

**MODULE III**  
**DECISION-MAKER**  
**TRAINING:**  
**SANCTIONING AND**  
**HEARING TECHNOLOGY**

OFFICE FOR TITLE  
IX AND  
INSTITUTIONAL  
EQUITY (TIXIE)  
GRAND VALLEY  
STATE  
UNIVERSITY  
2021

# WELCOME TO MODULE III!

- As a result of the Title IX Final Rules, GVSU adopted a Title IX complaint procedure and revised existing policies and procedures
- Under Title IX (Policy A) the “formal grievance process,” Hearing Panel decision-makers also determine the sanction(s) in any case for which they have determined policy was violated.
- **Module III** is intended to be a helpful guide to sanction determination. Notice the word “guide.” What follows is *not* intended to be prescriptive.



# SANCTIONS: INTRODUCTION

Sanction(s) should be designed to:

- *stop the misconduct that has been the subject of the Hearing, AND*
- *prevent its recurrence, AND*
- *remedy its effects.*

■ To those ends, sanction(s) must be:

- ***Proportional*** to the severity of the violation and, if applicable, to the cumulative record of the Respondent,
- Shown to have a ***rational relationship*** to the nature of the violation, i.e. the sanction(s) is neither arbitrary nor capricious.
- ***Consistent***, i.e. not gratuitously inconsistent with the sanction(s) in similar cases

# SANCTIONS: RANGE

TIXIE envisions a range of sanctions, from least to most severe. Please treat this range as a general guide to assist in your decision-making.

- **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.

# SANCTIONS: RANGE (con't)

- **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 if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- **Other Actions:** In addition to or in place of the above sanctions, GVSU may assign any other sanctions as deemed appropriate.

# SANCTIONS: RANGE (con't)



# SANCTION DETERMINATION

- At the conclusion of a Hearing in which you have determined that the Respondent violated policy, you will then determine the sanction(s).
- The Hearing Panel Chair will participate in that discussion, but her/his/their opinion is no more important or significant than yours.



# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS

- You know that each case of harassment or misconduct is unique.
- The fact that each case is unique requires you to tailor sanctions to the context and circumstances of the particular case, thus avoiding a “one size fits all” approach,
- To guide you in that decision-making task, consider three broad categories of case factors as you begin your determination:
  - **Mitigating factors:** *extenuating circumstances that tend to lessen the severity of a policy violation and/or its sanction(s) by making the Respondent’s conduct understandable or less blameworthy.*
  - **Aggravating factors:** *any fact or circumstance that increases the severity of a policy violation and/or the culpability of the Respondent.*
  - **Compounding factors:** *any factor that renders the sanctioning range for a particular violation insufficient to properly address the totality of the circumstances. These factors are often specific to the Respondent, such as a prior conduct history or cumulative violations. They can “bump” the sanction range higher to include more severe sanctions, enhanced sanctions, and/or longer sanctions.*



# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

Let's look at **Sexual Harassment**

Key elements (refer to **Module I**):

- *Unwelcome*
- *Sexual AND/OR*
- *Sex-based AND/OR*
- *Gender-based AND*
- *Verbal AND/OR*
- *Written AND/OR*
- *Online AND/OR*
- *Graphic AND/OR*
- *Physical conduct that is*
  - *Severe AND*
  - *Pervasive AND*
  - *Objectively offensive AND*
- *Effectively denies the person equal access to GVSU's educational programs or activities or employment.*

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

## Sexual Harassment (con't):

- What would be a **mitigating** factor? Prior situations where the Respondent's advances were welcomed or reciprocated? The Respondent attempted to make amends or provide a remedy?
- What would be an **aggravating** factor? The harassment was threatening? The harassment persisted despite repeated attempts to indicate it was unwelcome, or get it to stop?
- What would be a **compounding** factor? Prior history of misconduct? Significant impact on the Complainant's education or employment, e.g. Complainant fails a class, or is fired from a job?

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

Let's look at **Sexual Assault: Forcible Rape**.

Key elements (refer to **Module I**):

- *carnal knowledge of a person (i.e. penile penetration)*
  - *against that person's will (non-consensually), OR*
  - *when the person is incapable of giving consent because of age (below 16 years in Michigan), OR*
  - *is temporarily or permanently mentally or physically incapacitated.*
- 
- What would be a **mitigating** factor? Genuine contrition? Ambiguous consent?
  - What would be an **aggravating** factor? Physical force? Deliberate incapacitation of the Complainant by the Respondent?
  - What would be a **compounding** factor? Respondent's prior history of misconduct? Cumulative violations, e.g. Respondent engaged in multiple violations of the same policy in a single incident?

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

Now Let's look at **Dating Violence**

Key elements (refer to **Module I**):

- *violence, committed by a person,*
- *who is in or has been in a social relationship of a romantic or intimate nature with the Complainant, AND*
- *where the existence of such a relationship shall be determined based on a consideration of the following factors:*
  - *length of the relationship,*
  - *type of relationship,*
  - *frequency of interaction between the persons involved in the relationship.*

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

## Dating Violence (con't):

- What would be a **mitigating** factor? Self defense? Lack of potential to recidivate, e.g. relationship is over?
- What would be an **aggravating** factor? Length of the violent relationship? The violence resulted in the Complainant needing medical attention?
- What would be a **compounding** factor? Respondent's prior history of misconduct involving violence? Cumulative violations, e.g. Respondent also charged with stalking in this complaint?

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

Now let's look at **Stalking**.

Key elements (refer to **Module I**):

- *engaging in a course of conduct,*
- *directed at a specific person,*
- *that would cause a reasonable person to fear for the person's safety, OR*
- *the safety of others; OR*
- *suffer substantial emotional distress.*

- What would be a **mitigating** factor? Respondent is on the Autism spectrum? The Complainant requests leniency?
- What would be an **aggravating** factor? Respondent engaged friends to also stalk the Complainant? The Respondent engaged in cyberstalking under an assumed identity?
- What would be a **compounding** factor? Respondent engaged in violations of the same policy involving different Complainants, either in a single incident or over multiple incidents? The Respondent refused to accept responsibility even in the face of compelling evidence?

# SANCTION DETERMINATION: MITIGATING, AGGRAVATING AND COMPOUNDING FACTORS (con't)

- One more exercise: let's look at **Retaliation**.
- Definition (refer to **Module I**):
  - *No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX.*
  - *The exercise of rights protected under the First Amendment does not constitute retaliation.*
- What would be a **mitigating** factor? The retaliatory conduct was mild? The Respondent did not realize the conduct would be seen as retaliatory?
- What would be an **aggravating** factor? The retaliatory conduct involved a threat? The Respondent enlisted another person to carry out the retaliatory conduct?
- What would be a **compounding** factor? Prior history of retaliatory conduct? The retaliatory conduct had a significant effect on a person other than the Complainant, or on a department/program?

# JUST A REMINDER...

- Some conduct is **so egregious** in nature, so harmful to the individuals involved, or so deleterious to the educational process that it requires suspension or expulsion from GVSU.
  - *Suspension and expulsion are **never** off the table until you have first thoughtfully discussed the policy violation. Then you can take them off the table.*





# ANOTHER REMINDER

**Close Calls:** Hearing Panel decision-makers often find it difficult to truly detach the findings from the sanctions, especially when a finding is based on that “feather” or “grain of sand” that tips the scale just enough to satisfy the preponderance of evidence standard.

- In close call situations, decision-makers often feel less sure of their decision and wish there were more evidence so that they could feel more confident in their decision.
- The inadvertent result of this uncertainty is that decision-makers tend to assign sanctions somewhere on the lower end of the sanctioning range.
- With this practice, decision-makers essentially treat their lack of confidence in the decision or their lack of overwhelming evidence as a **mitigating factor** for the purpose of sanctioning.

Please be aware and check yourself and your fellow Hearing Panel decision-makers if you are hearing, feeling, sensing you are in a close call dilemma.



# JUST ONE MORE REMINDER

- It's tempting to use the behavior of the Complainant as a **mitigating factor** when determining sanctions for the Respondent.
- This is especially true in Domestic/Dating Violence and Stalking complaints in which the Complainant and Respondent are, or have been, in a relationship of some duration, and questions about the Complainant's own behavior may enter into your deliberation. For example:
  - *The Complainant hit the Respondent first several times in their relationship, or*
  - *The Complainant went to the party knowing full well that the Respondent who is stalking her/him/them would be there.*
- TIXIE is concerned that using the Complainant's behavior as a mitigating factor opens the door for **bias**.
- We strongly **discourage** you from doing that.



# SANCTION RECOMMENDATIONS

- Once you have decided on a sanction(s), you will outline your determination for sanctions and rationale in a brief report that addresses the following:
  - *Identify specific sanctions and include their function to eliminate the prohibited conduct, prevent its recurrence, and/or remedy its effects.*
  - *Using language from the considerations above (applicable to this case), explain broadly and/or specifically the rationale for each assigned sanction.*

AND ONCE YOU'VE DONE THAT, IT'S  
TIME FOR THIS:



# HEARING TECHNOLOGY

- [Download and setup Zoom on your device](#)
- [Getting your account setup under GVSU's Zoom Account](#)
  - *This allows you to tie the account to GVSU's corporate account, providing additional security features and a separation from any personal Zoom account you may have.*
- A member of the TIXIE team will coordinate scheduling, notifications, and details regarding the remote hearing through Zoom.
  - *At the start of the hearing, Decision-Makers (as well as impacted parties and their advisors) will be moved into the primary hearing room, that is being recorded. Witnesses will be brought into the hearing room individually, at the appropriate time. At the conclusion of the hearing, Decision-makers will be moved into a private room for deliberations.*
  - *Security settings for the hearing will only allow for pre-registered or pre-approved accounts to join. This will all be in place prior to the hearing.*
- [Zoom Security](#) – read more about security options

# TECHNOLOGY: VIRTUAL ROOM SET-UP

HEARING ROOM

- RECORDED

DELIBERATION ROOM

- NOT RECORDED

COMPLAINANT &  
ADVISOR

RESPONDENT &  
ADVISOR

WITNESS  
WAITING ROOM

TITLE IX  
COORDINATOR  
&/OR DEPUTY  
COORDINATOR

# TIX TEAM MISSION. . AND THANKS!

- With our TIXIE value statement in mind, we will be holding in-person discussions that will provide the opportunity to engage in critical thinking, knowledge sharing, empathic engagement, imagination, discernment and examination of the materials in **Modules I, II and III.**
- And, oh, yeah, the in-person sessions will be a great opportunity to see each other again!
  
- **We thank you for your commitment to Title IX!**

