

Dear Mr. Sokolow:

Thank you for your email to the U.S. Department of Education's Office for Civil Rights (OCR) regarding whether a university ombudsman whose professional association ethics require confidentiality (and who may also be someone to whom employees/students are directed for confidential resolutions of sexual harassment concerns) is a responsible employee under Title IX.

Each case is fact-specific and each determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we do provide information on how the civil rights laws that OCR enforces apply generally.

As you are aware, OCR enforces Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which require schools receiving federal funding to respond promptly and equitably to allegations of sexual violence. Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school (i.e., an employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty).

To determine what reporting obligations, if any, its ombudsmen have, a school, must first determine whether its ombudsmen are responsible employees. Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the employee, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. The duties and responsibilities of ombudsmen vary among schools, and therefore, a school should consider its own policies and procedures to determine whether its

ombudsmen are responsible employees. When making this determination a university should consider if its ombudsmen have the general authority to take action to redress misconduct or the duty to report misconduct to the appropriate university official with the authority to redress misconduct as well as whether students could reasonably believe that the ombudsman has this authority or duty; or whether it has determined and clearly informed students that the ombudsmen are generally available for confidential discussions and do not have the authority or responsibility to take action to redress misconduct or to report any misconduct to the appropriate university officials.

If the school determines that its ombudsmen are responsible employees, it must then determine whether they fall into the category of responsible employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual-assault related services to students who have experienced sexual violence as these individuals are not required to report incidents of sexual violence to the school in a way that identifies the student.

As explained in OCR's April 2014 Q&A on Title IX and Sexual Violence, 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. OCR also recognizes that not all individuals who provide assistance to students who experience sexual violence are professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's

centers, or health centers ("non-professional counselors or advocates"). OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent. These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

In any event, a school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.

OCR is committed to providing the public with information about the civil rights laws OCR enforces. In responding to correspondence, OCR provides general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

We hope this information is helpful.

Sincerely,

Rachel Gettler
Program Legal Group
Office for Civil Rights