

Confidentiality is the protection of personal information and an essential component of sexual assault investigations, reporting, and adjudication. When applied to cases of campus sexual assault, confidentiality specifically refers to:

1. securing information about a case,
2. protecting the complainant's and respondent's identities, and,
3. safeguarding information about the support services extended to the parties involved.

When implemented effectively, confidentiality empowers survivors to have control over reporting process decisions. By protecting survivors, it also creates an enabling environment for survivors to report assaults.

Unfortunately confidentiality is often implemented improperly or not at all. In some cases, confidentiality policies have been misused by universities to mask important data and case information and ultimately protecting their reputation. When universities lack comprehensive confidentiality policies or misuse them, they place the health and safety of students and survivors at risk.

POLICY LANDSCAPE

Three key federal policies impact how the rights to confidentiality of survivors and respondents are treated by institutions: Title IX, the Clery Act and The Family Educational Rights and Privacy Act (FERPA).

Title IX

Title IX is a federal law that aims to end gender-based discrimination in education. It states that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

As applied to campus sexual assault, it prohibits retaliation and requires institutions to take steps to prevent retaliation and respond if it occurs.

In the [2011 Dear Colleague Letter](#), the Office of Civil Rights specifies that institutions need to weigh the request for confidentiality against the following factors:

- the seriousness of the alleged harassment;
- the complainant's age;
- whether there have been other harassment complaints about the same individual; and
- the alleged harasser's rights to receive information about the allegations if the information is maintained by the school

as an "education record."

The 2011 Dear Colleague Letter [catalyzed a movement](#) led by students from the University of North Carolina at Chapel Hill, Dartmouth, Swarthmore, the University of California at Berkeley, and the University of Southern California, among others. They filed complaints against their campuses for failing to respond appropriately to sexual assault allegations.

In response, the Obama administration began looking into these complaints and proactively investigating compliance with Title IX on other campuses. In May 2014, the Office of Civil Rights publicly named the first 55 universities that were under investigation. As of March 2017, there were 375 investigations, with 61 cases resolved and 314 remaining open.

- **Take Action:** The Chronicle of Higher Education has created a valuable [online tool](#) for searching and tracking federal investigations into potential Title IX violations. [Search](#) the database to see if your campus was, or is, being investigated under Title IX.

The Clery Act

The [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#), or **The Clery Act**, is a law that aims to ensure that schools uphold transparency around policies and statistics related to campus crime. It stipulates that a school's annual security report must disclose the process for public recordkeeping and data-sharing that protects individuals rights to confidentiality.

- **Take Action:** Advocates should [critically examine](#) their school's annual security report to see if it reports crime statistics while also maintaining confidentiality. [Schools sometimes do not accurately collect data, misclassify sexual assault, and submit inaccurate sexual assault statistics all together.](#)

FERPA

The [Family Educational Rights and Privacy Act](#), or **FERPA**, is a federal law that protects the privacy of student education records. [Under FERPA](#), schools must redact the survivor's identifying information before the respondent reviews the portions of the complaint that relate to them. A complainant's right is [limited to disclosure of the final results of a disciplinary proceeding](#), regardless of whether the institution concluded a violation was committed.

RECOMMENDATIONS

- **Institutions should take all reasonable steps to investigate and respond to reports of sexual miscon-**

duct while protecting confidentiality. This includes honoring all requests by survivors not to pursue an investigation.

- **Policies should explicitly make clear when the confidentiality of survivors are protected and when there are limits.** School policies should direct students to the staff members who can ensure confidentiality and explicitly state that other staff may be compelled to report disclosed incidents of sexual assault, regardless of a student's request for confidentiality.
- **Institutions should disclose how maintaining confidentiality restricts the scope of an investigation.** For example, a survivor may request during the course of an investigation that his or her name or other identifiable information be withheld from the respondent. In that case, the institution must inform the survivor that its ability to uphold that request may be limited.
- **Confidentiality should prioritize protecting survivors.** It should [not be misused by institutions](#) to deprive students of data, facts, reasoning about remedies/punishments, and case outcomes. Similarly, confidentiality should not leave survivors with insufficient information about their options.

Institutions have gone as far as citing confidentiality when refusing to share details of sexual misconduct investigations with the public. For example, [student journalists described being confronted](#) with increased disciplinary actions during their efforts to shed light on campus sexual assault.

Institutions are often reluctant to disclose cases of sexual misconduct due to potential damage to their reputation, resulting in the withholding of necessary information about sexual assault cases. Instead, they should combat the culture of sexual violence by sharing data and information that can empower student choice.

- **Confidentiality should be central in the support, resources and information that survivors receive throughout the healing process.** [The American Psychological Association specifies](#) that confidentiality is a cornerstone of mental health treatment. In order to feel safe throughout the healing process, survivors need a confidential space to disclose information and receive support. Access to confidential mental health counselors, a crisis center on campus whose staff members are protected by confidentiality statutes, or a representative from a community based center with such privileges [are critical when creating a support network](#) in which a survivor feels safe.

SAFER strengthens student movements to combat sexual and interpersonal violence in campus communities. We are a nonprofit organization that is devoted to empowering college students by providing them with the resources they need to build successful grassroots campaigns.

For support with crafting and implementing policy reforms, email info@safercampus.org or visit www.safercampus.org.