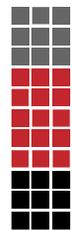
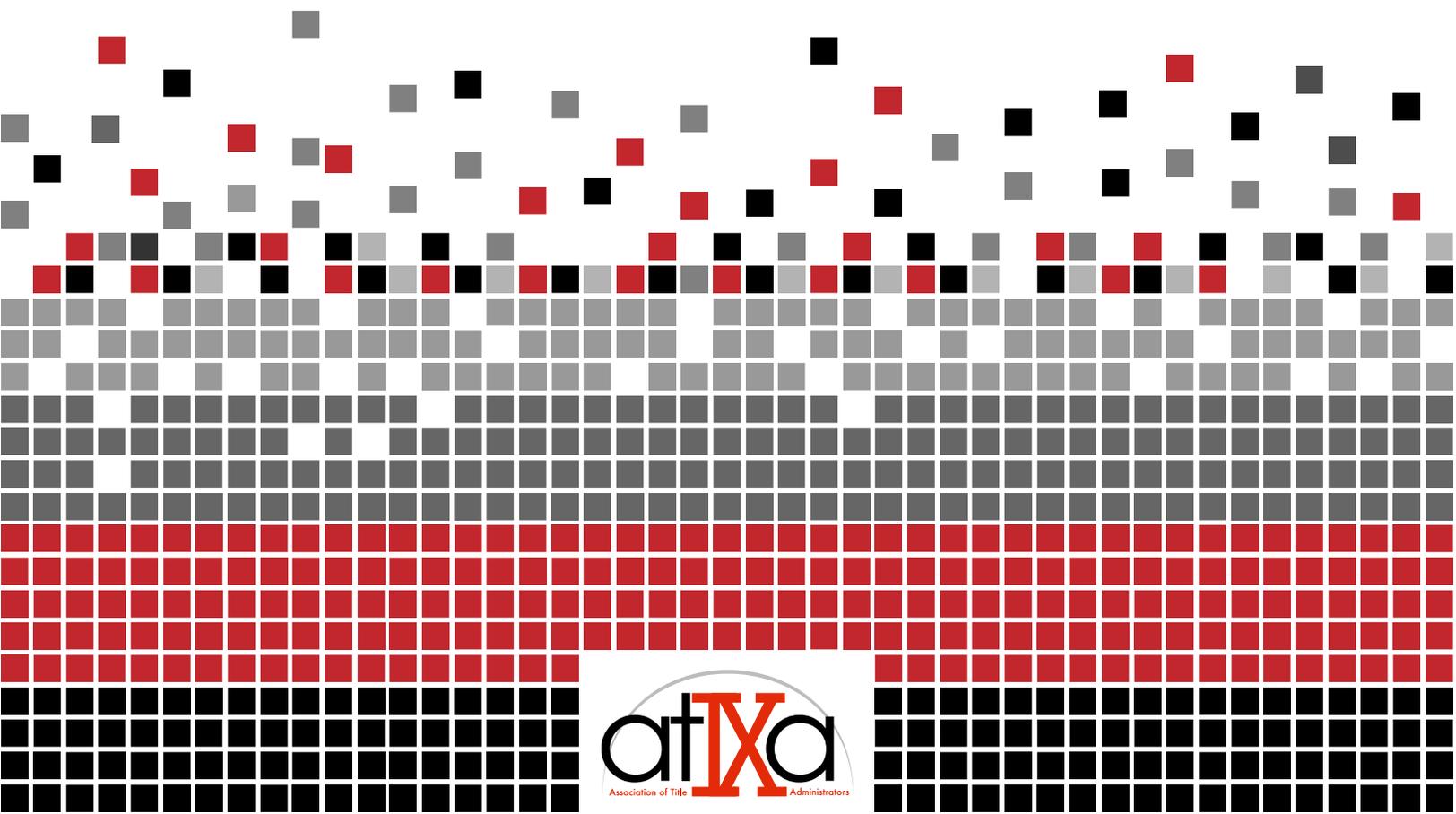


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# The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations

Michael Henry, J.D.  
Brett A. Sokolow, J.D.  
Daniel C. Swinton, J.D., Ed.D.  
Anna Oppenheim, J.D.  
W. Scott Lewis, J.D.  
Saundra K. Schuster, J.D.  
*With contributions by Richard Olshak, M.S.*



# CONTENTS

<b>PREFACE</b> .....	<b>2</b>
<b>SANCTIONING GUIDE</b> .....	<b>3</b>
INTRODUCTION.....	3
PRIMARY STUDENT SANCTIONS.....	4
SANCTIONING CONSIDERATIONS.....	6
Mitigating, Aggravating, and Compounding Factors.....	6
Severity and Egregiousness.....	7
Cumulative Violations.....	8
Prior History of Misconduct.....	9
Patterns of Behavior.....	10
Reporting Party’s Request for Enhanced/Lesser Sanctions.....	11
Responding Party’s Attitude.....	12
Staying the Sanction During the Appeal Window.....	13
Conditions for Return.....	14
<b>OFFENSE-SPECIFIC SANCTIONING</b> .....	<b>14</b>
Sex Discrimination.....	15
Hostile Environment Sexual Harassment.....	16
Intimate Partner Violence (IPV).....	17
Sexual Exploitation.....	18
Non-Consensual Sexual Contact.....	19
Non-Consensual Sexual Intercourse/Penetration.....	20
Stalking.....	21
Retaliation.....	22
Close Calls.....	23
<b>ABOUT THE AUTHORS</b> .....	<b>25</b>

## PREFACE

*This guide offers ATIXA's best thinking on sanctioning for the range of offenses covered by Title IX and VAWA §304. While sanctioning is ultimately the province of each school or college, guidelines and sanctioning ranges like those offered in this guide can help schools and colleges to benchmark their sanctions against the field, better understand industry standards for sanctioning, and ensure that consistency and proportionality guide sanction decision-making.*

*From an educational perspective, teaching is the central function of an institution. Sanctions are an essential part of that teaching process, and are driven by the learning outcomes educators intend those sanctions to achieve. The law recognizes and respects this notion, which is*

### *Consistency encompasses the added obligation of equitable sanctioning imposed by Title IX.*

*why the courts often show deference to the sanctions educators assign. When courts do review the fairness of sanctions, they evaluate sanctions on the three yardsticks of proportionality, a rational relationship, and consistency. Sanctions must be proportional to the severity of the violation, and, if applicable, the cumulative conduct record of the responding party. Similarly, sanctions must bear a*

*rational relationship to the nature of the misconduct: they can be neither arbitrary nor capricious. They should be designed to stop the misconduct, prevent its recurrence, and remedy its effects. If sanctions don't serve some or all of these purposes, the rational relationship to the underlying misconduct will be in doubt, as will the efficacy and the value of the sanctions themselves. Finally, consistency is a relevant principle, but it tends to be over-emphasized by sanction decision-makers for some reason. Proportionality and a rational relationship are the more significant legal constructs, with consistency being a secondary consideration.*

*When considering consistency, the goal is to avoid being gratuitously inconsistent across or within cases. Courts will tolerate inconsistency when there is a rational basis for deviating from prior sanctioning practice, or sanctions administered in similar cases, especially when there is a well-developed rationale for determining the sanction included with the sanctioning notice. Consistency encompasses the added obligation of equitable sanctioning imposed by Title IX. Sanctions should not vary based on sex (including sexual orientation) or gender, typically. Sanctioning rubrics are designed to help improve consistency, but need to be flexible enough to allow administrators to depart from the guidelines where there is a compelling justification to do so. While many trainings focus on policy, procedure, and analysis, sanctioning is not often as deeply developed a topic. Our hope is that this guide will be a tool that is useful to training efforts at schools and colleges.*

## SANCTIONING GUIDE

### INTRODUCTION

There must be sufficient evidence obtained via a thorough, reliable, and impartial investigation to support a finding that a student has violated one or more provisions of the sexual misconduct policy. The institution must implement sanctions that are proportionate to the severity of the misconduct and that are designed to stop the harassment/discrimination, prevent its recurrence, and remedy its effects on the individual(s), and when applicable, the community. While straightforward in theory, different incidents constituting violations of the same policy often arise out of markedly different circumstances, sometimes including various aggravating and/or mitigating factors. These factors may make a particular offense more or less egregious, or suggest that a responding party is more or less of a continuing threat (either physical or threat to disrupt the educational mission) to the campus community. Accordingly, decision-makers (i.e., civil rights investigators, hearing officers, or hearing panel/committees, depending on the resolution structure) must carefully consider these circumstances in order to identify and implement the most appropriate, equitable, and effective sanction(s).

It is important to note that these considerations are wholly independent from, and should be made subsequent to, the analysis of whether a student is responsible for violating the sexual misconduct policy. In other words, the fact that a particular instance of misconduct can—based on articulable mitigating factors—be considered relatively less egregious than other instances of the same misconduct, should not impact the determination of whether that behavior more likely than not occurred in violation of policy. Occasionally, decision-makers mistakenly use mitigating circumstances as evidentiary support for determining whether a student violated policy, rather than properly applying the standard of proof and then considering any relevant mitigating factors during sanctioning. If anything is a “best practice” in sanctioning that is commonly recognized in the field, the delineation between finding and sanctioning is one of the most important concepts that any sanctioning training should seek to impart.

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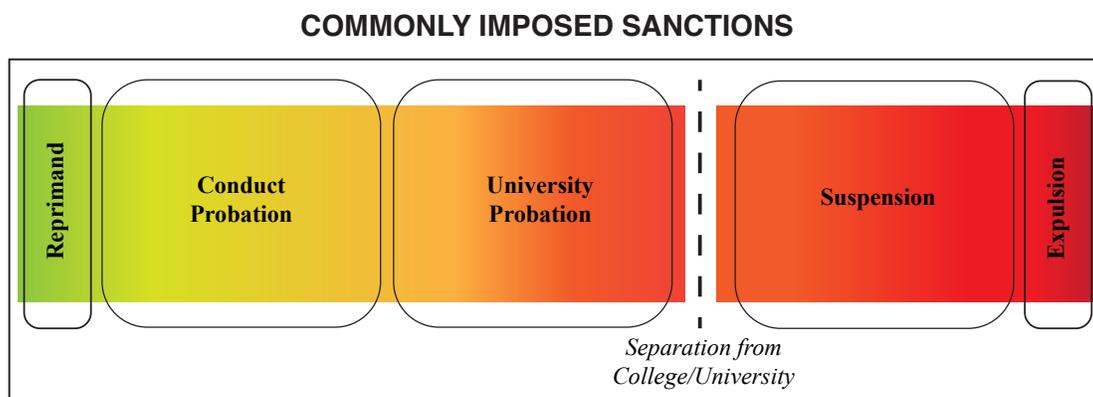
The following is a guide to the implementation of appropriate and offense-specific sanctions for sexual misconduct violations by students. For the purposes of this guide, the term sexual misconduct includes sexual harassment, sex discrimination, sexual violence, intimate partner violence (IPV), sexual exploitation, stalking, and sex- or gender-based retaliation. This guide utilizes the sexual misconduct definitions promulgated in The ATIXA Model Policy and Procedure, found [here](https://atixa.org/resources/model-policies/) (https://atixa.org/resources/model-policies/), and additionally

referenced in The ATIXA Playbook, found [here](https://atixa.org/resources/playbook/) (https://atixa.org/resources/playbook/). This guide provides examples and explanations of common sanctions, addresses various considerations and potential pitfalls in the sanctioning process, and lays out ATIXA’s proposed sanctioning ranges for each of the seven aforementioned sexual misconduct violations.

## PRIMARY STUDENT SANCTIONS

The primary student sanctions range from a reprimand to probation to temporary or permanent separation from the College/University in the form of suspension and expulsion. Sexual misconduct violations typically entail the imposition of one of these primary sanctions, with additional sanctions, often more educational, preventative, and/or rehabilitative in nature, imposed as appropriate. We generally find the dichotomy common in the field between sanctions that are “punitive” and those that are “educational,” to be a false and meaningless dichotomy. All sanctions can and should be educative, and all have a punitive element of some kind; on a continuum, some will feel (or are intended to be) more educative than punitive, or vice versa.

The graphic below will be utilized throughout this guide to illustrate the sanctioning ranges. It can also serve as a helpful visual aid when explaining the sanctioning range to students. Note that while reprimand and expulsion are sanctions that do not fluctuate (i.e., you either receive a reprimand or you don’t; you’re either expelled or you are not), conduct/university probation and suspension are durational and can be implemented for a period of semester(s) or year(s). As an example, the top end of the sanctioning range for a particular offense could include a suspension of any length, represented on the graphic below by a range spanning the entire suspension block, or be limited to a suspension for a specific amount of time, represented by a range spanning only a portion of the suspension block.



### Reprimand

An official written notice that the student has violated College/University policies and/or rules and that more severe conduct action will result should the student engage in additional violations while enrolled at the College/University.

### Conduct Probation

The student is put on official notice that, should further violations of College/University policies occur during a specified probationary period, the student may face suspension

or expulsion. Regular probationary meetings may also be imposed. The duration of a probationary period can range from a semester to the full academic career of the student. This sanction can also include loss of privileges.

### **University Probation**

University Probation, sometimes also called “Deferred Suspension,” “Suspension in Abeyance,” or “Double Secret Probation,”<sup>1</sup> is a more consequential form of probation, in that any subsequent violation of University/College policy(ies) during the specified probationary period will almost certainly result in suspension or expulsion. This type of sanction is typically appropriate when a violation would have resulted in suspension but for articulable mitigating factor(s). The duration of a probationary period can range from a semester to the full academic career of the student. This sanction usually includes significant loss of privileges.<sup>2</sup>

### **Suspension**

Separation from the College/University for a specified period of time, typically one semester to two years (though shorter or longer terms can be imposed), after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, or upon a general condition that the student is eligible to return if the College/University determines it is safe to readmit the student. The student is typically required to vacate the campus within 24 hours of notification of the action, though this deadline may be extended upon application to, and at the discretion of, the Director of Student Conduct or Title IX Coordinator. During the suspension period, the student is banned from College/University property, school functions, events, and activities unless they receive prior written approval from the Director of Student Conduct or Title IX Coordinator. This sanction may be enforced with a trespass action, as necessary. [This sanction may be noted as a Conduct Suspension on the student’s official academic transcript, per College/University policy.]

### **Expulsion**

Permanent separation from the College/University.<sup>3</sup> The student is banned from College/University property and the student’s presence at any College/University-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. [This sanction may be noted as a Conduct Expulsion on the student’s official academic transcript, per College/University policy.]

### **Other Common Student Sanctions**

Below is a non-exhaustive list of other common student sanctions for sexual misconduct violations that may be used in conjunction with the above sanctions:

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<sup>1</sup> This terminology is limited to Faber College ☺, and all three of these terms are discouraged usages because they are imprecise if not completely misleading.

<sup>2</sup> Imposing deferred suspension (or suspension in abeyance) and university probation is both redundant and confusing.

<sup>3</sup> Except at some community colleges, where, by state or system rules or regulation, expulsion is for a period of time, after which the student may re-enroll. While the student’s status is different than suspension, the result is functionally the same, though expulsion is often longer than the term of a suspension.

- Loss of privileges (e.g., library, gym, cafeteria, etc.)
- Mental health assessment
- Psychoeducational course (e.g., anger management, emotional control)
- No-Contact Order<sup>4</sup>
- Residence hall relocation
- Residence hall eviction
- Limited access to campus or campus buildings
- Denial of ability to represent college in official capacities
- Service hours, restitution, fines
- Online prevention education
- Alcohol/drug assessment and/or classes
- Sexual harassment prevention curriculum
- Organizational sanctions/restrictions
- Withholding diploma
- Revocation of degree<sup>5</sup>
- Transcript notation
- Other discretionary sanctions

## SANCTIONING CONSIDERATIONS

Proper sanctioning for sexual misconduct violations requires careful review of numerous different factors and circumstances. Some factors are specific to the responding party, such as a prior history of misconduct, evidence of a pattern of behavior, and/or multiple violations within the same occurrence. Other factors relate to the circumstances surrounding or contributing to the offense at issue, such as the inherent severity of the incident, the intentionality or premeditation of the behavior, and/or whether the conduct involved physical violence or the use of a weapon. Colleges/Universities must also assess these considerations in light of the obligation to stop, prevent, and remedy incidents of discrimination and harassment. Careful consideration of all of these factors is paramount to the determination of appropriate, equitable, and effective sanctions.

### ***Mitigating, Aggravating, and Compounding Factors***

Rarely are two incidents of sexual misconduct identical, thus requiring institutions to tailor sanctions to the context and circumstances of the particular behavior. Sexual misconduct violations often include “mitigating” and/or “aggravating” factors, which tend to render a violation either more or less egregious than other violations of the same policy. As a result, a one-size-fits-all approach, such as expelling all students who violate a particular policy, can be disproportionately harsh (or lenient), is often ineffective at discouraging misconduct, and fails to consider the circumstantial differences that contribute to behavior that violates policy. Instead, each sexual misconduct violation should allow for a range of sanctions, where a violation that is more egregious receives more severe sanctions within the allotted range and a less egregious violation results in less severe sanctions within the same range. This provides consistency and transpar-

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<sup>4</sup> This is often an administrative action to defuse conflict or protect safety prior to a finding, though some Colleges/Universities consider it a type of sanction. It is more clearly a sanction when imposed subsequent to a finding.

<sup>5</sup> A specific policy and procedure permitting revocation would be necessary to permit this action.

ency for the students involved in the sanctioning process, helps to avoid “arbitrary and capricious” sanctioning decisions and the appearance of the same, and simultaneously recognizes that certain instances of a particular type of misconduct can be articulated as being more severe than others.

Even with an established sanctioning range for each sexual misconduct violation, certain aggravating factors can have a “compounding” effect on sanctioning, in that they render the sanctioning range for a particular violation insufficient to properly address the totality of the circumstances. These factors are often responding party specific, such as a prior conduct history or cumulative violations, and can “bump” the sanction range higher to include more severe sanctions, enhanced sanctions, and/or longer sanctions. Simply put, the various mitigating and aggravating circumstances involved in or contributing to a policy violation(s) will either affect where a decision-maker lands within the sanctioning range or will have a compounding effect and bump the overall sanctioning range. While this is not an exact science, neither is it completely subjective, and a decision-maker’s meticulous evaluation of each circumstantial factor at play ultimately provides the decision-maker with the ability to articulate a sound, evidence-based, and situation-specific rationale in support of the sanction(s) they impose for a particular violation.

### ***Severity and Egregiousness***

One of the first considerations for a decision-maker in the sanctioning process is evaluating the inherent severity and egregiousness of the misconduct at hand relative to other instances of the same violation. The goal here is to sanction a responding party in proportion to the severity of the conduct.

For instance, in penetration-based sexual misconduct violations, it would be perfectly reasonable for a decision-maker to consider an enhanced sanction for a student who deliberately and surreptitiously plied someone with alcohol, drugs, spiked punch or used a rape drug, when compared with a situation where the reporting party had self-incapacitated. Both instances will likely result in a finding of a Non-Consensual Sexual Intercourse policy violation, but the first instance is objectively and articulably more severe, or egregious, than the second. Similarly, a student’s use of force, physical violence, or a weapon to compel a reporting party into engaging in sexual intercourse may be subject to enhanced sanctions as compared to a student who, despite seemingly good intentions, nevertheless failed to obtain clear consent. Both types of misconduct will likely be determined to violate the College/University’s Non-Consensual Sexual Intercourse policy, but one is demonstrably more egregious. We are not saying the behavior is more harmful to the reporting party, but the act itself is more egregious and, accordingly, may warrant heightened sanctions. There are two rubrics for assessing the appropriate severity of the applicable sanction. One is to look at the severity of the misconduct and the other is to look at the severity of the effect, or extent of the discriminatory impact. While the former is far more compelling a reason to enhance a sanction, the severity of the effect can be a legitimate basis to enhance or lessen a sanction.

Another example of tailoring appropriate sanctions arises if utilizing the Clery/VAWA definition of stalking as policy (which we do not recommend). When assessing the appropriate sanction for a sex- or gender-based stalking violation, a decision-maker should differentiate menacing from

non-menacing behavior. Where the former embodies a more severe and intentionally malicious type of behavior, the latter represents a more benign and often inadvertent, “lurking” type of behavior. Though both may constitute a violation of the same stalking policy (when poorly written, like the VAWA definition), the inherent severity of these different types of stalking behaviors are notably different. This disparity must be considered as part of a decision-maker’s sanctioning analysis. The reporting party may be equally fearful or intimidated by lurking as by stalking, but the intent of the responding party (in the stalking example, the presence or absence of malice), if it can be determined, is relevant to sanctioning. One of the primary purposes of sanctioning is to stop behavior that violates College/University policy, and while both lurkers and stalkers need to cease their behavior, disciplining a socially awkward lurker for what they consider to be “puppy love,” or imposing tough sanctions on a student on the Autism spectrum for failure to read social cues, can be excessive, unnecessary, and often ineffective. It also illustrates the need to consider the inherent severity of the misconduct in sanctioning.

### ***Cumulative Violations***

It is not uncommon for allegations of sexual misconduct to include more than one potential violation of College/University policy. For example, stalking violations may also involve a sexually exploitative element, such as voyeurism. Incidents of intimate partner violence (IPV) can also involve a non-consensual sexual contact component. Almost all forms of sexual misconduct are also forms of sexual harassment, legally. Additionally, incidents of sexual misconduct can include what we call “general conduct” violations that do not fall under the sexual misconduct umbrella, such as (non-sexual) physical assault, threats, bullying, drug or alcohol use, theft, hazing, etc.

Cumulative violations arise out of various scenarios, especially when addressing a serial abuser or serial acts of misconduct. Examples of these scenarios include, but are not limited to:

- responding party engages in multiple violations of the same policy in a single incident,
- responding party engages in multiple violations of different policies in a single incident,
- responding party engages in multiple violations involving the same reporting party over multiple incidents, either of the same policy or of different policies,
- responding party engages in violations of the same policy involving different reporting parties, either in a single incident or over multiple incidents, or
- responding party engages in violations of multiple policies involving different reporting parties, either in a single incident or over multiple incidents.

The general rule for sanctioning cumulative violations is to sanction per violation. In other words, each violation must first be assessed independently, then considered within the broader context. Cumulative violations should be considered as an aggravating factor, but, depending on the circumstances, they can also constitute a compounding factor, serving to bump the sanctioning range.

For example, assume a responding party was found responsible for five separate instances of low-severity Non-Consensual Sexual Contact (e.g., a pat on the butt) over a three-day period, and that each violation warranted some period of conduct probation. Thus, for sanctioning purposes, a decision-maker would first assess this as five independent conduct probations and proceed from there, typically with additional mitigating or aggravating factors to consider.

The decision-maker could determine that the repeated nature of the behavior was an aggravating factor that, given the low-severity nature of the contact, simply made the violations more severe and thus warranted the higher end of the sanctioning range, resulting in a longer period of probation or more restrictions in the terms of the probation. Alternatively, the decision-maker could determine that, while two incidents might make the conduct warrant a more severe sanction, five incidents makes the cumulative violations an aggravating compounding factor. As a result, the sanctioning range applicable to one violation of the Non-Consensual Sexual Contact policy is insufficient to account for all five instances, and the decision-maker decides to bump the relevant sanctioning range to include university probation or even a brief suspension. The decision-maker would likely have additional mitigating/aggravating factors to consider which would further inform the sanctioning decision, such as an escalation in severity of the repeated contact, or that the responding party's behavior persisted despite repeated warnings that the contact was unwelcome.

### ***Prior History of Misconduct***

Another common sanctioning consideration is a responding party's prior conduct history. While a student's conduct history is usually not considered during the investigation itself or the decision-making process unless it evidences a pattern of behavior (see next section), prior conduct history is highly relevant to the sanctioning phase. This history serves as both an aggravating and compounding factor that may bump the sanctioning range. The magnitude of the bump will depend on the extent and composition of the conduct history.

Naturally, a shorter/minor conduct history should have only a minor effect, if any at all in some cases, while a longer/more serious conduct history can result in a more pronounced bump to the sanctioning range. For instance, in sanctioning a stalking violation, a prior conduct history showing only one alcohol violation should have only a slight effect on the sanctioning range, if any at all, since it is only one, relatively minor violation. Alternatively, a conduct history consisting of violations for possession of marijuana, academic dishonesty, and assault would likely have a more substantial impact on the sanctioning range for the stalking violation at issue because the conduct history is extensive and includes at least one violation involving physical violence. The timing of the prior misconduct can also be relevant. Two violations during a student's freshman year are likely less impactful to the sanctioning of a violation in that student's senior year (assuming 2 years of good behavior in the interim) than a senior at the end of the semester who has two previous violations within the same semester.

A decision-maker must also consider whether the prior conduct violations involved behaviors that are directly related to the present sexual misconduct violation. If so, this can indicate a possible pattern of behavior, discussed in more detail below. The existence of related, prior misconduct may also suggest a responding party's proclivity for engaging in sexual or gender-based misconduct. Either should engender a more substantial bump to the sanctioning range than prior, unrelated misconduct. Using the same stalking violation example referenced above, while a prior conduct history that includes marijuana possession, academic dishonesty, and assault is a compounding factor that should result in a bump to the sanctioning range, a prior conduct history that includes violations for sexual harassment and non-consensual sexual contact would likely have an even greater bump on the sanctioning range for the stalking violation at issue.

As a final note regarding prior conduct history, remember that even when compounding factors

bump the sanctioning range, a decision-maker should still consider all mitigating and aggravating circumstances to determine where the sanctions should fall within that range. In other words, compounding factors adjust the floor and ceiling of the sanctioning range, but consideration for the circumstances contributing to the present violation will determine the actual sanction imposed.

### ***Patterns of Behavior***

Federal law requires Colleges/Universities to identify and respond to possible patterns of discriminating/harassing behavior, and to do so by keeping track of reported incidents of sexual misconduct and maintaining a record of students who are found in violation of sexual misconduct policies. A pattern of behavior is an aggravating factor, and while the determination of whether such a pattern exists affects a College/University's initial response obligations, the existence of a pattern of behavior must also be considered in sanctioning, albeit carefully.

As discussed above, when a responding party's prior conduct history shows a pattern of behavior where the student was previously found responsible for sexual misconduct policy violations, this pattern is an aggravating and compounding factor that serves to bump the sanctioning

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range. When the behaviors appear to be escalating in severity over time or with each subsequent offense, that escalation constitutes an even greater aggravating factor and should bump the sanctioning range commensurately.

However, a significant number of reported incidents of sexual misconduct do not proceed through a formal investigation and resolution process, often at the request of the reporting party. Thus, these reports do not result in findings and do not exist in a responding party's prior conduct history. When good-faith

reports of alleged sexual misconduct indicate a possible pattern of behavior, OCR noted during the Obama administration, these reports should be considered an aggravating factor. We do not yet know if the current tenants of the OCR adhere to that mindset. Courts weigh in on this issue from time-to-time, and seem to abide by a tighter framework, acknowledging a pattern only when there are previous findings of substantially similar offenses.

Regardless, to sanction a student based on only an allegation, without an investigation or finding of responsibility, is a glaring due process violation. But, there is a legitimate best practice question when evidence suggesting that a pattern of (potentially escalating) behavior is derived only from good faith reported incidents of sexual misconduct, without formal findings(s): can the alleged pattern of behavior be considered as an aggravating factor, such that it could result in a more severe sanction? It is certainly not a compounding factor, such that it bumps the range

entirely. But, in terms of aggravation, enhancing the sanction within the range is a debatable practice that we are going to leave to decision-makers to resolve in conversation with campus officials and attorneys. Doing so might be permissible, and even common, on a private college campus (except in states like MA, CA, and NY, where the public/private distinction is blurring). Doing so on a public university campus, however, may run afoul of due process, as this practice, for all intents and purposes, sanctions someone (at least in part) for an offense for which they were not found responsible. It can be argued that sanctioning within a range is always within the discretion of decision-makers, and owed deference by the courts, but that is not a recommendation we are prepared to make. The below illustration may help demonstrate the difficulty of this type of situation.

A responding party was reported to their college three times in one year, by three different individuals, for intimate partner violence. The first report was submitted by the reporting party's friend, who included in her online report a screenshot of a text message from the reporting party showing bruises. After multiple attempts to contact the reporting party, she was ultimately unresponsive and the allegation was closed with no further investigation. A few months later, a different woman reported the responding party for intimate partner violence and this time participated in an investigation. However, after an investigation and hearing, there was insufficient evidence to find a violation. Six months later, the responding party was arrested after a third reporting party called the police following a particularly violent interaction with the responding party that resulted in her lip and nose bleeding. The college investigated the incident and, after a hearing, the responding party was found responsible for intimate partner violence.

The three reported incidents might evidence a pattern of escalating behavior and the second incident can be considered as an aggravating factor in sanctioning for the violation found in the third incident. The first report may have been made in good faith, but there really is no way to know, so it cannot be considered as an aggravating factor or part of a potential pattern with respect to the sanction. Further, since the first and second reports of intimate partner violence did not result in a finding of a violation, they cannot be considered as compounding factors sufficient to bump the sanctioning range, as doing so would be tantamount to treating them as substantiated violations, which they are not. Instead, the second report can serve (if you choose to view it that way) as articulable evidence of a pattern of escalating behavior, which when considered in the totality of the circumstances makes the third incident more egregious, potentially resulting in the decision-maker landing higher in the sanctioning range.

Ultimately, consideration of good faith allegations—especially those that have not been substantiated—during the investigation, decision-making, or sanctioning phases of the process can be highly nuanced, is very evidence-dependent, and should be carefully considered, preferably in consultation with the College/University's Title IX Coordinator and/or General Counsel.

### ***Reporting Party's Request for Enhanced/Lesser Sanctions***

At some point during the process, often during the investigation or via an impact statement, a reporting party may ask for a particular sanctioning outcome. Sometimes the request is, "I don't want them to get kicked out of school, I just want them to know what they did was wrong." Other

times the sentiment is, “I want them gone, expelled, I never want to see their face on campus again.” While the reporting party’s wishes are in no way dispositive in terms of sanctioning, they should also not be wholly disregarded. Instead, they may be taken into account and considered along with the other relevant circumstances and factors.

*While the reporting party’s request can affect where a decision-maker falls within the range, it should not bump the sanctioning range up or down, nor should it serve as a rationale for stepping outside the prescribed range.*

If the reporting party is adamant that the responding party receive a lenient sanction, this request provides some level of mitigation, but Colleges/Universities must ultimately balance the reporting party’s request for leniency, and all other mitigating factors, with their obligation to stop, prevent, and remedy the harassing conduct. Similarly, a reporting party’s insistence that the responding party be suspended or expelled is an aggravating factor that must be considered with all of the other factors at play. Importantly, while the reporting party’s

request can affect where a decision-maker falls within the range, it should not bump the sanctioning range up or down (as it is not a compounding factor), nor should it serve as a rationale for stepping outside the prescribed range. This highlights the importance of explaining the sanctioning process to the parties toward the beginning of the process, including the sanctioning ranges applicable to each allegation and how certain offenses carry a higher base sanction while others carry a lower ceiling sanction.

### ***Responding Party’s Attitude***

A responding party’s attitude regarding a violation can also be considered during sanctioning as either a mitigating or aggravating factor. However, be careful not to confuse a responding party’s right to defend themselves with a brazen refusal to acknowledge and take responsibility for a clear violation of policy. When the weight of the evidence lands just above a preponderance (i.e., a tip of the scale or just above 50 percent), a responding party’s refusal to take responsibility should likely not be considered an aggravating factor. On the other hand, a responding party’s lack of contrition when their act of physical violence was captured by surveillance cameras can be an aggravating factor. Gaslighting, infantilizing, or blaming the reporting party during the sanctioning phase can also be considered aggravating factors, because they may suggest that the responding party has not learned from the experience and/or believes their actions were reasonable. To return to the prior discussion of consistency, genuine contrition is important and may reasonably contribute to the (in)consistency of sanctions. If two responding parties engaged in exactly the same misconduct, but one refused to accept any responsibility while the other owned their misconduct and was completely contrite and sincere, the decision-maker could reasonably assign sanctions at the top and bottom of the sanction range, respectively, even if the underlying misconduct was identical.

The following are examples of language a decision-maker can use in a rationale to justify sanctions that are either mitigated or aggravated by the responding party's attitude:

- The responding party accepted responsibility, showed remorse, demonstrated thoughtful understanding of policy violations, and/or articulated a reformed perspective and a plan for modified future behavior.
- The responding party demonstrated, despite overwhelming evidence of a violation, an outright refusal to acknowledge their role or accept responsibility for a clear violation of policy.
- Despite the preponderance of evidence clearly supporting the determination of a violation, the responding party repeatedly attempted to explain why the reporting party was ultimately responsible for the misconduct.

### ***Staying the Sanction During the Appeal Window***

A student does not have a due process "right" to an appeal. While an appellate review is a useful tool for Colleges/Universities to check for errors within the process, and almost all Colleges/Universities offer appeals voluntarily, appeals should not be a reinvestigation or a rehearing. Investigations and resolution processes should be airtight, with very few resulting in some sort of action taken at the appellate level. Accordingly, to stay the implementation of sanctions until the appeal window closes or merely because an appeal has been filed by a party significantly undermines the original decision and presumes that the original decision-maker acted in error. The presumptive stance should be deference to the original decision-maker and implementation of sanctions without appeal-related delay.

*A student does not have a due process "right" to an appeal... appeals should not be a reinvestigation or a rehearing.*

Now, there are certainly circumstances where staying the sanctions is the prudent and fairest path, but that should be the exception, granted case-by-case when warranted, at the discretion of the Title IX Coordinator. Perhaps the most common of these circumstances is when a finding occurs toward the end of a semester, during finals, or just before a graduation ceremony. The key consideration here is whether the responding party would suffer irreparable harm in the (even unlikely) event that there were to be a modification at the appellate level. So, for example, if a responding party was found responsible for a violation in early May and sanctioned with a suspension, there may be a compelling reason to stay the sanction to allow them to complete finals or walk at graduation (though withholding the conferral of the degree), because implementing the suspension immediately might deprive them of an opportunity they can't get back. If, on appeal, the suspension was found to have been inappropriate because it was outside the sanctioning range and the rationale for exceeding the prescribed range was deficient, the loss of opportunity is irreversible.

Staying the sanction should be an option, but it should not be the default policy. A responding party should have the opportunity to petition the appellate body or Title IX Coordinator for a stay of the sanction(s) (this can occur prior to the submission of their actual appeal), but the party

must demonstrate in that petition that they would suffer irreparable harm if the appeal were to be successful and they must cite a plausible basis for their forthcoming appeal.

### ***Conditions for Return***

Suspension can be a highly effective disciplinary tool, in that it is stringent, but impermanent. Students feel the gravity of their misconduct with the unexpected delay in their expected graduation date, but suspension is a sanction from which they can recover. If a student's misconduct merits a suspension, Colleges/Universities should try to take steps to prevent recurrence once that student returns to campus. They do this by levying "conditions for return," typically educational and/or rehabilitative in nature, which the student must complete either prior to reenrollment or within a specified timeframe after they return to campus. Failure to do so will result in denial of reenrollment or trigger a "Failure to Comply" violation, which might extend the suspension for an additional semester or until the conditions are satisfied. Examples of these types of conditions include, but are not limited to: required counseling assessment, completion of service hours, completion of online prevention training, completion of drug/alcohol or psychoeducational courses, pre-admission interview, risk assessment by a BIT, and/or completion of a sexual misconduct/sensitivity training.

## **OFFENSE-SPECIFIC SANCTIONING**

Below, you will find ATIXA's proposed sanctioning ranges for each sexual misconduct offense, as well as common aggravating and mitigating circumstances specific to each violation. In developing a campus-specific sanctioning guide, you may choose to modify the proposed sanctioning ranges to better fit your own institutional culture, outlook, or historical sanctioning practices. As noted in the section above, certain factors, such as a prior conduct history, evidence of a pattern of behavior, cumulative violations, reporting party's request for enhanced/

*Ultimately, the goal of developing an institution-specific sanction guide is to promote proportionality and consistency.*

lesser sanctions, or responding party's attitude, can occur within the context of virtually all sexual misconduct violations and are not repeated in detail below.

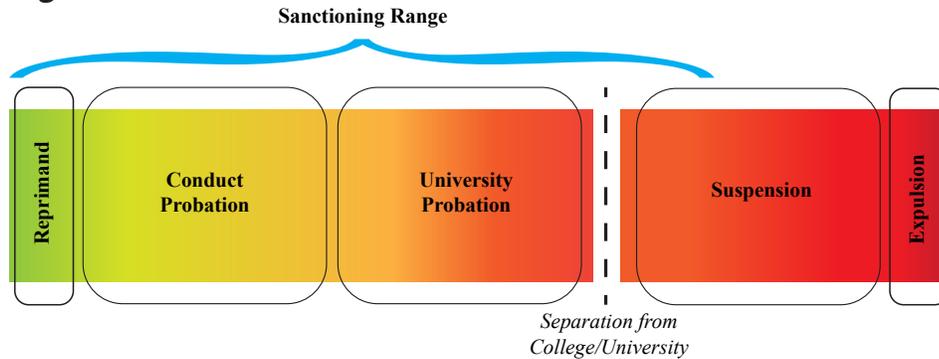
Ultimately, the goal of developing an institution-specific sanction guide is to promote proportionality and consistency, so students who violate the same policy under similar circumstances face the same base

sanction range, at least as a starting point before aggravating, mitigating, and/or compounding factors are considered. A sanctioning guide offers transparency so that that students know and understand the range of sanctions that will be considered for a particular violation prior to the implementation of sanctions, and satisfies the Clery Act's sanction range disclosure requirements, as well.

## **Sex Discrimination**

Sex discrimination is defined as action(s) that deprive another member of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender. Sex discrimination commonly arises within the context of admissions, athletic programs, student organizations, with pregnant students, and includes discrimination/harassment on the basis of sex, gender identity, gender expression, or sexual orientation.

### **Sanctioning Range:**



### **Common Mitigating Factors:**

- Genuine contrition.
- The deprivation of access/benefits/opportunities was brief or trivial.
- The harm caused by the deprivation of access/benefits/opportunities was minimal and temporary.
- The discriminatory conduct was committed in error, by mistake, or was clearly unintentional.

### **Common Aggravating Factors:**

- The deprivation of access/benefits/opportunities was abiding.
- The harm caused by the deprivation of access/benefits/opportunities was extensive or irreparable.
- The totality of the behavior was exceptionally severe, persistent, or pervasive.
- The harassment was threatening, intimidating, or aggressive.

### **Compounding Factors (can bump the range):**

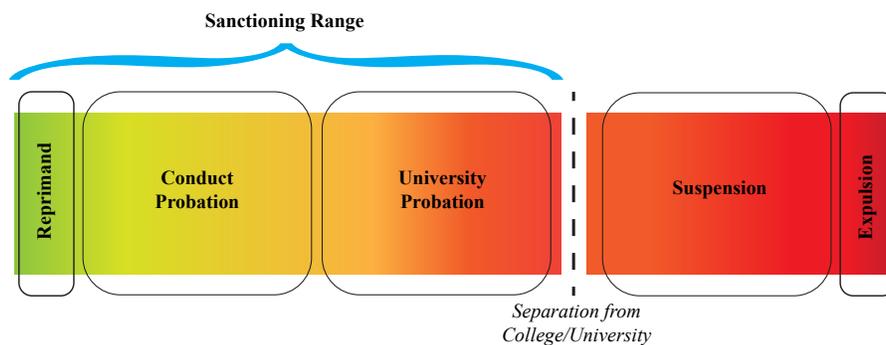
- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

## **Hostile Environment Sexual Harassment**

Hostile Environment Sexual Harassment is defined as any unwelcome conduct—verbal, written, or physical—of a sexual nature that is severe and/or persistent or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone’s ability to participate in or benefit from the institution’s education or employment programs.

### **Sanctioning Range:**

Sexual harassment is the broadest policy in terms of the variety of behaviors it prohibits, ranging from low-level verbal harassment to more egregious forms of physical sexual misconduct. Each of the more specific forms of sexual misconduct (e.g., Non-Consensual Sexual Contact, Sexual Exploitation, etc.) can also simultaneously constitute a violation of a College/University’s sexual harassment policy if the conduct involves a power differential, is retaliatory, or creates a hostile educational environment. Since the sanctioning range for all possible sexual harassment violations spans the complete array of possible sanctions, the sanctioning range below addresses only incidents of verbal or written hostile environment sexual harassment that do not otherwise constitute a violation of one of the other sexual misconduct offenses.



### **Common Mitigating Factors:**

- Genuine contrition.
- Prior situations where the responding party’s advances were welcomed or reciprocated.
- The harasser attempted to make amends or provide a remedy.
- The reporting party was not the target recipient of the conduct; though the reporting party was offended, the target was not.

### **Common Aggravating Factors (can increase severity within the range):**

- The language used was extraordinarily offensive, hate-based, and/or the totality of the behavior was exceptionally severe, persistent, or pervasive.
- The harassment was threatening, intimidating, and/or aggressive.
- The harassment occurred in violation of an existing No-Contact Order between the parties.
- The harassment persisted despite repeated attempts to indicate it was unwelcome, or get it to stop.

### **Compounding Factors (can bump the range):**

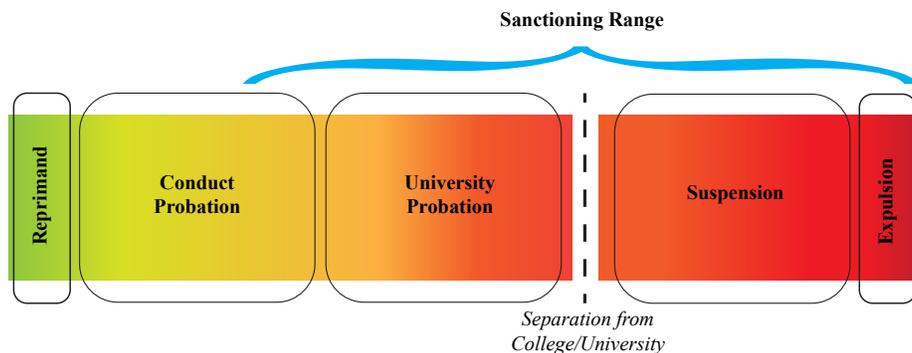
- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student’s prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

## ***Intimate Partner Violence (IPV)***

Intimate Partner Violence (IPV) is defined as any instance of violence or abuse—verbal, physical, or psychological—that occurs between individuals who are or have been in an intimate relationship or interaction with each other. Verbal abuse is the extreme or excessive use of language, which may take the form of insults, name-calling, and criticism, designed to mock, shame, embarrass, or humiliate the other. Physical violence is defined as any act that does harm, attempts to do harm, or imminently threatens to do harm, and includes conventional battery, such as punching, slapping, scratching, or otherwise striking an intimate partner, as well as sexual violence. Psychological or emotional abuse is often intended to terrorize, intimidate, isolate, or exclude the other and can often result in measureable psychological harm, such as depression, anxiety, or post-traumatic stress symptoms.

### ***Sanctioning Range:***

While the range below is applicable for all forms of IPV, verbal and emotional abuse will likely trend on the lower side of this range, while physical violence will trend toward the upper end.



### ***Common Mitigating Factors:***

- Genuine contrition.
- Self-defense (in cross-claims, if self-defense doesn't fully excuse the conduct).
- While still constituting a violation, the abuse was brief and comparatively mild.
- The harm caused by the violence or abuse was minimal.
- Lack of potential to recidivate (relationship is over; no contact between parties, etc.).

### ***Common Aggravating Factors:***

- The violence or abuse was long-lasting, occurred multiple times, and/or involved several types of abuse.
- The harm caused by the violence or abuse was extensive or irreparable.
- The violence or abuse resulted in the reporting party needing medical attention.
- The violence or abuse was particularly cruel or sadistic.
- High potential to recidivate (the relationship may be ongoing or not fully severed).

### ***Compounding Factors (can bump the range):***

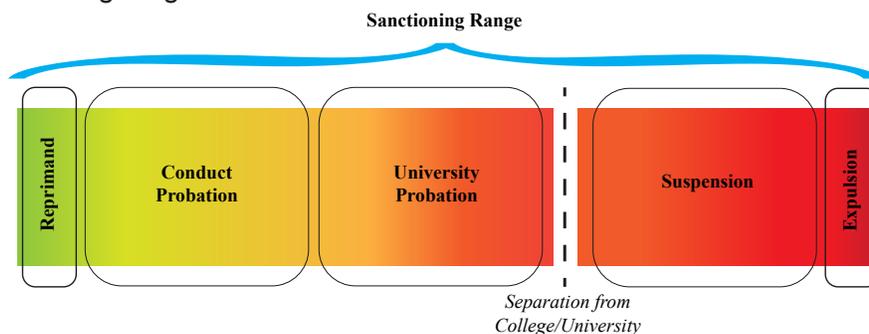
- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

## Sexual Exploitation

Sexual exploitation occurs when one person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. A violation of the sexual exploitation policy considers whether there was physical or emotional harm to the reporting party, whether the conduct transgressed against a socially acknowledged norm or boundary, violated privacy, or took advantage of a known weakness, youth, misunderstanding, inexperience, or naïveté. Common examples of sexual exploitation include: engaging in voyeurism; exposing one's genitals or inducing another to expose their genitals; knowingly exposing someone to or transmitting an STI, STD, or HIV; photographing or video recording another person in a private, intimate, or sexual act without their consent, or the purposeful distribution or dissemination of the same without the person's consent.

### Sanctioning Range:

As is likely apparent, the broad spectrum of violations that would fall under this offense is reflected by the breadth of the sanctioning range.



### Common Mitigating Factors:

- Genuine contrition.
- Prior instances where the photography or recording was consensual between the parties.
- The private/intimate/sexual acts photographed or recorded were not very explicit.
- The harm, embarrassment, or humiliation experienced by the reporting party was comparatively mild, either because the exposure was limited to only a few people, occurred for a short period, or because the reporting party's identity was unknown to viewers.

### Common Aggravating Factors:

- The responding party was in a position of power or authority over the reporting party.
- The responding party used manipulation or misrepresentation to effectuate the abuse.
- The private/intimate/sexual acts photographed or recorded were highly explicit.
- The non-consensual dissemination of the private/intimate/sexual acts was premeditated, extensive, pervasive, and/or exposed the reporting party to a large number of people.
- The reporting party's identity was clear or easily discernable to viewers.
- The reporting party experienced a substantial amount of harm, embarrassment, or humiliation.
- The responding party's disclosure of private/intimate/sexual material was vengeful, malicious, or retaliatory.
- The behavior (e.g., voyeurism, non-consensual dissemination, etc.) occurred multiple times.

### Compounding Factors (can bump the range):

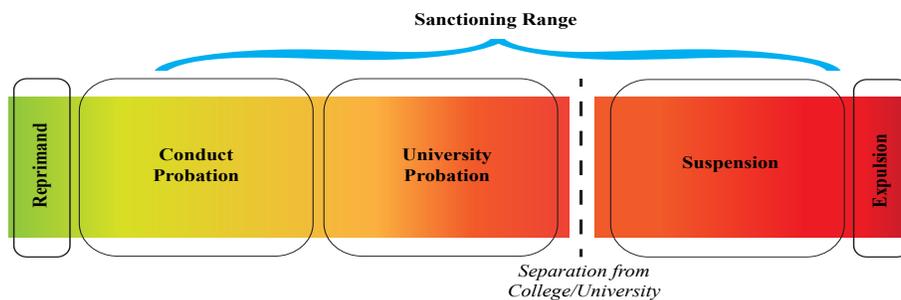
- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations

## **Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner.

### **Sanctioning Range:**

While the range here applies to all instances of intentional non-consensual sexual contact, contact with the breasts or genitals will trend toward the upper end, while contact with the buttocks or other private areas will trend toward the lower end of the range. Additionally, sexualized contact not involving the buttocks, breasts, genitals or other private areas (e.g., shoulder massage, prolonged hugs, back rubs) would trend even lower in the range.



\*Adjust this range to include expulsion if you prefer. We believe expulsion can occur for Non-Consensual Sexual Contact incidents, but most typically when the range is bumped as the result of other factors.

### **Common Mitigating Factors:**

- Genuine contrition.
- Consent was ambiguous.
- A request for leniency by the reporting party.
- Prior instances where the responding party's sexual contact was welcome and/or reciprocated.
- The sexual contact was (relatively) minimally invasive, such as a grazing touch rather than a prolonged squeeze, or the contact was over the clothes rather than under.
- The sexual contact was relatively brief and ephemeral.

### **Common Aggravating Factors:**

- A request for enhanced sanctions from the reporting party.
- The sexual contact was comparatively more invasive, such as a responding party reaching under the reporting party's clothes or engaging in more vigorous or aggressive fondling rather than merely touching.
- The sexual contact was extensive and abiding.
- The sexual contact was aggressive or violent.
- The responding party engaged in the sexual contact—or continued to engage in the sexual contact—after the reporting party communicated, verbally and/or nonverbally, that it was unwelcome.
- An ongoing hostile environment persists.

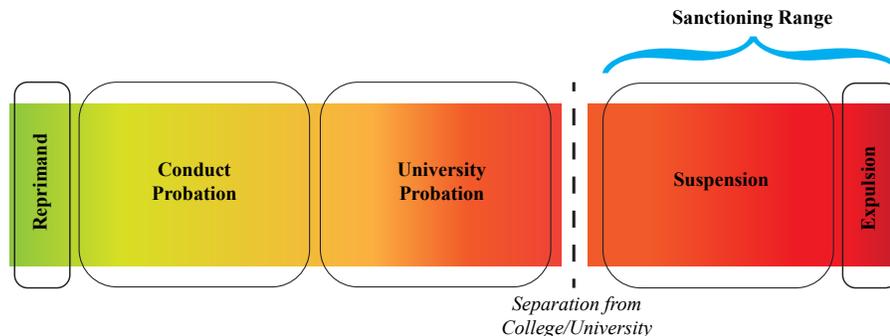
### **Compounding Factors (can bump the range):**

- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

## ***Non-Consensual Sexual Intercourse/Penetration***

Non-Consensual Sexual Intercourse/Penetration is any sexual intercourse, however slight, with any object, by a person upon another person, that is without consent and/or by force. Intercourse includes: vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

### ***Sanctioning Range:***



### ***Common Mitigating Factors:***

- Genuine contrition.
- Consent was ambiguous.
- A request for leniency by the reporting party.
- The responding party's behavior, though non-consensual, did not exhibit a deliberate disregard for the dignity and autonomy of the reporting party, but instead appeared to be an error in judgment, possibly affected by drug or alcohol use.
- The responding party's behavior was not malicious and was intended to be seductive, despite ultimately being received and assessed as coercive.

### ***Common Aggravating Factors:***

- A request for enhanced sanctions by the reporting party.
- The responding party's use of force or physical violence in the perpetration of the non-consensual sexual intercourse.
- The responding party's use of a weapon or restraints.
- The responding party threatened bodily injury or intimidated the reporting party.
- The use of drugs or alcohol to intentionally incapacitate the reporting party.
- The responding party's brazen refusal to desist the conduct after consent had been clearly revoked.
- The responding party's behavior was predatory.
- The responding party knew they had an STD at the time of the intercourse and did not disclose it.
- "Stealthling."
- An ongoing hostile environment persists.

### ***Compounding Factors (can bump the range):***

- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

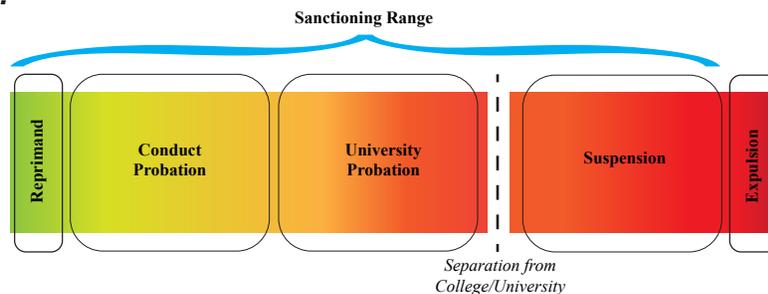
## Stalking

Stalking is the repetitive and menacing pursuit, following, harassing, and/or interfering with the peace and/or safety of another. There are multiple types of stalking, but the most common by far in the education context is “Simple Obsessional.” This type of stalking occurs when an individual is fixated on another person with whom they had, have, or wish to have, some manner of personal relationship. The second type is “Lurking,” which is a type of fixation behavior where the attention is unwelcome, but the lurker’s intentions are not menacing. The lurker isn’t a jilted lover or former partner, typically, but is often an unrequited lover who often does not know how to express their affection in healthy ways. Lurkers tend to maintain a steady-state to their interest, rather than the menacing pattern of escalation over time, leading to violence, that characterizes more pernicious forms of stalking.

### **Sanctioning Range:**

As noted above, a decision-maker should differentiate menacing from non-menacing behavior, in that the former embodies a more severe and intentionally malicious type of behavior while the latter represents a more benign and often inadvertent type of behavior. Disciplining a lurker for what is believed by the lurker to be “puppy love,” or a student on the Autism spectrum for failure to read social cues,<sup>6</sup> or an international student who is unfamiliar with western culture can be excessive and/or ineffective. Some schools will not discipline for lurking at all. For those that do, sanctions should move gradually up the sanctioning range, starting on the low end with simple obsessional behavior, lurking behavior landing somewhere in the middle, and menacing stalking behavior trending toward the top end.

### **Sanctioning Range:**



\*Adjust this range to include expulsion if you prefer. We believe expulsion can occur for Stalking incidents, but most typically when the range is bumped as the result of other factors.

### **Common Mitigating Factors:**

- Genuine contrition.
- A request for leniency from the reporting party.
- The responding party appears to be on the Autism spectrum and intends no harm.
- The responding party exhibited articulable signs of possessing below-average social skills and/or demonstrated inability to perceive and understand normal social cues or conventions.

### **Common Aggravating Factors:**

- A request for enhanced sanctions from the reporting party.
- The responding party’s refusal to desist the conduct after being told that their behavior was unwelcome.
- The responding party’s behavior was excessive, pervasive, aggressive, and/or violent.

### **Compounding Factors (can bump the range):**

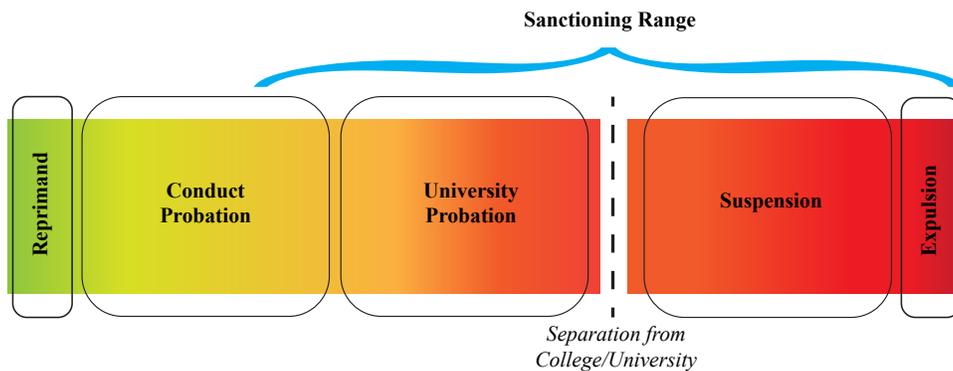
- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student’s prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

<sup>6</sup> ATIXA does not believe that lurking behavior constitutes stalking, but we are aware of too many poorly written stalking policies to exclude this behavior and possible sanctions entirely.

## Retaliation

Retaliation is a form of sex discrimination that is defined as any materially adverse action taken against a person because of that person's participation in protected activity. Protected activity includes the reporting of a possible policy violation, supporting a reporting or responding party, and/or providing information relevant to an investigation of an alleged sexual misconduct policy violation.

### Sanctioning Range:



### Common Mitigating Factors:

- Genuine contrition and efforts at restitution.
- The retaliatory conduct was comparatively mild, in that it was not aggressive or violent and did not involve threatening or intimidating behavior (such as social ostracism by a fraternity).

### Common Aggravating Factors:

- The retaliatory conduct included a threat(s), particularly one of physical violence or severe academic consequence.
- The retaliatory conduct was intended to discourage participation in a protected activity (e.g., "If you don't withdraw your complaint and stop this investigation right now...").

### Compounding Factors (can bump the range):

- Prior history of misconduct (i.e., found in violation of policy through formal process).
- The student's prior history of misconduct involved the same or similar types of behavior.
- Cumulative violations.

## *Close Calls*

We'll conclude with a note about close calls. Decision-makers often find it difficult to truly detach the findings from the sanctions. This manifests most commonly when decision-makers have rightfully determined by a preponderance of the evidence that a violation occurred, but feel like the finding was a close call—i.e., that the evidentiary scale tipped only slightly beyond 50 percent to find a violation, rather than, say, 80 percent. This is especially true in the current political environment and in light of recent court decisions. In close call situations, decision-makers often feel less sure of their decision, and despite correctly determining that there was sufficient evidence to find a violation, nevertheless wish there were more evidence so that they could feel more confident in their decision. The often-inadvertent result of this uncertainty is that, particularly when assessing a more serious violation (e.g., Non-Consensual Sexual Intercourse) where separation would be a likely—and appropriate—sanction if the determination were based on the 80 percent evidentiary scale, decision-makers tend to, even subconsciously, assign sanctions somewhere on the lower end of the sanctioning range if they have reached a preponderance by 51 percent. With this practice, decision-makers essentially treat their lack of confidence in the decision or their lack of overwhelming evidence as a mitigating factor for the purpose of sanctioning.

Criminal juries tend to struggle with the same quandary, often wanting to know prior to rendering a verdict what punishment the court will impose should they find the defendant guilty. For the same reason that this is impermissible in a criminal court of law (a judge could actually declare a mistrial if punishment is considered in deliberations

concerning guilt or innocence), it is improper to comingle one's finding of a policy violation with consideration of the appropriate sanctions, and doing so actually ends up undermining both analyses.

*The evidentiary analysis of whether a policy has been violated should be entirely separate and independent from the evaluation of what sanctions are appropriate given a particular set of circumstances.*

By considering “less evidence” (different from insufficient evidence) as a mitigating factor, a decision-maker is treating the absence of conclusive and irrefutable evidence that a violation occurred as evidence that the violation was somehow less severe. This line of reasoning may actually result in erroneous findings of “not in violation” because decision-makers, feeling insecure with a close call, feel better about erring on the side of not suspending or expelling a student despite knowing that is the appropriate sanction for a particular violation. This undermines the integrity of findings. Inversely, by improperly applying mitigation to a situation that, if more verifiable, would have likely resulted in a tougher sanction, we have undermined the consistency and supportability of our sanctioning practices. If mitigation/aggravation were impacted by the quantum of evidence, every sanctioning rubric would have a sliding scale

where the sanction enhances as the amount of evidence increases, as if a decision based on 70 percent evidence somehow magically merits enhanced sanctions over a decision at 60 percent evidence. Now it just sounds silly, right?

The evidentiary analysis of whether a policy has been violated should be entirely separate and independent from the evaluation of what sanctions are appropriate given a particular set of circumstances. In many instances, where a decision-maker renders both a finding and proposes sanctions, this will be a cerebral separation (forcing oneself to first determine whether a violation occurred before even thinking about potential sanctions), but some schools have opted for a procedural separation between the finding and sanctioning, where after a finding, the determination of sanctions is handed off to an entirely separate deliberative body. Regardless of the resolution model a College/University employs, it is crucial that the respective analyses for findings and sanctions be entirely bifurcated.

## ABOUT THE AUTHORS



**Michael Henry, J.D.** serves as Legal Affairs Director at the U.S. Center for SafeSport. Prior to that, he served as The NCHERM Group's Lead Investigator, performing external investigations for K-12 and higher education clients across the country. Prior to joining The NCHERM Group, Henry served as the Deputy Title IX Coordinator, Lead Title IX Investigator, and Director of the Office for Student Rights & Resolution at Texas Tech University. While at Texas Tech, Henry investigated and adjudicated employee and student cases of discrimination, harassment, and gender-based violence, as well as incidents of hazing and other forms of organizational misconduct within the university's Greek community. Henry

authored and revised extensive portions of the university's conduct policy and procedure, trained University Discipline Committees, and developed institutional and system-wide operating policies related to discrimination, harassment, and Title IX. Henry has worked extensively with both university and municipal police departments, developing MOUs and joint interview protocols for Title IX investigations, and has provided education and prevention programming for faculty, staff, and students. Henry is a graduate of the Texas Tech University School of Law and has experience in civil litigation, as well as having worked in the Appellate Division of the Lubbock District Attorney's Office. Henry has presented at the Association for Student Conduct Administration (ASCA) National Conference, served as a Faculty Fellow at the Gehring Academy, and has trained Title IX Coordinators and Investigators as a faculty member for ATIXA.



**W. Scott Lewis, J.D.** is a partner with The NCHERM Group. He is a co-founder and advisory board member of ATIXA and NaBITA. Previously, he served as Special Advisor to Saint Mary's College in South Bend, IN, as Associate Vice Provost at the University of South Carolina, and worked in Student Conduct and Residence Life at Texas A&M University. He also serves as faculty, teaching courses in Education, Law, Political Science, and Business. He has worked with and trained the Department of Education's Offices for Civil Rights and the Department of Justice's Office of Violence Against Women as a trainer and consultant, and was a consultant to the Office of the Vice President and the White House

Task Force on issues of sexual misconduct and Title IX. He has also trained the Offices for Civil Rights and OCR Investigators. Additionally, he works with athletes, coaches, and administrators at all levels of intercollegiate and K-12 athletics as well as with the USOC®, the Center for Safe Sport®, and the NCAA® in the areas of sexual misconduct and gender equity in sport. He has given a Ted Talk® on helping victims of trauma. Scott brings 20 plus years of experience as a student affairs administrator, faculty member, and consultant in higher education. He lives in Denver, Colorado.



**Rick Olshak, M.S.** serves as the Director of Title IX Compliance for the Texas A&M University System. Previously, Olshak served for 25 years in student affairs and student conduct administration at Illinois State University, SUNY-Cortland, and Georgetown University. He is a Past-President of the Association for Student Conduct Administration (ASCA) and is the author of *Mastering Mediation: Training Mediators in a College and University Setting*. He has served as a frequent consultant on issues involving Title IX, conflict resolution and mediation, training conduct administrators and boards, sanctioning, and program development and assessment.



**Anna Oppenheim, J.D.** is an Associate Attorney with The NCHERM Group, LLC. She advises colleges and universities on ongoing misconduct investigations and often serves as an external investigator for issues of complex sexual misconduct as well as employment matters, retaliation, and harassment. Oppenheim also is responsible for drafting policies and best practices for educational institutions on a wide range of matters, in addition to assisting with policy implementation. Prior to joining The NCHERM Group, LLC, she worked as a civil rights attorney at a boutique plaintiff's employment discrimination firm in Center City, Philadelphia, where she focused on advising current employees on issues involving sexual harassment. Oppenheim also served as an investigator for the Office of the Inspector General in Philadelphia, where she specialized in cases involving sexual misconduct by government employees. She has experience conducting mediations and other forms of alternate dispute resolution, and has developed and presented seminars and trainings related to complex employment matters, ethical obstacles in the workplace, and gender and diversity issues, both in the United States and internationally. A Philadelphia native, Oppenheim received her law degree from Temple University and her Bachelor of Arts from Dartmouth College.



**Sandra K. Schuster, J.D.** is a Partner with The NCHERM Group, a national risk management legal consulting firm. Saunie is a recognized expert in preventive and civil rights law for education, notably in the fields of harassment, discrimination and sexual misconduct and violence, ADA and disability issues. Prior to joining The NCHERM Group in 2009, Saunie's higher education legal experience included serving as the General Counsel for Sinclair Community College; as Senior Assistant Attorney General for the State of Ohio, representing public colleges and universities; and as the Associate General Counsel for the University of Toledo. In addition to her legal work in higher education, Saunie has over twenty-five years' experience in college administration and teaching, including serving as the Associate Dean of Students at The Ohio State University, Director of the Office of Learning Assistance at Miami University, and as Assistant Dean at Western College. She also served as a faculty member at The Ohio State University, Miami University, and Columbus State Community College. She lives in Columbus, Ohio.



**Brett A. Sokolow, J.D.** is the President, Founder, and CEO of The NCHERM Group, a national multidisciplinary risk management consulting and law firm with more than 3,000 education-sector clients, 14 executive and support employees, and a roster of 30 attorneys and consultants who are at the forefront of the field in their areas of expertise. He has served as an expert witness in more than 50 significant lawsuits affecting college, university, and school liability. In addition to his role with The NCHERM Group, Brett has served as Executive Director and then President of ATIXA since 2012. In his role as an attorney with The NCHERM Group, Brett serves with his partners as outside counsel/ad-

visor to 70 colleges and universities, and has served as counsel to more than 250 campuses. Since June of 2017, Brett has chaired The NCHERM Group's west coast practice group, in Los Angeles, CA. In 2009, Brett founded NaBITA, The National Behavioral Intervention Team Association ([www.nabita.org](http://www.nabita.org)), an organization of 1,200 members dedicated to school and campus violence prevention, intervention, and mental health resources. He served as Executive Director until 2015, and now serves as Founder and Board Chair of the NaBITA Advisory Board. Brett is a risk management consultant, author, editor, and education attorney admitted to the Pennsylvania and New Jersey bars. He holds a Bachelor of Arts degree in East Asian Studies from the College of William and Mary (1993), and a Juris Doctorate from the Villanova University School of Law (1997).



**Daniel Swinton, J.D., Ed.D.** is the Managing Partner of The NCHERM Group. Prior to his work with The NCHERM Group, he served as Assistant Dean and Director of Student Conduct and Academic Integrity at Vanderbilt University. Daniel serves as Vice President of ATIXA and on the Advisory Board of NaBITA. He has also served on the Board for the Association for Student Conduct Administration (ASCA), having served as its President in 2011-2012. Daniel received his Bachelor's degree from Brigham Young University, his law degree from the J. Reuben Clark Law School at BYU and a doctorate in higher education leadership and policy from Vanderbilt University's Peabody College. He is a member of the Tennessee State Bar. He lives in Pennsylvania.

