



TITLE IX HEARING OFFICER AND DECISION-MAKER TRAINING & CERTIFICATION COURSE

SCU – Fall 2020

SANCTIONING

SANCTIONING IN SEXUAL MISCONDUCT CASES



- Title IX and case law require:
 - Decision-maker should also decide sanction if credibility will influence the sanction
 - Not act unreasonably to bring an end to the discriminatory conduct (Stop)
 - Not act unreasonably to prevent the future reoccurrence of the discriminatory conduct (Prevent)
 - Restore the Complainant as best you can to their pre-deprivation status (Remedy)
- This may create a clash if the other sanctions only focus on educational and developmental aspects.
- Sanctions for serious sexual misconduct should not be developmental as their primary purpose; they are intended to protect the Complainant and the community.

SANCTIONING IN SEXUAL MISCONDUCT CASES



- Whatever sanctions you impose or recommend (depending on the process), you **MUST** offer a written rationale for **EACH** sanction.
- While that rationale can be whatever you want it to be, the sanctions **MUST** - on the whole - address the conduct and reference how they will:
 - Stop the behavior
 - Prevent its recurrence
 - Remedy the effects on the Complainant and the

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- The Complainant's suggested remedies are just that, suggestions. Their statements as to what they want as remedies are not binding. The panel may consider:
 - Precedent
 - Past record
 - Cooperation
 - Consistency
 - Climate and culture
- The panel should NOT consider:
 - Their own life experience and how the behaviors may deviate from their personal norms and mores
 - The "Brock Turner" analysis
 - What they may have heard outside the hearing and report about a case
 - How close to graduation someone may be
 - How well-liked someone may be or their grades

COMMON STUDENT SANCTIONS



- Warning
- Probation
- Loss of privileges
- Counseling
- No contact
- Residence hall relocation, suspension, or expulsion
- Limited access to campus
- Service hours
- Online education
- Parental notification
- Alcohol and drug assessment, and counseling
- Discretionary sanctions
- College suspension
- College expulsion

WHAT SANCTIONS?



- A female staff member has been found responsible for sexual harassment for:
 - Making overt and tacit sexual advances towards a female colleague, even though the recipient of the behavior has repeatedly (more than four times) told the staff member that the advances were unwelcome.
 - The advances were verbal, as well as in emails and text messages.
 - Some of the more subtle advances were confirmed by witnesses.
 - The victim complained because it started to impact her ability to focus at work and participate in committees.

WHAT SANCTIONS?



- A male tenured faculty member is found responsible for sex and race-based harassment involving a female student who is not in any of the faculty member's classes.
 - The faculty member is a full professor holding a prestigious endowed chair position.
 - It was determined that the faculty member said in class and in a one-on-one with the student that she “would likely do poorly in these engineering classes because women, especially women with her background, do poorly in engineering.” When asked what he meant, he indicated that he was referring to first generation students who do not have a strong math background in HS.”

WHAT SANCTIONS?



- A male tenured faculty member is found responsible for sex and race-based harassment involving a female student who is not in any of the faculty member's classes.
 - It was determined and confirmed by witnesses that the professor made comments in class such as:
 - "If you are from a poor High School, you should probably drop out of this program now!"
 - "Affirmative action is hurting the profession because people who are not ready are getting jobs"
 - I would tell you a good engineering joke, but...(gestures toward her, the only female in the class) I don't want to get in trouble."

WHAT SANCTIONS?



- A male tenured faculty member is found responsible for sex and race-based harassment involving a female student who is not in any of the faculty member's classes.
 - It was determined he has never had a female TA in the last five years as tenured faculty.
 - His response is that none apply to work with him.
- She brought the complaint after she did not get a fellowship and he was on the committee.
 - It was determined and confirmed that he actively campaigned for the male candidate who got the fellowship.

WHAT SANCTIONS?



- Five members of the men's soccer team (Students A, B, C, D, and E) are found responsible for subjecting the first-year players to a hazing-related rituals that included paddling them on their bare buttocks and having them lay down while the upper-class students poured hot sauce on the them, including on their genitals.

WHAT SANCTIONS?



- Four students (A,B,C, and D) engage in the paddling.
- Two students (A and B) poured hot sauce on the genitals of first-year students.
- One student (E) was present throughout but did not paddle or pour hot sauce on the first-year students.
- The ritual has been going on for at least 3 years, and A,B,C,D, and E all endured the same treatment their first year.

WHAT SANCTIONS?



- A, B & E are seniors and graduate at the end of this term.
- C & D are juniors.
- All are on full scholarships.
- The coach was aware of some “shenanigans,” but was shocked. He suspended all the players for 2 games for “violations of team policies” (there was underage drinking at the gathering) and considers the matter closed.
- There are 4 more games left in the season.
- Next week is Senior night.

WHAT SANCTIONS?



- The report came from the parent of a first-year player.
- WOULD IT MAKE A DIFFERENCE IF:
- E was the team captain and/or organized the activity?
- D was the one who reported the incident to the coach?
- E was the one who the first-year students confirmed “stopped the hazing” because “it was getting out of hand!”

QUESTIONS?



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