

**GRAND RIVER** | SOLUTIONS

# Sanctioning

Washington Community Colleges

Martha Compton | November 2023



Martha Compton

*She/her*

Director of Strategic Partnerships and  
Client Relations

## Meet Your Facilitator

Martha consults and trains nationally on Title IX and student conduct and has previously served as a technical trainer for Department of Justice VAWA campus grantees. Martha is a former President of the Association for Student Conduct Administration, has been a faculty member for ASCA's Gehring Academy, and was part of the core team that developed ASCA's Sexual Misconduct Institute. A student conduct professional for over 20 years, Martha is also a former dean of students and has extensive experience in residence life, behavior intervention, emergency services, orientation, leadership, and working with student organizations.



# Title IX Regulations

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"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



# Section 106.30: Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

# AND... Only Covered, IF:

## Place of Conduct

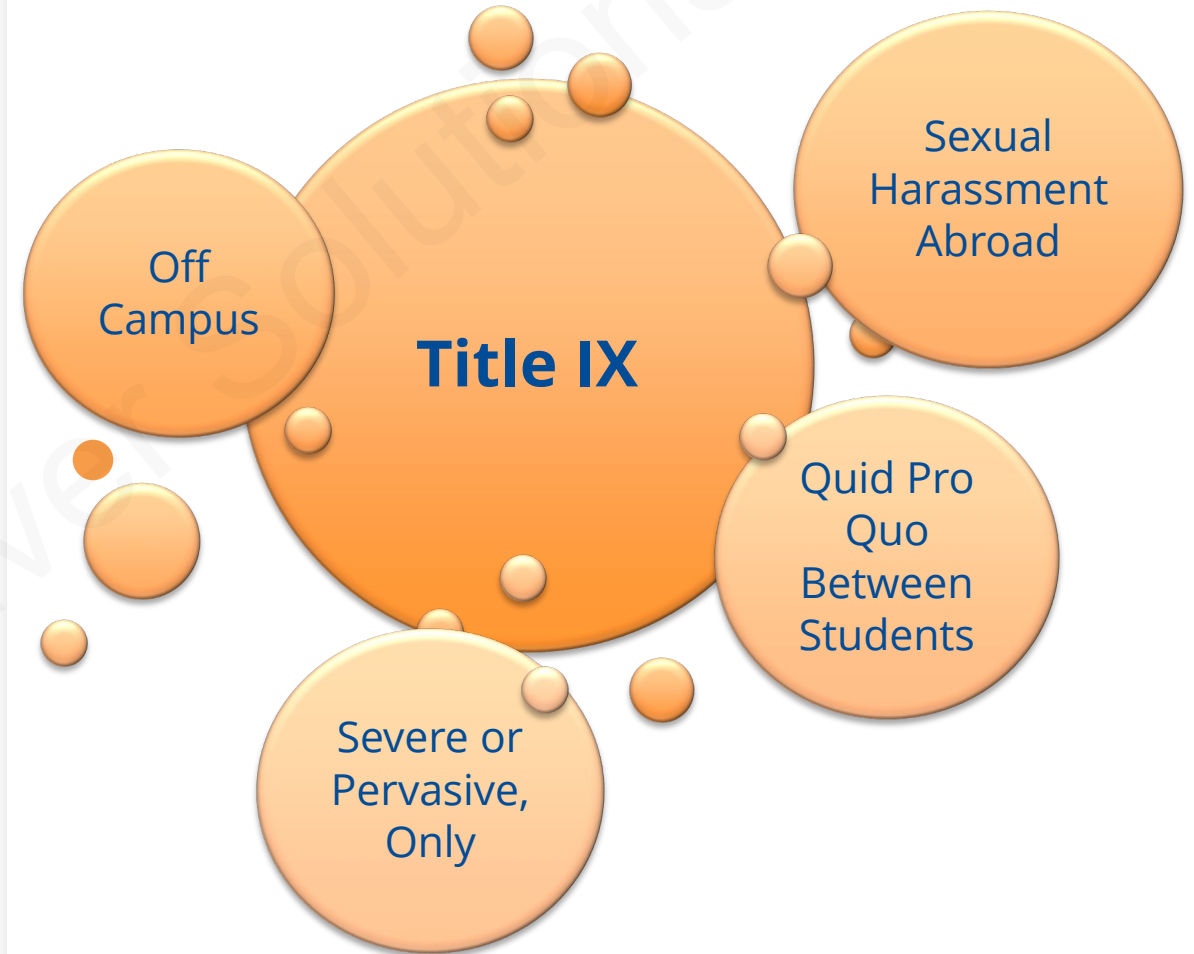
- On campus **OR**
- Campus Program, Activity, Building, **AND**
- In the United States

## Required Identity

- Complainant participating/attempting to participate in Program or Activity, **AND**
- Control over Respondent

# Conduct Falling Outside the Scope of Title IX

- Apply other applicable institutional policies and procedures



# Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing



# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction



# The Requirement of Impartiality

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# Section 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, *decision maker*, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent

## Section 106.45(b)(1)(iii)

“

Title IX Coordinator, investigator, **decision maker**, or facilitator of informal resolution must receive training on...how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias. This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

”



# Conflict of Interest

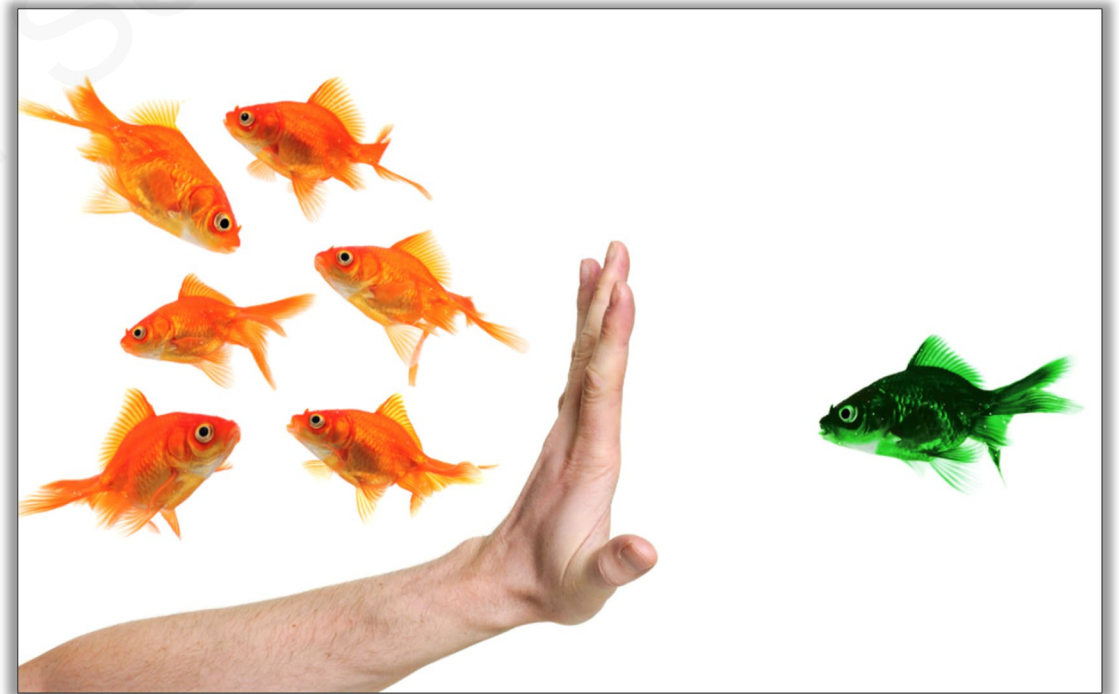


# What Constitutes Bias?

Decision-making that is grounded in stereotypes

Different treatment based on a person's sex or other protected characteristic

A decision based on something other than the facts





# Reviewing the Record

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# Report and Evidence File



Summary of the  
Evidence



Compilation of the  
Evidence



# The Recording



# Written Determination

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal



**How do you approach  
reviewing the record?**



# When is evidence relevant?

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



Information protected by an un-waived legal privilege

Medical treatment and care

Unduly repetitious or duplicative questions

Information that otherwise irrelevant

Complainant's prior sexual history, with limited exceptions.

Irrelevant and Impermissible Questions



# Determining a Sanction

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# Determining the Sanction

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## Five Approaches

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# Approaches to Sanctioning

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Start from scratch each time – no system.

Expel/Dismiss for all violations .

- Variation: Expel/dismiss only for those that are in most egregious category.

Never expel/dismiss; this is a learning environment.

Start at expulsion/dismissal as default and work down.

Start at some floor (1 year? 2 years? 5 years?) and work up.



# Why Sanction?

Once a determination is made and the institution has determined that conduct did violate its values (as set forth in its policies), the institution needs to decide what to do in response:

Educate

Rehabilitate

Punish

Set conditions

Reparations

Remediation

# Goals of Sanctions/Discipline

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End the harassment

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Prevent its recurrence

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Remedy the harm



# What Does This Mean?

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Does everyone have to get fired/expelled? (Hint: NO)

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Can you articulate why the action taken is reasonably calculated to end the harassment?

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Can you articulate why the action is reasonably calculated to prevent the recurrence?

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

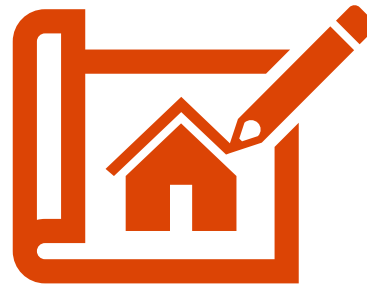
# Sanctioning Considerations



State law



Policy



Learning  
environment



Available  
measures

# The Sanction Does Not Undo the Finding



No lesser sanction if  
you disagree with  
findings

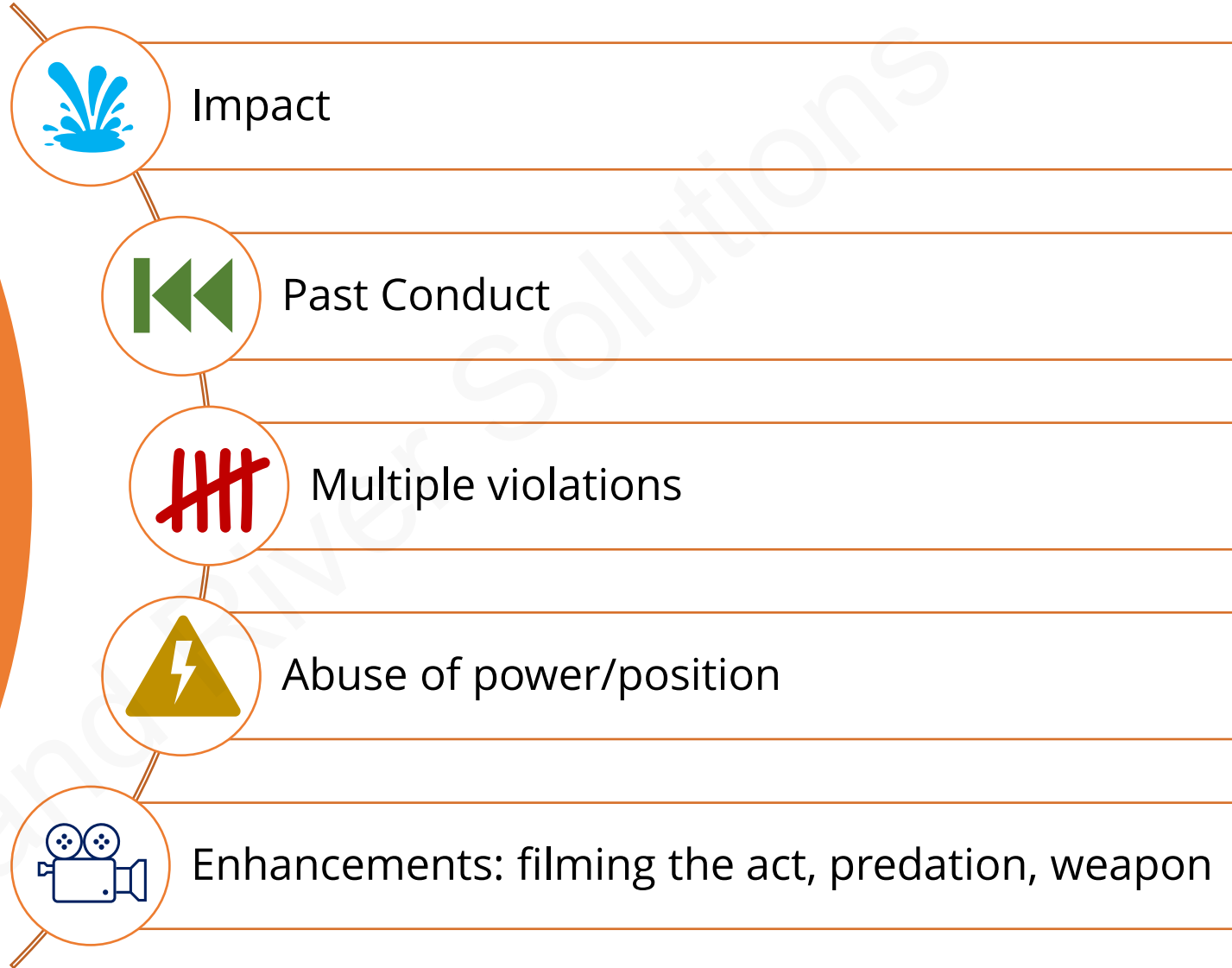


Sanctioning officer  
must assume findings  
are correct

- This is not about the decision you may have made differently if you were the decision maker.
- This is not about how you would have conducted yourself differently if you were either party.
- This is not about your personal views, feelings, lived experience, or biases.

**Don't Get  
Personal!**

# Factors to Consider Considering



# Questions to consider when sanctioning...

- Does the respondent demonstrate understanding of the policy that was violated?
- Who was impacted by the behavior? How severe was the impact?
- Is there foreseeability of repeated conduct?
- Has the respondent engaged in similar conduct in the past?
- If this is repeat behavior, how/why is the respondent in this situation again?
- How have similar incidents been sanctioned in the past?
- What measures are available and reasonable to employ in this matter?





# Aggravating Circumstances

Premeditation

Predation

Physical violence

Repeated violation

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

# What about...

The respondent's level of intoxication?

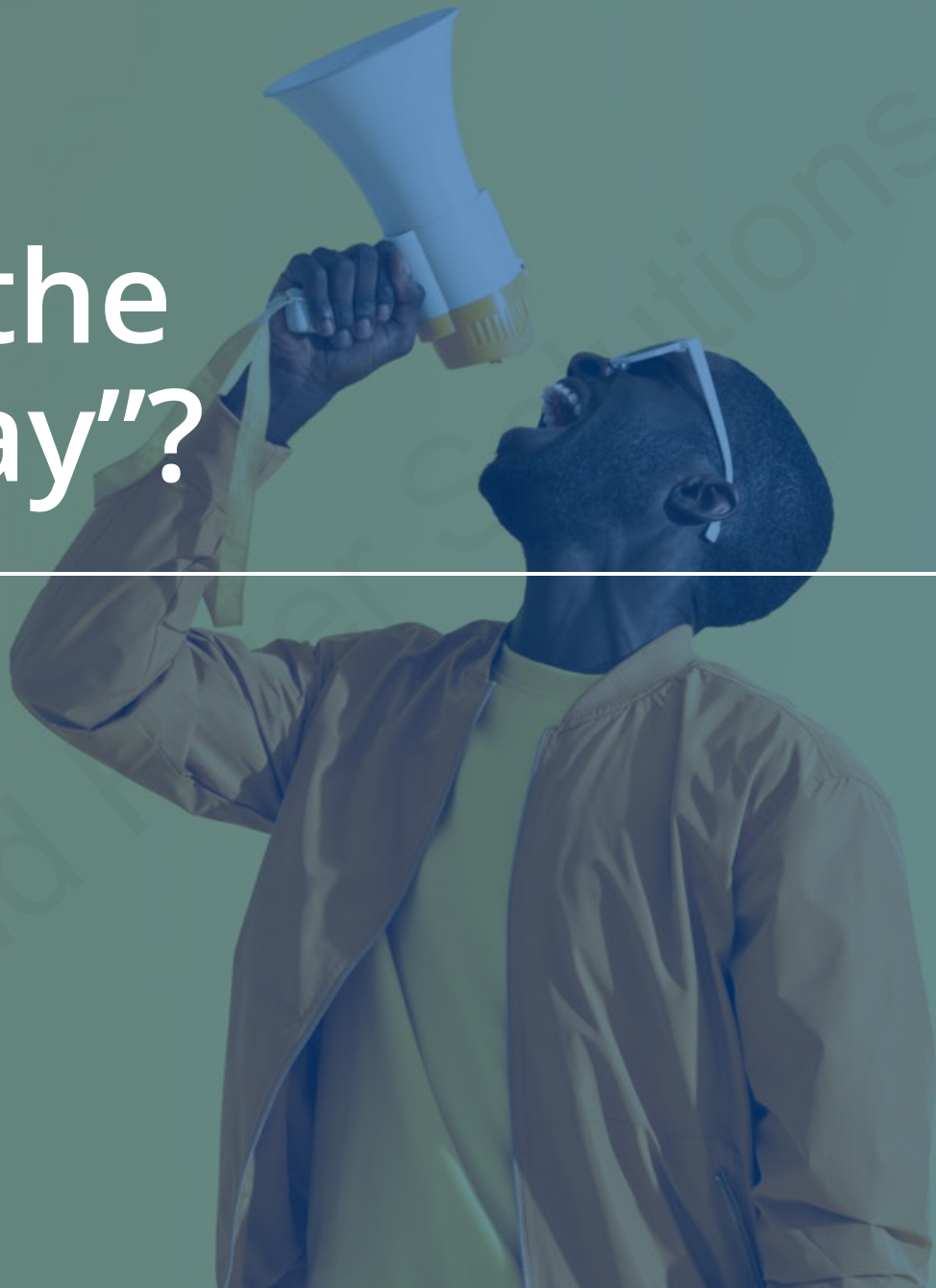
The respondent's character?

The respondent's remorse?

The respondent's disability or mental health status?

The complainant's conduct?

The complainant's character or motivation to report?

A man in a brown jacket and sunglasses is shouting into a white megaphone. The background is a teal gradient with a faint watermark that reads "Grand Institutions".

What does the  
sanction “say”?

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To keep in mind in case the respondent should return...

If placed on leave/suspended... do you assume all is well upon return?

Protections for both parties from retaliation.

Is the respondent forever “marked”? Does process provide room for learning and rehabilitation?

# Communicate Findings

- Sanctions (if any) need to be included in the written determination, along with your rationale for the sanction.
- There should be one single communication to all parties, not separate ones.
- The parties should be notified as close to simultaneously as possible.

# Written Determination

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
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- Procedure for appeal



# Thank you!

## Send Feedback



## Email Us

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