

2022-2023: FERPA and Title IX

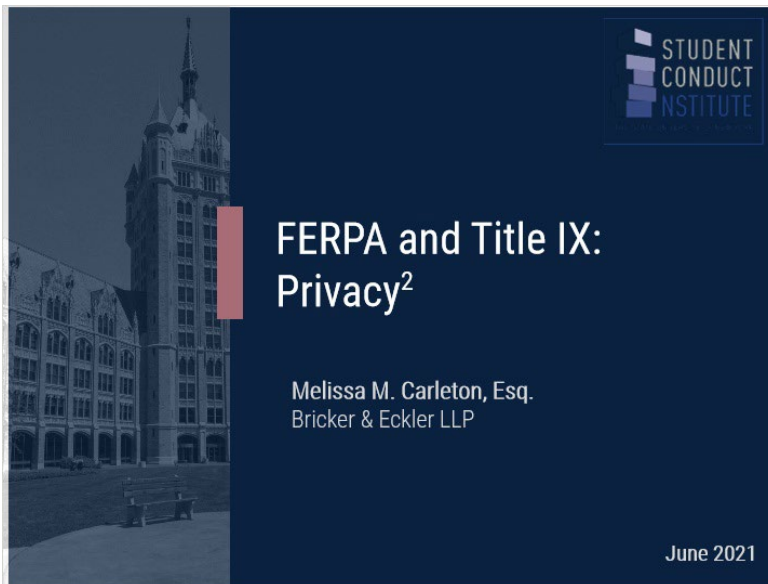
1. SCI FERPA and Title IX

1.1 SCI Welcome & Legal disclaimer



Notes:

1.2 FERPA and Title IX:



Notes:

Hello and welcome to the third presentation in the FERPA Fundamentals Series. This installment is on FERPA and Title IX, which I've subtitled, "Privacy Squared." If you've been through the first two FERPA trainings, you know how important the protection of student records is to building and maintaining trust between your institution and your students. In the Title IX context, that trust is even more critical, and it's central to our discussion in this session.

If you aren't familiar with FERPA, I'd suggest you go back and listen to the first two sessions. They outline FERPA's protection of student records, as well as the situations in which you may release personally identifiable information from those records without consent of the student. They also talk about our favorite power-pop duo, Melody and Harmony, your internationally famous first-year students who just keep getting into sticky situations—today's session included.

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Notes:

I am your host for this series. My name is Melissa Carleton, and I am an attorney with the Higher Ed team at Bricker & Eckler LLP. I am also an avowed FERPA geek. I get excited when new cases come out. Every new case and every new guidance document is a piece of the FERPA puzzle. I hope by the end of this series, you find yourself excited for new cases too, and then we can geek out together.

1.4 Learning Objectives

Learning Objectives

- 1 What does Title IX say about privacy?
- 2 What does the Clery Act say about privacy?
- 3 When can we share information in the context of Title IX?
- 4 When should we share information in the context of Title IX?

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Notes:

Title IX intersects with FERPA in a few different ways, and so does the Clery Act. We'll talk through each of those today. We'll also talk through a hypothetical about when we are permitted to share information involving a Title IX case without consent of the students. Finally, we'll end with revisiting our perpetual mantra about sharing records without consent, which is "just because we can, doesn't mean we should." We'll talk about best practices and considerations in Title IX cases given the sensitive nature of the subject.

1.5 Title IX – General FERPA Obligations

The slide features a title 'Title IX – General FERPA Obligations' in blue text next to a red vertical bar. Below the title is a white box with a dotted border containing a bullet point and a citation. The bullet point reads: "The obligation to comply with [Title IX] is not obviated or alleviated by the FERPA statute ... or FERPA regulations." Below this, the citation '34 C.F.R. 106.6(e).' is displayed. A small blue box with the number '4' is located in the bottom right corner of the slide.

Notes:

First off, good news. The U.S. Department of Education made it clear in the 2020 regulations that FERPA and Title IX can and must co-exist. This has long been the rule in the guidance, but adding it to the regulations makes it more official. You can't use the protections in FERPA as a shield to defend your institution from having to share information as part of the Title IX process. Likewise, you can't use the Title IX process to shield your institution from sharing education records when appropriate and permissible under FERPA. The two work hand in hand together, and we need to find a way to comply with both.

1.6 Title IX – Retaliation 106.71

Title IX – Retaliation 106.71

- “The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by ... FERPA ... or as required by law, or to carry out the purposes of [Title IX]...”

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Notes:

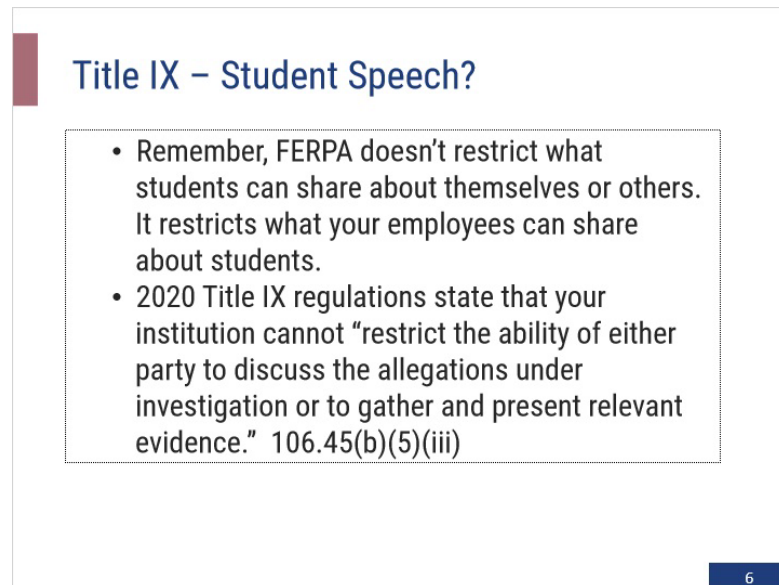
Second, the U.S. Department isn't messing around. When they say you need to comply with FERPA, they have tied it to a retaliation charge under the new regulation. If your institution – and probably, any employee at your institution – fails to keep confidential the names of the individuals involved as parties, witnesses, or reporters, that may give rise to a retaliation charge. The exceptions are important here, though. You may still share information according to all of the FERPA exceptions, such as with school officials who have a legitimate educational interest, or with others in situations involving a health and safety emergency. You may still share information if it is required by law for some reason. For example, if your complainant is a minor, you may be under a mandatory child abuse reporting requirement and if so, Title IX will permit that disclosure because it's required by law. You may – and in fact must – share information as necessary to carry out the purposes of Title IX, and that is also not retaliation. So, for example, you can share information from a student witness with the parties, and that's permissible. They need to know who the witness is and what they said, because that witness may be called to a hearing, and how else would you be able to respond to the evidence and question credibility?

This provision is tricky, because it's easy for an unsuspecting and perhaps well-meaning employee at your institution to get sideways with this. Let's say you have a case involving two student athletes as parties. They are both on the same team. The coach is aware of the case because there was a need to organize practice times to give the parties some space. The coach decides to tell the assistant coaches and the volunteer coaches. When the case starts causing disruption among the team, the coach might decide to call a team

meeting without the two parties to talk the players through it. Let's consider this. If the coach acknowledges that there is a Title IX case, to either the volunteer coaches or the teammates, is this permitted under FERPA? Is it required by law? Is it necessary to the Title IX process? Nope, nope, nope. You could in theory share the information with assistant coaches and volunteers under FERPA, but it's hard to see what the legitimate educational interest is as we've described in this situation. And the rest of it just doesn't apply. So it's easy to see that the coach might mean well, but we'd like that coach to avoid a retaliation charge. So please, make sure your folks are trained on this provision!

2. Speech, Clery Regulations, and Title IX

2.1 Title IX – Student Speech?



Title IX – Student Speech?

- Remember, FERPA doesn't restrict what students can share about themselves or others. It restricts what your employees can share about students.
- 2020 Title IX regulations state that your institution cannot "restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence." 106.45(b)(5)(iii)

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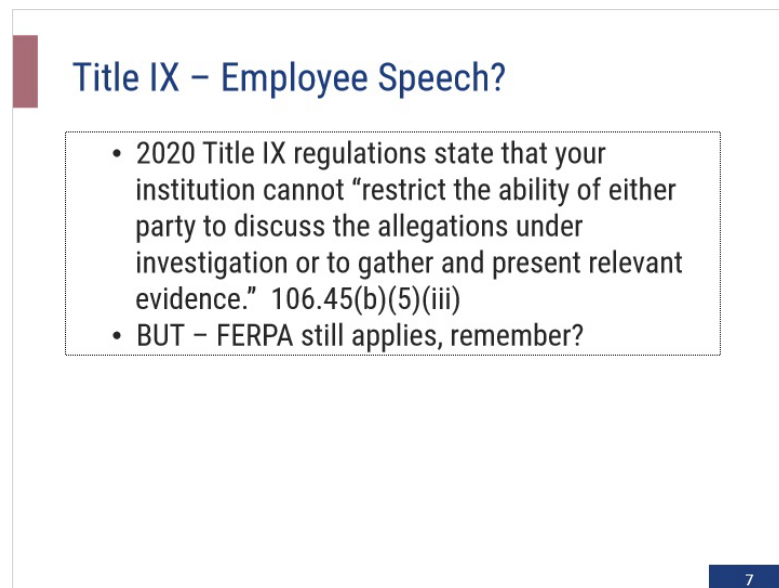
Notes:

You may think, great, so we have to be careful what we say, but what provisions apply to the parties? If we're so concerned about privacy, then surely the law and regulations must restrict them as well, right? Well, no. The First Amendment applies to the U.S. Department of Education and makes it difficult to regulate the content of free speech. So we have a bit of a mismatch here. Your employees can't share information due to the retaliation regulation, but your students aren't bound in the same way. In fact, the 2020 regulations specifically say that your institution can't "restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence." This is affectionately known as the "no gag orders" provision. As the commentary notes, this was put in place because of concerns that "complainants are sometimes punished unfairly for

merely talking about their assault with fellow students in violation of a school-imposed gag order,” as well as because the Department was worried that such gag orders would “prevent[] parties from collecting evidence by preventing them from talking to possible witnesses , and even from calling parents or friends for support.” I’ve pulled those concerns from the Preamble, in case you are wondering.

And yes, there’s a mismatch here, too. What about when an employee is a party?

2.2 Title IX – Employee Speech?



Title IX – Employee Speech?

- 2020 Title IX regulations state that your institution cannot “restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.” 106.45(b)(5)(iii)
- BUT – FERPA still applies, remember?

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Notes:

If employees are parties, they are still bound by FERPA. Your Title IX policy doesn’t restrict them, as a party, from discussing the case, but they are still required to follow your institution’s FERPA policies, which you need to enforce in order to maintain your federal funding. So, employee parties can do what they need to do to gather and present relevant evidence, but they probably can’t go talk about their case with the media if the other party is a student, because that is outside what is permitted by Title IX and FERPA.

Now, if both of your parties are employees and they want to air their dirty laundry, well... FERPA doesn’t apply if there isn’t student information, and the end result will be that everyone will be unhappy. And that’s probably a whole different SCI session.

2.3 Clery Regs – Sharing Evidence

Clery Regs – Sharing Evidence

- In cases involving sexual assault, dating violence, domestic violence, or stalking, you must provide both parties with “timely and equal access” to “any information that will be used during informal and formal disciplinary meetings and hearings.” 34 C.F.R. 668.46(k)(3)(B)(3)
- Compliance with this provision is not a violation of FERPA. 34 C.F.R. 668.46(l)

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Notes:

The Clery regulations also have their share of say on privacy in some Title IX cases. Remember, the Clery regulations, at least for our purposes today, apply to cases involving sexual assault, dating violence, domestic violence, or stalking. All of these cases would also be considered Title IX sexual harassment, but only to the extent that they happened in the context of your educational program or activity, against a person in the United States at the time, and of course the formal complaint must have been filed when the complainant was either participating in or attempting to participate in your educational program or activity. That means you may have off-campus behavior that you still might want to prohibit, but that doesn't fall under your Title IX procedures. So just be aware that these Clery regulations not only cover part of Title IX sexual harassment, but they also go beyond that.

The Clery regulations require that in these specific cases of sexual assault, dating violence, domestic violence, and stalking, you must provide both parties with timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings. What does that mean? There isn't a lot of guidance on this point, but look to the idea that parties need to be provided with proper notice of the allegations under consideration, as well as access to the evidence that will be considered by the decision-maker in the case so that they can rebut it if appropriate.

2.4 Clery Regs – Outcome Notification

Clery Regs – Outcome Notification

- The Clery regulations require that in cases involving sexual assault, dating violence, domestic violence, and stalking, you must provide simultaneous written notification to both parties of:
 - The result of the disciplinary proceeding
 - Appeal procedures
 - Any change to the result
 - When such results become final.
- Compliance with this provision is also not a violation of FERPA. 34 C.F.R. 668.46(l)

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Notes:

There is a second provision of the Clery regulations involving the sharing of information that might otherwise be prevented by FERPA, and you can find this one in 34 C.F.R. 668.46(k)(2)(v). In these cases, you must provide simultaneous written notice to both parties as to the result of the disciplinary proceeding, the appeal procedures, any change to the result, and when such results become final. Again, you'll want to make sure that case that do not fall within your Title IX sexual harassment definition but still involve sexual assault, dating violence, domestic violence, and stalking and using procedures that comply with the Clery regulations.

2.5 Clery Regs – Emergency Notifications

Clery Regs – Emergency Notifications

- Under Clery, you must send emergency notifications and timely warnings about crime to your campus under certain circumstances, to help keep your community safe.
- If you are sending these out, you cannot include identifying information about the crime victim. You should also be careful to release information about respondent students only if truly necessary.
- See 34 C.F.R. 668.46(b)(11)(iii)(A).

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Notes:

The Clery Act doesn't just apply to sexual assault, dating violence, domestic violence, and stalking cases. It has many broad provisions, including keeping crime statistics, sending out annual security reports, and also providing your campus with emergency notifications and timely warnings. Sometimes those notifications involve information about crime around campus so that you can help keep your community safe. If that is the case, your emergency notifications and timely warnings cannot include personally identifiable information about the victim of those crimes. Obviously, this may overlap with your Title IX cases, so be protective of that information.

The same provision does not protect information about the respondent, and in fact, it may be critically important to share information about the respondent depending on the circumstances. Consider these descriptions, taken from sample emergency notifications.

"Number One: An short individual wearing blue jeans and a unicorn t-shirt was spotted on the quad wielding a sword." Specific, right? But how about, "A girl named Stephe G has been spotted on the quad wielding a sword. She is wearing blue jeans and a unicorn t-shirt." Now, if you know Stephe G, who happens to be my eight-year-old daughter, you have more information about who to avoid, and probably when to call the police. Also, I really question whether we need an emergency notification for an eight-year-old with a sword, but that's a separate issue.

Now consider this version: "A girl named Stephe G has been spotted on the quad attempting to take a boy named Sam hostage." Great, we have some information about

the source of the danger, but do we really need to know the name of the victim here? I think my ten-year-old, Sam, would say something like, “That’s nunya business,” and he’d be right.

2.6 Clery Regs – Supportive Measures

Clery Regs – Supportive Measures

- Under Clery, you must maintain privacy for any accommodations or protective measures (supportive measures) that you provide to the victim of a crime, to the extent that maintaining that confidentiality doesn’t impair your ability to provide them.
- See 34 C.F.R. 668.46(b)(11)(iii)(B).
- Note: Also applies in the Title IX context. See definition of “Supportive Measures” in 34 C.F.R. 106.30(a).

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Notes:

Clery also requires you to keep confidential the supports and accommodations that you offer your crime victims. The respondent doesn’t need to know that, and neither does the rest of the community.

Although it is not stated in the Clery regulations, I typically read the protections to be mutually protective of complainants and respondents, to the extent appropriate. So, if you are providing accommodations and supports to a respondent, you probably don’t need to share them with the community or the complainant either.

Of course the exception to all of this is when you have something that both parties need to know about, such as a mutual no-contact order. It would be kind of hard to enforce that if both parties didn’t know about it, and of course it wouldn’t be fair to try to do so.

And wait, wait, Melissa, doesn’t this apply to Title IX, too? Yes, it does. The same provision is found in 106.30(a).

2.7 Title IX and Clery - Summary

Title IX and Clery - Summary

- When we have a Title IX/Clery disciplinary action, we create a bubble around the parties and their advisors.
- You can share within the bubble as needed to implement the process.
- When the process is over, the bubble pops. We're not protecting a process anymore, so relying on the process for permission to share doesn't work.
- That's when you rely on your old friend, FERPA.

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Notes:

OK, so I just threw a lot at you, so let me tell you how I explain it to my clients. When we get a Title IX case going, or we have a case involving sexual assault, dating violence, domestic violence, or stalking under Clery, imagine that a bubble of protection grows over the parties and their advisors. The institution will get to share information within that bubble if it's necessary to implement that Title IX or Clery process. If FERPA wouldn't allow you to share evidence, but the evidence must be shared according to Title IX, that bubble is going to protect you when you share. The bubble doesn't protect anything that isn't required by the process though. So if you, as the Title IX Coordinator, want to go to the media, you're out of luck and the bubble won't protect you.

Once the process is over – POP! The bubble is gone. You aren't required to share all that information to implement the process anymore. Now, FERPA applies to protect that student information again, and we have to run through our usual analysis.

2.8 Sharing Beyond the Bubble

Sharing Beyond the Bubble

Under what conditions may you share?

- ✓ School officials with a legitimate educational interest
- ✓ OCR for audits/complaints
- ✓ Health or safety emergency
- ✓ Disclosure to victim of outcome of disciplinary proceedings for crime of violence or non-forcible sex offense
- ✓ Disclosure to anyone where respondent found responsible for violent crime or non-forcible sex offense

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Notes:

This is really a revisit of the various exceptions to FERPA that we covered in the first two parts of our FERPA series, but I've listed them here to note that these are the most common exceptions that often come up in Title IX cases. If you need to share outside the bubble, you can always still share with school officials with a legitimate educational interest, governmental agencies like OCR that are investigating your Title IX compliance, and in situations involving a health or safety emergency in which the information must be shared to help avoid an imminent and articulable threat to the health or safety of the student or others.

The final two involve situations in which disciplinary proceedings (such as your Title IX process) are held to adjudicate crimes of violence, including sexual assault, and non-forcible sex offenses such as incest and statutory rape. When those proceedings conclude, you may disclose the final outcome to the complainant. Note that the Clery Act really requires you to make this disclosure, but at least you know you have permission under FERPA. If the respondent is found responsible for a policy violation for a crime of violence or non-forcible sex offense, you may release the responsibility determination to anyone.

There was a recent court case that looked to this last permission in the regulations in the context of a public institution. The student newspaper asked for a list of everyone who had been found responsible for a crime of violence or non-forcible sex offense. The institution refused to release the information, citing that FERPA did not require the institution to release it. The court found that FERPA didn't prevent them from releasing it, and since they were a public institution, these were essentially public records, and under that state's

public records law, the institution was required to release the names. So, keep this in mind when you're thinking about whether you can or must release certain records.

You may notice there are a few other FERPA exceptions that often apply in Title IX. If so, you are well on your way to being a fellow FERPA geek. Either congratulations or apologies are in order. Let's talk about these additional exceptions in the hypothetical we're going to talk through.

3. Check Your Knowledge

3.1 *Harmony Becomes Dissonant*

Harmony Becomes Dissonant

- Harmony is accusing Officer Jake of groping her on the way to the police car
- She has "incontrovertible proof," which she is not sharing at this time
- Melody is a key witness
- Harmony will be filing a lawsuit

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Notes:

As you may recall from previous FERPA sessions, Melody and Harmony are friends, roommates, and first-year students at your institution. They are also an internationally famous pop singing duo. They got caught drinking, and then Harmony assaulted a police officer and everything kind of went downhill from there.

It's a few months later, and Melody and Harmony have withdrawn from your institution because their world tour is back on. You are glad not to be getting information about your campus through the tabloids anymore, at least until today.

There is a TV in your office reception area as you walk in, and Harmony is on the news, now explaining that when she was taken to the police car in handcuffs by Officer Jake of your

campus police, she was groped. Not only that, Harmony has announced that she has “incontrovertible proof” that she was a sexual assault victim. She announces that your institution has done nothing in response to this outrageous injustice, and that she is planning to file a lawsuit and seek damages. Just when you’re thinking that this is the first you’ve heard of it and can’t imagine who might have handled it that way, Harmony goes on to announce that YOU, by name, are the one she told about it. Suddenly, everyone in the lobby is staring at you. This does not feel good.

3.2 Can You Defend Officer Jake?

Can You Defend Officer Jake?

- You pull the security and body camera footage.
- The footage completely exonerates Officer Jake.
- Can you release the footage to the media?

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Notes:

Now that you’ve made sure that Harmony never told you about the sexual assault, it’s time for you to look into the allegations against Officer Jake. Thank goodness for whoever had the foresight to preserve all of the security and body camera footage from that encounter, because you have angles from three different officers, including Officer Jake. You also have security footage from the residence hall entrance, which has a clear view of the police car. You have now reviewed it all several times.

The only officer that comes anywhere near Harmony is Officer Annie, whose hands are clearly visible for all relevant portions of the footage. Officer Jake does not touch Harmony, although in the video he tells her that she should be ashamed of her behavior, which seems to aggravate her more. Releasing this footage would absolutely exonerate all of the officers, and that’s not just your optimism. The videos are really that unassailable. But could you release the videos?

The answer is probably “yes,” but it is going to depend on who kept the videos and what the purpose was. If your police department saved the footage as part of its law enforcement investigation, then it is not considered a “student record” under FERPA and no FERPA protections apply. If your police department did not maintain the footage but instead turned it entirely over to your student conduct office for the disciplinary proceedings, then the records are being maintained for a disciplinary purpose and they probably ARE protected by FERPA. But chances are good that your police officers maintained a copy of their body camera footage for law enforcement purposes, right? The trickier issue is the security camera footage. If the police didn’t collect that because of all the body camera footage, and it just exists in your disciplinary file, then it’s protected under FERPA and can’t be released.

Let’s say you have done your analysis and have determined that all the footage is protected under FERPA, for whatever reason. Could you just redact Harmony’s face and release the video? No, because redaction isn’t sufficient when everyone knows who the record is about. In this case, Harmony’s allegations have been all over the news, so that ship has sailed.

3.3 Can You Defend Yourself?

Can You Defend Yourself?

- You are quite certain that Harmony never told you.
- You have met with Harmony several times and have correspondence and pages of notes.
- Reporter Joe calls you up to ask for a quote, and for any relevant records.
- What do you do?

Notes:

Fortunately for you, your superpower is documenting everything. You met with Harmony several times about her conduct case, and you have extensive notes from each of those conversations. You also have emails back to Harmony after each meeting, documenting what was discussed. None of the documentation mentions a sexual assault, which is consistent with your memory. Harmony emailed you multiple times, but never mentioned any sexual assault to you.

You sit for a moment in your office, frustrated, and that's when Reporter Joe calls. He's looking for all your relevant records, as well as a statement. What do you do?

Let's handle the easy one first. When Joe is asking you for relevant records about your meetings with Harmony, that's going to be a no-go. You don't have consent from Harmony to release the records, and there isn't any exception that applies that would allow you to release without consent. "Defending yourself" is not one of the exceptions, not only because it isn't listed in the regulations, but because the U.S. Department of Education told us as much in a letter. The letter addressed a situation in which a student in a Title IX case had gone to the media, and the question was whether going to the media operated as a waiver of the student's FERPA rights. The answer was a clear "no." So, your institution will be prohibited from releasing your notes and records.

Well Melissa, you might say, I didn't just read about this in some record. I lived it. FERPA protects records, but does it require me to keep quiet? Can't I just tell Reporter Joe everything I experienced myself?

You're right. FERPA protects personally identifiable information in education records. It does not protect your own memories. However, the answer to this is more practical than FERPA. First, your institution's attorney is probably scrambling to help your public relations team address this incident. I would strongly suggest that you connect with those folks before you respond to media inquiries in a situation like this, because you could inadvertently make something worse. Statements that seem true to you when you say them may be taken more broadly than you intended, and when you line it up with your institution's official statement, it could accidentally create misunderstandings. I don't want that for you or really anyone. Second, when such misunderstandings arise, it leaves you open for claims such as defamation or invasion of privacy, depending on the exact situation and your state laws. I don't want that for you either.

So, in this case, just because you can, doesn't mean you necessarily should – at least not immediately. You are strongly encouraged to consult with legal counsel before talking with Reporter Joe.

3.4 Melody in the Mix

Melody in the Mix

- As you are reviewing the footage, you notice that Officer Jake comes very close to Melody.
- You realize that the footage shows that Officer Jake in fact groped *Melody*, even though Harmony is the one making the allegations.
- What do you do now?

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Notes:

So if you thought this was easy because there doesn't seem to be a true and actual Title IX case, think again. As you are reviewing the footage, you happen to notice that Officer Jake gropes Melody, not Harmony. Just as before, the video is crystal clear, and when it happens in the video, Melody looks horrified.

So let's follow the chain of events that will happen now. You, being the good human being that you are, will report the situation to the Title IX Coordinator. In fact, your Title IX policy may require that you do so. You can do this under FERPA because of the exception involving "school officials with a legitimate educational interest." The Title IX Coordinator will reach out to Melody to talk about her options and maybe offer supports, if they are feasible given that Melody is no longer a student.

If Melody wants to see the footage, she may watch it with you in your office, but she may not have a copy. Why? Because it is also Harmony's student record, and we don't have permission from Harmony to give Melody a copy. If she opts to move forward with our process, we now have our FERPA bubble, and she'll have more access to the video, as will Officer Jake.

You may say, Melissa – this can't be handled under Title IX jurisdiction, because Melody is not participating or attempting to participate in our education program or activity. You are correct on that account. However, this is going to qualify as a sexual assault under Clery,

which means that you have certain procedural requirements that apply, including that you provide timely and equal access to both Melody and Officer Jake for any information that will be used during disciplinary meetings and hearings.

3.5 Melody Has Opinions

Melody Has Opinions

- Melody has decided to re-enroll during the process. She is now speaking openly about her encounter with Officer Jake.
- She posts daily on Instagram about the process and her feelings about it.
- She posts hourly on Twitter about how she feels about Officer Jake.
- Officer Jake is on paid leave during the process, but he's feeling anxious that everyone is suddenly talking about him.
- What can you do?

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Notes:

Melody is so impressed with how you are handling her case that she has decided to re-enroll before it is finished. She is now regularly updating her friends and fans on the investigation, her thoughts, and how she feels about Officer Jake. She has called him a “predator” and a “bad apple” and says that the process is “emotionally taxing and difficult.” Officer Jake is on paid leave, but he’s feeling anxious about what Melody is saying. He thinks everyone is talking about him, and that’s probably true. His emotional temperature is turned up, and he’s seeking mental health assistance to process Melody’s constant stream of comments. He wants to know if there’s anything you can do.

The answer is, probably not much. Remember that while you have a lot to keep private under FERPA, Melody is under no such restriction. In fact, the new Title IX regulations provide that you cannot issue a “gag order” on the parties to keep them from talking about the case. You can address retaliation, stalking, and unwelcome sexual conduct that rises to the level of sexual harassment, but none of those seem to fit here. You might meet with Melody to caution her against those concerns if you think she is nearing the line, but other than that, there’s not much you can do.

Remember that case where a complainant carried a mattress around campus as

performance art to protest sexual misconduct she had reported? Well, the respondent in that case tried to sue the institution because they wouldn't stop her public demonstrations – and that respondent lost. So if someone can carry a mattress around, they can probably express their opinion in less bulky fashion too.

Now, if you are a private institution with a particularly stringent speech code, I suggest you talk with your lawyer before you try to enforce it here.

3.6 Officer Jake... is a student?

Officer Jake... is a student?

- Turns out that Officer Jake was taking graduate classes in criminology at the time of the incident.
- As a result of your disciplinary process, he was terminated from employment *and* dismissed from his graduate program.
- Posh College wants to hire him.
- Law and Order Academy wants to enroll him as a graduate student.
- What can you tell them?

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Notes:

So let's make things even more complicated, because that makes life more interesting, doesn't it? Officer Jake happens to be enrolled as a graduate student at your institution in addition to his employment. At the end of the disciplinary process, his employment is terminated and he is dismissed from your institution.

Posh College, a well-endowed liberal arts institution about an hour upstate, has asked for information from your HR department about his termination, and L&O Academy is asking for information about his disciplinary history as a student so that he can enroll in their program. You know that Officer Jake is very unhappy about his disciplinary process, and although he lost his appeal, there are rumblings that he may be looking for an attorney.

What can you tell Posh College? Well, remember that FERPA doesn't protect records that are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any

other purpose. You'll need to look at the records you have to determine whether any of them fall into that category, and this may be complicated in this situation so I'd recommend getting some legal guidance here. You'll also have non-FERPA things to worry about, such as what your HR policies provide with regard to providing this sort of information to future employers, and whether your state restricts information shared under these circumstances.

How about Law and Order Academy? Officer Jake is looking to enroll there, so you do have a FERPA exception available, as long as you notify students of this exception in your annual FERPA notice. And in fact, you have another exception available, because Officer Jake was found responsible for a disciplinary violation that constitutes a crime of violence, so you are allowed to release that information. A double exception! That sounds good right? It is good. You could release records here to facilitate the transfer under these circumstances.

But just because you can, doesn't mean you should. I work with many Title IX offices that take the position that they keep records private under these circumstances unless they have specific consent from the student to release Title IX information to the transfer school. If they don't have consent, they tell the transfer school that it is their practice not to release records without consent of the student, and the student has declined to provide such consent – and the transfer school can think about what they wish to do in that circumstance. This is not required by the law, but it is something to think about.

Of course, if you can release the records under FERPA and you're a public institution, you may have to release the records and having such a policy may be impermissible.

I hope our little hypo has helped to answer some questions about Title IX and FERPA for you. Thank you for joining me today!

4. Exit Questions

4.1 Attest

(True/False, 100 points, 1 attempt permitted)

I attest that I watched and completed this course in full.

True

Submit

Correct

Choice

X

True

4.2 Results Slide

(Results Slide, 0 points, 1 attempt permitted)



This course is not complete until you click the button below.

Continue

Results for

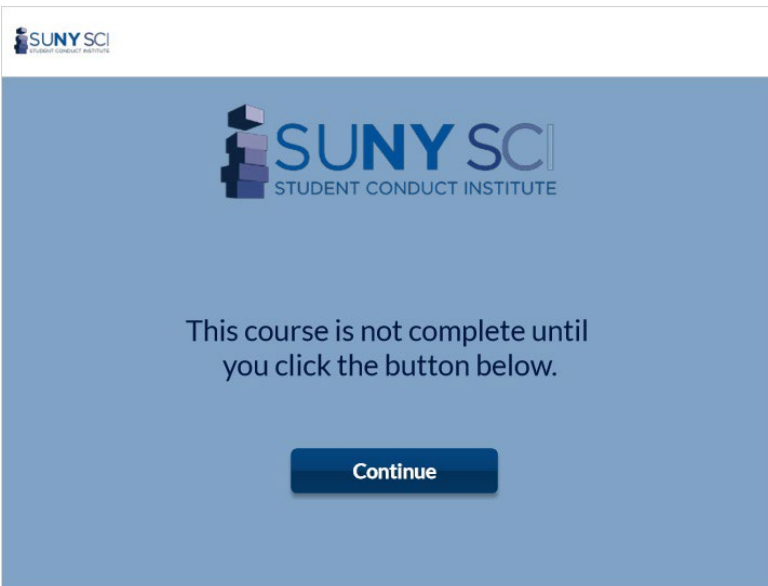
4.1 Attest

Result slide properties

Passing Score



80%

Success (Slide Layer)



The slide layer features a blue background. At the top left is a small SUNY SCI logo. In the center is a larger SUNY SCI logo with the text 'STUDENT CONDUCT INSTITUTE' below it. Below the logo, the text reads: 'This course is not complete until you click the button below.' At the bottom center is a dark blue button with the word 'Continue' in white text.


Failure (Slide Layer)



This course is not complete until you click the button below.

[Continue](#)




4.3 End Course



We invite you to take an optional Course Feedback Survey to help our team improve your learning experience. The link to this survey is located in the Table of Contents menu.

To end the course, click the button below.
Proceed back to the main menu.
DO NOT CLICK THE BACK BUTTON

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[End Course](#)