

**GRAND RIVER**  
SOLUTIONS

# **Interim Limiting, Exclusionary, and Emergency Actions: Factors to Consider Before Taking Action**

## Factors to Consider Before Taking Action

Interim limiting, exclusionary, and emergency actions are actions taken by an institution that may limit contact between individuals; limit access to an educational program or activity; or preclude access to educational programs and activities following receipt of a report, but prior to any sanction or discipline that may result from a finding that an institution's policy(s) has been violated.

### Some examples of interim limiting, exclusionary, and emergency actions are:

- One-way no contact directives;
- Reassignment or rescheduling of academic classes or work schedules;
- Temporary exclusion from an athletic team or activity;
- Temporary/interim suspension;
- Leave.



### ***What is the Purpose?***

The purpose of interim limiting, exclusionary, and emergency actions is to:

- a) Protect the physical health and safety of an individual or the community;
- b) Respond to a report of alleged assault or harassment or alleged severe, pervasive, and objectively offensive harassment;
- c) Mitigate opportunities for further harassment or retaliation during an investigation;
- d) Protect the integrity of an investigation process.

### ***When Should Interim Limiting, and Exclusionary or Emergency Actions Be Taken?***

The decision to take action to limit someone's access or participation in programs or activities or exclude someone altogether from campus may occur when there is a threat of harm related to, or arising from, the reported misconduct.

**Note:** for Title IX related reports, the analysis must be based on threat of immediate physical harm arising from the reported misconduct.

### ***What They Are Not***

Interim limiting, exclusionary, and emergency actions are not punitive or disciplinary actions. Interim measures may feel punitive, but because they are made prior to the conclusion of an investigation and adjudication process, the purpose and rationale are different.



## FACTORS TO CONSIDER

Taking steps to limit or exclude someone's participation must be supported by:

- a) Information regarding the alleged acts of prohibited conduct that are known to the institution;
- b) Defined criteria or factors to guide consistent decisions related to risk and campus safety;
- c) Past practice and circumstances underlying past decisions when limiting or exclusionary actions were taken;
- d) Institutional policy.

The following factors should be considered when determining whether to limit or exclude someone from a program or activity:


- Immediate threat to the (physical) health and safety of an individual or the campus community;
- Context in which the alleged conduct occurred;
- Institutional policy, procedure and past practices.

### Threat to Health and Safety

Does the individual present an immediate threat to the physical health and safety of an individual or the campus community?

#### *Consider*


- Presence or use of a weapon or threat of a weapon;
- Use of force or threat of the use of force;
- Threat of harm to the person or person's friends, family, acquaintances;
- Destruction of property or threat of destruction of property;
- Use of drugs or alcohol;
- Patterns or behavior targeting vulnerable individuals;
- Multiple reports of the same or similar conduct.



## Context and Conditions

What was the context and what were the conditions of the alleged conduct as known at the time of the report?

### *Consider*


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- Location of the incident (e.g. residence hall, academic building/library/lab, open campus areas, off-campus housing or other location);
  - Context of the incident (e.g. academic program or activity, on-campus social gathering or party, off-campus social gathering or party);
  - Conditions at the time the conduct occurred (e.g. influence of alcohol or drugs, unsupervised or limited supervision of remote or virtual learning or work environment);
  - Power differentials (e.g. supervisor to supervisee);
  - Conduct occurred during an ongoing investigation of the same or similar conduct.



## Past Conduct

Has the individual accused previously engaged in the same or similar conduct?

### *Consider*

- 
- Previous determination of the same or similar conduct as determined by a previous investigation, finding or conviction in a court of law.
  - Was previous conduct resolved at the allegation stage and not subject to investigation? Subject to similar process or protections against bias?

## Factors That Should Not Be Considered

The following factors should never support or be used in support of a decision to limit or exclude someone from a program or activity:

- Either the popularity or lack thereof of the individual;
- Either the popularity or lack thereof of the person who brought forward the allegation;
- Community, political or media pressure.

## Factors to Consider When Crafting the Specific Limiting, Exclusionary or Emergency Action

When it has been determined that there is a threat to physical health and safety to another or the campus community it is important to craft the limiting, exclusionary or emergency action based on:



### *Context and Conditions*

The action taken should reflect the conditions, circumstances, and context of the alleged conduct; **and**



### *Past Conduct*

Whether the accused has engaged in the same or similar conduct in the past; **and**



### *Institutional Policy and Past Practice*

Institutional policy and procedural requirements **and** how the institution responded to the same or similar allegations in the past.



## A Note Regarding Allegations Made Under The 2020 Final Title IX Regulations

For allegations of sexual harassment, sexual assault, dating/domestic violence and stalking that occur on or after August 14, 2020, Section 106.44(c) of the Final Rule outlines a five-step process for evaluating the necessity of an emergency removal from campus. This should be used any time the conduct used as the basis for a potential emergency removal arises from conduct that may be defined as a form of conduct prohibited by the Title IX Final Rule (which may include removal from all or only some programs and activities).

1. Conduct a prompt safety and risk analysis that is individualized to the individual accused;
2. Determine whether there is an immediate threat to the physical health or safety of any student or other individual arises from the allegations of sexual harassment, sexual assault, dating/domestic violence, or stalking;
3. Evaluate the applicability of disability laws to the removal decision;
4. Consider whether supportive measures may be used in lieu of an emergency removal so that the person making the report (Complainant) may be ensured of equal educational access without needing to limit or exclude the person accused;
5. Provide the individual against whom the limiting action is being taken an opportunity to challenge the emergency removal.

## Plan for the Impact of the Decision to Take Action Prior to the Decision

When it is determined that an interim limiting, exclusionary, or emergency action is to be taken, consider and plan for the following:

- Arrangements for any needed changes to academic or work schedules. Depending on the circumstances, and when appropriate, consider opportunities to mitigate a pause or cessation of an employee's ability to conduct their work or for a student to continue their forward academic progress;
- Impact to financial aid;
- Impact to visa status;
- Impact to housing status;
- Identify the individual who will be able to answer questions regarding the decision and provide their name and contact information to the person against whom the action is being taken;
- Provide specific information about the availability of challenges or appeals to the action, the process for submitting a challenge or appeal, and any deadlines pertaining to the challenge or appeal.

When it is necessary to communicate with others in order to implement an interim limiting, exclusionary, or emergency action, only disclose what must be disclosed in order to effectuate the action. For example, details of the action to be taken, name of the individual the action applies to, date and time ranges of the action. Refrain from providing details related to the underlying reason for the action or the identities of others involved unless they are needed to effectuate the interim limiting, exclusionary, and emergency action.

