Supportive Measures, Sanctions and Remedies

Peter Lake
Professor of Law, Charles A. Dana Chair, Director of the Center for Excellence in Higher Education Law & Policy
Stetson University College of Law
Senior Higher Education Consulting Attorney
Stephens & Johnson, PLLC

2020 Regulations Regarding “Supportive Measures”

§ 106.30(a) “Supportive Measures”
Supportive measures mean 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.

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

§ 106.45(b)(1)(ix)

§ 106.45(b)(10)(ii)
(i) 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.
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)(10)(i)(B) 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 parties and may necessitate support and assistance for both parties.

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.

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.

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

These 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.

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.

Title IX Coordinator

• Must offer and implement supportive measures.
• Implementation may require coordination with others on campus.
Supportive Measures—GVSU Policy

GVSU will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, retaliation, and/or sexual misconduct.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, reasonably available, and without fee or charge to the parties to restore or preserve access to GVSU’s education programs or activities, including measures designed to protect the safety of all parties or GVSU’s educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, GVSU will inform the Complainant, in writing, that they may file a formal complaint with GVSU either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Supportive Measures—GVSU Policy Cont’d

GVSU will maintain the privacy of the supportive measures, provided that privacy does not impair GVSU’s ability to provide the supportive measures. GVSU will not act to ensure as minimal an academic/employment impact on the parties as possible. GVSU will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Providing campus safety escorts
- Providing transportation accommodations
- Academic adjustments, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Even when the Respondent is not a member of GVSU’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

Definition of Supportive Measures

Supportive measures means non-disciplinary, non-punitive individualized measures offered as appropriate, reasonably available, without unreasonably burdening a party, and without fee or charge to the complainant or respondent:

(i) restore or preserve that party’s access to the recipient’s education program or activity, including temporary measures that burden a respondent imposed for non-punitive and non-disciplinary reasons and that are designed to protect the safety of the complainant or the recipient’s educational environment, or deter the respondent from engaging in sex-based harassment; or

(ii) provide support during the recipient’s grievance procedures under § 106.45, and if applicable § 106.48, or during the informal resolution process under § 106.44(b).

2022 Proposed Regulations on “Supportive Measures”

106.8 (d)(2)

Investigators, decisionmakers, and other persons who are responsible for implementing the recipient’s grievance procedures or have the authority to modify or terminate supportive measures. In addition to the training requirements in paragraph (d)(1) of this section, all investigators, decisionmakers, and other persons who are responsible for implementing the recipient’s grievance procedures or have the authority to modify or terminate supportive measures under § 106.44(g)(4) must be trained . . .
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;

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 service on the recipient's behalf, to alter the allegedly discriminatory conduct for the purpose of providing a supportive measure.

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.

Supportive measures that burden a respondent may be imposed only during thependency 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 ordisciplinary reasons.

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.

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.
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.

106.44 (g)(6)

Under paragraph (f)(5) of this section, the Title IX Coordinator is responsible for offering and coordinating supportive measures.

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 is in compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

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);

106.45 (k)

Provisions limited to sex-based harassment complaints. For complaints alleging sex-based harassment, the grievance procedures must:

(i) 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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§ 106.45(b)(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;]

Disciplinary Decisions/Sanctions Must Themselves Not Be Discriminatory

The Department notes that while Title IX does not give the Department a basis to impose a Federal standard of fairness or proportionality onto disciplinary decisions, Title IX does, of course, require that actions taken by a recipient must not constitute sex discrimination; Title IX’s non-discrimination mandates applies as much to a recipient’s disciplinary actions as to any other action taken by a recipient with respect to its education programs or activities.

Id. at 30048.

Sanctions

The Department does not require particular sanctions – or therapeutic interventions – for respondents who are found responsible for sexual harassment, and leaves those decisions in the sound discretion of State and local educators.

Id. at 30047 (emphasis added).

The Department does not require disciplinary sanctions after a determination of responsibility, and does not prescribe any particular form of sanctions.

Id. at 30048 (emphasis added).

The Department acknowledges that this approach departs from the 2001 Guidance, which stated that where a school has determined that sexual harassment occurred, effective corrective action “tailored to the specific situation” may include particular sanctions against the respondent, such as counseling, warning, disciplinary action, or escalating consequences. ... For reasons described throughout this preamble, the final regulations modify this approach to focus on remedies for the complainant who was victimized rather than on second guessing the recipient’s disciplinary sanction decisions with respect to the respondent. However, the final regulations are consistent with the 2001 Guidance’s approach inasmuch as § 106.45(b)(vi) clarifies that “remedies” may consist of individualized services similar to those described in § 106.30 as “supportive measures” except that remedies need not avoid disciplining or burdening the respondent.

Id. at 30096 n.456 (emphasis added).

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Sanctions

• If a respondent is found responsible in a grievance process for sexual harassment what is an appropriate sanction?

• Is anything less than expulsion okay?

• Schools maintain discretion and flexibility in imposing sanctions AFTER a respondent has been found responsible.

• Make sure to outline the possible RANGE of sanctions clearly in your policy.

• Can include a continuation of supportive measures.

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Id. at 30096 n.456 (emphasis added).

GVSU Policy—Sanctions

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

GVSU Policy—Sanctions

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.
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 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. Termination of the probation will be based upon compliance and/or evidence that the student has not violated GVSU’s policies and procedures, including any appeals, 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 or deny a student participation in commencement activities.
- Demotion
- Probation
- Suspension without pay
- Delay of tenure track progress

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

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

- Warning
- Performance Improvement Plan
- Enhanced supervision, observation, or review
- Required Training or Education
- Probation
- Denial of any increased pay grade
- Loss of Overnight or Supervisory Responsibility
- Demotion
- Transfer
- Assignment to new supervisor
- Enhanced supervision, observation, or review
- Restriction of objects, research, and/or professional development resources
- 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.

2022 Proposed Regulations on “Sanctions”

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

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, or list, the possible disciplinary sanctions and remedies that the recipient may impose following a determination that sex-based harassment occurred.
§ 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.

§ 106.45(b)(1)(i)

[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; and

(ii) 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).

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.

- 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?
GVSU Policy Regarding “Remedies”

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 after a recipient determines that sex discrimination occurred.

(2) Notify the parties of the outcome of the complaint, including the determination of whether sex discrimination occurred, unless the recipient uses the clear and convincing evidence standard of proof.

(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 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.

(4) Comply with this section, and if applicable § 106.45(b)(12)(i)(D). This material is not intended to be used by other entities, including other entities of higher education, for their own training purposes for any reason. Use of this material for proprietary reasons, except by the original author(s), is strictly prohibited.

GVSU Policy—Long-Term Remedies/Other Actions

2022 Proposed Regulations on “Remedies”

(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 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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9) 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:
(a) 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.