

INSTITUTIONAL REVIEW BOARD FOR THE PROTECTION OF HUMAN SUBJECTS IN RESEARCH

Information Individuals in New Hampshire are Legally Required to Report

New Hampshire law mandates that all individuals must disclose certain information to law enforcement officials and/or other third parties, regardless of whether they have entered into a legally-recognized confidential relationship with the source of the information. The following is a summary of the pertinent New Hampshire laws:

- a) Any person who has reason to suspect that a child has been abused or neglected must report the information to the New Hampshire Department of Health and Human Services. RSA § 169-C:29.
- b) Any person who has reason to believe that an incapacitated adult is being or has been subjected to physical abuse, neglect or exploitation, or is living in hazardous conditions must report the information to the Director of the Division of Elderly and Adult Services at the New Hampshire Department of Health and Human Services. RSA § 161-F:46.
- c) Any person who is present or otherwise has direct knowledge of any student hazing must report the hazing to law enforcement or educational institution authorities. The educational institution is required to report the hazing information to law enforcement authorities. RSA § 631:7.
- d) Any person who knowingly renders treatment or assistance to an individual for a gunshot wound or any other injury believed to have been caused by a criminal act must immediately notify law enforcement officials. (This reporting requirement does not apply to a victim of sexual assault who is over 18 years of age, objects to the release of any information, and has not been treated for a gunshot wound or other serious bodily injury.) RSA § 631:6.

In addition, in the court case of *Schneider v. Plymouth State College*, the New Hampshire Supreme Court indicated that employees of New Hampshire institutions of higher education have a duty to report situations where there is reason to suspect that a student is being or has been sexually harassed by a faculty or staff member. Furthermore, in response to guidance issued by federal regulators under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) ("Title IX"), KSC requires employees to report all situations where there is reason to suspect that a student is being or has been subject to sexual violence by a faculty member, a staff member, or another student. Sexual violence includes sexual harassment, sexual assault, unwanted sexual contact, sexual misconduct, domestic violence, relationship abuse, stalking (including cyberstalking) and dating violence. These reports must be made to appropriate school officials; either Campus Police or the Title IX Coordinator, Deirdre Loftus, at 603-358-2958.

These reporting requirements create a duty of disclosure for faculty and staff who may obtain certain information during the performance of their duties or as a result of research. Moreover, an employee's failure to report certain information to law enforcement and/or other third parties, including administrators at the institution, creates liability issues for themselves as well as the institution. Specifically, the institution may be deemed to have constructive knowledge of the information due to the fact that one of its employees had actual

knowledge. Therefore, it is important employees understand the reporting requirements and the limitations on assurances of confidentiality.

Recommendations for Researchers

To manage the risk of liability for failure to disclose any of the above situations by promising confidentiality to human subjects in a research project where they might reveal the above information, researchers must ensure participants understand the researcher's reporting responsibilities and the associated risks they present to participants. Accordingly, when developing research protocols and accompanying informed consent documents, researchers should clearly outline specific situations wherein they are mandated to disclose certain confidential information (i.e., cannot maintain confidentiality of responses), therefore potentially putting participants at risk for legal action. Ideally researchers should present this disclosure information in at least two places in the informed consent document: (1) detailed as a potential risk to the participant; and (2) detailed as (a) situation(s) wherein confidentiality of responses can not be maintained. There are very limited circumstances where exceptions may be permitted to mandated Title IX reporting of sexual violence disclosures, but researchers must obtain prior IRB approval for such exception.

For more information on the KSC Institutional Review Board or institutional requirements regarding research involving human subjects, contact the Office of Sponsored Projects and Research Interim Director, Audrey Arsenault, at aarsenault@keene.edu or 603-358-2046. Additional materials are available on the IRB webpage at <http://ptw.keene.edu/office/ospr/compliance/human-research>. The above information is based on advice from the University System of New Hampshire General Counsel's Office.