



Title IX and client confidentiality

Question: I am a licensed professional counselor at a small college and have also been designated as a “responsible employee” or contact person for incidents involving sexual violence. The school’s Title IX coordinator has advised me that if a student comes to me for counseling and says that she or he has been sexually assaulted, I must report the incident, including the identity of the perpetrator, to the coordinator. Maybe I don’t fully understand Title IX, but I am concerned that this would be a breach of confidentiality and could also cause potential problems for me with my state licensure board.

Answer: Title IX is the popular “shortcut” name for Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. It was enacted to ban discrimination on the basis of sex in public and private schools, colleges and universities that receive federal financial funding. The Office of Civil Rights (OCR) under the Department of Education oversees compliance with the law and has been actively concerned in recent years about student-on-student sexual harassment and violence. You may wish to review the OCR guidance document titled “Questions and Answers on Title IX and Sexual Violence,” which may be found at www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.

If you are acting in your role as a licensed professional counselor and your client authorizes you in writing to report the incident to the Title IX coordinator, then you are permitted to do so. However, if your client does not want you to report the incident, and reporting the identity of the alleged

perpetrator would cause you to breach your client’s confidentiality, you should not report in most circumstances. In many cases, simply revealing the identity of the perpetrator could ultimately cause a breach because the perpetrator may then reveal the identity of the alleged victim (i.e., your client). However, if the incident involves a legally mandated reporting situation, such as child abuse, you would be required to follow those reporting requirements.

The OCR provides specific guidance on this topic in Section E.3. of its Title IX document: “OCR does not require campus mental health counselors, pastoral counselors, social workers, psychologists, health center employees or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student’s consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor–client relationship, which often requires confidentiality to ensure that students will seek the help they need.

“Professional counselors and pastoral counselors whose official responsibilities include providing mental health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.”

This policy appears to be consistent with Section B of the 2014 *ACA Code*

of Ethics as well as most state licensure and confidentiality laws. You may wish to share relevant resources on Title IX, including the quote above, with your school’s Title IX coordinator. Also, suggest that the college’s attorney become involved in clarifying institutional policy on this issue.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented for educational purposes only. For specific legal advice, please consult your own local attorney. To access additional risk management Q&As, go to counseling.org/ethics and scroll to the bottom of the page for the ACA members-only link to the Risk Management section of the website. ♦

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