



## Demystifying Sanctions

Understanding, Implementing, &  
Communicating Campus Disciplinary Actions

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# MEET YOUR FACILITATOR



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# SANCTIONING

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# GOALS OF SANCTIONS/DISCIPLINE



END

PREVENT

REMEDY

End The  
Harassment

Prevent The  
Recurrence

Remedy The Harm,  
Restore Equal Access

# WHAT DOES THE SANCTION “SAY”?

Who is valued, who is not?

Community values?

# THE SANCTION DOES NOT UNDO THE FINDING



No lesser sanction if you disagree with findings



Sanctioning officer must assume findings are correct

# SANCTIONING CONSIDERATIONS

Expulsion/Termination not required

Must be able to articulate why the action taken is reasonably calculated to end the harassment

Must be able to articulate why the action is reasonably calculated to prevent the recurrence

Remedy: To restore or preserve equal access; implemented by Title IX Coordinator.

# DETERMINING THE PROPER SANCTION

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?



# FACTORS TO CONSIDER

Impact

Past Conduct

Multiple violations

Abuse of power/position

Enhancements: filming the act, predation, weapon

# THE ROLE OF IMPACT STATEMENTS

Think ahead, and include in your training for sanctioning officers:

- Would the sanctioning officer become convinced that the conduct was worse than, or less than, the findings made by the hearing officer
- Would it create a bias to sanction more, or not at all?
- If it is poorly written, or makes no sense, would that influence the sanctioning officer?

# WHAT WOULD YOU DO?

Complainant requested that university appoint “school monitors” to supervise off-campus events at fraternities

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# COMPLAINANT'S WISHES TAKEN INTO ACCOUNT?

An institution's remedial measures do not amount to deliberate indifference simply because a reporting individual disagrees with their severity.

*Butters v. James Madison Univ.*, 208 F. Supp. 3d 745, 762 (W.D. Va. 2016). *Kelly v. Yale Univ.*, No. 3:01-cv-1591, 2003 WL 1563424, \*4 (D. Conn. Mar. 26, 2003). *Shank v. Carleton Coll.*, No. 16-CV-01154 (ECT/HB), 2019 WL 3974091, at \*14 (D. Minn. Aug. 22, 2019), *aff'd*, 2021 WL 1228068 (8th Cir. Apr. 2, 2021).

Complainants do not have right to choose the particular sanction (or remedial measure)

# I NEVER WANT TO SEE THEM AGAIN

Following a finding of sexual misconduct, the respondent was sanctioned with a no-contact order and deferred suspension. The complainant sued, alleging deliberate indifference, arguing that respondent should have been removed from campus to prevent any possible future encounters, which was more likely given that both were students in the same program and therefore more likely to access the same campus building.

What did the court say?

# WHAT DID THE COURT SAY?

Sanctioning officer asked the respondent to confess to the misconduct, and informed the respondent that the failure to admit to the misconduct would be taken into account as part of the sanction. The student did not admit to the misconduct, in part because he was facing a concurrent criminal investigation. In court, the respondent argued that his due process rights were violated when the sanctioning officer met with him and asked him to confess.

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# RESPONDENT'S ADMISSION

- Can sanction take an admission into account?
- Can sanction be more harsh for a respondent who “refuses” to admit to the conduct?
- Should failure to admit to the conduct ever be a part of the sanctioning determination?

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# AGGRAVATING CIRCUMSTANCES

Premeditation

Predation

Physical Violence

Multiple policy violations in one incident

Harm to others, impact on complainant and/or community

Did the behavior continue after intervention?

Effort to conceal or hide the incident?

Refusal to attend past trainings

Past failures to comply with directives



# ERRORS IN SANCTIONING

- Delays in delivering the sanction
- Using a sanction not listed (in handbook, code of conduct, policy)
- Inconsistent sanctions
- Sanctioning on basis of incidents not in the notice letter

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# WHAT WOULD YOU DO?

During the investigation, the respondent was found responsible for sexual assault, and there was considerable evidence gathered that the student was also responsible for underage drinking and providing alcohol to minors. Would you adjust the sanction on sexual assault to also take into account the findings on underage drinking and providing alcohol to minors?

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# WHAT DID THE COURT SAY?

A student found responsible for disruptive and harassing behavior received sanction of a written warning and the requirement to write an essay.

In lawsuit, student argued that the college's registration hold (until he turned in the essay) was a denial of his due process rights.

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# WHAT WOULD A COURT SAY?

Respondent was found responsible for a sexual assault. Being certain of litigation from the respondent, and wanting to at least “do something” and send a message, the sanctioning officer sanctioned respondent to a three-year restriction on accessing certain campus buildings, including the lab; a three-year ban on holding any paid or volunteer position at the university, including a post-doctoral position for Spring 2015; and a no-contact order with the complainant with no end duration.

In court, the complainant argued this was evidence of gender discrimination.

# WHAT DID COURT SAY?

After a finding of sexual assault (rape), the complainant argued that the university had engaged in deliberate indifference because the respondent was sanctioned with “six counseling sessions, a book assignment, completion of an online class on consent that was required of all incoming students, and staying away from the [reporting individual’s] assigned workplace, and a ‘perpetual’ no contact order.” The respondent was also placed on “behavioral probation.” The complainant also noted that the university had never expelled any student for sexual assault.

During sanctioning, the Title IX Coordinated noted that respondent did not understand the meaning of consent and was emotionally immature.

Would your answer change if respondent violated the no contact directive and university did not respond?

# TWO STUDENTS FOUND RESPONSIBLE

A male and a female student were each found responsible for sexual assault. The female student was suspended, the male was expelled. The college explained that the difference was that the male student had engaged in a penetrative sex act, and the female student had not, and therefore it was the specific type of misconduct that caused the difference in sanction, and not gender.

What did the court say?

# SANCTIONING ON THE BASIS OF “DEGREE” OF HARM

The Sixth Circuit Court of Appeals, which has suggested, without deciding, that a decision-maker’s failure to identify the “degree” of the violation, such as exactly what types of sexual misconduct were the basis for the finding of responsibility, could be a Title IX violation, as it leaves the respondent without a “precise basis for the punishment administered.”

*Doe v. Case Western Reserve Univ.*, No. 19-3520, 2020 WL 1672830, at \*3 (6th Cir. Apr. 6, 2020)



# TO KEEP IN MIND

01

Suspension - do you assume all is well upon return?

02

Protecting returning person from retaliation

03

Is the respondent forever "marked"? Where is room for rehabilitation?



# SANCTIONS AND INTERIM MEASURES DURING APPEAL PROCESS

- Maintaining or changing interim measures during the process
- Communicating and documenting sanctions and interim measures
- Deciding whether to impose sanctions during the process
  - Pros and Cons

# CAN A SANCTION INCREASE ON APPEAL

- A. In response to Complainant's appeal
- B. Sua sponte (meaning, just on their own determining it was not sufficient)

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QUESTIONS?

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