

Supportive Measures, Sanctions and Remedies

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2020 Regulations Regarding "Supportive Measures"

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§ 106.30(a) "Supportive Measures"

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

§ 106.30(a)"Supportive Measures" Cont'd

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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§ 106.45(b)(1)(ix)

[A recipient's grievance process must] describe the range of supportive measures available to complainants and respondents; and

§ 106.45(b)(10)(ii)

(ii) For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

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§106.44(a) Cont'd

... The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint . . .

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More on Supportive Measures...

[A] recipient must offer supportive measures to a complainant, regardless of whether the complainant decides to file, or the Title IX Coordinator decides to sign, a formal complaint.

Id. at 30046 (emphasis added).

[S]upportive measures must be offered not only in an "interim" period during an investigation, but regardless of whether an investigation is pending or ever occurs.

Id. (emphasis added).

Complainants must be offered supportive measures, and respondents may receive supportive measures, whether or not a formal complaint has been filed or a determination regarding responsibility has been made.

Id. at 30064 (emphasis added).

[A] recipient must offer supportive measures to any person alleged to be the victim, even if the complainant is not the person who made the report of sexual harassment.

Id. at 30069-70 (emphasis added).

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Supportive Measures and Respondents

The Department does not equate the trauma experienced by a sexual harassment victim with the experience of a perpetrator of sexual harassment or the experience of a person accused of sexual harassment. Nonetheless, the Department acknowledges that a grievance process may be difficult and stressful for both parties. Further, supportive measures may be offered to complainants and respondents (see § 106.30 defining "supportive measures"), and §106.45(b)(5)(iv) requires recipients to provide both parties the same opportunity to select an advisor of the party's choice. These provisions recognize that the stress of participating in a grievance process affects both complainants and respondents and may necessitate support and assistance for both parties. *Id.* at 30103 n.477.

Under § 106.30, a supportive measure must not be punitive or disciplinary, but may burden a respondent as long as the burden is not unreasonable. *Id.* at 30231.

The Department does not intend, and the final regulations do not require, to impose a requirement of equality or parity with respect to supportive measures provided to complainants and respondents. *Id.* at 30277.

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Thoughts on Supportive Measures

- Moving classes?
- Housing changes?
- Two students in the same student organization, club, or team?
- Burden on one party but not the other?
- No-contact orders
 - [T]hese final regulations allow for mutual restrictions on contact between the parties as stated in § 106.30, and § 106.30 does not expressly prohibit other types of no-contact orders such as a one-way no-contact order.

Id. at 30521.

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One-Way No-Contact Orders

A fact-specific inquiry is required into whether a carefully crafted no-contact order restricting the actions of only one party would meet the § 106.30 definition of supportive measures. For example, if a recipient issues a one-way no-contact order to help enforce a restraining order, preliminary injunction, or other order of protection issued by a court, or if a one-way no-contact order does not unreasonably burden the other party, then a one-way no-contact order may be appropriate. *Id.* at 30184.

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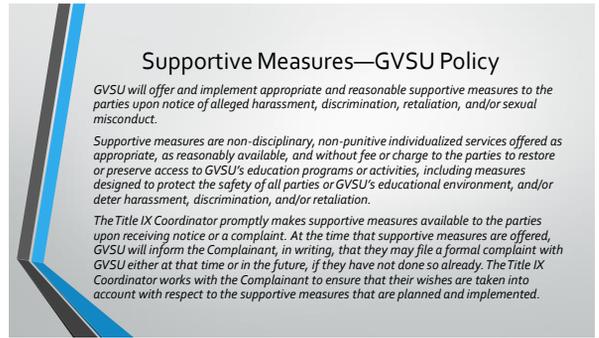
Title IX Coordinator

- Must offer and implement supportive measures.
- Implementation may require coordination with others on campus.

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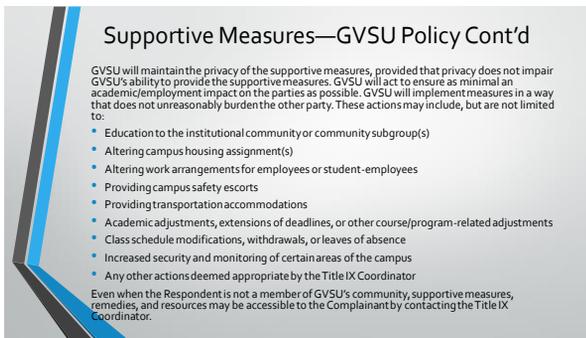


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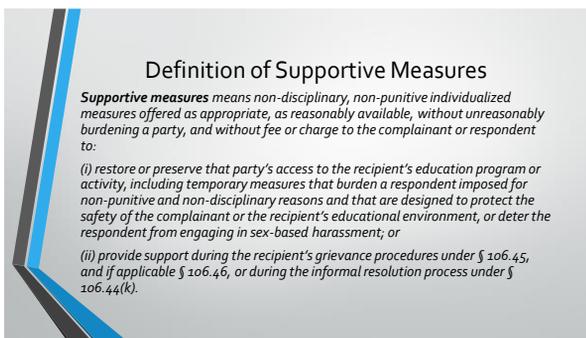


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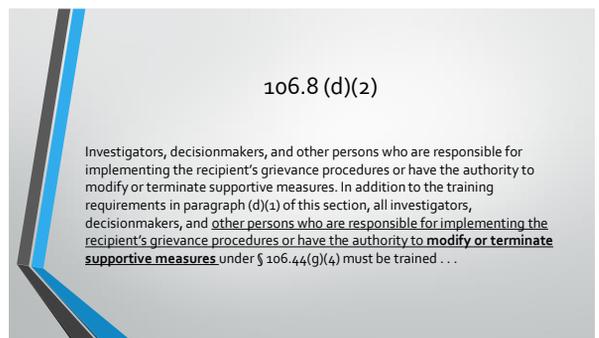


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106.44 (f)(3)

[A Title IX Coordinator must offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, to the complainant and respondent to restore or preserve that party's access to the recipient's education program or activity;

106.44 (g)

Supportive measures. Upon being notified of conduct that may constitute sex discrimination under Title IX, a Title IX Coordinator must offer supportive measures, as appropriate, to the complainant or respondent to the extent necessary to restore or preserve that party's access to the recipient's education program or activity. For allegations of sex discrimination, other than sex-based harassment or retaliation, a recipient's provision of supportive measures would not require the recipient, its employee, or other person authorized to provide aid, benefit or services on the recipient's behalf to alter the allegedly discriminatory conduct for the purpose of providing a supportive measure.

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106.44 (g)(1)

Supportive measures may vary depending on what the recipient deems to be available and reasonable. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact between the parties; leaves of absence; voluntary or involuntary changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

106.44 (g)(2)

Supportive measures that burden a respondent may be imposed only during the pendency of a recipient's grievance procedures under § 106.45, and if applicable § 106.46, and must be terminated at the conclusion of those grievance procedures. These measures must be no more restrictive of the respondent than is necessary to restore or preserve the complainant's access to the recipient's education program or activity. A recipient may not impose such measures for punitive or disciplinary reasons.

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106.44 (g)(3)

For supportive measures other than those that burden a respondent, a recipient may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures under § 106.45, and if applicable § 106.46, or at the conclusion of the informal resolution process under paragraph (k) of this section, or the recipient may continue them beyond that point.

106.44 (g)(4)

A recipient must provide a complainant or respondent affected by a decision to provide, deny, modify, or terminate supportive measures with a timely opportunity to seek modification or reversal of the recipient's decision by an appropriate, impartial employee. The impartial employee must be someone other than the employee who made the decision being challenged and must have authority to modify or reverse the decision, if appropriate. A recipient must make a fact-specific inquiry to determine what constitutes a timely opportunity for seeking modification or reversal of a supportive measure. If the supportive measure burdens the respondent, the initial opportunity to seek modification or reversal of the recipient's decision must be provided before the measure is imposed or, if necessary under the circumstances, as soon as possible after the measure has taken effect. A recipient must also provide a complainant or respondent affected by a supportive measure with the opportunity to seek additional modification or termination of such supportive measure if circumstances change materially.

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106.44 (g)(5)

A recipient must ensure that it does not disclose information about any supportive measures to persons other than the complainant or respondent unless necessary to provide the supportive measure. A recipient may inform a party of supportive measures provided to or imposed on another party only if necessary to restore or preserve that party's access to the education program or activity.

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106.44 (g)(6)

Under paragraph (f)(3) of this section, the Title IX Coordinator is responsible for offering and coordinating supportive measures.

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106.44 (g)(7)(ii)

*If the complainant or respondent is **a postsecondary student with a disability**, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide supports to students with disabilities to help ensure that the recipient 679 complies with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.*

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106.45 (d)(4)

*A recipient that **dismisses a complaint** must, at a minimum:*

- (i) Offer supportive measures to the complainant as appropriate under § 106.44(g);*
- (ii) For dismissals under paragraphs (1)(iii) or (1)(iv) of this section in which the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate under § 106.44(g);*

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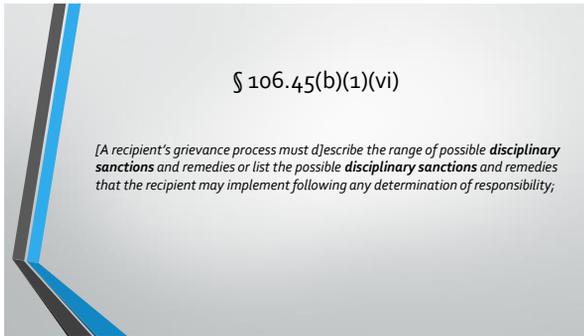
106.45 (k)

Provisions limited to sex-based harassment complaints. For complaints alleging sex-based harassment, the grievance procedures must: (1) **Describe the range of supportive measures available to complainants and respondents** under § 106.44(g)

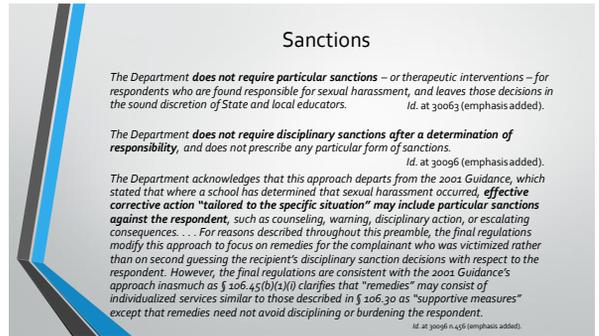
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2020 Regulations Regarding "Sanctions"

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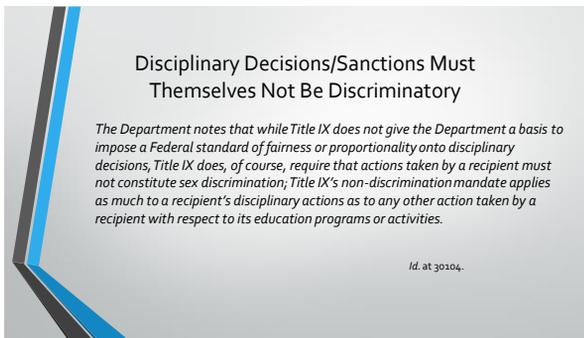


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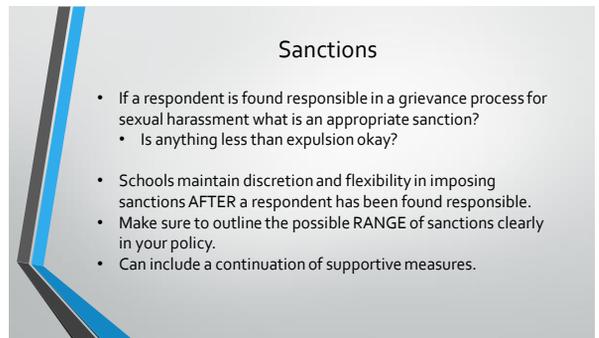


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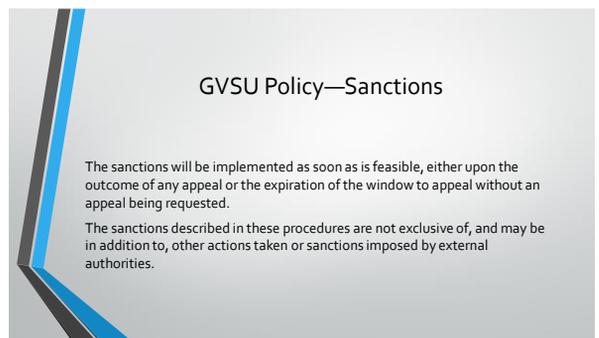


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GVSU Policy—Student Sanctions

The following lists the range of sanctions that may be imposed upon students:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any GVSU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Professional Assessment:** Completion of a professional assessment that could help the respondent or GVSU ascertain the respondent's ongoing supervision or support needed to successfully participate in the GVSU community.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend GVSU-sponsored events.
- **Withholding Diploma:** GVSU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities.

Other Actions: In addition to or in place of the above sanctions, GVSU may assign any other sanctions as deemed appropriate.

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GVSU Policy—Employee Sanctions/Responsive Actions

The following lists the range of sanctions that may be imposed upon employees:

- **Warning—Written**
- **Performance Improvement Plan**
- **Enhanced supervision, observation, or review**
- **Required Training or Education**
- **Probation**
- **Denial of Pay Increase/Pay Grade**
- **Loss of Oversight or Supervisory Responsibility**
- **Demotion**
- **Transfer**
- **Reassignment**
- **Delay of tenure track progress**
- **Assignment to new supervisor**
- **Restriction of stipends, research, and/or professional development resources**
- **Suspension with pay**
- **Suspension without pay**
- **Termination**

Other Actions: In addition to or in place of the above sanctions/responsive actions, GVSU may assign any other responsive actions as deemed appropriate.

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2022 Proposed Regulations on "Sanctions"

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Disciplinary sanctions means consequences imposed on a respondent following a determination that the respondent violated the recipient's prohibition on sex discrimination.

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(h) *Determination of whether sex discrimination occurred.* Following an investigation and evaluation process under paragraphs (f) and (g) of this section, the recipient must:

- (1) Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred. Both standards of proof require the decisionmaker to evaluate relevant evidence for its persuasiveness, if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker should not determine that sex discrimination occurred.
- (2) Notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred under Title IX, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- (3) If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator to provide and implement remedies to a complainant or other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(6).
- (4) Comply with this section, and if applicable § 106.46, before the imposition of any disciplinary sanctions against a respondent, and
- (5) Not discipline a party, witness, or others participating in a recipient's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination of whether sex discrimination occurred.

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106.45 (k) *Provisions limited to sex-based harassment complaints.* For complaints alleging sex-based harassment, the grievance procedures must:

- (2) Describe the range of, or list, the possible disciplinary sanctions and remedies that the recipient may impose following a determination that sex-based harassment occurred.

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106.46(h) *Written determination of whether sex-based harassment occurred.* The postsecondary institution must provide the determination whether sex-based harassment occurred in writing to the parties simultaneously.

(1) The written determination must include:

- (i) A description of the alleged sex-based harassment;
- (ii) Information about the policies and procedures that the postsecondary institution used to evaluate the allegations;
- (iii) The decisionmaker's evaluation of the relevant evidence and determination of whether sex-based harassment occurred;
- (iv) **When the decisionmaker finds that sex-based harassment occurred, any disciplinary sanctions the postsecondary institution will impose on the respondent, and whether remedies other than the imposition of disciplinary sanctions will be provided by the postsecondary institution to the complainant; and, to the extent appropriate, other students identified by the postsecondary institution to be experiencing the effects of the sex-based harassment; and**
- (v) The postsecondary institution's procedures for the complainant and respondent to appeal.

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2020 Regulations Regarding "Remedies"

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§ 106.45(b)(1)(vi)

*[A recipient's grievance process must describe the range of possible disciplinary sanctions and **remedies** or list the possible disciplinary sanctions and **remedies** that the recipient may implement following any determination of responsibility;*

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§ 106.45(b)(1)(i)

(1) Basic requirements for grievance process. A recipient's grievance process must—

*(i) **Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;***

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Remedies

*Where a respondent is found responsible for sexual harassment as defined in § 106.30, **the recipient must provide remedies to the complainant designed to restore or preserve the complainant's equal access to education.***

Id. at 30083 (emphasis added).

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Remedies

- Examples of remedies for an individual complainant
 - Can be a continuation of supportive measures (such as a no-contact order)
 - Academic accommodations/academic support services
 - Counseling services
 - Residence accommodations
- What about remedies for the broader community?
- Again, issuing sanctions after a respondent is found responsible is not enough. The new regulations turn on "remedies for the complainant" not just sanctions against the respondent.
- Are there academic remedies based on the impact the event had?

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GVSU Policy Regarding "Remedies"

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GVSU Policy—Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the behavior, remedy the effects, and prevent recurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy/procedural modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by GVSU to the Respondent to ensure no effective denial of educational access.

GVSU will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair GVSU's ability to provide these services

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2022 Proposed Regulations on "Remedies"

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Remedies means measures provided, as appropriate, to a complainant or any other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the recipient's education program or activity after a recipient determines that sex discrimination occurred.

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(f) **Title IX Coordinator requirements.** A recipient must require its Title IX Coordinator to take the following steps upon being notified of conduct that may constitute sex discrimination under Title IX:

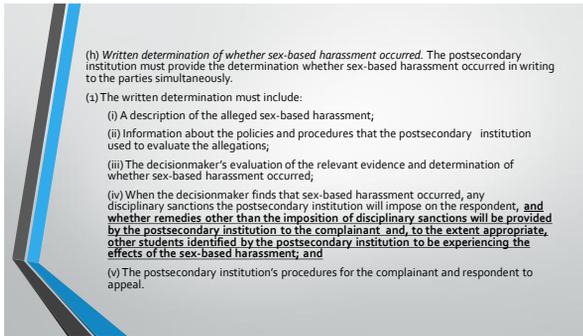
- (1) Treat the complainant and respondent equitably;
- (2) (i) Notify the complainant of the grievance procedures under § 106.45, and if applicable § 106.46; and (ii) if a complaint is made, notify the respondent of the applicable grievance procedures and notify the parties of the informal resolution process under this section if available and appropriate;
- (3) Offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, to the complainant and respondent to restore or preserve that party's access to the recipient's education program or activity;
- (4) In response to a complaint, initiate the grievance procedures or informal resolution process under § 106.45, and if applicable § 106.46;
- (5) In the absence of a complaint or informal resolution process, determine whether to initiate a complaint of sex discrimination that complies with the grievance procedures under § 106.45, and if applicable § 106.46, if necessary to address conduct that may constitute sex discrimination under Title IX in the recipient's education program or activity; and
- (6) Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity, in addition to remedies provided to an individual complainant.

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(h) **Determination of whether sex discrimination occurred.** Following an investigation and evaluation process under paragraphs (f) and (g) of this section, the recipient must:

- (1) Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof in all other comparable proceedings, including proceedings relating to other discrimination complaints, in which case the recipient may elect to use that standard of proof in determining whether sex discrimination occurred. Both standards of proof require the decisionmaker to evaluate relevant evidence for its persuasiveness; if the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker should not determine that sex discrimination occurred.
- (2) Notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred under Title IX, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable;
- (3) **If there is a determination that sex discrimination occurred, as appropriate, require the Title IX Coordinator to provide and implement remedies to a complainant or other person the recipient identifies as having had equal access to the recipient's education program or activity limited or denied by sex discrimination, and require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the recipient's education program or activity under § 106.44(f)(6);**
- (4) Comply with this section, and if applicable § 106.46, before the imposition of any disciplinary sanctions against a respondent; and
- (5) Not discipline a party, witness, or others participating in a recipient's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the recipient's determination of whether sex discrimination occurred.

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