

Title IX Panel Training

Equal Opportunity Office and Office of Student Conduct

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UNIVERSITY OF
GEORGIA

Authorities and Citations:

- US ED OCR, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, May 19, 2020
- US ED OCR, Q&A, July 20, 2021
- OCR Letter to Students, Educators, and other Stakeholders re Victim Rights Law Center et al. v. Cardona, August 24, 2021)
- USG Sexual Misconduct Policy
- USG Standards for Institutional Student Conduct Investigation and Disciplinary Proceedings
- UGA Code of Conduct
- UGA Non-Discrimination and Anti-Harassment (NDAH) Policy
- Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.
- NCHERM – National Center for Higher Education Risk Management & ATIXA – Association for Title IX Administrators
- Nolan, Jeffrey, “Promoting Fairness in Trauma-Informed Investigation Training,” NACUANOTES, February 8, 2018.



Interim Measures

- Individualized services offered as appropriate to both parties prior to, or during an investigation.
- Evaluation in determining what if any interim measures are appropriate is based on the information gathered by the Coordinator/Investigator, making every effort to avoid depriving any student of her or his education.
- Designed to prevent retaliation or further harassment, discrimination, or sexual misconduct.
- Measures may change over time.
- Range of measures tailored and proportionate to the evidence known.
- Remain in effect until lifted or the appeal process is over.



Sexual Harassment Includes:

- **NON-CONSENSUAL** SEXUAL CONTACT (or attempts)
- SEXUAL EXPLOITATION
Taking non-consensual or abusive sexual advantage of another
Examples: prostitution, photographing or videotaping sexual activity, voyeurism, flashing
- DOMESTIC VIOLENCE, DATING VIOLENCE & STALKING if arises out of a past or present sexual or romantic relationship or interest



UGA Definition of CONSENT

Words or actions that show a knowing and voluntary willingness to engage in mutually agreed-upon sexual activity. Consent cannot be gained by force, intimidation or coercion, by ignoring or acting in spite of objections; or by taking advantage of the incapacitation of another where the respondent knows or reasonably should have known of such incapacitation. Minor under the age of 16 cannot legally consent under Georgia law.

Consent is also absent when the activity in question exceeds the scope of consent previously given. Past consent does not imply present or future consent. Silence or an absence of resistance does not imply consent.

Consent can be withdrawn at any time by either party by using clear words or actions.




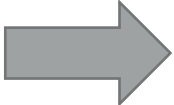
Incapacity

- First line of incapacity inquiry:

Was alcohol, drugs or other forms of incapacitation involved?

Other forms: mental/cognitive impairment; injury; sleep

NO  Move on the CONSENT

YES  Move to second line of inquiry



Incapacity


- Second line of incapacity inquiry:

Was the alleged victim incapacitated at the time of the sexual activity?

- Unconscious, unaware or otherwise physically helpless
- Lack the ability to appreciate the fact that the situation is sexual and/or cannot rationally and reasonably appreciate the nature and extent of the situation

ASSESSING INCAPACITY IS VERY FACT DEPENDENT

CAPACITY  Move to CONSENT

INCAPACITY  Move to third line of inquiry



Incapacity

- Third line of incapacity inquiry:

Did the accused student know, or should they have known that the alleged victim was incapacitated?

NO → Move to CONSENT

YES → VIOLATION





Consent

Look for the elements:

- Clear words or actions
- Knowing
- Voluntary
- Indicating willingness to engage in mutually agreed upon sexual activity

WORDS OR ACTIONS

- Look for clear communication – verbal or nonverbal “yes”
- Silence and/or passivity is not consent
- Warnings
 - Party making assumptions about what the other wants
 - Absence of clear communication



Formal Hearing (What Does it Look Like?)

- Opening by Hearing Officer
 - Introduction of charges, procedural rules, reminders, discussion of hearing order, and presentation of undisputed facts
- Opening Statements (Both Parties)
- Questioning of any Witnesses
 - By the Hearing Officer
 - By other party (through their advisor or Hearing Officer)
- Questioning of the Complainant
 - By the Hearing Officer
 - By other party (through their advisor or Hearing Officer)
- Questioning of the Respondent
 - By the Hearing Officer
 - By other party (through their advisor or Hearing Officer)
- Closing Statements (Both Parties)
- Closing by Hearing Officer
- Deliberations by Hearing Panel
 - Deliberate as to each charge and determine by a preponderance of the evidence if the student is in violation of each charge
- Issuance of Written Decision



Deliberations and Decision-Making

Deliberations

- Review and assess evidence presented
 - Examine only actions that have a direct relation to the situation under review
 - Explore motivation, attitude and behavior of accused and witnesses
 - Apply relevant standards:
 - Force
 - Consent
 - Incapacity
- Preponderance of the evidence standard
- If student is found in violation, panel opens prior record envelope and assigns appropriate sanctions
- Prior record will include violations of NDAH, SMP, and Code of Conduct



Determining Appropriate Sanctions

- “Must be made as a proportionate response to the violation.”
- Should prevent the recurrence of sexual misconduct
- Should remedy the effects of the sexual misconduct



Make Finding Prior to Discussing Sanctioning

Finding: Hearing Panel makes a determination of whether or not the student is in violation of the Code of Conduct (Regulation 3.4)

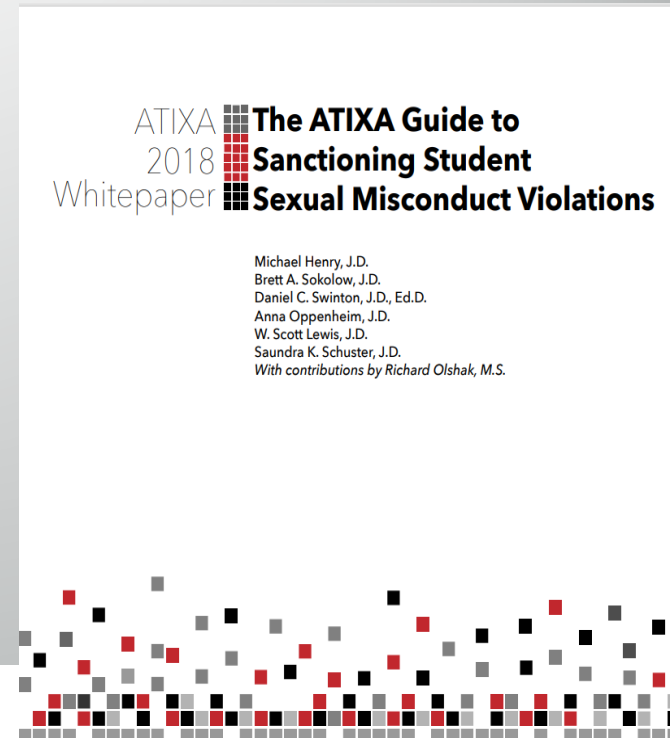
Sanctioning: If a student has been found in violation, then the panel determines appropriate sanctions.

- It is important to note that considerations of sanctioning are wholly independent from the analysis of whether or not a student violated the policy.
- Just because an instance of misconduct can, based on articulable mitigating factors, be considered relatively less egregious than other instances of misconduct should not impact the determination of responsibility
- Common error: using mitigating factors as evidentiary support for determining whether the policy was violated.



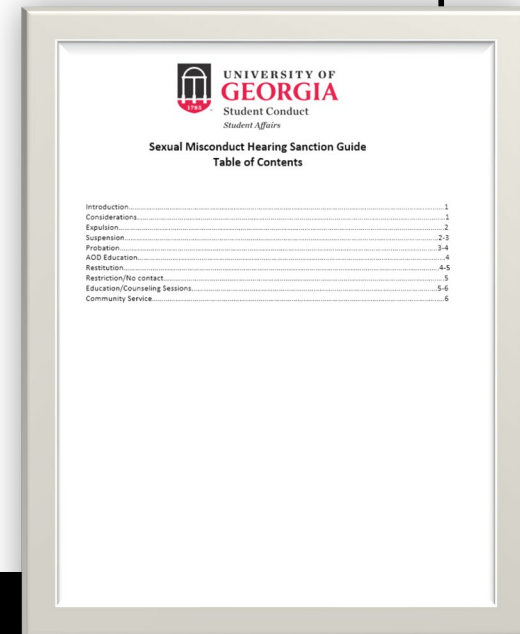
ATIXA Guide to Sanctioning Student Sexual Misconduct Investigations

- ATIXA (Association for Title IX Administrators) is a national organization that provides training throughout the country related to Title IX.
 - The University System of Georgia uses ATIXA trainers to train campus investigators.
- Sanctioning Examples
 - Probation
 - Suspension
 - Expulsion
 - Restrictions
 - No Contact Directives
 - Other Educational Sanctions
- Page 14 – Offense Specific Sanctioning



Importance of Communicating Sanctions in Decision Form

- Interim measures
- Be Intentional and Thoughtful with your language
- Does suspension include barring from campus
- Who should follow up to ensure sanctions are complete
- Utilize sanction guide
- Utilize ATIXA considerations
- Mitigating or Aggravating factors
 - Page 6 of Guide
 - Mitigating Factors
 - Aggravating Factors



The image shows the cover of a document titled "Sexual Misconduct Hearing Sanction Guide" with a "Table of Contents" section. The document is from the University of Georgia Student Conduct, Student Affairs. The table of contents lists the following sections and page numbers:

Introduction.....	1
Considerations.....	1
Expulsion.....	2
Suspension.....	2-3
Probation.....	3-4
AOD Education.....	4
Restitution.....	4-5
Restriction/No contact.....	5
Education/Counseling Sessions.....	5-6
Community Service.....	6





Questions?

