



# ATIXA POSITION STATEMENT

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## ATIXA POSITION STATEMENT IN FAVOR OF AMNESTY POLICIES

### 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 3,000 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](http://www.atixa.org).*

February 17, 2017


The purpose of this statement is to make clear the position of the ATIXA Advisory Board in support of formal written policies affording amnesty (immunity) to victim/survivors and witnesses involved in allegations of sexual misconduct. While amnesty is widely practiced on many college campuses already, it needs to be a formally articulated policy, not just common practice. Students may never have the chance to learn about their college's amnesty policy if the fear of reprisal is enough to keep them from ever reporting to the college.

ATIXA maintains its ongoing support of amnesty policies as a means to encourage the reporting of sexual misconduct. A chilling effect can occur when victims/survivors or witnesses are hesitant to report to university officials or participate in resolution processes based on a fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident.

Campus communities are best served when as many victims/survivors as possible feel supported in their decision to report to university officials, and when witnesses feel comfortable coming forward to share what they know. To encourage a culture of reporting, ATIXA's [model policy](#) has always offered victims/survivors of sexual misconduct and witnesses amnesty from minor policy violations related to the incident.

The consensus of the ATIXA Advisory Board is that amnesty should provide a full release from all disciplinary consequences for the specified violations. However, educational conversations and voluntary education around the policy violation may be appropriate in situations when there is little risk of causing a chilling effect on reporting. It is the view of the ATIXA Advisory

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Board that abuse and misuse of amnesty policies are very rare, and that the benefits of such policies outweigh the minimal risks of abuse.

The *minor* aspect of the misconduct is an important amnesty criteria, as the institution is more interested in, and places greater importance on, reports of sexual misconduct (including sexual harassment, sexual violence, IPV, and stalking) than in imposing discipline for lesser policy infractions. Examples of minor misconduct include underage drinking, substance abuse, minor property damage, and the like. Administrators should maintain discretion over when and how to employ amnesty provisions, such that each instance aligns with the philosophical purpose of having an amnesty policy. Significant policy violations, especially those that could endanger or harm community members (e.g., drug dealing), should not be excused.

Sometimes, students are hesitant to offer assistance to others for fear that doing so may expose their own minor policy violations. As an example, an underage student who has been drinking might hesitate to take a sexual misconduct victim to the Campus Police. Institutions should promote an amnesty policy for students who offer help to others in need. It is still appropriate to provide educational options, rather than discipline, to those students who offer their assistance, but full amnesty can be granted if that approach is preferred. Bystander intervention education is a pillar of the Violence Against Women Act, Section 304, and amnesty policies serve to reinforce the spirit of this law. Similarly, witnesses may hesitate to come forward or participate in investigations if their own misconduct could come to light. Amnesty serves to incentivize witness participation and is therefore of significant benefit to the institution.

The ATIXA Advisory Board further believes that amnesty should not be routinely extended to responding parties, because there is no risk of a chilling effect on reporting, which is the primary reason for providing amnesty. There is a mistaken belief that equity requires such action, but as long as both male and female victims/survivors are afforded amnesty, no gender inequity occurs.

For religiously-affiliated institutions that do not wish to offer amnesty, the proper path is to apply to the Office for Civil Rights (OCR) for an exemption that allows discipline for violations of policies on visitation, being in rooms after hours, sex outside the covenant of marriage, and other faith-based restrictions. Otherwise, religious institutions risk allegations that the disciplinary actions taken against victims/survivors are retaliatory under Title IX. ATIXA does not support any approach that punishes victims morally. The experience of victimization is horrific, and compounding it with discipline does not strike us as either redemptive or merciful, but ATIXA respects that articles of faith are for institutions to determine. If OCR grants an exemption on this basis, the institution has that right. Otherwise, if it can be demonstrated that holding victims/survivors accountable for policy violations creates a chilling effect on reporting, OCR can find that school in violation of Title IX on that basis, regardless of religious tenets. There is a [2003 OCR investigation](#) specific to this issue.

*This statement was approved by the ATIXA Board of Advisors on February, 17, 2017.*