232g(b)(6)(B) (emphasis added).

7 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10) and 99.36.

8 20 U.S.C. § 1232g(h); 34 C.F.R. § 99.36(b).

9 U.S. DEP’T OF EDUC., READINESS AND EMERGENCY MANAGEMENT FOR SCHOOLS TECHNICAL ASSISTANCE CENTER, SHARING INFORMATION (FERPA), FY07 REMS INITIAL GRANTEE MEETING at 22 (Dec. 5, 2007), available at [http://rems.ed.gov/docs/Training\\_SD07\\_FERPA\\_SharingInfo.pdf](http://rems.ed.gov/docs/Training_SD07_FERPA_SharingInfo.pdf).

10 20 U.S.C. § 1092f(1)(J)(3).

11 Includes campus law enforcement or security personnel, as well as any official who has significant responsibility for student and campus activities, such as resident assistants, a dean of students, coaches, or Greek affairs coordinators. 34 C.F.R. § 668.46

12 Defined as any employee who has the authority to act to address sexual harassment; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator; or whom a student could reasonably believe has that authority. U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES, at 13 (2001), available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

13 20 U.S.C. § 7165(b).

