



ATIXA STATEMENT

ATIXA'S POSITION: IN FAVOR OF THE SAFE TRANSFER ACT

ABOUT ATIXA

Founded in 2011, ATIXA is the nation's only membership association dedicated solely to compliance with Title IX and the support of our more than 6,000 administrator members who hold Title IX responsibilities in schools and colleges. ATIXA is the leading provider of Title IX training and certification, having certified more than 3,000 Title IX coordinators and more than 8,000 Title IX investigators since 2011. ATIXA releases position statements on matters of import to our members and the field, as authorized by the ATIXA Board of Advisors. For more information, visit www.atixa.org.

December 5, 2016

ATIXA reiterates its support for notation of the academic transcript of any student duly found by a college or university to have committed acts of serious sexual misconduct. ATIXA's Advisory Board has determined that the aims of the [Safe Transfer Act of 2016](#) are largely consistent with ATIXA's 2015 position statement in favor of transcript notation, adopted by the Board last year and posted [here](#).

As we wrote last year, with transcript notation in place, a school considering an applicant for admission would receive a "flag" indicating that a risk may exist, independent of whether the applicant has disclosed this information as part of the application process. Without a transcript notation, colleges and universities in many cases have no way to determine that further inquiry may be warranted.

The transcript notation affords the receiving (transferring) school the opportunity to inquire of the transferor's school about the circumstances that led to the student's permanent or temporary removal or withdrawal. Once it has the full context, the institution to which the student is seeking acceptance is then in a better position to make an informed decision for the good of the entire community.

ATIXA does not suggest that students be excluded from admission solely on the basis of notation, but that colleges and universities should be empowered by the tool of transcript notation to make more informed vetting decisions on the eligibility of any candidate for admission. Because transcripts most often pass directly between schools, the transcript offers the best opportunity for information to be shared without a student's interference and with minimal burden to administrations.

ATIXA's support for transcript notation arises primarily from concern about students who pose a risk of harm from continuing patterns of misconduct as they transfer between institutions. The Safe Transfer Act will further the goal of inhibiting that harm. However, the Advisory Board of ATIXA has reservations about both the bill and the practice of transcript notation that it requests Congress to consider seriously as it debates this bill and has enumerated those concerns below:

- The bill lacks specificity about what the actual notation should state on the transcript. For purposes of consistency and clarity, the bill or its regulations should so specify.
- Rather than establishing the ability to fine or restrict funds per violation, the bill states that “no funds shall be made available” to any college that fails to make notations of final determinations related to sex offenses. This means that one minor or inadvertent failure by a college could result in restriction of millions in federal funding. This is clearly not the desired intent and should be clarified. Habitual or intentional violations should be addressed differently than inadvertent or clerical failures to notate.
- The notations in the bill sunset after five years or one year, depending on the type of notation, but Congress should be aware that there is no mechanism for collegiate registrars to automate this notation or its timely removal. Thus, there will be a laborious and costly process of hand-culling and tracking what could be dozens or hundreds of notations at any given college. Many colleges simply lack the infrastructure to support such an effort, at present. This means that the potential for clerical error is high.
- The bill or regulations need to create a workable threshold to determine at what point notation regarding a withdrawal takes effect. ATIXA's sense is that “jeopardy” in the sense of notation should occur only for withdrawals that occur once a charge is made by the college, and not before.
- ATIXA is concerned that notation may cause some victims/survivors to decide not to pursue formal resolution within the college, perceiving the notation to be a draconian consequence that is outside their control. This effect might be magnified when the victim/survivor is from a marginalized population and especially when the student they are accusing is as well.
- ATIXA is very concerned that some colleges, faced with an obligation to notate at the threshold of suspension, will elect not to suspend some students who ought to be suspended, based on the severity of their offenses, simply to avoid the perceived “Scarlet Letter” created by notation. A companion requirement for every college to publish an annual report of Title IX outcomes (anonymously, of course), including sanctions, could ameliorate this concern.
- ATIXA is concerned that notation will give rise to a sharp increase in lawsuits by accused students alleging that the notation is defamatory, especially since there is always a risk of erroneous findings. If it is the sense of Congress that the mandate to notate creates a qualified privilege for colleges to make the notation, Congress should so state. Further, ATIXA notes that an increase in defamation lawsuits against colleges as the result of notation may also result in more victims being named as co-defendants in such suits, a trend which ATIXA would not welcome.

- Several states have already implemented state laws requiring notation. Those laws do not precisely parallel the requirements of the Safe Transfer Act. The bill should state something about its impact on inconsistent state mandates.
- ATIXA calls on Congress to clarify the meaning of the withdrawal provision in the bill. Does a notation attach to the transcript of every accused student for one year, or only if that student seeks to transfer? The text of the bill could be construed either way, and ATIXA cannot support the automatic notation of the transcript of every student who is accused in a disciplinary proceeding.