

Disciplinary Proceedings -- Disclosure of Certain Results (HEA Title IV, Sec. 487(a)(26))

Quick Take: Institutions will now be required, upon written request, to disclose to the alleged victim of a crime of violence or a nonforcible sex offense or to the alleged victim's next of kin (if the victim is dead due to the crime or offense) the final results of cases where the institution has conducted a disciplinary proceeding dealing with that crime or offense. Currently, such disclosures are optional under the Family Educational Rights and Privacy Act (FERPA).

When Will This Take Effect? The provision will take effect on August 14, 2009. It is subject to negotiated rulemaking, so specific regulatory guidance may be provided in the future.

Who On Campus Needs to Be Involved? Legal counsel; those involved with institutional disciplinary proceedings.

HEAGuide Keyword for More Information: Disciplinary

ADDITIONAL INFORMATION

Disciplinary Proceedings -- Disclosure of Certain Results

Statutory Language: [New language in bold.]

SEC. 487. [20 U.S.C. 1094] PROGRAM PARTICIPATION AGREEMENTS.

(a) **REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.**—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

...

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

EFFECTIVE DATE -- The amendment made by subparagraph (A) with respect to **section 487(a)(26)** of the Higher Education Act of 1965 (as added by subparagraph (A)) shall apply with respect to any disciplinary proceeding conducted by an institution on or after the day that is one year after the date of enactment of this Act.

Report Language (House Report 110-803)

The House bill requires an institution of higher education to, upon request, disclose to the alleged victim of any violent crime or nonforcible sex offense the final results of any institutional disciplinary proceeding conducted against a student who is the alleged perpetrator of such crime or offense. The House bill also requires that this information be provided to the alleged victim's next of kin, if the alleged victim is deceased.

The Senate amendment contains no similar provision.

The Senate recedes with an amendment to require disclosure upon written request and that the disclosure be made available to the next of kin only if the victim dies as a result of the crime or offense.

Definition of "crime of violence"

TITLE 18--CRIMES AND CRIMINAL PROCEDURE

PART I--CRIMES

CHAPTER 1--GENERAL PROVISIONS

Sec. 16. Crime of violence defined

The term "crime of violence" means--

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Related FERPA Provisions

SEC. 444 [20 U.S.C. 1232g]

(b)(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

- (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and
- (ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

Comparison of new HEA Provisions with FERPA

Public Law 110-315 amends the program participation section (Sec. 487) of the Higher Education Act in what appears to be an attempt to modify FERPA Section 444(b)(6).

The differences between P.L. 110-315 and the FERPA provisions are:

P.L. 110-315 requires the institution to disclose the final results to the alleged victim or to the alleged victim's next of kin (if the victim is dead due to the crime or offense) in all cases where the institution has conducted a disciplinary proceeding dealing with a crime of violence or a nonforcible sex offense—provided that a written request is made for the information.

FERPA makes it an option for the institution to disclose the final results to the alleged victim of a disciplinary proceeding dealing with a crime of violence or a nonforcible sex offense. (*Section 444(b)(6)(A)*)

FERPA does not place any restrictions on whom the institution may choose to disclose the final results IF the proceeding determines the student violated the institution's rules or policies regarding the crime or offense. [*Note that the "to an alleged victim" phrase in section 444(b)(6)(A) does not appear in section 444(b)(6)(B).*]