Appropriate Sanctioning Range: Sexual Violence Policy Violations

Tip of the Week authored by Brett A. Sokolow, Esq., ATIXA Executive Director

**Q:** I know that all cases are different and have levels of nuance that prohibit absolutes in our sanctioning of students, however I would be interested to hear about the range of your sanctioning for what one would consider for egregious violations of sexual violence policies. Obviously there are differences between someone being groped, objecting and the offender complying with the objection, and repeated attempts at intercourse, violence and/or penetration. I am looking at the more serious end of the spectrum to ask about separation from the institution - temporary or permanent - and what types of educational sanctions are also considered and utilized. Also, as this is both a personal and community issue, how much does the complainant’s thoughts on a sanction play into the final decision?

**A:** I would take the victim’s wishes into account, but they are not determinative, especially if they are unreasonable. For sanctioning of behaviors such as illicit observation, groping, fondling, quiescent stalking (the term I use to describe stalking that is not escalating or menacing, but is creepy and unwanted), and similar lower-level sexual misconduct, I find most campuses in the 1-2 semester suspension range, coupled with some educational efforts to show the individual why the behavior was problematic. This assumes the individual is contrite or remorseful, willing to change behavior, or subject to some mitigating circumstance. Those who evidence violence, pattern, predation or threat, even with low-level misconduct, should be subject to the sanctions described below for more serious offenses. You might also consider that if the behavior is clearly linked to an interpersonal conflict, a separation until the victim graduates may work (unless he or she comes back for grad school). I generally don’t prefer that approach in the more serious cases, because it assumes the conflict is interpersonal, and the accused individual is of no risk to anyone else. That is something we rarely can know.

Thus, in the more serious offenses, such as those that involve sexual penetration, menacing stalking, relationship violence, etc., I prefer expulsion or long-term (1-2 year) suspensions, where the suspension must be served, and then the individual must also demonstrate, as a condition of return, that they are safe to return to the community. Again, where violence, pattern, predation or threat are involved, I’m going to tend toward expulsion. I’ll also tend toward expulsion if the offender is callous, cruel, lying, opportunistic or sociopathic.

In longer-term suspensions, I prefer not spelling out how the offender may demonstrate they are safe to return, but instead suggest that we leave it to them to genuinely and sincerely do what needs to be done to convince a dean, panel, or Coordinator that re-admission will not lead to reoccurrence (the Title IX requirement). The idea is that they have to earn their way back in, not just "do their time." There is nothing magic about a two-year separation that suddenly makes a rapist no longer a rapist after day 731. And, I don’t know how to educate a sex offender (and neither do most of you), so I don’t want us to determine the criteria for what is educational, but instead make return conditional on demonstrating the effectiveness of whatever education, therapy, etc., the offender chooses.
Well-meaning, but misguided, educational sanctions include requiring offenders to educate groups on the errors of their ways, making offenders volunteer for advocacy organizations and shelters (don’t sanction the fox to the henhouse, please), or masculinity counseling with campus role models (ignores the nature of predatory offenders if we too readily accept that all they need is a role model to change their ways). I might permit a sincere interest in restorative justice to pave a way to return, or to mitigate sanction severity, assuming the victim is comfortable with it, and there appears to be no undue risk to the community. And, I tend to couple separations with transcript notation, to take away the incentive for our bad apples to just keep transferring from campus to campus whenever they get caught.