

March 22, 2024



TITLE IX HEARING PANEL TRAINING
TITLE IX HEARING PANEL TRAINING
TITLE IX HEARING PANEL TRAINING
TITLE IX HEARING PANEL TRAINING



SANCTIONING

LEARNING OBJECTIVES

- Understand how and when Transcript Notations are used
- Understand the difference between Status & Outcome Sanctions
- Apply Presumptive Model in Sanctioning Practices
- Review decision-making steps to effective sanctioning
- Write a Rationale that articulates the Decision Making

...

agenda

agenda

agenda

agenda

...



Office Updates



STAFFING

Arlette Henderson

NEW WEBSITE

Division of Engagement, Civil Rights & Title IX

APRIL IS SAAM

Look for our events and activities

NEW REGS

Coming soon?

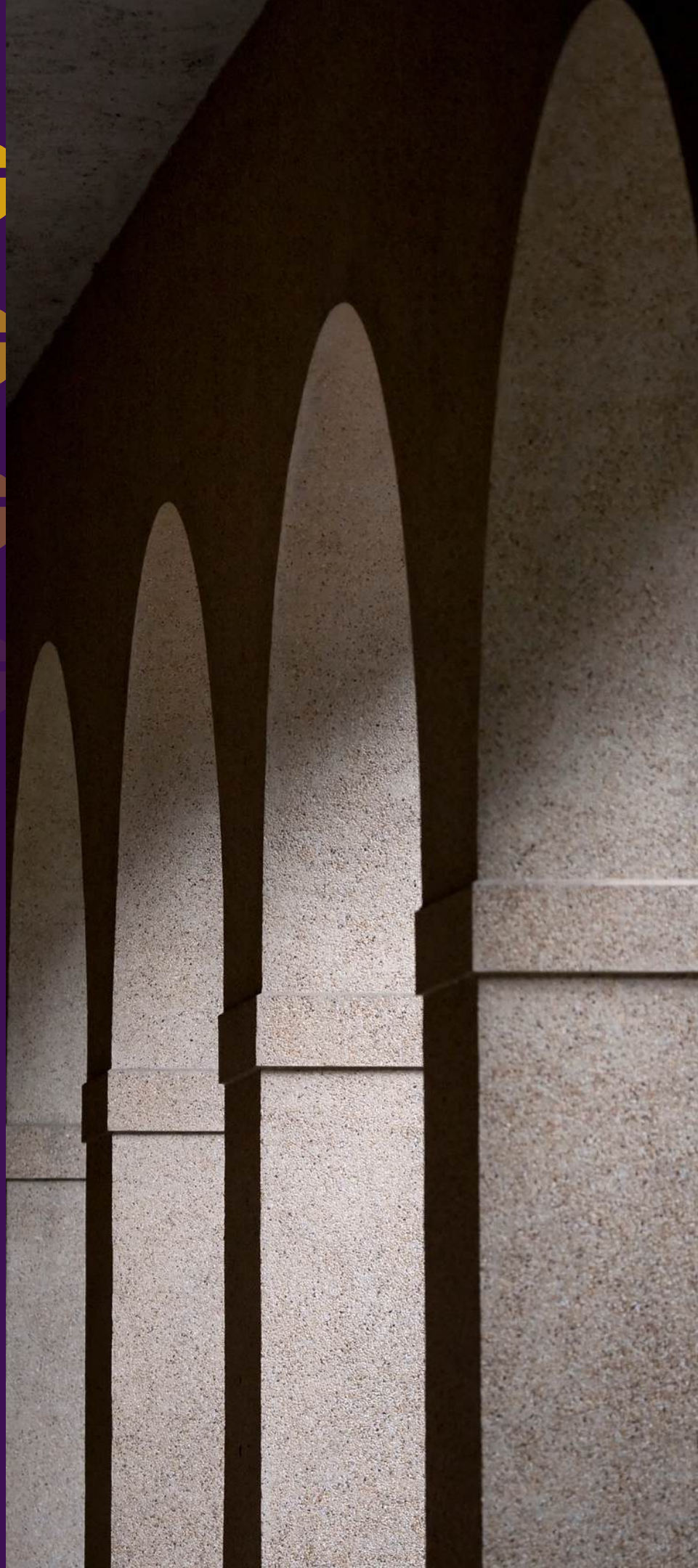
Sanctioning



FOR FINDINGS OF RESPONSIBILITY



SANCTIONING
SANCTIONING
SANCTIONING
SANCTIONING



DETERMINATION VS. SANCTIONING

It may difficult to de-couple
the finding decision from
the sanctioning decision.





Kinds of Sanctions

TRANSCRIPT NOTATION



NOTATION

NOTATION

NOTATION

- When a Formal Complaint is filed: “Administrative Matter Pending”
- When there is a final decision of Responsibility: “Student Found Responsible in Violation of Code of Conduct”

STATUS

Disciplinary status for a fixed amount of time during which the student must follow specific rules or restrictions; failure to comply may result in further sanctions or disciplinary action.

OUTCOMES

Conditions, restrictions, and/or educational or restorative activities

STATUS

WARNING

A formal statement that the conduct was unacceptable and a warning that further violation of any university policy, procedure, or directive will result in more severe sanctions.

PROBATION W/O RESTRICTIONS

A status for a specified period of time during which any further violation of the Code, any University policy, or Informal Resolutions jeopardizes the status of the Student with the University

PROBATION W/ RESTRICTIONS

Probation period which includes a set loss of privileges.

SUSPENSION

The physical separation of a Student from the University for a specified period of time.

EXPULSION

The permanent separation of a Student from the University without the possibility of readmission.

LOSS OF PRIVILEGES ON PROBATION: EXAMPLES



Ineligibility to live on campus or relocation



Exclusion from designated areas of campus



Inability to hold a position of leadership in an RSO,



Exclusion from participation in intramurals or other co-curricular activities,



Exclusion from LSU study abroad programs

More on Probation & Suspension

Probation

Use to increase likelihood that student will comply with educational activities/outcomes.

Stipulate that failure to complete any other assigned sanctions will result in suspension or expulsion.

Suspension

A Student may be readmitted with approval of admissions, the degree-granting college, and OCR&TIX

A suspended student may not be on Campus without specific written authorization by OCR&TIX

EDUCATIONAL OUTCOMES

COMMUNITY SERVICE HOURS

Student may choose the organization or cause, or can be directed by the Panel

TITLE IX 1:1 TRAINING

Individual sessions with Title IX Staff focused on education and growth

WELLNESS COACHING

Conflict Management/Healthy Relationships, Stress or Time management

COUNSELING INTAKE

Requirement that a student attend an initial eval and follow recommendations

ONLINE SA PREVENTION MODULE

Vector Solutions' online module tailored for UG students

SAA EDUCATIONAL OUTCOMES

Ethics & Decision-Making Module, Reflective Essays, Alcohol-related assessments/interventions



Sanction Decision Making

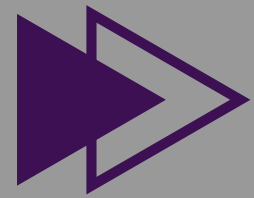


CUMULATIVE VIOLATIONS
CUMULATIVE VIOLATIONS
CUMULATIVE VIOLATIONS
CUMULATIVE VIOLATIONS

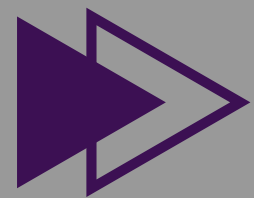
GENERAL RULE IS SANCTION PER VIOLATION

Decision makers must be clear about whether their findings and sanctions are cumulative for separate incidents or for a single incident that violates multiple policy provisions (overlapping policy charge).

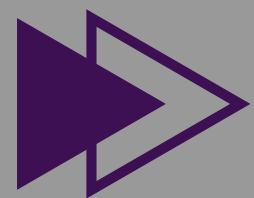
EXAMPLES OF CUMULATIVE VIOLATIONS



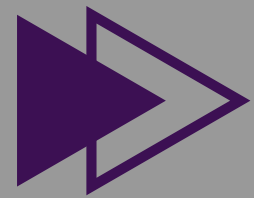
Respondent engages in multiple violations of the same policy in a single incident



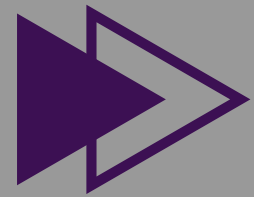
Respondent engages in multiple violations either of the same policy or of different policies, involving the same Complainant, in multiple incidents



Respondent engages in violations of the same policy, either in a single incident or over multiple incidents, involving different Complainants



Respondent engages in multiple violations of different policies in a single incident



Respondent engages in violations of multiple policies, either in a single incident or over multiple incidents, involving different Complainants

WHERE DO WE BEGIN?
WHERE DO WE BEGIN?
WHERE DO WE BEGIN?
WHERE DO WE BEGIN?

PRESUMPTIVE SANCTIONING

- Guideline based sanctioning
- Provides an offense-specific starting point for sanctioning process
- The initial “presumptive” sanction is presumed to be appropriate for all typical cases sharing offense severity characteristics.
- Mitigating and Aggravating factors are considered after establishment of this starting point





BEHAVIOR PATTERN/PRIORS

BEHAVIOR PATTERN/PRIORS

PRIOR MISCONDUCT MUST BE CAREFULLY CONSIDERED

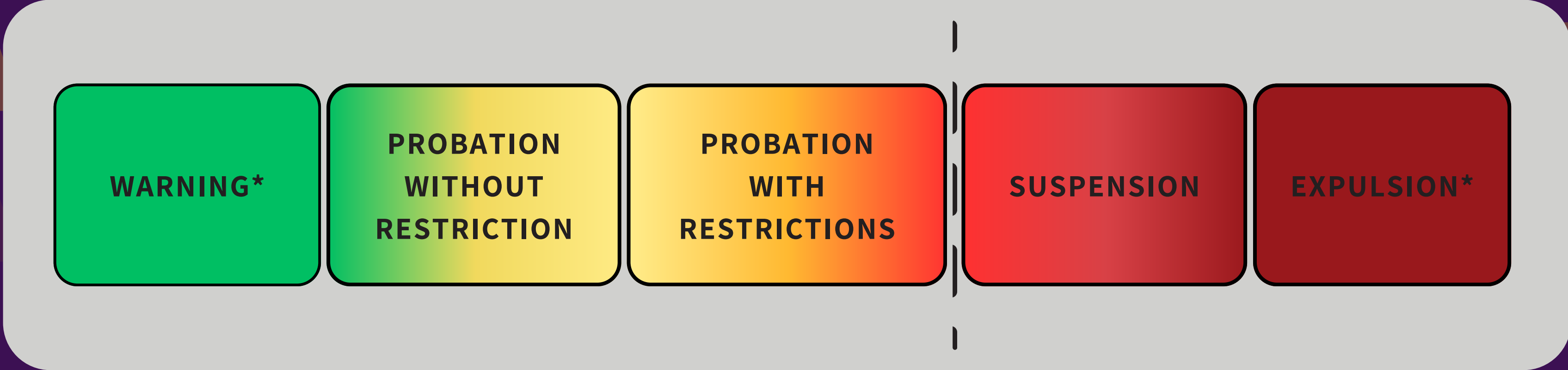
Should be considered

- Good faith reports of alleged sexual misconduct that do not result in a policy violation finding
- Other kinds of misconduct
- Timing from last offense

Should not be considered

- Many reported incidents of sexual misconduct are resolved informally, often at the request of a Complainant
- Unsubstantiated reports

SANCTIONING SANCTIONING
SANCTIONING SANCTIONING



SANCTIONING RANGE



PRESUMPTIVE RANGES

MISCONDUCT HISTORY

HARM/SEVERITY

HIGH

LOW

Suspension

Probation
w/
Restrictions

Probation
w/o
Restrictions

Probation
w/o
Restrictions

Warning

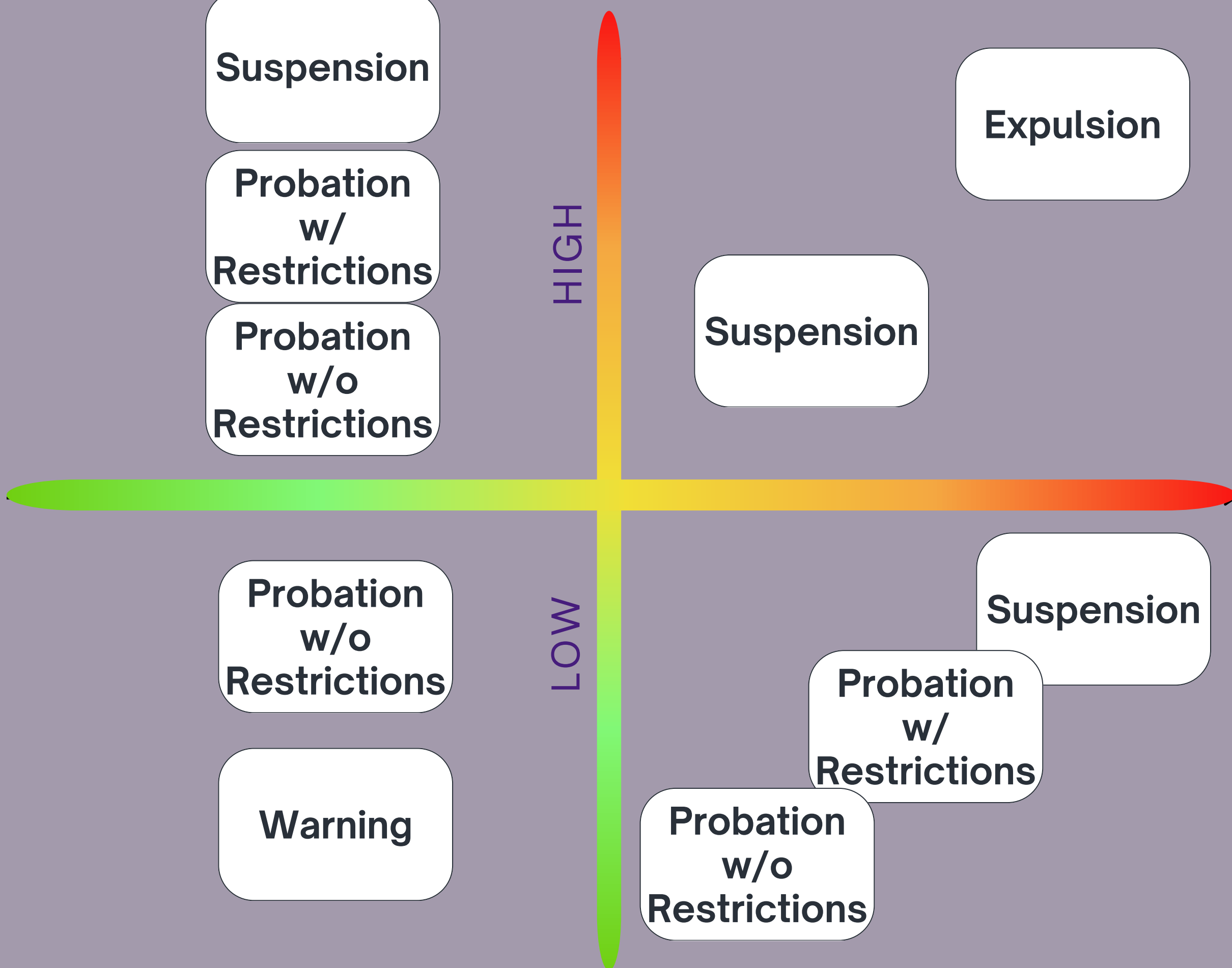
Suspension

Probation
w/o
Restrictions

Probation
w/
Restrictions

Expulsion

Suspension



Factors to Consider

Factors to Consider

Factors to Consider

Factors to Consider



MITIGATING FACTORS

Factors that render a violation less egregious than other violations of the same policy
(E.g., genuine contrition, self-defense, disability in play)



AGGRAVATING FACTORS

Factors that render a violation more egregious than other violations of the same policy
(E.g., physical violence, presence of a weapon, premeditation)

MITIGATING FACTORS



Genuine contrition



The Respondent's behavior did not exhibit a disregard for the dignity and autonomy of the Complainant



The nature and context of the relationship (e.g., the length of the relationship, the type of relationship, the frequency of interaction between Complainant and Respondent, the age of the Complainant and Respondent)



Lack of potential to repeat the behavior (e.g., relationship is over; no contact between parties)



A request for leniency by the Complainant



The harm caused by the sexual act was minimal



The Respondent's behavior was not intended to be malicious



Consent was ambiguous

AGGRAVATING FACTORS



The nature and context of the relationship (e.g., the length of the relationship, the type of relationship, the frequency of interaction between Complainant and Respondent, the age or difference between the age of the Complainant and Respondent)



The harm caused by the Respondent's behavior was extensive or irreparable



A request for enhanced sanctions by the Complainant



The Respondent's behavior was malicious and/or predatory



The Respondent's behavior resulted in the Complainant needing medical attention



The Respondent's behavior was particularly cruel or sadistic



High potential to recidivate (the relationship may be ongoing or not fully severed)



Respondent had power dynamic over complainant

SEXUAL ASSAULT- FORCIBLE FONDLING



PRESUMPTIVE

**NO
PRIORS**

Brief Touch: Probation with or without Restrictions 1-2 years

Extensive Fondling: Suspension 1-2 years

PRIORS

Brief Touch: Probation with Restrictions or Suspension 1-2 years

Extensive Fondling: Suspension 2-4 years



Mitigating Factors

- Consent was ambiguous
- Actions were both consensual and non-consensual
- Respondent takes responsibility for actions
- Contact over clothes or incidental contact (brief graze)
- Complainant requests lower sanction



Aggravating Factors

- Behavior occurred/continued after clear communication that the behavior was unwelcome
- Respondent has power dynamic over complainant
- Complaint requests a higher sanction

Decision Making Snapshot



Assess for Severity & Egregiousness

What is severity of conduct itself?
Impact of the behavior?
Are there cumulative violations?



Assess the nature of misconduct history, if any

An aggravating factor if serious.
Consider the timing of the priors



Assess for behavior pattern

An aggravating factor if present



Consider impact Statements

What are the complainant's requests?
What is the perspective of the Respondent?





RATIONALE WRITING



SANCTION-SPECIFIC

- PM-73 requires a statement explaining the sanction for each policy violation found “responsible.”
- The evidentiary analysis of whether a policy has been violated should be entirely separate and independent from the evaluation of what sanctions are appropriate

Rationale Examples

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

Case Study

From ATIXA's 2023 Guide to Sanctioning Student Sexual Harassment Violations

A Respondent was reported to their college for dating violence by three different individuals a total of three times in one year.



The first report was submitted by Complainant A's friend, who included a screenshot of a text message from Complainant A showing bruises in her online report. After multiple attempts to contact Complainant A, who was ultimately unresponsive, the allegation was closed with no further investigation.



A few months later, Complainant B reported the Respondent for dating violence and this time participated in an investigation. However, after an investigation and hearing, there was insufficient evidence to find a violation.



Six months later, the Respondent was arrested after Complainant C called the police following a particularly violent interaction with the Respondent that resulted in physical injuries. The college investigated the incident, and after a hearing, the Respondent was found responsible for dating violence.

DATING VIOLENCE



PRESUMPTIVE

NO PRIORS

Verbal only: Probation
1-2 years

Violence: Probation
with restrictions

Injuries: Suspension 1-2
years

PRIORS

No Violence:
Suspension 2-4 years

Violence: Expulsion



Mitigating Factors

- Harm was minimal
- Other party engaged in harm as well
- Complainant requests lower sanction



Aggravating Factors

- Violence caused physical injury or hospitalization
- violence has been ongoing for a long period of time
- Potential for revictimization is high
- Complainant requests higher sanction

Analysis

- 1 The first report may have been made in good faith, but no way to know, so cannot be considered as aggravating factor
- 2 Both of the prior reports did not result in a finding of a violation, so they cannot be considered as “priors.”
- 3 Instead, the second report can serve as relevant evidence of a pattern of escalating behavior, which when considered in the totality of the circumstances makes the third incident more egregious and subject to a more severe sanction.

OFFICE OF CIVIL RIGHTS & TITLE IX OFFICE OF CIVIL RIGHTS & TITLE IX OF



OFFICE OF CIVIL RIGHTS & TITLE IX OFFICE OF CIVIL RIGHTS & TITLE IX OF

DATING VIOLENCE



PRESUMPTIVE

NO PRIORS

Verbal only: Probation
1-2 years

Violence: Probation
with restrictions

Injuries: Suspension 1-2
years

PRIORS

No Violence:
Suspension 2-4 years

Violence: Expulsion

Mitigating Factors



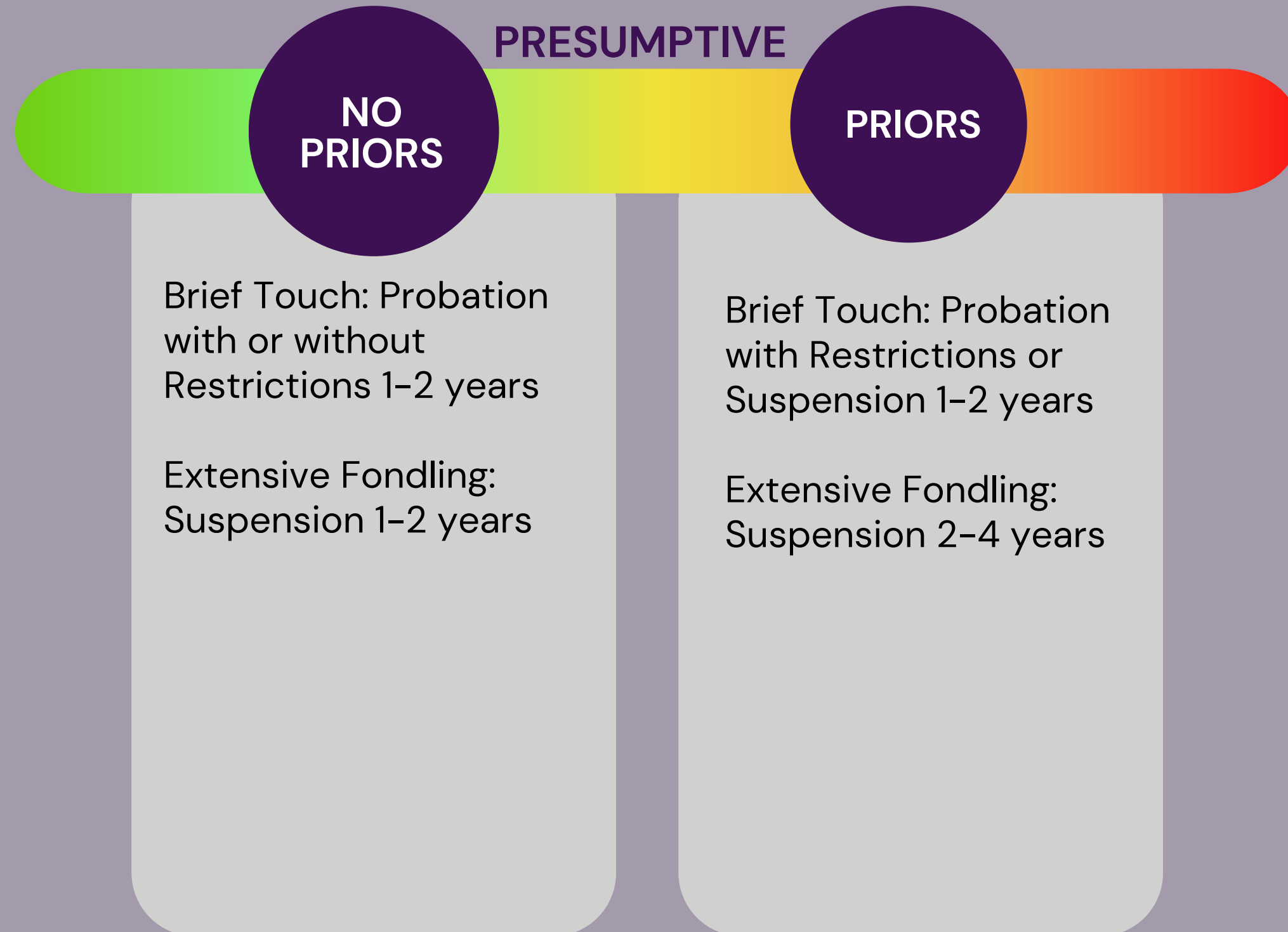
- Harm was minimal
- Other party engaged in harm as well
- Complainant requests lower sanction

Aggravating Factors



- Violence caused physical injury or hospitalization
- violence has been ongoing for a long period of time
- Potential for revictimization is high
- Complainant requests higher sanction

SEXUAL ASSAULT- FORCIBLE FONDLING



Mitigating Factors

- Consent was ambiguous
- Actions were both consensual and non-consensual
- Respondent takes responsibility for actions
- Contact over clothes or incidental contact (brief graze)
- Complainant requests lower sanction



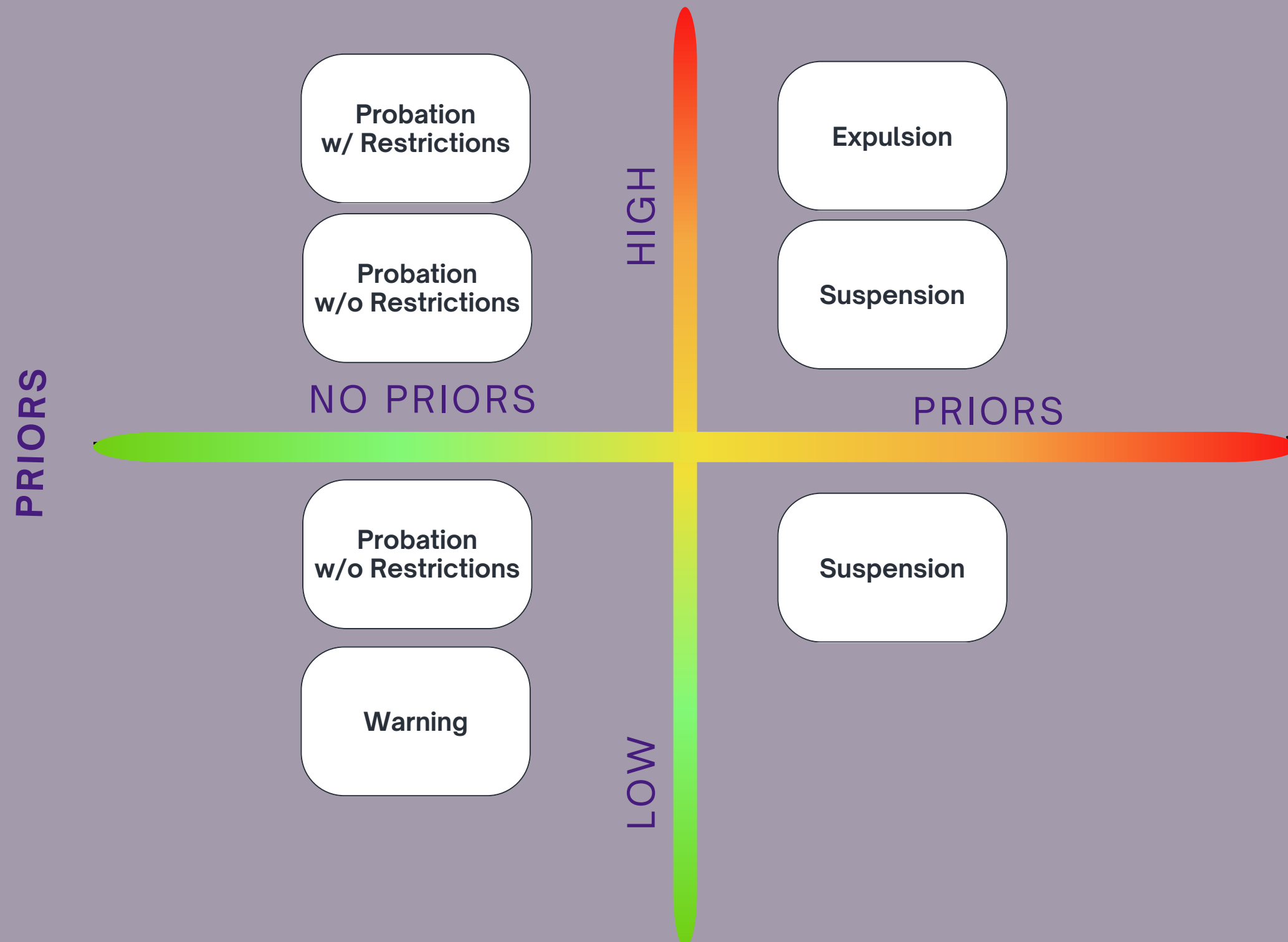
Aggravating Factors

- Behavior occurred/continued after clear communication that the behavior was unwelcome
- Respondent has power dynamic over complainant
- Complaint requests a higher sanction

SPECIFIC VIOLATION



PRESUMPTIVE HARM/SEVERITY



Mitigating Factors

- Behavior has small impact on access to education
- Behavior ceased after being told it was unwelcome
- Complainant requests lower sanction



Aggravating Factors

- Behavior has large impact on access to education
- Behavior continued after being told it was unwelcome
- Behavior was threatening or intimidating
- Respondent was in a position of power over the complainant
- Complaint requests a higher sanction