

## **Sample Language for Reporting and Confidentially Disclosing Sexual Violence**

The Task Force to Protect Students from Sexual Assault is committed to supporting institutions of higher education in preventing sexual misconduct, encouraging reports of such misconduct, improving responses to reports of such misconduct, and complying with applicable federal laws. The following provides sample language for the Confidentiality section of a sexual misconduct policy, specifically as it applies to confidentiality regarding disclosures of sexual violence.

This is a guide that highlights important elements for institutions to consider when drafting an effective policy regarding reporting and confidentially disclosing sexual violence. This guide is not meant to be simply cut and pasted into a policy. Among other things, a school must determine how a confidentiality section regarding sexual violence fits into a larger sexual misconduct policy.<sup>1</sup> Schools must also consult applicable state laws (such as those relating to privilege), to determine the parameters of its employees' legal obligations.

This sample language is neither exhaustive nor exclusive, and the sections of every school's policy must reflect its own character and circumstances. Policies will vary in detail, specificity and components, reflecting differences in state or local legal requirements and each school's students, size, administrative structure, and what it has learned from past experiences. Also, the sample language does not constitute legal advice or create new legal obligations. Institutions that use this language in their sexual misconduct policies, in part or in whole, may still be found to be in violation of federal law(s) (e.g., if the institution fails to effectively address a hostile education environment created by sexual misconduct).

### **Reporting and Confidentially Disclosing Sexual Violence: Know the Options**

The School encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the School can respond appropriately.

Different employees on campus have different abilities to maintain a victim's confidentiality.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.”
- Other employees may talk to a victim in confidence, and generally only report to the School that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a School investigation into an incident against the victim's wishes.
- Thirdly, some employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX coordinator. A

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<sup>1</sup> While the sample language included here focuses on sexual violence, this language would generally also apply to other forms of sexual harassment, all of which should be covered in a school's sexual misconduct policy.

report to these employees constitutes a report to the School – and generally obligates the School to investigate the incident and take appropriate steps to address the situation.

This policy is intended to make students aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they become a victim of sexual violence. The School encourages victims to talk to someone identified in one or more of these groups.

## The Options

### A. Privileged and Confidential Communications □

#### *Professional and Pastoral Counselors.*

Professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX coordinator without a victim’s permission. Following is the contact information for these individuals:

[INSERT LIST]

#### □ *Non-professional Counselors and Advocates*

Individuals who work or volunteer in the on-campus [**list the offices that pertain to your school: sexual assault center, victim advocacy office, women’s center, health center**], including front desk staff and students, can generally talk to a victim without revealing any personally identifying information about an incident to the School. A victim can seek assistance and support from these individuals without triggering a School investigation that could reveal the victim’s identity or that the victim has disclosed the incident.

While maintaining a victim’s confidentiality, these individuals or their office should report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report – which includes no information that would directly or indirectly identify the victim – helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the victim to ensure that no personally identifying details are shared with the Title IX Coordinator.

Following is contact information for these non-professional counselors and advocates:

[INSERT LIST]

A victim who speaks to a professional or non-professional counselor or advocate must understand that, if the victim wants to maintain confidentiality, the School will be unable

to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator.

Even so, these counselors and advocates will still assist the victim in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules. A victim who at first requests confidentiality may later decide to file a complaint with the school or report the incident to local law enforcement, and thus have the incident fully investigated. These counselors and advocates will provide the victim with assistance if the victim wishes to do so.

**NOTE:** While these professional and non-professional counselors and advocates may maintain a victim’s confidentiality vis-à-vis the School, they may have reporting or other obligations under state law. **[Insert any specific state-law restrictions – such as mandatory reporting to law enforcement in case of minors; imminent harm to self or others; requirement to testify if subpoenaed in a criminal case.]**

**ALSO NOTE:** If the School determines that the alleged perpetrator(s) pose a serious and immediate threat to the School community may be called upon to issue a timely warning to the community. Any such warning should not include any information that identifies the victim.

## **Requesting Confidentiality From the School: How the School Will Weigh the Request and Respond.**

If a victim discloses an incident but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the School must weigh that request against the School’s obligation to provide a safe, non-discriminatory environment for all students, including the victim.

If the School honors the request for confidentiality, a victim must understand that the School’s ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when the School may not be able to honor a victim’s request in order to provide a safe, non-discriminatory environment for all students.

The School has designated the following individual(s) to evaluate requests for confidentiality once a responsible employee is on notice of alleged sexual violence:

**[INSERT NAME/POSITION]**

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, [name/position] will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
  - whether there have been other sexual violence complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
  - whether the sexual violence was committed by multiple perpetrators;
  - whether the sexual violence was perpetrated with a weapon;
  - whether the victim is a minor;
  - whether the School possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
  - whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the School to investigate and, if appropriate, pursue disciplinary action.<sup>2</sup> If none of these factors is present, the School will likely respect the victim's request for confidentiality.

**If the School determines that it cannot maintain a victim's confidentiality**, the School will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the School's response.

The School will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or School employees, will not be tolerated. The School will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);
- provide other security and support, which could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to campus or local law enforcement – and provide the victim with assistance if the victim wishes to do so.

The School may not require a victim to participate in any investigation or disciplinary proceeding.

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<sup>2</sup> If, for example, the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation and, if appropriate, pursue disciplinary action.

Because the School is under a continuing obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) will also prompt the School to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

**If the School determines that it can respect a victim’s request for confidentiality**, the School will also take immediate action as necessary to protect and assist the victim.

## **Miscellaneous**

### **Take Back the Night and other public awareness events**

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which students disclose incidents of sexual violence, are not considered notice to the School of sexual violence for purposes of triggering its obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the School will provide information about students’ Title IX rights at these events.

### **Anonymous Reporting**

Although the School encourages victims to talk to someone, the School provides an online [or other system] for anonymous reporting. The system will notify the user (before s/he enters information) that entering personally identifying information may serve as notice to the School for the purpose of triggering an investigation.

### **Off-campus Counselors and Advocates.**

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the School unless the victim requests the disclosure and signs a consent or waiver form.

Following is contact information for these off-campus resources:

**[INSERT LIST]**

**NOTE:** While these off-campus counselors and advocates may maintain a victim’s confidentiality vis-à-vis the School, they may have reporting or other obligations under state law. **[Insert any specific state-law restrictions – such as mandatory reporting to law enforcement in case of minors; imminent harm to self or others; requirement to testify if subpoenaed in a criminal case.]**