

## California State University Systemwide Sanctioning Guidance for Student Sexual Misconduct, Dating and Domestic Violence, Stalking, and Sexual Harassment

California State University (CSU) Executive Orders 1096 and 1097, Revised August 14, 2020, (policy)<sup>1</sup> prohibit sexual misconduct of any kind, which includes any sexual activity engaged in without affirmative consent, sexual harassment, dating and domestic violence, and stalking.

This sanctioning guidance is intended to foster fair and consistent application of sanctions based on the facts and circumstances of each case. This guidance is not CSU policy or a comprehensive statement of CSU policy and is only intended to provide a framework for Universities to assess sanctions.

The range of behaviors that could violate CSU policy is broad. Each case is unique and fact specific. For example, kissing someone without affirmative consent and engaging in sexual intercourse with someone while they are incapacitated are both policy violations constituting sexual misconduct, but the appropriate sanctions will be different. Similarly, the range of behaviors that can constitute dating and domestic violence, and stalking vary in degree and severity. For example, stalking can range from sending at least two texts, to following and explicit threats. Likewise, domestic violence can range from one incident of grabbing forcefully to ongoing physical assault and strangulation.

When a student is found responsible for violating University policy<sup>2</sup>, the University will assign disciplinary sanctions that are appropriate to the violation, taking into consideration the context and severity of the violation(s).

The administration of student discipline must be consistent with [CSU Executive Order 1098, Revised August 14, 2020 Student Conduct Procedures](#).

Disciplinary sanctions are enforceable systemwide and include, but are not limited to:

**Disciplinary Probation.** A designated period during which privileges of continuing in Student status are conditioned upon future behavior. Conditions may include the potential loss of specified privileges to which a current Student would otherwise be entitled, or the probability of more severe disciplinary sanctions if the Student is found to violate any University rule during the probationary period.

**Suspension.** Temporary separation of the Student from active Student status or Student status.

- a. A Student who is suspended for less than one academic year shall be placed on inactive Student (or equivalent) status (subject to individual Campus policies) and remains eligible to re-enroll at the University (subject to individual Campus

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<sup>1</sup> This document does not replace or revise any definitions outlined in the Executive Orders currently in place. All definitions in this document are taken from the [August 14, 2020, CSU Executive Order 1097](#), [August 14, 2020, CSU Executive Order 1096](#), [August 14, 2020, CSU Executive Order 1098](#)

<sup>2</sup> Where there is no finding and students agree to an informal resolution, the guidance provided regarding sanctions is still applicable. This guidance does not encompass all measures available to address a finding of a violation. For example, campuses may include other educational and remedial sanctions where appropriate.

enrollment policies) once the suspension has been served. Conditions for re-enrollment may be specified.

- b. A Student who is suspended for one academic year or more shall be separated from Student status but remains eligible to reapply to the University (subject to individual Campus application policies) once the suspension has been served. Conditions for readmission may be specified.
- c. Suspension of one academic year or more shall be entered on the Student's transcript permanently without exception; this requirement shall not be waived in connection with a settlement agreement<sup>3</sup>.

**Expulsion.** Permanent separation of the Student from Student status from the California State University system. Expulsion shall be entered on the Student's transcript permanently without exception; this requirement shall not be waived in connection with a settlement agreement.

More than one sanction may be imposed for a single violation.

A record of disciplinary sanctions will be entered on a student's transcript in accordance with CSU Executive Order 1098.

Generally, students found to have engaged in sexual misconduct, dating or domestic violence, stalking or sexual harassment may be **suspended for no less than one year**. If aggravating factors (defined below) are present, a more severe sanction will be imposed. Conversely, if mitigating factors (defined below) are present a lesser sanction may be considered.

Decision makers may also consider the length of time the Complainant is expected to remain on campus to complete the Complainant's education in determining the appropriate length of a suspension. However, this should not be the primary factor considered and suspensions should not be indefinite.

Expulsion from the CSU may be appropriate where students have been found to have engaged in egregious acts of sexual misconduct, dating or domestic violence, stalking, or sexual harassment. Egregious conduct exists where an aggravating factor or multiple aggravating factors are present. Determining whether conduct is egregious is done at the discretion of the Title IX Coordinator in consultation with Student Conduct Administrator. Factors that should be considered in this determination include, but are not limited to: the severity of the conduct (for sexual misconduct, sexual penetration and oral copulation could be considered severe for the purposes of this analysis), the location, nature, duration, and extent of any touching, the level of injury that resulted from the conduct, and the level of interference with the complainant's participation in educational activities.

Expulsion should be the likely outcome for policy violations in which a factual finding is made regarding any one of the following **aggravating factors**:

Use of force, violence, threats, foreign objects, or coercion

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<sup>3</sup> See Article V, EO 1098. Note that a settlement agreement includes a resolution agreement as defined in Executive Orders 1096, 1097, and 1098 and any other matters that occur as part of the campus administrative process.

Use or threat of use of weapon(s); weapons include, but are not limited to guns, knives, or other household objects that can be used to threaten or inflict physical injury

Causing the other person's incapacitation through the use of drugs or alcohol

Taking advantage of a person's incapacitation where there is a preponderance of evidence that the respondent knew of the complainant's state

Recklessly or intentionally causing or attempting to cause serious bodily injury

Sexual penetration (oral, vaginal, or anal, including the use of a foreign object) while ignoring the objections of the other person

More than one violation of EO 1096/1097 whether in consort with the current policy violation being sanctioned or previous EO 1096/1097 policy violations by the same student

Holding someone against their will

Premeditation or planning

Recording, photographing, transmitting, viewing, posting, publishing, or distributing intimate or sexual images, without consent, other than to assist the parties in reporting or proving the misconduct or innocence

Abuse of authority, trust, or confidence

Deliberate and repeated violations of any no contact directive, including where harm is threatened, or attempts are made to interfere with the investigative or hearing process

Deliberate and repeated Interference with interim measures/remedies that impacts a party's ability to participate in or benefit from the services, activities or opportunities offered by the University.

Additionally, where there is a finding of conduct that would not typically result in expulsion, these factors will be considered in determining the severity of disciplinary sanctions:

Use of humiliation, or intimidation

Attempts were made to obstruct the investigation

The wishes of the complainant, so long as it does not result in disparate outcomes

The severity of the offense, including the location, nature, duration, and extent of any touching

The harm, or potential harm, to the complainant, campus community or member of the campus community

The number of policy violations (single or repeated acts) either within the same matter or in prior matters

The intent or motive for any violation, including any planning or premeditation

Abuse of authority, trust, or confidence

Any sanctions previously imposed for the same or a similar violation

Any other past disciplinary record of the student

Pressured or induced others to participate in the violation

Hate or bias based on the complainant's membership or perceived membership in a protected group

Age, maturity, and cognitive abilities (including cognitive capacity to comprehend social cues) of the parties

Respondent expression of remorse/demonstrated understanding of the harm caused by actions

Prior sanctions from another college or school for sexual misconduct, sexual harassment, dating violence, domestic violence, or stalking

Relevant criminal history as to the complainant

Prior civil action indicating a respondent had a history of sexual misconduct, sexual harassment, dating violence, domestic violence, or stalking with the complainant

Recording the sexual activity (by video or audio means)

The following factors may not be relied upon to justify a lesser sanction:

Respondent's own intoxication

A prior relationship of the parties in and of itself

Prior sexual history with any other person

Willingness of a minor, unless there is no more than a one-year age difference

Clothing of the complainant

Past acts of Complainant, not related to investigation

Public coverage or reputational concerns of the institution

Complainant's voluntary use of alcohol or drugs

Complainant's counseling or mental health history

Complainant's status as a sex worker

Gender, gender identity, gender expression, sexual orientation, or any other protected category of the parties

Respondent's participation or involvement in student government, athletics, or other campus activities

Participation by or pressure from alumni, athletics, attorneys, parents or other third parties

Respondent's degree progress at the time that outcome is deemed final