



Key points:

- **FERPA exception: Districts may disclose disciplinary sanctions that 'directly relate' to victim**
- **Exception applies to cases involving discriminatory harassment**
- **Districts may not reveal student's disability**

Discipline and student privacy: Know what you can, can't disclose to parents

Can you reveal to the parents of a student who has been bullied the disciplinary actions taken against the bullies?

Typically, the Family Educational Rights and Privacy Act prohibits school districts from revealing personally identifiable information about a student to other students' parents without consent. However, there is an exception in cases involving discriminatory harassment.

In *Letter to Soukup*, [115 LRP 18668](#), 18 FAB 33 (FPCO 2015), the Family Policy Compliance Office noted that districts may disclose to the parents of a harassed student information about the disciplinary sanctions imposed on the students who engaged in the harassment if the sanction "directly relates" to the harassed student. The letter clarified that FERPA does not conflict with civil rights laws such as Title IX, which require districts to notify the parents of a harassed student of the outcome of a harassment investigation.

Learn more below:

- **Know what you can, can't disclose.** What kind of disciplinary actions would be considered "directly related" to the harassed student? FPCO provided a few examples:
 - An order that the harasser stay away from the harassed student.
 - The harasser being prohibited from attending school for a period of time.
 - The harasser being transferred to other classes.

Be careful not to disclose disciplinary actions that do not meet this standard. One example would be the harasser receiving psychiatric treatment or other medical care, said Nathanya Simon, a school attorney with [Scarinci Hollenbeck LLC](#) in Lyndhurst, N.J. "That goes beyond what the school is doing [to protect the harassed student]," she said. "You want to protect the student's psychiatric and medical records. You would not share those." Revealing information about disciplinary actions that do not relate to the harassed student may violate FERPA, according to FPCO.

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- **Don't reveal student's disability.** Consider this scenario: A student with a disability is involved in a behavioral incident with a nondisabled peer. You determine that the student's misbehavior is due to her disability. However, that isn't something you should share with the other student's parents, Simon said. Doing so could violate FERPA.

Keep in mind that in some cases, parents may already know the other student has a disability, such as if the misbehavior occurs between two students in a special education classroom, Simon pointed out. Similarly, some disciplinary actions may be obvious to other students in the classroom, she said. Still, that information should not come from the district.

- **Know how to talk to parents.** As a district, you must protect all students' confidentiality. But parents of bullied students don't always see it from your side, Simon said. She advised districts to sit down and explain to parents, "Here's what we can tell you." Help them understand the rationale behind what you can and can't discuss, she said. Ask parents to consider it from their side -- would they want the district to tell other parents personal information about their child? "Usually, in most cases, if [parents] feel validated and they feel their child is being dealt with fairly and will be safe in the future, they will be OK," Simon said.

If a case involving bullying ends up going to court, obtain a confidentiality order so that parties cannot reveal classified information, Simon advised. "Because of social media, that's the biggest fear -- you don't want to give [parents] something that they put out there," she said.

- **Be aware of state laws.** For example, in New Jersey, the Open Public Records Act enables the public to request access to government records, including student records. "That's a new thing I've been dealing with," Simon said. "If [parents] don't get something under FERPA, they've been asking for it under OPRA." Make sure your district is aware of any similar laws in your state and knows how to respond to records requests.

Ragini Algoles covers special education issues for LRP Publications.

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