

Colleges warned about records

*The U.S. Department
of Education reacts to
a UO student's claims
against the university*

BY DIANE DIETZ
The Register-Guard

A rape victim's therapy notes are among the types of records that university attorneys ought to leave alone, the U.S. Department of Education has announced.

In a clarification of student privacy rights, the department issued a "dear colleague" letter to universities dated April 18.

The letter said that, except in the rarest cases, university attorneys must get a court order or a student's permission before seizing his or her mental health or other medical records.

The federal department was reacting to national outrage sparked early this year when it came to light that University of Oregon attorneys gathered therapy notes of an 18-year-old UO student from the campus counseling center.

The student, known publicly only as Jane Doe, had alleged she was raped in March 2014 by three UO basketball players. The players said the sex was consensual. The Lane County District Attorney's Office declined to prosecute, saying there was insufficient evidence to find the players guilty, but the UO took the players off the team and banned them from campus for as long as the young woman is enrolled.

In January, Jane Doe filed a civil suit against the UO; one of many claims was that the UO violated her civil rights by accessing her therapy records without her permission.

"Students should not be hesitant to use the (university's) medical services out of fear that information they share with a medical professional will be inappropriately disclosed to others," Education Department Chief Privacy Officer Kathleen Styles wrote in the guidance letter.

UO psychology professor Jennifer Freyd, who pushed

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to make the UO counseling center records private, said she was “very, very pleased” with the Education Department’s guidance.

“They’ve gone a long way to clarifying the situation,” Freyd said Thursday. “The only way people are going to be able to get help for psychological suffering is if they feel that their information is going to be private. That’s at the heart of therapy.”

UO spokesman Tobin Klinger issued a statement saying: “The guidance itself is quite helpful and serves to clarify best practices in highly sensitive and complicated situations.”

U.S. Sen. Ron Wyden and U.S. Rep. Suzanne Bonamici, both Democrats, pushed the Education Department for the clarifying statement, and both issued statements saying they were encouraged by the new guidance.

Jane Doe and her father were so troubled by a UO attorney taking Jane Doe’s therapy records that they were adamant about including the privacy claim in the civil lawsuit, said Boulder, Colo., attorney John Clune, who represented Jane Doe.

“Honestly, if it had just been left to the attorneys, I don’t know that we would have included it” in the lawsuit, he said.

The UO and Jane Doe settled the civil lawsuit earlier month; the university agreed to pay her \$800,000 and provide her with four-year, full-ride enrollment at the university.

Previously, when the UO legal department’s seizure of Jane Doe’s therapy records became public, students told their professors that they felt unsafe sharing their innermost thoughts with UO counselors.

“I have seen it in my work,” UO law professor Ibrahim Gassama said at the time, “and it is devastating.”

At that time, acting Provost Frances Bronet sprang into action, announcing that the university had returned the student’s records to the counseling center.

She promised confidentiality to students who use the counseling center in the future, and she formed a committee to propose new or clarified privacy policies for UO counseling and medical services.

She promised a draft by April 2015, but that was too soon, she said as the date slipped past. Then Bronet promised a document by the end of spring term, which didn’t materialize either.

“Various promises have been made that they would be finalized by certain dates, but those dates came and went,” Freyd said.

Bronet left the university in June.

In an e-mail, UO spokesman Klinger said the committee is “very close” to presenting a draft policy to Provost Scott Coltrane. “I’m told it could occur this coming week,” he said.

UO President Michael Schill said a resolution to the student privacy issues will emerge in the next three or four months.

“What we’re trying to do is come up with a solution consistent with all of the law that will maintain confidentiality for our students. There’s absolutely no desire — nor was there any desire — to invade anyone’s privacy,” he said in an interview earlier this month.

The committee is likely to reconsider its recommendations in light of the new Education Department guidance.

The department offers two main situations

when university attorneys should still be able to get student therapy records without permission or a court order — one, if the student is suing the university about the therapy or its cost; or two, if the student poses an “articulable and significant” threat to themselves or others.

Even then, the attorneys must restrict their taking of documents to only the most relevant, the guidance said.

“In most cases, a counselor’s summative statement of the relevant and necessary information from those records will suffice,” the guidance said.

Colleges and universities pay attention to Department of Education guidance letters because the letters indicate how the department means

to interpret federal law. “Schools in general make concerted efforts to comply with or use the guidance that’s offered in these ‘dear colleague’ letters,” Clune said.

The Education Department also said that state privacy laws take precedence and can give even greater protection to the privacy of student therapy records.

In June, Gov. Kate Brown signed into Oregon law a bill that extends privileged communications — such as between lawyers and clients or husbands and wives — to rape victims and their counselors.

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