

S. Daniel Carter

Sun, Mar 2, 2003 8:54 PM

Subject: Georgetown University**Date:** Sunday, March 2, 2003 6:55 PM**From:** [REDACTED]**To:** <beth.brinly@ed.gov>, <JamesMoore@ed.gov>, <sdcarter@securityoncampus.org>**Category:** Clients

Ms. Brinly and Mr. Moore,

I am a sophomore student at Georgetown University in Washington, DC and I am writing to seek help on an issue that occurred during my adjudication for sexual assault. After my hearing I was told that in order to receive any results (sanctions and findings) that I had to sign a confidentiality agreement with the school prohibiting me from sharing any information with any third party on the outcome of my hearing. The Director of Student Conduct (Ms. Judy Johnson) informed me that if I indeed choose to not sign the agreement that I would not be privy to the outcome of my hearing. I feel that after reading information about disclosure to the victim in the Clery Act, that my rights have been violated, as are the rights of any sexual assault victim here at Georgetown. I did sign the agreement because I needed to know the outcome not only for peace of mind but also to make decisions about where I would feel safest attending school. I feel that signing the confidentiality agreement violates the Clery Act's requirement that I was unconditionally due the outcome. The section that states that "Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging sexual assault" was not upheld in my case, because the rules at Georgetown in the Code of Conduct state that the accuser will be notified of the outcome if and only if she/he sign the confidentiality agreement. Yes one may choose not to sign it, thus forfeiting their right to any outcomes. I was looking for your help in making this atrocity right. Please consider my situation, I will be happy to give you any information that you may need.

Sincerely,

[REDACTED]

S. Daniel Carter

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Subject: Georgetown University Clery Act Complaint**Date:** Sunday, March 2, 2003 8:43 PM**From:** S. Daniel Carter <sdcarter@securityoncampus.org>**To:** <beth.brinly@ed.gov>**Cc:** James Moore <James.Moore@ed.gov>, [REDACTED],
LeRoy Rooker <LeRoy.Rooker@ed.gov>, David Bergeron <David.Bergeron@ed.gov>**Category:** Colleagues, Bearden, Family, Safe Campuses Now

Dear Ms. Brinly-

In the interests of assisting the U.S. Department of Education in their review of the Jeanne Clery Act complaint filed recently against Georgetown University by student [REDACTED] we submit this analysis in support of her argument that her rights under the "Campus Sexual Assault Victims' Bill of Rights" were violated, and that the rights of other students continue to be violated.

Specifically, we agree with [REDACTED] that Georgetown's policy of requiring sexual assault victims to sign a confidentiality agreement before they will be told the final results of any disciplinary action taken against their alleged assailants violates the Clery Act, and serves as an unconscionable revictimization.

This reality is also not accurately reflected in their annual security report, which at a minimum it should be. Accordingly we ask you to require that this substantial misrepresentation be corrected immediately, or a civil penalty be imposed on Georgetown for their failure to fully comply with the Clery Act.

Georgetown's 2002 annual security report produced in compliance with the Clery Act provides that in sexual assault cases the "Office of Student Conduct discloses the finding and the sanction to the victim and the accused," however this statement does not address the conditions imposed upon the victim for receipt of this information. A review of the annual report alone might lead one to believe that a victim is unconditionally provided the final results, however as noted in their handbook this is not the case.

The annual security report is available on-line at...

http://www.georgetown.edu/student-affairs/dps/Security_Report.htm

Georgetown's student handbook provides that the "disclosure to a complainant or alleged victim will be made only on the condition that he or she agrees to and signs the confidentiality agreement set forth in the Disclosure of Adjudication Outcome Form prior to the release of the information." This policy prohibits the complainant from redisclosing the outcome to anyone except "his or her parents and the individual who served as his or her advisor or student consultant during the disciplinary process."

Georgetown's complete "Disclosure of Adjudication Outcome Policy" policy can be accessed on-line at...

<http://www.georgetown.edu/student-affairs/handbook/conduct/disclosure.html>

The Clery Act, however, clearly provides that sexual assault victims MUST be told the outcome of any such disciplinary proceeding, and does not permit an institution to make such disclosure contingent on anything. 20 U.S.C. § 1092(f)(8)(B)(iv)(II) unequivocally provides that "both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault."

Additionally, 34 CFR 668.46(b)(11)(vi)(B) the regulation implementing this particular requirement provides that both "the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense." "Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g)," it further notes.

The implementing regulations recognize not only the exception provided by 20 USC § 1232(g)(b)(6)(A) which specifically permits this disclosure to the victims of violent crimes, or non-forcible sex offenses regardless of the outcome of a case, but also the unique statutory protections afforded sexual assault victims by the Clery Act.

Normally information disclosed under FERPA is subject to a non redisclosure requirement, but it is not in this case as recognized by the Clery Act regulations which provide that the unconditional disclosure to sexual assault victims is not in violation of FERPA. First, in those cases where an accused student is found responsible 20 USC § 1232(g)(b)(6)(B) specifically permits public disclosure of the final results, and accordingly the records are not subject to any redisclosure prohibition.

Second, while the public disclosure of the final results of student disciplinary cases involving crimes of violence, or non-forcible sex offenses continues to be precluded by FERPA when the accused student is not found responsible, and non sexual assault crime victims who are told under 20 USC § 1232(g)(b)(6)(A) remain subject to redisclosure prohibitions this is not the case for sexual assault victims.

The requirement of 20 U.S.C. § 1092(f)(8)(B)(iv)(II) that sexual assault victims "shall be informed of the outcome" supercedes any FERPA provision, and makes unconditional disclosure to the victim a requirement. This unique requirement recognizes the particular needs of sexual assault victims to be able to share their experiences with others, including victims, friends, counselors, and advocates.

The outcome of any disciplinary action taken against their alleged assailant is an important element of this healing, especially if they are dissatisfied with the process. Denying them this option, as Georgetown has, can be seriously detrimental, and was one of the things Congress sought to prevent when adopting this unique disclosure requirement.

Even if sexual assault victims in cases where the accused student is not found responsible were to remain subject to FERPA's redisclosure prohibitions, the Clery Act does not permit an institution to artificially impose a redisclosure requirement in those cases where FERPA permits public disclosure, and accordingly there is no redisclosure prohibition.

Only a provision in federal law could possibly serve as justification to impose any redisclosure prohibition on a sexual assault victim who receives

the final results of a disciplinary proceeding. Absent any superceding prohibition in another federal law, the Clery Act mandates that sexual assault victims be permitted to redisclose the final results shared with them. An institution is not permitted to establish their own prohibition and remain in compliance with the Clery Act.

In [REDACTED] case, according to published reports in the Georgetown Voice, the accused student was in fact found in violation of school rules in relation to her accusation. Accordingly the FERPA statute does not preclude public disclosure of this information, or redisclosure by anyone who is in receipt of it. Georgetown's choice to silence her was completely at the institution's whim, and not done in response to any federal requirement.

By forcing [REDACTED] to sign an agreement promising not to redisclose the final results of the disciplinary action taken against her assailant they violated her rights under the Jeanne Clery Act which guarantees unconditional access to this information by sexual assault victims.

We ask that [REDACTED] and all future sexual assault victims at Georgetown University be spared this revictimization and ask the U.S. Department of Education to take all steps necessary to ensure that they are provided with unobstructed access to the outcomes of disciplinary actions taken against their attackers as guaranteed by the Jeanne Clery Act's "Campus Sexual Assault Victims' Bill of Rights" provisions.

Thank you in advance for your prompt attention and response to this issue. If you have any questions please don't hesitate to contact me.

S. Daniel Carter
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