

**STUDY GUIDE :
INTERIM MEASURES**

20-Minutes-to...
Trained

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20-Minutes-to...*Trained*: Interim Measures Learning Outcomes

- Participants will be able to define interim measures and provide examples of support services that can be provided throughout the process.
- Participants will recognize what considerations are important to determine appropriate interim measures.
- Participants will recognize the value in setting no contact orders and be able outline considerations that should be made when putting no contact orders into place.
- Participants will understand that interim suspensions are the most severe interim measure and should be implemented when there is a pattern, predation, violence, weapons, threats or targeting of minors.
- Participants will appreciate the impact an interim suspension has on a responding party's educational opportunities and will be able to evaluate the due process considerations that should be made before placing a student on interim suspension.



20-Minutes-to...*Trained*: Interim Measures Discussion Questions

- How does the implementation of interim measures relate to the institution's responsibility to "stop, prevent and remedy?"
- What interim measures are common at your institution? Who is responsible for putting interim measures into place? What process does your institution have to survey whether additional interim measures may become necessary throughout the process?
- Why has OCR highlighted the importance of providing interim measures to both parties? Why is it important to strive for equitable support rather than equal support?
- What are some considerations that should be made when putting into place a no contact order? What are drawbacks to automatically putting into place a mutual no contact order?
- What due process considerations should be made before placing a responding party on interim suspension? What lessons can be learned from the 2016 Wesley College OCR resolution?
- Why is it important to document what interim measures have been put into place to support the parties? Why does ATIXA recommend sending a remedies summary to each party to conclude the process?



20-Minutes-to...*Trained*: Interim Measures Case Studies

Ivan and Juanita

I, Michelle Goldberg, met with a female student, Juanita Morales, who was extremely upset. Apparently, Juanita received a picture, via email, that had her face attached to a body with exaggerated breasts. She received the picture while studying at her sorority house. Many sorority members also saw the picture. Juanita was very worried that the picture had been distributed campus wide. Juanita stated that she thought that another student, Ivan Petrovich, was responsible.

I contacted John Wang, the assistant director of information technology, to investigate how the picture originated. We supplied Mr. Wang with the IP address from the originating email. Mr. Wang determined that the picture was sent from the community recreation room of the Lambda Lambda Lambda fraternity house, from on a desktop permanently installed there. However, he could not positively identify who actually sent the picture. The email account was assigned generically by the university (TriLambda@university.edu), as with all Greek Letter organizations, to be used for official organization business, and could be accessed by the fraternity's executives, who have shared the password broadly within the fraternity. The email was sent at 10:24 a.m. on October 11, when Petrovich was in class, to the sorority's generic email address. Once received, it was forwarded by sorority members within the sorority, and then externally, to hundreds, if not thousands, of recipients.

Petrovich learned the file had been shared only when he received it via email later on the 11th, and believes that it was stolen from the laptop in his room, where he stored it after copying it off a class shared drive, where he was working on it for an assignment. Petrovich noted that when he attempted to submit the picture for the class assignment, his professor refused to accept it. Ivan then transferred the image to a flash drive so that he could finish it at home on his own laptop. Petrovich noted that he usually signs out of his laptop when he is not using it, but does leave it unguarded while signed in occasionally to go down the hall to use the bathroom or to get some food.

Amy and Billy

Amy and Billy are both students. Amy has filed a complaint about Billy for touching her sexually both in and out of class. Specifically:

- He grabbed her on the butt in the hallway and in class as she was sitting down.

- He has given her “shoulder massages” in class (he sits behind her).
- While they were out with a group, he repeatedly touched her on the buttocks.
- While out with groups at parties, he will come up behind her and press himself against her and/or put his arms around her and hug her from behind without consent.
- When they were alone, he kissed her without consent, and touched her repeatedly on her breasts without her consent. This has happened twice.

They have a mutual group of friends that they spend a lot of time with.



20-Minutes-to...Trained: Interim Measures Case Studies Question & Answer

Ivan and Juanita

For Discussion:

- What are the first steps of the institution's response to this report?
 - Juanita should know that the institution will assist her in reporting to campus and/or local police.
 - Juanita should be advised of available medical and mental health providers and offered support with contacting, scheduling, or with transportation (if appropriate).
 - Assess for Clery reportability based on the location of the fraternity house.
 - Juanita should be advised of the next steps under policy, including contacting witnesses and the responding parties and disclosing information including her name.
- What interim measures are appropriate here?
 - Ms. Goldberg should ask Juanita what support measures would assist her in the process.
 - Since Ivan has admitted he created the image (though he doesn't admit to its distribution) a no contact order should be considered.
 - Juanita is friends with many of the fraternity members and participates in events at their house. A no contact order between all members of the fraternity and Juanita would seem impractical and may be against Juanita's wishes.
 - Placing Ivan on an interim suspension seems extreme in this situation. A no contact order should appropriately create space between the parties.
 - Juanita may need academic support, counseling, and possibly housing relocation (especially depending on how her sorority sisters feel about the incident).
 - Ivan may need counseling, academic support, an advisor, as well as assistance with adhering with a no contact order.

Ivan and Juanita

For Discussion:

- What interim measures might be implemented? By whom?
 - Amy should know that the institution will assist her in reporting to campus and/or local police, if she wishes to do so and the behavior seems to violate law.
 - Amy should be advised of available medical and mental health providers and offered support with contacting, scheduling, or with transportation (if appropriate).
 - Assess for Clery reportability based on the location of the conduct.
 - Amy should be advised of the next steps under policy, including contacting witnesses and the responding parties and disclosing information including her name.
- What if Amy does not want a no contact order because they have so many mutual friends?
 - Here, because they are part of a small friend group, a no contact order may not be feasible, nor Amy's wishes.
 - The Title IX Coordinator may need to meet with Billy to advise him to stop the conduct.
 - Even without a no contact order, a Title IX Coordinator can work with the parties to create space.
 - Amy may wish to move from her class.
 - Amy may wish to remain in class but have her seat moved.
 - Amy may wish to drop the class if it is not a required course.
 - At this point, any requirement for Billy to move would be inappropriate unless he volunteered to do so.
- Amy reports that her former friends are "looking at her mean" in the cafeteria/food court, as well as in the hallways and in her other classes. She wants to be reassigned into other sections in 2 other classes. Assuming there are other sections of these classes with availability:
 - The Title IX Coordinator may consider Amy's request and move Amy, if it is feasible. Alternatively, the Coordinator may work with Amy to create space between her and the formal friends within the classroom.
 - Moving the former friends from the class would be inappropriate. There has been no formal disciplinary action against them (and likely no policy violation) that would provide grounds to move them from the class.
- As a result of all of this social ostracizing, Amy is now seeing a therapist and engaging in self injurious behaviors: self-medicating, early stage disordered eating behaviors. She now asks if she can have extra time on an assignment for one of the classes she transferred into.
 - The Title IX Coordinator can speak with the professor to determine whether an extension is possible.
 - An extension may not be reasonable depending on the assignment.
 - If Amy cannot receive an extension, she can be referred to academic support.
 - At this point, it might also make sense to talk to Amy about withdrawing from the class.
 - If possible, a tuition credit should be considered.



ATIXA One Policy, One Process Model Interim Actions and Responsive Measures

N.B.: All text offered in [brackets] throughout this document is optional language. All gray highlighted text must be customized by the end-user or deleted if not needed. Please find and replace the word “Institution” throughout with the name of your college or university.

As used in this document, the term “reporting party” refers to the person impacted by the alleged discrimination. The term “responding party” refers to the person who has allegedly engaged in discrimination. The term “report” and “allegation” are used interchangeably and denote information provided to the Institution regarding conduct that may have violated this policy.

3. Interim Actions and Responsive Measures

Institution will offer and implement appropriate and reasonable responsive, supportive, and/or protective measures to reporting and responding parties upon notice of alleged harassment, discrimination, and/or retaliation. These interim actions are intended to support both the reporting and responding parties; protect and preserve access to educational and employment programs and activity; address the short-term effects of harassment, discrimination, and/or retaliation; protect the safety of all parties; and prevent further violations.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup
- Altering campus housing situation
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support
- Offering adjustments to academic deadlines, course schedules, etc.

At the time that measures are offered, the Institution will inform the reporting party, in writing, that they may file a formal report with the Institution either at that time or in the future.¹

¹ ATIXA includes this clause in anticipation of OCR’s proposed regulation §106.30.

The Institution will maintain as confidential the supportive or protective measures, provided that confidentiality does not impair the Institution's ability to provide the supportive or protective measures. Reasonable measures taken will be at no cost to the parties.

The Institution will use the least restrictive means possible when determining appropriate interim actions to ensure the continued safety and health of the reporting and responding parties and/or the Institution's community and to ensure as minimal an academic impact on the reporting and responding parties. The Institution will implement measures that do not unreasonably burden the other party and will regularly re-evaluate the actions to determine the necessity of their continued implementation.

The Institution may interim suspend a student or student organization, or place an employee on paid or unpaid administrative leave, pending the completion of investigation and resolution procedures when, in the judgment of the EEO/Title IX Coordinator, the safety or well-being of any member(s) of the Institution's community may be jeopardized by the on-campus presence/on-going activity of the responding party. The Institution may implement such measures if, after engaging in an individualized analysis, the Institution determines that the immediate threat to any member(s) of the Institution's community justifies removal of the individual.²

In all cases in which an interim action/suspension is imposed, the student, employee, or two (2) representatives from a student organization will be given the option to meet with the EEO/Title IX Coordinator prior to such action/suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the action/suspension should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), rather an administrative process intended to determine solely whether the interim action/suspension is appropriate. The EEO/Title IX Coordinator has sole discretion to implement or stay an interim action/suspension and to determine conditions and duration. Violation of an interim action under this policy will be grounds for discipline which may include expulsion or termination. During an interim action/suspension, a student or employee may be denied access to any or all of the following: Institution housing/campus/facilities/events.

The Institution will implement the least restrictive interim actions possible in light of the circumstances and safety concerns. As determined by the EEO/Title IX Coordinator, these measures may include restrictions from classes and/or all other Institutional activities or privileges for which the student might otherwise be eligible. For example, such measures could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of Institutional facilities or equipment, allowing a student to withdraw or take incompletes without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student organizational leadership, or intercollegiate athletics. At the discretion of the EEO/Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the reporting and responding parties.

² ATIXA includes this clause in anticipation of OCR's proposed regulation §106.44(c).



ATIXA Tip of the Week August 18th, 2016

Documenting Interim Measures

Tip of the Week authored by Brett A. Sokolow, J.D., ATIXA Executive Director

Q: What is best practice in documenting interim measures utilized during an investigation?

A: I don't know that it's a best practice, but I attach a page to the letter of final determination to the reporting party. That letter contains a checklist of all possible remedies offered by the college, with those elected checked off. I usually include the following text:

This letter summarizes the remedial actions taken by the college on your behalf, to date. The below checklist reflects all available remedies, and those that are checked are those that you have elected to receive. Should there be any additional remedies listed here that you decide are needed, or other needs that arise for you from this matter, please do not hesitate to call on me for additional resources. If you find any inaccuracies in this list, please notify me immediately. On behalf of the college, I wish you the best of luck in your continued academic endeavors and now consider this matter to be closed.

If there are any time delimited or renewable remedies, I will note those in this letter as well, and the procedures for their renewal or expiration.



ATIXA Tip of the Week October 20th, 2016

Interim Suspension

Tip of the Week authored by Daniel C. Swinton, J.D., Ed.D., ATIXA Senior Associate Executive Director

On October 12, 2016, the Office for Civil Rights (OCR) Philadelphia Office released the Wesley College Title IX Resolution Letter. The letter spends significant time on interim suspensions and cautions institutions from employing such measures too hastily and without an opportunity for the accused to contest the action.

In the Wesley College case, four students were accused of live streaming a consensual sexual encounter without the consent of one of the two parties. Within a day of notice being received by the institution, the four men had been banned completely from campus, courses, and a no contact order with the victim was put in place. OCR summarized Wesley College's procedural requirement in such situations, "whenever an interim suspension is imposed, the student will be given the opportunity to show why the suspension should not be implemented." However, in this case, "College staff conceded to OCR that [none of the four accused students] were afforded this opportunity." OCR found two significant problems: 1) rushing to use an interim suspension; and 2) not following institutional procedures for doing so. Both issues must be handled appropriately for an interim suspension to be equitable and appropriate.

OCR then provided valuable information as to the intent, purpose, and acceptability of interim suspensions, *"immediate suspensions may be warranted by the circumstances to protect individuals or the community," however, "here the repetition of the swift imposition of interim suspension coupled with both the absence of effective recordkeeping and the lack of accused interviews, raises concerns. Specifically, OCR has concerns that the College may not be affording accused students their basic procedural protections by imposing immediate suspensions without conducting a sufficient assessment of the risk to the community, while also considering the rights of the parties, including the accused student."*

This is a critical analysis as institutions are increasingly under pressure from a number of groups to interim suspend in any case involving sexual violence or sexual exploitation. OCR continued,

"The equitable principle in Title IX requires the College to consider a variety of factors in weighing whether an interim suspension is an appropriate interim remedy, given the potential educational impact of an interim suspension on the accused student. These factors include, for example, circumstances that suggest a risk to the greater College community, and the existence of risk that the accused student will commit additional acts of sexual harassment or sexual violence. Other factors to consider are whether there have been other sexual harassment or sexual violence complaints against the same accused student, whether the accused student threatened further sexual harassment or sexual violence against the victim or others, and whether the sexual harassment or sexual violence was committed by multiple perpetrators."

Interim suspensions are a valuable and necessary tool in the Title IX arena. However, equity demands that each instance be examined on its own merits and that decisions be made in a manner that recognizes the

rights of all parties. Additionally, ATIXA recommends that institutions provide students who are going to be or have been suspended on an interim basis with the opportunity to promptly challenge the interim suspension.