



INTERNAL REVIEW COMMITTEE

**Title IX/Student Assistance Services  
Processes & Procedures**

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*August 2018*

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## INTERNAL REVIEW COMMITTEE

# Title IX/Student Assistance Services Processes & Procedures

### Introduction

In June 2018, President Michael K. Young ordered two reviews regarding Title IX student assistance services and processes at Texas A&M University (TAMU): one external review by an outside firm, and one internal review. This report encompasses only the internal review, including recommendations to-date for actions to enhance the process.

The internal review consisted of two committees, reported and delineated here as “Part One” and “Part Two.”

#### “Part One: Committee on Student Experience in Investigations”

**Committee Co-Chairs:** Dr. Robin Means-Coleman, Vice President and Associate Provost for Diversity; and Mr. Kevin McGinnis, Chief Risk, Ethics, and Compliance Officer

##### Scope:

- Reviewed sexual assault reporting intake process experience, including a mock intake scenario by committee co-chairs;
- Reviewed policies, communications channels at Texas A&M, and best practice examples;
- Collected input from committee members, including subject matter experts; and
- Developed a series of recommendations.

#### “Part Two: Committee on Sanctions and Eligibility for Participation in Extracurricular Activities”

**Committee Chair:** Dr. Danny Pugh, Vice President for Student Affairs

##### Scope:

- Analyzed best practices in U.S. Title IX sanctioning models at other universities;
- Reviewed Code of Conduct violations and sanctioning at Texas A&M;
- Created a new sanctioning model for Texas A&M (Appendix A. Cumulative Sanctioning Matrix); and
- Developed new guidelines for participation in extracurricular activities.

## Part One: Student Experience in Investigations

### Committee Charge

The charge of this committee was to engage in a review of student experience in investigations, including policies and practices of the university’s Title IX processes pertaining to sexual assault, with additional attention paid to sexual harassment. Foci included interaction and impact for complainant, respondent, and other participants including but not limited to:

1. Initial case intake
2. Communication of process and expectations
3. Support and resources
4. Due process and fairness
5. Post-process communication

## Committee Membership

The Internal Review Committee membership comprised 11 regular members with additional participants who joined for part of the process to offer input:

- Dr. Robin Means Coleman, Co-Chair  
*Vice President and Associate Provost for Diversity, Professor of Communication*
- Mr. Kevin McGinnis, Co-Chair  
*Chief Risk, Ethics, and Compliance Officer*
- Mr. Kevin Bazner,\* *Doctoral Student, Higher Education Administration Experience: Coordinator for Greek Life, Asst. Dir. of Student Development & Orientation*
- Ms. Autumn Clouthier,\* *Undergraduate student, Psychology*
- Ms. Brooke Conrad, *President, Sexual Assault Resource Center (SARC), a community (non university) entity*
- Dr. Nancy Downing, *Associate Professor of Nursing, Sexual Assault Nurse Examiner/Forensic Nurse*
- Dr. Blanca Lupiani, *Executive Associate Dean, Dean of Faculties, Professor of Veterinary Medicine & Biomedical Sciences*
- Mr. Carlos Pinkerton,\* *Doctoral Student, Higher Education Administration Community Director for Residential Life*
- Dr. Rumya Putcha, *Assistant Professor of Performance Studies, Advocacy Group Representative*
- Ms. Elizabeth Roudbari,\* *Undergraduate student, International Studies*
- Anonymous Staff

Additional Participants:

- Ms. Abbie Hillis, *Former student, Advocacy Group member*
- Ms. Hannah Shaw,\* *Advocacy Group*

\*Denotes Student Membership

## Overview and Methodology

The Division of Student Affairs (DSA) and the university are charged with supporting the education of students by fostering a healthy campus climate. The DSA website states:

**Students engage in learning experiences that integrate all aspects of their lives. In order for students to be academically successful, they need to be in a positive, healthy, and secure environment.**

To accomplish a healthy and secure environment, we will:

- Provide innovative training and programs to students on risk management;
- Provide innovative training, programs, and services to students on wellness;
- Create and enhance programs and services using local, state, and federal guidance and evidence-based practices as a baseline that are aimed at changing the culture to reduce incidents of sexual harassment (including sexual violence), domestic violence, dating violence, and stalking;
- Examine and enhance policies, processes, and procedures in response to incidents of sexual harassment (including sexual violence), domestic violence, dating violence, and stalking, referencing local, state, and federal guidance using evidence-based practices as a baseline; and
- Meet or exceed local, state, and federal mandates that support the student experience

As such, this committee focused on examining Student Affairs' Title IX policies, procedures, and practices for both complainants and respondents in the following areas:

- The student experience during intake, investigation, adjudication, and resolution;
- Communication with the parties throughout the process; and
- Adequacy of support services available to complainants and respondents (e.g., advocates, advisors, counseling, legal, etc.).

Part Two of this report (to follow in this document) managed by another committee addresses a uniform predetermined range of sanctions and participation eligibility in extracurricular activities.

## Mock Intake Process and Discussions

While impossible to simulate the trauma felt by a survivor, walking through the steps of filing a complaint at Texas A&M dramatically helped the committee understand the strengths and weaknesses of the process itself. Committee co-chairs Dr. Robin Means Coleman and Mr. Kevin McGinnis participated in a mock process of the steps that a student might go through when considering and/or filing a complaint for sexual misconduct.

Dr. Means Coleman presented herself to intake staff as a graduate student considering filing a complaint, with Mr. McGinnis acting in this mock scenario as her faculty advisor and support person. This line of investigation resulted in Dr. Means Coleman and Mr. McGinnis meeting with and gathering information from the following units/staff: Student Assistance Services, Dean of Student Life, Student Conduct Office, Student Counseling Service, UPD's Victim Advocate, Women's Resource Center, Health Promotion/C.L.E.A.R, Student Health Services, Title IX office, and the Step In Stand Up website (<https://stepinstandup.tamu.edu/>).

The internal review also included meetings with committee members to accomplish three goals:

1. Review, discuss, and assess the experiences that Dr. Means Coleman and Mr. McGinnis went through in the reporting and information gathering process;
2. Review, discuss, and assess TAMU’s verbal communications and written resources for students involved in the process; and
3. Discuss emergent issues.

**Meeting agenda items for this Committee Included:**

- Case Intake and Initial Communication
- Investigation Process and timeline Title IX
- Resources, Rights, and Options for “victim” and “accused” Telling the story...or not
- Communication and information gathering (what is enough vs. too much) regarding mandatory reporting
- What is working well
- Recommendations for change
- Emergent issues
- Maintaining control for complainant/“If I take this route, here are the possible outcomes”
- Adequacy of Counseling and Trauma Support
- Process and Outcome
- Training in trauma-informed response
- Communication – post-sanctions

To prepare for these meetings, Dr. Means Coleman and Mr. McGinnis engaged in a review of the relevant literature (See Appendix B. “Literature Reviewed”). To ensure proper interaction for this difficult discussion, the review committee adhered to “Guidelines for Dialogue” from Intergroup Relations (IGR). As part of their work, the committee reviewed several documents: Investigation Process; Title IX-Sexual Discrimination, Sexual Harassment, Sexual Assault & Violence; TAMU Sexual Violence/Harassment; Step In Stand Up; Resources, Rights and Options (“Victim”); Resources, Rights, and Options (“Accused”); and, Texas A&M University Student Investigation Acknowledgement.

The review occurred over the month of July. Dr. Means Coleman and Mr. McGinnis met three times per week for planning, assessment, and writing purposes. Dr. Means Coleman and Mr. McGinnis met with units and staff of Student Assistance twice weekly to gather facts about the reporting process. The review committee met for over two hours per week to engage in review, discussion, and assessment.

## “Part One: Committee on Student Experience in Investigations” - Recommendations

### Title IX Education Recommendations

1. Update all communications (e.g., websites, posters, handouts, etc.) with the most recent personnel and contact information, links to resources, and office locations.
2. Ensure that there is consistency across communications and training in the following ways:
  - i. Clear and consistent definitions, terms, and identifiers (e.g., survivor vs. victim); gender neutral pronouns;
  - ii. Clarification on confidentiality vs. privacy vs. anonymity and include a list of who must provide each (See Appendix C: Sample language from University of Michigan);
  - iii. Clarification of what happens if mandatory reporter fails to report;
  - iv. Ensure ongoing, up-to-date training for mandatory reporters, with a focus on reporters at various intake points using a trauma informed response (e.g., Resident Assistants in dorms, Corps barracks, Athletics housing); and
  - v. Make sexual assault awareness training engaging and accessible (e.g., University of Arkansas student-athlete year-round training).
3. Ensure that all student group members and leadership communicate the seriousness and importance of awareness and prevention training.
4. Improve accessibility and ease of use of documents and information – viewed now as complicated, inaccessible, and difficult to locate and navigate. For example, improvements could include:
  - a. Enhance Title IX office site to an omnibus site where all other resources link and flow with clarity and consistency;
  - b. Provide multiple types of educational communication (e.g., audio, written, video, multi-media);
  - c. Clarify the differences between Tell Somebody and Campus Community Incident Report pages;
  - d. Improve Tell Somebody site so that it is easier to navigate and decipher;
  - e. Provide a large, easily-seen “Speak with a Counselor” button on the Title IX page;
  - f. Work with Disability Services to make current communications accessible;
  - g. Address communications and support for sexually diverse, sexually minoritized students who may also fear being “outed” and/or consideration for intersectional identities;
  - h. Implement a large “File a Report” button on the Title IX homepage with a “File Submitted” pop-up once filed (e.g. Ohio State example for bias reporting: <https://studentlife.osu.edu/bias/>);
  - i. Add additional reporting options such as a textable number, which should also be placed, on the back of every campus I.D.;
  - j. Current process through Student Assistance Services reflects proper protocol when the respondent is a student. If the complainant is a student but the respondent is not, communications need to be consistent with student process, to include support for student when respondent is an advisor and/or supervisor for the complainant;
  - k. Additional attention to the power differential of the educational and employment dynamic;
  - l. Accommodations for complainants continuing research and instruction in these circumstances.

## Reporting and Intake Recommendations

1. Improve reporting and intake process to minimize the negative impact on parties, keeping the emotional state of complainant and respondent in mind:
  - a. Ensure a trauma-informed response for all;
  - b. Explicitly inform students that they are participating in an investigative process and it may or may not lead to their desired, specific outcome;
  - c. When a complainant reports to Student Assistance Services, ensure complainant and respondent receive process, rights, and counseling resources information through multiple forms of communication (e.g., hardcopy, email, multi-media);
  - d. Explore making a soft-handoff to student counseling services during the intake with support from counseling services;
  - e. Provide a clear overview of the anticipated timeline for stages of the process and appeal process;
  - f. Create a 'progress tracker' site for each case so that complainant and respondent can check in on case progress;
    - i. At each point on the tracker, link to resources (e.g. shipping tracker from UPS/Fed-Ex)
    - ii. Explain at what points complainants can opt in and out of the process, and with what consequence;
  - g. Limit the number of times individuals must recount their stories by permitting complainant and respondent to record or write their narratives, if they choose;
  - h. Communicate the importance of preserving evidence and how to do so with guidance from law enforcement and the medical community.

## Investigation and Resolution

1. Centralize Title IX intake and investigations in a single Title IX Office;
  - a. This will also work to control fragmented information from various sources
  - b. The new office should then launch a new Title IX campaign
2. Clearly communicate the difference between advocate, advisor, counselor, and legal representation to complainant and respondent;
3. Whenever necessary, inform complainant or respondent that the other has secured legal representation. Note: Communication about legal representation should be handled carefully so as not to create a “chilling effect” among those who may not have the resources to hire an attorney. Evaluate potential for education on potential community representation at no cost;
4. Clearly communicate that a university investigation is separate from a police investigation;
  - a. Clearly communicate that reporting to police, including University Police Department, local city police, Sheriff’s Office, does not lead to a University investigation through Student Affairs
  - b. Provide information about whether there will be communication between the University and various law enforcement agencies
  - c. Evaluate the merits of a reporting system such as Callisto (<https://www.projectcallisto.org/>);
5. Provide more time for case file review for the hearing panel;
6. Ensure proper training for hearing panel and appropriate panel constitution;
7. Improve education on the panel process for the complainant and respondent;
8. Explore alternative resolution models to the current student hearing panel process (e.g., Investigator Model, Administrator, Restorative Justice) and examine the possibility of providing complainant options (See page 18 of <https://www.theasca.org/files/Publications/ASCA%202014%20Gold%20Standard.pdf>);
9. Schedule an exit interview when individuals complete or drop out of the process.

## Other Items for Consideration

1. As TAMU makes changes, show the steps being taken—make it public that TAMU is improving and cares;
2. Implement technology (apps, media platforms) to combat and track sexual assault and harassment;
3. Do not lose sight of what works well at TAMU, to include:
  - a. Preserving the rights of complainant and respondent;
  - b. Provide interim accommodations as appropriate;
  - c. Continue development of relationship with Sexual Assault Resource Center (SARC) which is not part of the university but an important part of the community and important to the university;
  - d. Continue to make students aware of resources such as Student Assistance Services, Counseling Services, Health Services, Campus Ministry;
  - e. Make sure Title IX Deputies are visible;
  - f. Continue to engage a well-constituted, diverse, and equitable group such as represented in this committee to provide ongoing input.

Please see Appendices B and C for reference documents that informed these recommendations.

## “Part Two: Committee on Sanctions and Eligibility for Participation in Extracurricular Activities”

### Committee Charge

This committee within the greater internal review of Title IX processes was charged with researching, discussing and developing recommendations for student sanctioning as well as eligibility guidelines for participation in extracurricular activities.

The resulting work should clearly, consistently, and uniformly hold accountable students and student groups when:

1. They are facing Title IX campus and/or criminal allegations of wrongdoing, regardless of outcome;
2. They are found “responsible” for the associated allegations;
3. They wish to represent the University through extracurricular activities.

The resulting recommendations in this document (in detail in Appendix A) provide:

- Student sanctioning (both during the interim period preceding the hearing, and if found responsible); and
- Participation and eligibility for students alleged with and found responsible for violations in association with Student Rule 47 (Investigation and Resolution of Complaints Against Texas A&M Students for Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking and Related Retaliation (SSDDSR).

### Committee Membership

- Mr. Jerry Brown, *Office of General Counsel*
- Dr. Robin Means Coleman  
*Vice President and Associate Provost for Diversity, Professor of Communication (Dr. Jyotsna Vaid, substitute, Director for Organizational Development, Research, and Equity; Professor)*
- Ms. Kirsten Marie Covington, *student*
- Dr. Carol Fierke, *Provost*
- Ms. Alyssa Leffall, *Project support, Special Assistant to the Vice President of the Division of Student Affairs*
- Mr. Kevin McGinnis, *Chief Risk, Ethics, and Compliance Officer*
- Ms. Nikki Platamone, *student*
- Dr. Danny Pugh, *(Committee Chair), Vice President for Student Affairs*
- Ms. Amy Sharp, *(Student body President)*
- Ms. Amy B. Smith, *SVP, Chief Marketing and Communications Officer*
- Ms. Jennifer Smith, *Title IX Coordinator*
- Dr. Jerry Strawser, *EVP Finance, Professor*
- Ms. Sydney Whigam, *Former student*
- Mr. Scott Woodward, *Director of Athletics (Ms. Stephanie Rempe, Deputy Director of Athletics, substitute)*

The committee convened on July 2, 9, 20, and 25, 2018.

### **Committee Perspective on Eligibility to Participate in Extracurricular Activities**

While membership in student organizations and the establishment of student organizations is governed by First Amendment principles of “the right to associate” (<http://provost.tamu.edu/Provost/media/Assets/pdfs-essentials/Access-Free-Speech-0618.pdf>), participation and performance as a representative of the University in institutionally-sponsored groups or events is a “privilege,” not a “right.”

The committee felt strongly that not only is eligibility to participate in extracurricular activities a privilege, but also that eligibility includes and transcends all recognized groups, teams, clubs, Corps of Cadets and other areas in which students represent the university.

### **Methodology: Data, Information, and Resources**

To help determine which recommendations were most appropriate, the committee reviewed current University policies related to interim actions, student conduct sanctions, off-campus jurisdiction, and delegated student conduct authority. The committee also reviewed examples of other institutions’ sanctioning guidelines for cases involving sexual misconduct, dating violence, domestic violence, and stalking.

Some external content reviewed included:

- The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations
- Title IX Sanctioning Guidelines (University of Minnesota)
- “Against Taking Rape “Seriously”: The Case against Mandatory Referral Laws for Campus Gender Violence” – Harvard Civil Rights, Civil Liberties Review
- Q&A on Campus Sexual Misconduct (US Department of Education – OCR)
- Student Conduct Procedures (UCLA)
- Sanctioning Guidelines for Sexual Misconduct (Ohio University)

The committee also sought guidance from offices and individuals who would be responsible for implementing the proposed recommendations as currently organized. The committee believed this was important to understand the complexity and challenges associated with developing ranges of sanctions and participation eligibility in this subject area.

### **Student Sanctions and Eligibility Recommendations**

The following are the committee’s recommendations that are discussed in great detail in Appendix A:

1. Implement the attached Title IX Cumulative Sanction Matrix (Appendix A) which cross-references violations in the Student Code of Conduct with recommended ranges of sanctions by violation, including mitigating, aggravating, and compounding examples matrix aims to set a new standard at Texas A&M and nationally in providing complainants and respondents alike with a clear set of sanction minimums through expulsion that demonstrate where sanctions by violation if responsibility is determined in the investigation process;
2. Implement Interim Conduct Probation policy, process and definitions with regard to Title IX sexual misconduct cases, regardless of what the outcome may be;

3. Implement clear communication standards and practices regarding sanctions and extracurricular participation:
  - Train investigators on the new protocol;
  - Update the protocol as necessary with continued examples that may not already be addressed;
  - Educate students, faculty and staff alike through in-person, web, media and social media channels, and scheduled trainings, as well as handouts to all incoming students and to all complainants and respondents.
  
4. Include transcript notations: Utilize the newly-adopted policy regarding Conduct Requirements for Admissions Applications and Transcripts (11.99.02) to implement the attached Interim Conduct Probation (proposed Student Rule 27.5) policy, process and definitions related to as students “good standing” with respect to student participation and representation when the University receives notice of SSDDSR cases. In the spring of 2018, Texas A&M University implemented the new policy associated with admissions applications and transcripts. This policy includes the directive that we must place a transcript notation in all academic and conduct cases resulting in separation from the university, to include suspension, dismissal, or expulsion. Additionally, the policy requires a transcript hold in all pending conduct cases that could result in suspension, dismissal or expulsion. In essence, a decision is currently being made by the Student Conduct Office as to whether a case will rise to the level of separation based on investigative material.  
 Given a determination is being made by the Student Conduct Office, the committee recognized the “transcript hold” decision point as the exact moment when a students’ eligibility to participate and/or represent the university or student organization should also be determined. At this time, Student Rule 27 only provides guidance for interim suspension and does not accommodate an interim conduct probation action that would allow for continued matriculation, but disallow participation and/or representation associate with being in “good standing.” The committee used Student Rule 27.4 (Interim Suspension - <https://student-rules.tamu.edu/rule27/>) as the guide in developing the recommendation for a new rule on Interim Conduct Probation (attached).
  
5. Consider establishing a new separate conduct rule for “retaliation” which is currently listed within several other violations. Presently, Student Rule 24 does not identify “retaliation” as a specific conduct regulation and is only referenced once within Student Rule 24 (24.4.23 Abuse of Student Conduct Process). Once established and defined as an independent rule within Student Rule 24 it can be cross-referenced to Student Rule 47 that governs investigation and resolution of Title IX complaints against Texas A&M students. The addition of a new student rule will require adoption through the Student Rules Committee and Faculty Senate. While that process is being navigated, we recommend the continued use of “retaliation” within the Title IX Cumulative Sanction Matrix, and that an eighth category be added to the matrix after passage through Faculty Senate.
  
6. Implement clear communication standards and practices to ensure all parties fully understand definitions and implications for the following:
  - a. Charges as defined in Student Rule 24 and Student Rule 47;
  - b. Sanctions as defined in Student Rule 27, to include interim actions, tenets of “good standing,” and TAMUS Policy 11.99.02 Conduct Requirements for Admissions Applications and Transcripts;
  - c. Title IX Cumulative Sanctioning Model, to include appropriate use of mitigating, aggravating, and compounding factors, as well as sanctioning considerations.

### Improving Today and Establishing Best Practice for the Nation

We believe that the attached document (Appendix A) will not only improve clarity in sanctioning where needed today, but will also serve as our nation’s best practice in Title IX sanctioning guidelines and participation in the following ways:

1. First, the model creates a predetermined range of sanctions by severity of violation(s), available to all students as a resource before and during investigations so that all may more clearly understand the range of sanctions and severity if the respondent is found responsible;
2. Second, the model maps to participation eligibility in extracurricular activities which are viewed as a “privilege” not a “right” for students; and
3. Third, extracurricular participation eligibility restrictions apply to all campus organizations where students represent our university (such as Greek life, Corps of Cadets, athletics, clubs);
4. Fourth, the model enhances transparency of process to all involved which has been a concern raised by students and their families; and
5. Fifth, it serves as an educational communications tool (from hard copy brochures and signage to electronic resources in websites, social media channels and messaging, and downloadable versions) for all students to better understand Texas A&M’s position with respect to Student Code of Conduct rules and resulting implications of violations.

The committee on sanctions and eligibility to participate in extracurricular activities feels strongly that the successful implementation of the Title IX Cumulative Sanction Matrix will only be as effective as the communication between the University and the student.

The committee’s priorities were three-fold:

1. First and foremost, to deliver clear sanctioning guidelines by violation aligned with (1) reprimand; (2) probation; (3) suspension; and (4) expulsion to directly assign accountability by violation severity;
2. Secondly to educate all campus stakeholders about the sanctions and implications of violations upon status as a student and right to participate in extracurricular activities;
3. Thirdly, communication begins with recruitment of students to New Student Conferences and continues throughout various primary educational touch points each year. More intentional communication should occur for all students who maintain student leadership positions for both student and university organizations.

In specific instances where students are engaged with Student Rule 47 (Investigation and Resolution of Complaints Against Texas A&M Students for Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking and Related Retaliation (SSDDSR)), more intentional communication efforts are recommended to ensure clear understanding at specific decision points, including information and consultation, formal complaint intake, investigative interviews, pre-hearing and post-hearing meetings, and pre-appeal and post-appeal meetings. Continuing efforts should be made to ensure that all parties have a complete understanding of the hearing outcomes and implications of any finding/sanction.

## **Internal Review Conclusion: Two Committees and One Goal**

While the internal review was assigned to two committees, both committees came together in this report to provide a comprehensive list of recommended actions.

We understand that:

- The Office of General Counsel at the Texas A&M University System will review recommendations to cross reference with existing policies (which can be updated if gaps are found) and federal law;
- There is an external review by an outside firm underway concurrently which will soon be announced that will need to be reconciled with this review;
- President Young will determine which recommendations are to be acted upon immediately and which will need further review and discussion;
- President Young has advised that we will not wait for ongoing reviews to address concerns that can be implemented today. Therefore we will act responsibly and expeditiously to support the implementation of approved actions on a continual basis instead of waiting for all components to be complete; and
- Students, faculty, and staff who were unable to participate this summer will have opportunities to provide their input this fall in ongoing improvements to processes that will be implemented as opportunities present themselves.

We thank the faculty, staff, students, former students, and community group leaders who dedicated time and expertise in participating in these committees, some from many time zones away.

We appreciate all who came together to inform this review, including notably sexual assault survivors themselves.

This work is only one part of the actions underway. We commit to supporting the implementation of approved changes and to soliciting input on a continuing basis to continually shape and improve our processes.

APPENDIX A:

# Proposed Title IX Cumulative Sanction Matrix

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TEXAS A&M UNIVERSITY TITLE IX INTERNAL REVIEW AND RECOMMENDATIONS

AUGUST 2018

## Benchmark: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations

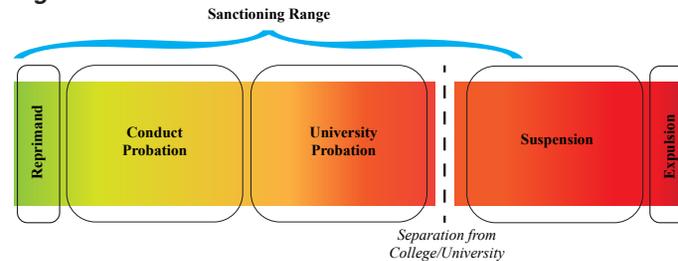
15

The 2018 ATIXA Whitepaper

### **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.

## Benchmark: University of Minnesota Title IX Sanctioning Guidelines

### Sanction ranges:

The majority of incidents will fall into these ranges, however factors such as egregiousness or persistent violations may warrant a sanction outside of the below range. (Example: Severe and egregious sexual harassment may include expulsion.) For more information, please see the [Administrative Policy: Sexual Harassment, Sexual Assault, Stalking and Relationship Violence](#).

Category	Actions	Warning	Probation	Suspension (less than 2 years)	Suspension (2-4 years)	Suspension (5+ years)	Expulsion
Sexual Harassment	Verbal sexual comments	■	■				
	Stalking		■	■	■	■	■
	Relationship Violence		■	■	■	■	■
Non-Consensual Sexual Contact	Touching over clothes	■	■				
	Kissing (above shoulders)	■	■	■			
	Light contact with hands under clothes		■	■			
	Sexual touching, fondling, and/or groping		■	■	■		
	Kissing below the neck (breasts or genitals)			■	■		
Non-Consensual Sexual Intercourse	Oral Sex			■	■	■	■
	Digital penetration				■	■	■
	Penetration				■	■	■
Sexual Exploitation	Distributing naked photographs		■	■	■		
	Invasion of Sexual Privacy (taking photos, video, voyeurism)			■	■	■	■
	Unlawfully obtaining and distributing private sexual photos or videos			■	■	■	■
	Knowingly transmitting sexual infections or disease			■	■	■	■
	Child pornography			■	■	■	■

# Proposed Texas A&M Title IX Cumulative Sanction Matrix\*

← SANCTION RANGE →			
Stage 1: Reprimand/Restrictions/Review	Stage 2: Probation	Stage 3: Suspension	Stage 4: Expulsion
<p><b>SEXUAL HARASSMENT</b></p> <ul style="list-style-type: none"> <li>Severe, persistent, or pervasive sexual innuendos, jokes, remarks, questions, gestures</li> <li>Display of sexually explicit visual material</li> </ul>	<p><b>SEXUAL HARASSMENT</b></p> <p>Any one or combination of Stage 1 behaviors plus a behavior from another category</p>	<p><b>SEXUAL HARASSMENT</b></p> <p>Any one or combination of Stage 1 and/or Stage 2 behaviors plus a behavior from another category</p>	<p><b>SEXUAL HARASSMENT</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors plus a behavior from another category</p>
<p><b>STALKING</b></p> <ul style="list-style-type: none"> <li>Repeated, unsolicited phone calls, emails, texts, and/or gifts to another person and/or their family/household</li> <li>Repeatedly following another person or conducting surveillance of another person and/or their family/household</li> <li>Direct or private unsolicited contact or attempts to contact via social media</li> </ul>	<p><b>STALKING</b></p> <p>Any one or combination of Stage 1 behaviors plus:</p> <ul style="list-style-type: none"> <li>2nd violation of stalking</li> <li>Repeated, unsolicited contact or attempts to contact via social media</li> </ul>	<p><b>STALKING</b></p> <p>Any one or combination of Stage 1 and/or Stage 2 behaviors plus:</p> <ul style="list-style-type: none"> <li>Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking</li> <li>Repeated, unsolicited visits to another person's home, business, and/or class, and/or that of their family/household</li> <li>Assuming another's identity in order to make contact with complainant</li> </ul>	<p><b>STALKING</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors</p>
<p><b>DATING ABUSE &amp; VIOLENCE</b></p> <ul style="list-style-type: none"> <li>Intimidation: using actions, gestures, and tone of voice to indicate a threat of violence</li> </ul>	<p><b>DATING ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 1 behaviors plus:</p> <ul style="list-style-type: none"> <li>Preventing complainant from calling for help</li> <li>Destruction of property</li> <li>Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, throwing objects</li> </ul>	<p><b>DATING ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 2 behaviors plus:</p> <ul style="list-style-type: none"> <li>Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking</li> <li>Displaying weapons, throwing objects at a person with potential to injure</li> <li>Destruction of valuable property</li> </ul>	<p><b>DATING ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors</p>
<p><b>DOMESTIC ABUSE &amp; VIOLENCE</b></p> <ul style="list-style-type: none"> <li>Intimidation: using actions, gestures, and tone of voice to indicate a threat of violence</li> </ul>	<p><b>DOMESTIC ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 1 behaviors plus:</p> <ul style="list-style-type: none"> <li>Preventing Complainant from calling for help or leaving the room</li> <li>Destruction of property</li> <li>Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, throwing objects</li> </ul>	<p><b>DOMESTIC ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 2 behaviors plus:</p> <ul style="list-style-type: none"> <li>Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking</li> <li>Displaying weapons, throwing objects at a person with potential to injure</li> <li>Destruction of valuable property</li> </ul>	<p><b>DOMESTIC ABUSE &amp; VIOLENCE</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors</p>
<p><b>SEXUAL EXPLOITATION</b></p> <ul style="list-style-type: none"> <li>Reckless viewing of nudity or sexual behavior</li> </ul>	<p><b>SEXUAL EXPLOITATION</b></p> <p>Any one or combination of Stage 1 behaviors plus:</p> <ul style="list-style-type: none"> <li>Allowing others to observe sexual activity without the other person's consent</li> <li>Intentional viewing of nudity or sexual behavior</li> <li>Indecent exposure without proper regard for others (i.e. public urination)</li> <li>Taking or transmitting images or videos of an unidentified person in a sexual, intimate, or private act without that person's consent</li> <li>Distributing sexual or intimate images or recordings of an unidentified person with-out that person's consent</li> </ul>	<p><b>SEXUAL EXPLOITATION</b></p> <p>Any one or combination of Stage 1 and/or Stage 2 behaviors plus:</p> <ul style="list-style-type: none"> <li>Soliciting sexual contact with a minor</li> <li>Possessing and/ or viewing child pornography/sexual images of those under 18</li> <li>Taking or transmitting images or videos of an identified person in a sexual, intimate, or private act without that person's consent</li> <li>Distributing sexual or intimate images or recordings of another identified person without that person's consent</li> <li>Engaging in sexual activity while knowingly infected with an STD without the other person's knowledge</li> <li>Deliberate indecent exposure with intent for impact</li> </ul>	<p><b>SEXUAL EXPLOITATION</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors</p> <ul style="list-style-type: none"> <li>Collecting, creating, and/or distributing child pornography/sexual images of those under 18</li> <li>Prostituting another person</li> </ul>
<p><b>NON-CONSENSUAL SEXUAL CONTACT</b></p> <ul style="list-style-type: none"> <li>Unwelcomed kissing and/or light touching over clothing</li> </ul>	<p><b>NON-CONSENSUAL SEXUAL CONTACT</b></p> <p>Any one or combination of Stage 1 behaviors plus a behavior from another category plus:</p> <ul style="list-style-type: none"> <li>Non-genital fondling, groping or heavy touching</li> <li>Unwelcomed increased touching, fondling, groping, or genital touching</li> </ul>	<p><b>NON-CONSENSUAL SEXUAL CONTACT</b></p> <p>Any one or combination of Stage 1 and/or Stage 2 behaviors plus:</p> <ul style="list-style-type: none"> <li>Unwelcomed touching, fondling, groping or genital touching</li> </ul>	<p><b>NON-CONSENSUAL SEXUAL CONTACT</b></p> <p>Any one or combination of Stage 1, Stage 2 and/or Stage 3 behaviors</p>
		<p><b>SEXUAL ABUSE</b></p> <ul style="list-style-type: none"> <li>Oral sex</li> <li>Penetration (by sex organs)</li> <li>Penetration (by means other than sex organs)</li> </ul>	<p><b>SEXUAL ABUSE</b></p> <p>Any one or combination of Stage 3 behaviors with predation</p>

\*Behavioral examples identified in the matrix are not intended to represent an exhaustive listing of prohibited conduct.

# Proposed Texas A&M Title IX Cumulative Sanction Matrix Dashboard\*

SANCTION RANGE



### Sexual Harassment Examples

SEVERE, PERSISTENT, OR PERVASIVE BEHAVIOR	1	2	3	4
Sexual innuendos, jokes, remarks, questions	■	■		
Sexual gestures and/or gifts of a sexual nature	■	■		
Display of sexually explicit visual material	■	■	■	
Pressuring another person for dates or sexual favors	■	■	■	
Depriving another person educational access, benefits, opportunities	■	■	■	■
Threats in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking (includes deprivation of and educational opportunity or benefit)			■	■

### Domestic Abuse & Violence Examples

BEHAVIOR	1	2	3	4
Intimidation: Using actions, gestures, and tone of voice to indicate a threat of violence	■	■	■	■
Preventing complainant from calling for help		■	■	■
Destruction of property		■	■	■
Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, using force to prevent partner from leaving		■	■	■
Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking			■	■
Displaying weapons, throwing objects at a person with potential to injure			■	■

### Stalking Examples

BEHAVIOR	1	2	3	4
Repeated, unsolicited phone calls, emails, texts, and/or gifts to another person and/or their family/household	■	■	■	■
Repeatedly following another person or conducting surveillance of another person and/or their family/household	■	■	■	■
Repeated, unsolicited visits to another person's home, business, and/or class, and/or that of their family/household		■	■	■
Repeated, unsolicited contact or attempts to contact via social media		■	■	■
Intimidation or physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking			■	■
Assuming another's identity in order to make contact with complainant			■	■

### Sexual Exploitation Examples

BEHAVIOR	1	2	3	4
Reckless viewing of nudity or sexual behavior	■	■	■	
Allowing others to observe sexual activity without the other person's consent		■	■	■
Taking or transmitting images or videos of another person in a sexual, intimate, or private act without that person's consent		■	■	■
Distributing sexual or intimate images or recordings of another person without that person's consent		■	■	■
Allowing others to observe sexual activity without the other person's consent		■	■	■
Engaging in sexual activity while knowingly infected with an STD without the other person's knowledge			■	■
Possessing and/ or viewing child pornography/sexual images of those under 18		■	■	■
Deliberate indecent exposure with intent for impact			■	■
Collecting, creating, and/or distributing child pornography/sexual images of those under 18				■
Prostituting another person				■

### Dating Abuse & Violence Examples

BEHAVIOR	1	2	3	4
Intimidation: Using actions, gestures, and tone of voice to indicate a threat of violence	■	■	■	■
Preventing complainant from calling for help		■	■	■
Destruction of property		■	■	■
Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, using force to prevent partner from leaving		■	■	■
Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking			■	■
Displaying weapons, throwing objects at a person with potential to injure			■	■

### Non-consensual Sexual Contact Examples

BEHAVIOR	1	2	3	4
Unwelcomed kissing and/or light touching over clothing	■	■	■	
Non-genital fondling, groping or heavy touching		■	■	■
Unwelcomed increased touching, fondling, groping, or genital touching		■	■	■
Unwelcomed touching, fondling, groping or genital touching			■	■

### Sexual Abuse Examples

BEHAVIOR	1	2	3	4
Oral sex			■	■
Penetration (by sex organs)			■	■
Penetration (by means other than sex organs)			■	■

\*Behavioral examples identified in the matrix are not intended to represent an exhaustive listing of prohibited conduct.

# Conduct Violation: Sexual Harassment

RANGE: 1-4

**EXAMPLES (Severe, persistent, or pervasive behaviors):**

- Sexual innuendos, jokes, remarks, questions
- Sexual gestures and/or gifts of a sexual nature
- Display of sexually explicit visual material
- Pressuring another person for dates or sexual favors
- Depriving another person educational access, benefits, opportunities
- Threats in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking (includes deprivation of and educational opportunity or benefit)

**DEFINITION FROM CONDUCT CODE**

A form of sex discrimination. Sexual harassment occurs when a person is the recipient of conduct of a sexual nature where:

- Submission to or toleration of such conduct is made either explicitly or implicitly a term or condition of an individual's education (including co-curricular activities) or employment;
- Submission to or rejection of such conduct by an individual is used as the basis for academic, co-curricular, or employment decisions affecting the individual's welfare; or
- Such conduct that has the purpose or effect of unreasonably interfering with an individual's welfare, academic or work performance, or creates an intimidating, hostile, offensive or de-meaning education (including co-curricular activities) or work environment. Sexual harassment also includes sexual misconduct (non-consensual sexual intercourse and non-consensual sexual contact) and sexual exploitation.



**Mitigating Factors:\***

- The harm caused by the deprivation of access/ benefits/opportunities was minimal and temporary.
- The behavior was committed in error, by mistake, or was unintentional.
- Prior instances where respondent's similar advances were welcome.
- Complainant impact statement and reduced sanction request.

**Aggravating Factors:\***

- The harm caused by the deprivation of access/ benefits/ opportunities was lengthy, extensive or irreparable.
- The totality of the behavior was exceptionally severe, persistent, or pervasive.
- The harassment was threatening, intimidating, or aggressive.
- There is a current no-contact restriction between the parties.
- A request for enhanced sanctions from the complainant.

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA's Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Stalking

RANGE: 1-4

- Repeated, unsolicited phone calls, emails, texts, and/or gifts to another person and/or their family/household
- Repeatedly following another person or conducting surveillance of another person and/or their family/household
- Repeated, unsolicited visits to another person’s home, business, and/or class, and/or that of their family/household
- Repeated, unsolicited contact or attempts to contact via social media
- Intimidation or physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking
- Assuming another’s identity in order to make contact with complainant

**DEFINITION FROM CONDUCT CODE**

Any repeated conduct directed specifically at another person that would cause a reasonable person similarly situated (or a member of that person’s family or household) to fear his/her safety. Such conduct includes, but is not limited to, following another person and acts that threaten or intimidate another person through fear of bodily injury or death of self or members of that person’s family or household or an offense being committed against that person’s property.



**Mitigating Factors:\***

- 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.
- Evidence that respondent may not have reasonably known that their conduct was regarded as unwelcome.
- Complainant impact statement and reduced sanction request.

**Aggravating Factors:\***

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

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA’s Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Dating Abuse & Violence

RANGE: 1-4

**EXAMPLES**

- Intimidation: Using actions, gestures, and tone of voice to indicate a threat of violence
- Preventing complainant from calling for help
- Destruction of property
- Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, using force to prevent partner from leaving
- Intimidation or physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking
- Displaying weapons, throwing objects at a person with potential to injure

**DEFINITION FROM CONDUCT CODE**

Any physical abuse or sexual misconduct, other than a defensive measure to protect oneself, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.



**Mitigating Factors:\***

- Defending ones self (in cross-claims, if self-defense doesn't fully excuse the conduct).
- The harm caused by the violence or abuse was minimal.
- Low potential that behavior will occur again.
- Complainant impact statement and reduced sanction request.

**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 complainant needing medical attention.
- The violence or abuse was particularly egregious.
- High potential for the behavior to occur again (the relationship may be ongoing or not fully severed).
- A request for enhanced sanctions from the complainant.

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA's Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Domestic Abuse & Violence

RANGE: 1-4

**EXAMPLES**

- Intimidation: Using actions, gestures, and tone of voice to indicate a threat of violence
- Preventing complainant from calling for help
- Destruction of property
- Physical abuse: Pushing, shoving, hair-pulling, scratching, hitting, using force to prevent partner from leaving
- Intimidation or Physical abuse in retaliation for reporting sexual misconduct, dating/domestic violence, and/or stalking
- Displaying weapons, throwing objects at a person with potential to injure

**DEFINITION FROM CONDUCT CODE**

Any physical abuse or sexual misconduct, other than a defensive measure to protect oneself, committed by a person who is or has been a current or former spouse of the complainant, person with whom the complainant shares a child in common, person who is co-habiting with or has cohabitated with the complainant as a spouse, a person similarly situated to a spouse of the complainant, or any other person against an adult or youth complainant who is a part of that person's household.



**Mitigating Factors:\***

- Defending ones self (in cross-claims, if self-defense doesn't fully excuse the conduct).
- The harm caused by the violence or abuse was minimal.
- Low potential that behavior will occur again.
- Complainant impact statement and reduced sanction request.

**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 complainant needing medical attention.
- The violence or abuse was particularly egregious.
- High potential for the behavior to occur again (the relationship may be ongoing or not fully severed).
- A request for enhanced sanctions from the complainant.

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA's Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Sexual Exploitation

RANGE: 1-4

**EXAMPLES**

- Reckless viewing of nudity or sexual behavior
- Allowing others to observe sexual activity without the other person’s consent
- Taking or transmitting images or videos of another person in a sexual, intimate, or private act without that person’s consent
- Distributing sexual or intimate images or recordings of another person without that person’s consent
- Allowing others to observe sexual activity without the other person’s consent

- Engaging in sexual activity while knowingly infected with an STD without the other person’s knowledge
- Collecting, creating, distributing and/or viewing child pornography/sexual images of those under 18
- Prostituting another person
- Possessing and/ or viewing child pornography/sexual images of those under 18
- Deliberate indecent exposure with intent for impact

**DEFINITION FROM CONDUCT CODE**

Taking non-consensual or abusive sexual advantage of another for one’s own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited.



**Mitigating Factors:\***

- Prior instances where the photography or recording was consensual between the parties thereby creating ambiguity of consent in the current instance.
- The transmittal was accidental.
- Complainant impact statement and reduced sanction request.
- Status as a minor.

**Aggravating Factors:\***

- The responding party was in a position of power or authority over the complainant.
- 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 complainant to a large number of people.
- The complainant’s identity was clear or easily discernible to viewers.
- The complainant 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.
- A request for enhanced sanctions from the complainant.

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA’s Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Non-Consensual Sexual Contact

RANGE: 1-4

## EXAMPLES

- Unwelcomed kissing and/or light touching over clothing
- Non-genital fondling, groping or heavy touching
- Unwelcomed increased touching, fondling, groping, or genital touching
- Unwelcomed touching, fondling, groping or genital touching

## DEFINITION FROM CONDUCT CODE

Attempting or making sexual contact, including but not limited to inappropriate touching or fondling, without the person’s consent (see “consent” in definitions), or in circumstances where the person is physically, mentally or legally unable to give consent.



## Mitigating Factors:\*

- Consent was ambiguous.
- Prior instances where the responding party’s sexual contact was welcome.
- 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.
- Complainant impact statement and reduced sanction request.

## Aggravating Factors:\*

- A request for enhanced sanctions from the complainant.
- The sexual contact was comparatively more invasive, such as a responding party reaching under the complainant’s clothes or engaging in more vigorous or aggressive fondling rather than merely touching.
- The sexual contact was extensive.
- 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.
- The responding party was in a position of power over the complainant.

## Compounding Factors:\*\*

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA’s Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Conduct Violation: Sexual Abuse

RANGE: 3-4

**EXAMPLES**

- Oral sex
- Penetration (by sex organs)
- Penetration (by means other than sex organs)
- Incidents with predation are automatic expulsion

**DEFINITION FROM CONDUCT CODE**

The oral, anal, or vaginal penetration by a sexual organ of another, use of another’s sexual organ for oral, anal, or vaginal penetration, or anal/vaginal penetration by any means against the victim’s will or without his/her consent (see “consent” in definitions). An individual who is mentally incapacitated, unconscious, or unaware that the sexual abuse is occurring is considered unable to give consent. The type of force employed may involve physical force, coercion, intentional impairment of an individual’s ability to appraise the situation through the administering of any substance, or threat of harm to the victim.



**Mitigating Factors:\***

- Consent was ambiguous.
- The responding party’s behavior, though non-con- sensual, did not exhibit a deliberate disregard for the dignity and autonomy of the complainant, but instead appeared to be an error in judgment, possibly affected by drug or alcohol use.
- The responding party’s behavior was not malicious.
- Complainant impact statement and reduced sanction request.

**Aggravating Factors:\***

- A request for enhanced sanctions by the complainant.
- 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 complainant.
- 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.
- “Stealththing” (removing a condom during sex without the reporting party’s consent).
- An ongoing hostile environment persists.
- The responding party was in a position of power or authority over the complainant.

**Compounding Factors:\*\***

- 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.

\* Sources: The ATIXA Guide to Sanctioning Student Sexual Misconduct Violations (Feb 2018); Texas A&M University Internal Review Committee (July 2018)

\*\* ATIXA’s Compounding Factors are designed to determine if the sanction range needs to be bumped upward as a result of the compounding factors.

# Title IX Cumulative Sanctions Defined



- **Restrictions:** The withdrawal of specified privileges for a definite period of time, but without the additional stipulation contained in the imposition of a sanction which results in a student being not in good standing. The restrictions involved will be clearly defined.
- **Restitution:** A payment for financial injury to an innocent party in cases involving theft, destruction of property or deception. The assessed costs to be paid may be in addition to receipt of any of the above sanctions.
- **Community/University Service:** A student may be offered an opportunity to complete a specified number of hours of Community/University Service. The type of Community/University Service must be approved by the Student Conduct Administrator.
- **Educational Requirements:** A provision to complete a specific educational requirement. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, essays, reports, reflective writing assignments, etc.
- **Letter of Reprimand:** A letter that makes a matter of record any incident that reflects unfavorably on the student or the University.
- **Conduct Review:** An official warning that the student’s conduct is in violation of Texas A&M University Student Rules, but is not sufficiently serious to warrant expulsion, suspension, or conduct probation. A student on conduct review shall have their conduct under review for a specified period of time. This sanction may require regular meetings with an appropriate official to ascertain and evaluate compliance with student rules. Additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct. Students placed on this sanction remain in good standing with the University. If there is a finding of responsibility for subsequent violations of the Student Rules during this period of time, more severe sanctions may be administered.
- **Conduct Probation:** An official warning that the student’s conduct is in violation of Texas A&M University Student Rules, but is not sufficiently serious to warrant expulsion or suspension. A student on conduct probation is deemed “not in good standing” with the University. If there is a finding of responsibility for subsequent violations of the student rules during this period of time, more severe sanctions may be administered.
- **Letter of Enrollment Block:** A letter stating that the student may not reenter Texas A&M University without prior approval through the Offices of the Dean of Student Life or the Vice President for Student Affairs if enrollment has been blocked for a previous student conduct problem or for medical reasons.
- **Suspension:** Separation of the student from the University for a definite period of time. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission. The suspension takes effect when the appeal for the offense is exhausted, waived or time limit has passed. Suspensions may be implemented in one of two ways: immediate implementation of suspension or deferred implementation of suspension. The sanction of suspension may be placed in deferred status. If the student is found in violation of any University rule during the time of deferred suspension, the suspension takes effect immediately without further review. Additional student conduct sanctions appropriate to the new violation also may be applied. A student who has been issued a deferred suspension sanction is deemed “not in good standing” with the University.
- **Expulsion:** Separation of the student from the University whereby the student is not eligible for readmission to this University.

# Sanctioning Considerations

## Sanctioning Considerations

When a Student Conduct Administrator is determining the most appropriate sanction or combination of sanctions for a student, these factors are considered:

- The nature of the violation – How serious is the violation? Who was harmed? What were the outcomes?
- Prior violations/previous disciplinary history – Does the student have other violations and sanctions on record? Please remember this is used only in the sanctioning phase, not in finding of responsibility.
- Mitigating/Aggravating circumstances surrounding the incident – What were the special circumstances surrounding the situation? To mitigate = reasons the sanction should be lessened. To aggravate = reasons the sanction should be more severe.
- Motivation for the behavior – Why did the student engage in the behavior? Was there evidence of malicious intent?
- Developmental and educational impact for individual and community – What message does this send to the community and the student? What can the sanction teach a student? How can the sanction help a student develop as a community member and individual? What does the complainant think is an appropriate sanction?
- Eligible to be in Good Standing - Should the student be allowed to represent the University in an official capacity (good standing requirement)?

Specific factors surrounding each case are unique and the facts/ findings may yield different results. These factors, if present, may increase the severity of the sanctions. Additional sanctioning factors may include:

- Use of force
- Use of weapons
- Incapacitation
- Threats to the community
- Coercion
- Manipulations
- Persistent violations
- Penetration

## Violence & Sexual Abuse

Students found responsible for committing acts of sex-based violence and/or non-consensual sexual penetration of another person will be subject to a minimum sanction of a one-year suspension, in the absence of significant mitigating factors. Students found responsible for these acts who have demonstrated predatory behaviors for the purpose of carrying out these acts shall be subject to a minimum sanction of permanent expulsion.

Students found responsible for committing acts of sex-based violence and/or non-consensual sexual penetration of another person who are allowed to return to a member university after a suspension of one year or more will be ineligible to hold an office in any student organization (including student government), ineligible to represent the university in any way (including intercollegiate athletics or other competitions, both on and off campus), and ineligible to receive a university-administered scholarship.

# Title IX Interim Conduct Probation: Representation and/or Participation

RANGE:

2-4

## Proposed Student Rule Change

### 27.5 Interim Conduct Probation

A student may not be placed on conduct probation prior to a student conduct proceeding except when the Dean of Student Life (or designee) believes that interim conduct probation should be instituted.

Interim conduct probation may be imposed (1) when a determination is made to implement a transcript hold under TAMUS Policy 11.99.02 and/or (2) in instances when the student's participation or representation would threaten or negatively impact other students who are participating and/or representing an organization/university. A student conduct proceeding will be scheduled as soon thereafter as practicable.

**27.5.1** During the interim conduct probation, a student is deemed "not in good standing" (see Student Rule 27.1.2) and "additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct."

**27.5.2** The interim conduct probation does not replace the regular process, which shall proceed on the normal schedule, up to and through a student conduct conference, if required. However, the student will be notified in writing of the specifics associated with this action and the reasons for the interim conduct probation. The notice will include the time, date, and place of a subsequent conference at which the student may show cause as to why TAMUS Policy 11.99.02 should not have been invoked and/or his/her continued participation and/or representation does not constitute a negative impact or threat (and at which s/he may contest whether a campus rule was violated).

**Conduct Probation:** An official warning that the student's conduct is in violation of Texas A&M University Student Rules, not is not sufficiently serious to warrant expulsion or suspension. A student on conduct probation is deemed "not in good standing" (Student Rule 27) with the University. If there is a finding of responsibility for subsequent violations of the student rules during this period of time, more severe sanctions may be administered.

#### Not in good standing:

A student who is not in good standing is subject to the following restrictions:

- Ineligibility to hold an office in any student organization recognized by the University or to hold any elected or appointed office of the University.
- Ineligibility to represent the University in any way, including representing the University at any official function, intercollegiate athletics or any forms of intercollegiate competition or representation. This includes events taking place both on and off of the University campus.
- Ineligibility to receive a University administered scholarship when the length of the period of not in good standing is greater than one semester. Some scholarships adhere to more strict guidelines, and, therefore, ineligibility may result from a lesser length of not in good standing. This sanction implies a serious offense and must be uniformly applied by the office administering the scholarship upon notification by the University Conduct Administrator.
- Additional restrictions or conditions also may be imposed, depending on the nature and seriousness of the misconduct.

#### Proposed Definitions

**Participation:** Engagement in any activity associated with the student organization, campus activity, and/or university sponsored organization (Corps, college, athletics, club sports, etc.).

**Representation:** Assuming an elected/appointed leadership, performing, and/or competitive role in a student organization, campus activity, and/or university sponsored organization (Corps, college, athletics, club sports, etc.).

# Title IX Transcript Notation Charge/Final Disposition

RANGE:

3-4

## 11.99.02 Conduct Requirements for Admissions Applications and Transcripts

### 1. Responsibilities of Member Academic Institutions

#### 1.2 Transcript Notations

Each CEO of the academic institution will adopt a standard transcript notation process for students who are suspended, dismissed or expelled.

##### 1.2.1 The notation must include:

- (a) The nature of the separation (e.g., suspension, dismissal or expulsion);
- (b) The type of infraction (e.g., academic or conduct);
- (c) The department responsible for issuing the student separation from the institution (e.g., Office of Student Conduct); and
- (d) The effective dates of separation from the academic institution, if applicable.

1.2.2 Transcripts of students with pending conduct investigations that could result in suspension, dismissal or expulsion may be held until the conduct process is complete.

1.2.3 Each academic institution must adopt a standard process for the evaluation and decision on what conduct charges will result in a student's transcript being held pending a conduct investigation.

## Appendix B: Literature Reviewed

- “Investigation” email from Intake
- “Student Assistance Services Follow up” email from Intake Advocacy Group statement packet (2018, June).
- “How a Student Used Title IX to Force Her College to Change Its Response to Cases of Sexual Assault.” (2018, June 26). Chronicle of Higher Education.
- Impact of the September 22, 2017 “Dear Colleague Letter”
- “Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct.” (2015, September 21). Westat.
- Dear Colleague Letter (2011, April 4).
- Dear Colleague Letter (2013, June 25).
- Interview with Cynthia Hernandez, Associate Vice President and Title IX Deputy, regarding actions taken by the Division of Student Affairs since April 2011 (release of 2011 Dear Colleague Letter)
- System Policy 08.01.01
- Texas Senate Bill 968 & 969 (<https://capitol.texas.gov/billlookup/Text.aspx?LegSess=85R&Bill=SB968>)
- (<https://capitol.texas.gov/billlookup/Text.aspx?LegSess=85R&Bill=SB969>) Report: Observations and Recommendations” (2016, January). Texas A&M.
- “Haven-Understanding Sexual Assault Impact Report.” (2016-17). Texas A&M and Everfi. Title IX of the Education Amendments of 1972.
- “Toward a Culture of Respect: The Problem of Sexual Misconduct at Amherst College.” (2013, January). Report of the Special Oversight Committee on Sexual Misconduct. Amherst College.
- Violence Against Women Act (VAWA). VAWA Reauthorization Act of 2013.

## Other References

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- The Chronicle of Higher Education (2018, July 17). Title IX: Tracking sexual assault investigations. Retrieved from <https://projects.chronicle.com/titleix/>
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- Orchowski, L. M., Oesterle, D. W., & Gidycz, C. A. (2015). How responses to disclosure affect college survivors. *Sexual Assault Report*, 14(5), 65, 77-79.
- Sabina, C., & Ho, L. Y. (2014). Campus and college victim responses to sexual assault and dating violence: Disclosure, service utilization, and service provision. *Trauma, Violence, & Abuse*, 15(3), 201-226.
- Wilson, L. C., & Miller, K. E. (2016). Meta-analysis of the prevalence of unacknowledged rape. *Trauma, Violence, & Abuse*, 17(2), 149-159.

## Appendix C: Mandatory Reporters

Source: Sample language from the University of Michigan

Responsible employee “sticker”: <https://hr.umich.edu/sites/default/files/RE-8x10-long.pdf>

### 1. Responsible Employees

Responsible employees must immediately report any information they learn about suspected Prohibited Conduct to OIE or the Title IX Coordinator. Failure by a responsible employee to timely report a suspected Prohibited Conduct may subject them to appropriate discipline, up to and including removal from their position. Responsible employees may report to the Title IX Coordinator through any of the reporting options previously noted in Section VI(B) or by going to <https://portal.dpss.umich.edu/public/reporting/>.

The following individuals are responsible employees:

- Regents, who are not employees but, rather, Constitutional Officers under the Michigan Constitution;
- Executive officers (including those serving in the role of Associate or Assistant Vice President/Provost, as designated by the executive officer);
- Deans, directors, department heads/chairs (including those serving in assistant or associate roles);
- Graduate and undergraduate chairs;
- Supervisors who have hiring or firing power over at least three employees who are not student or post-doc employees;
- University faculty or staff providing oversight to, or traveling with, students<sup>1</sup> on University related travel abroad, including University-sponsored study abroad, research, fieldwork, or internship programs;
- Faculty and staff, who serve as advisors to or coaches of University-recognized student groups;
- Any individuals, whether employees or not, who serve as advisors to or coaches of University-recognized student group;
- All individuals, including student-employees (such as Resident Advisors), working in Student Life, the Division of Public Safety and Security, Intercollegiate Athletics, and OIE, except those who serve in non-supervisory positions in dining services, clerical or custodial/maintenance capacities;
- Campus Security Authorities designated by the University under the Clery Act not otherwise specified in this provision; and
- Individuals serving in any of the positions described above on an acting or interim basis.

Faculty and staff who do not meet any of these criteria are not considered responsible employees.

Individuals who are Confidential Resources are not responsible employees. In addition, healthcare providers while acting in their professionally licensed treatment capacity (for example, physicians, nurses, dentists, pharmacists, and mental-health professional, including psychologists and social workers) are not required under this Policy to report a violation unless otherwise required to do so by law or other professional obligation.

Any questions regarding who is a responsible employee should be directed to the Office of the Vice President and General Counsel (OGC) at (734)764-0304 or OIE at (734)763-0235.

### 2. All Other Employees

Reporting is an important tool to address Prohibited Conduct. Thus, while all other employees who are not designated as Confidential Resources should safeguard an individual’s privacy, they are also strongly encouraged to share any information about such conduct with OIE, the Title IX Coordinator, or a member of DOS.

# End #