

Exploring Sanctions and Early Interventions for Faculty Sexual Harassment in Higher Education

Kait Spear, MPP, *National Academies of Sciences, Engineering, and Medicine*

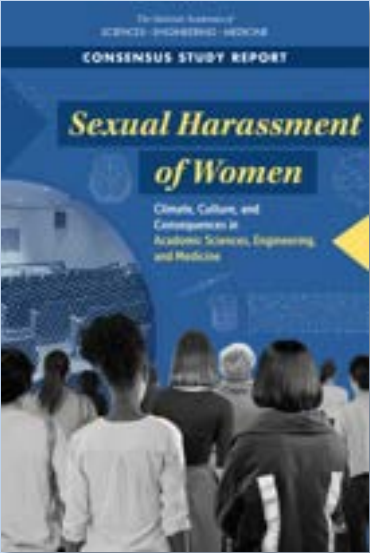
Tina Marisam, JD, *University of Minnesota*

Brijen Shah, MD, AGAM, *Icahn School of Medicine at Mount Sinai*

TUESDAY, OCTOBER 29TH, 2024

Featured Session Overview

Context



Foundation

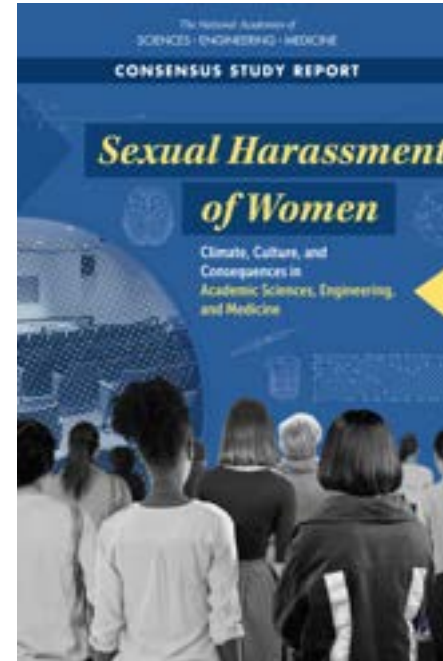


Deep Dives



About the Action Collaborative on Preventing Sexual Harassment in Higher Education

Created in April 2019, the Action Collaborative grew out of a desire among higher education institutions to collaborate and learn from each other as they worked to act on the findings and recommendations from the National Academies' Sexual Harassment of Women report.



Key Recommendations for Higher Education Institutions

Make systemwide changes that address the systems, cultures, and climates that enable sexual harassment to perpetuate:

- Address the most common form of sexual harassment: gender harassment
- Create diverse, inclusive, and respectful environments
- Diffuse the hierarchical and dependent relationship between trainees and faculty
- Improve transparency and accountability
- Provide support for targets
- Strive for strong and diverse leadership

Recognizing All Types



Of Sexual Harassment

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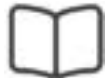
Goals of the Action Collaborative

1. Facilitate and inform action on preventing and addressing harassment;
2. Share and elevate evidence-based policies and strategies for reducing and preventing sexual harassment;
3. Advance research on sexual harassment prevention, and gather and apply research results across institutions;
4. Raise awareness about sexual harassment and its consequences, and motivate action to address and prevent it; and
5. Assess progress in higher education toward reducing and preventing sexual harassment in higher education.

Public Resources from the Action Collaborative



Summit: Annual open forum for identifying, discussing, and elevating innovative and promising approaches – Presentation and Materials available online



Publications: Working Groups, composed of representatives from the Member Institutions, work together to gathering information on research and practices and produce publications that can inform and enable action.



Rubric: List of the areas of work that align with the findings and recommendations from the National Academies 2018 report on *Sexual Harassment of Women*



Repository of Work: Collection of the most significant, novel actions that each Action Collaborative institution has taken

EXPLORING SANCTIONS AND EARLY INTERVENTIONS FOR FACULTY SEXUAL HARASSMENT IN HIGHER EDUCATION (2022)

This paper lays out the challenges and current landscape for how higher education deals with harassment by faculty members and notes some ways in which academic administrators may intervene and hold tenured or tenure-track faculty accountable for harmful behaviors that are not deemed institutional or legal violations.



Collaborative Publications from the Action Collaborative



STRATEGIES FOR DEVELOPING, IMPLEMENTING, AND SUSTAINING SEXUAL HARASSMENT BYSTANDER INTERVENTION PROGRAMS FOR FACULTY, STAFF, AND GRADUATE STUDENTS (2023)

This paper explores different approaches to developing, implementing, and evaluating the efficacy of sexual harassment bystander intervention trainings for faculty, staff, and graduate students.



INNOVATIVE PRACTICES TO STOP PASSING THE HARASSER (2022)

Two innovative practices from the University of Wisconsin System and the University of California, Davis provide comprehensive descriptions of policies and practices for stopping what is called “passing the harasser.” The publications detail how the policies work and what processes were used to develop and implement them, with the aim of enabling other organizations to adapt and apply it to their own environment.



Universities
of Wisconsin
System



University of
California,
Davis



EXPLORING POLICIES TO PREVENT “PASSING THE HARASSER” IN HIGHER EDUCATION (2023)

This paper explores decision points around the development and implementation of policies to prevent the practice known as “passing the harasser.”



Collaborative Publications from the Action Collaborative



APPROACHES TO THE EVALUATION OF SEXUAL HARASSMENT PREVENTION AND RESPONSE EFFORTS (2023)

This paper provides an introduction to methods and approaches for evaluating interventions designed to prevent and respond to sexual harassment in their institutions.



GUIDANCE FOR MEASURING SEXUAL HARASSMENT PREVALENCE USING CAMPUS CLIMATE SURVEYS (2021)

This paper provides guidance for measuring the prevalence of sexual harassment using campus climate surveys. Using decades of research on sexual harassment, it identifies key considerations for each step in the climate assessment process.



EVALUATING THE EFFECTIVENESS OF INTERVENTIONS TO PREVENT AND ADDRESS SEXUAL HARASSMENT: PROCEEDINGS OF A WORKSHOP (2021)

On April 20-21, 2021, the National Academies of Sciences, Engineering, and Medicine hosted the workshop Developing Evaluation Metrics for Sexual Harassment Prevention Efforts. The workshop explored approaches and strategies for evaluating and measuring the effectiveness of sexual harassment.

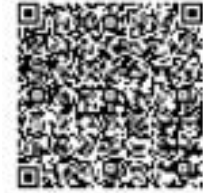


Collaborative Publications from the Action Collaborative



PREVENTING SEXUAL HARASSMENT AND REDUCING HARM BY ADDRESSING ABUSES OF POWER IN HIGHER EDUCATION INSTITUTIONS (2023)

This paper examines the types of power differentials in academia, how abuses of power can take the form of sexual harassment, and strategies for preventing and remediating such abuses.



APPLYING PROCEDURAL JUSTICE TO SEXUAL HARASSMENT POLICIES, PROCESSES, AND PRACTICES (2022)

This paper explores how a procedural justice framework could help guide improvements and revisions to policies, processes, and practices within higher education institutions with the potential to mitigate the negative experiences and outcomes of those affected by sexual harassment.



PREVENTING AND ADDRESSING RETALIATION RESULTING FROM SEXUAL HARASSMENT IN ACADEMIA (2023)

This paper discusses the existing legal protections for retaliation directed at those who experience or report sexual harassment in higher education. It discusses the conditions that enable retaliation to occur, negative consequences of retaliation, and policies and practices that may help prevent retaliation.



Action Collaborative on Preventing Sexual Harassment in Higher Education

Website:

[nationalacademies.org/
sexual-harassment-
collaborative](https://nationalacademies.org/sexual-harassment-collaborative)

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Exploring Sanctions and Early Interventions for Faculty Sexual Harassment in Higher Education

Presentation for the 13th Annual ATIXA Conference

Kait Spear, MPP, *National Academies of Sciences, Engineering, and Medicine*

OCTOBER 29, 2024

Exploring Sanctions and Early Interventions for Faculty Sexual Harassment in Higher Education

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Definitions

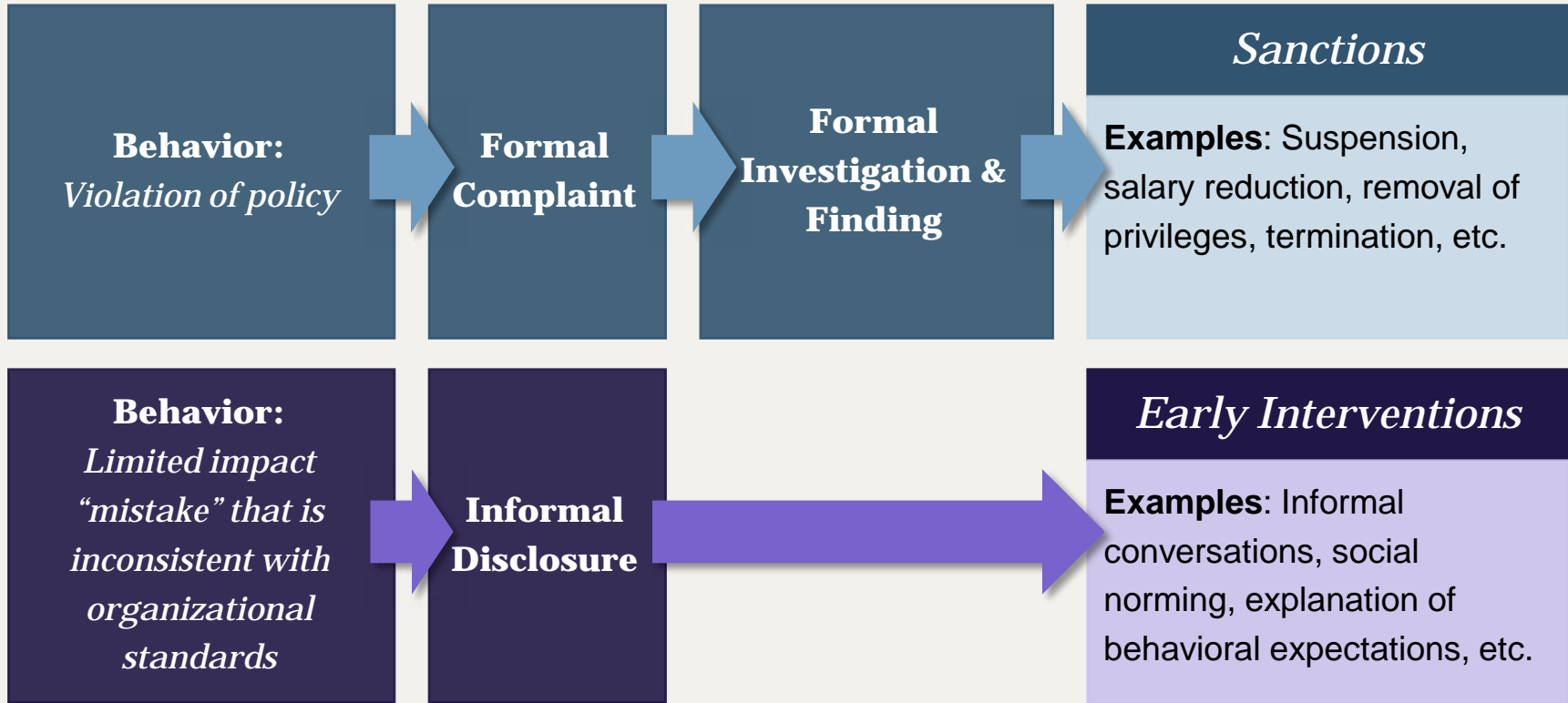
Sanctions

“Formal disciplinary actions imposed following a formal investigation and finding of responsibility, such as suspension, salary reduction, demotion, removal of privileges, or termination of employment.”

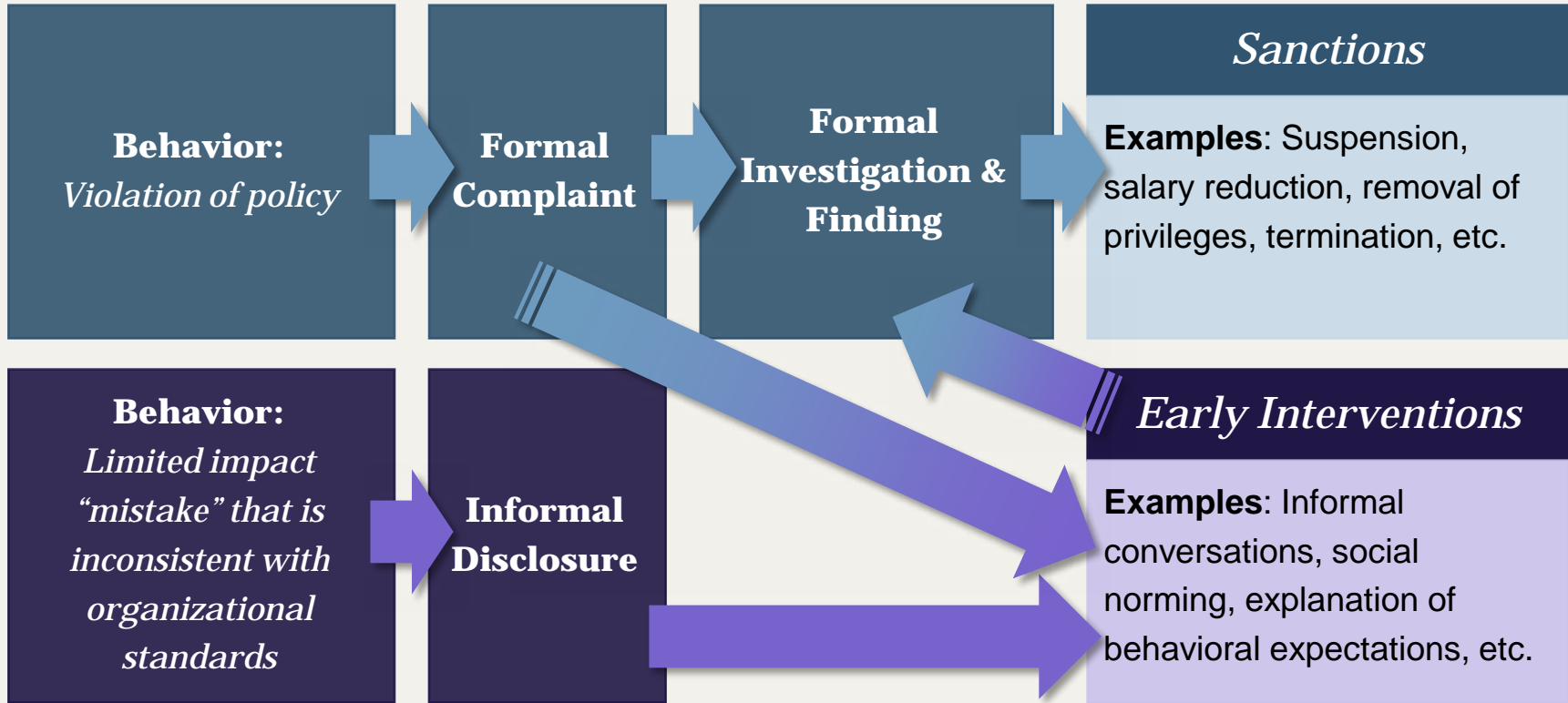
Early Interventions

“Responsive actions (e.g., corrective, rehabilitative, restorative, or monitoring measures) designed to (1) correct the harmful, sexually harassing behaviors by the accused faculty member before they rise to the level of a policy violation and (2) address the harm caused to the harmed party.”

Sanctions and Early Interventions



Sanctions and Early Interventions



Faculty Sexual Harassment in Higher Education

Consequences of Faculty Sexual Harassment

- Decreased mental health and well-being
- Education limitations
- Disruption to academic career advancement

Characteristics of Higher Ed

- Academic star culture
- Academic hierarchal systems
- Strong due process protections
- Not equipped to respond to incidents that do not constitute a policy violation

Current Challenges

Coordination

Transparency

Consistency

Accountability

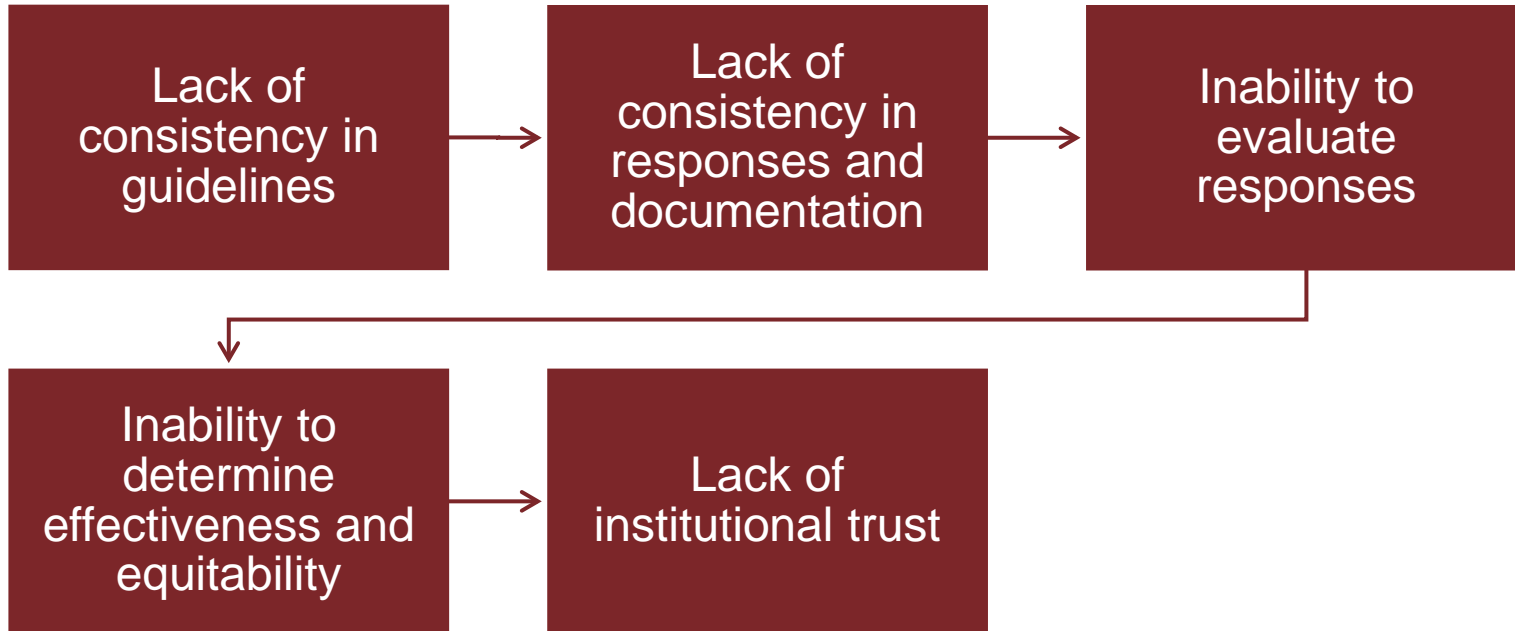
Lack of Coordination in Documenting Faculty Sexual Harassment

- **Multiple entities (individuals and offices) are involved** in receiving and handling reports of sexual harassment
- The decentralized processes for receiving and documenting both formal complaints and informal disclosures of sexual harassment can result in **outdated, inaccurate, and incomplete records**
- Some institutions also **lack centralized mechanisms** (e.g., shared software or hotspot mapping) for documenting and tracking reports
- Cases or incidents may not always be reported
- The lack of sexual harassment documentation could potentially contribute to the problem of **“passing the harasser”**

Lack of Transparency in Responses to Faculty Sexual Harassment

- **Factors that impact level of transparency**
 - Employees' rights to privacy and discretion;
 - The purpose for sharing the information;
 - Differing requests for privacy by harmed parties,
 - The potential impact on the reintegration of rehabilitated faculty;
 - Federal and state laws and regulations;
 - Contractual legal agreements;
 - Federal funding agencies; and
 - Professional societies.

Lack of Consistency in Responses to Sexual Harassment



Lack of Focus on Correcting Behavior through Accountability

- Many institutions have placed **insufficient emphasis** on early intervention and have **underdeveloped systems for early intervention**
- The processes to implement early intervention are often inconsistent and **lack of clear guidelines on the range of actions** that can be taken
- A lack of guidance can result in “well-meaning” interventions with **the potential to cause harm**

Early Interventions to Correct Behavior Through Accountability

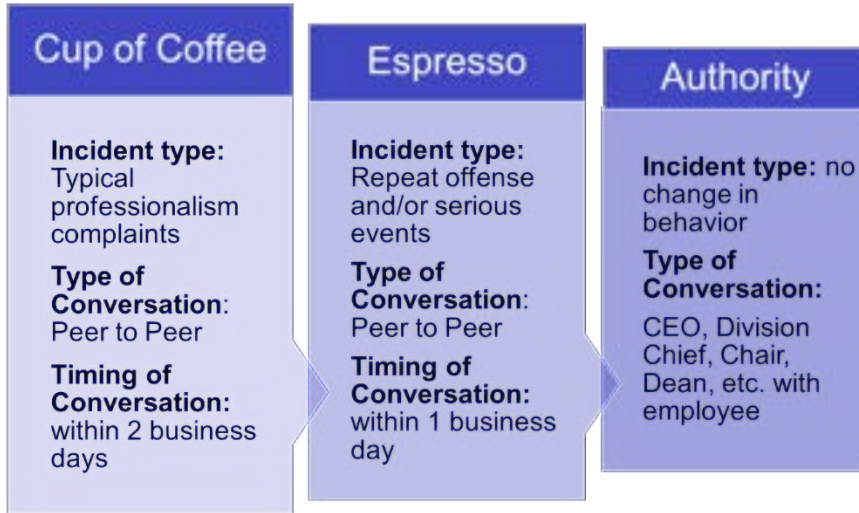


FIGURE 1. Tiered intervention process for the “cup of coffee” program at Duke Health System, designed to address disruptive behaviors through peer accountability.

SOURCE: Adapted from Rehder, 2020.

- The University of California, Davis, has instituted a mechanism called “**documented discussions**” (UC Davis, 2019).
- The “**cup of coffee**” program is used in the Duke Health System and based on a model developed at Vanderbilt University (Hickson et al., 2007).

Current Challenges

Coordination

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Accountability

Action Collaborative on Preventing Sexual Harassment in Higher Education

Website:

**[nationalacademies.org/
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Can a cup of coffee be your fire prevention plan?

Brijen J. Shah, MD

VP Medical Affairs and Associate Dean for GME

ATIXA Conference

October 29, 2024



Learning objectives

Describe features of an early peer-based response system for mistreatment.

Illustrate the value of a leadership huddle as part of an early response system.



Acknowledgements

COPHE team:

- Rebecca Anderson
 - Michael Broadman
 - Melissa Peralta
-
- Center for Patient and Professional Advocacy:
 - Tom Catron
 - Bill Cooper
 - Brittany Jenkins



Case

Dr. Sarah Johnson, a dedicated and skilled resident, is preparing for a critical surgical procedure under the supervision of Dr. Mark Thompson. Throughout her residency, she has consistently demonstrated her competence and commitment. However, during a pre-operative meeting, Dr. Thompson begins to overshadow her contributions.

As Dr. Johnson presents her surgical plan, Dr. Thompson frequently interrupts her, dismissing her suggestions and redirecting the conversation toward the opinions of male colleagues in the room. He makes comments like, "I think we should stick with what the experienced surgeons suggest," implying that Sarah's input is less valuable due to her gender.

When Dr. Johnson tries to assert her ideas, Dr. Thompson rolls his eyes and states, "This isn't the time for experimentation," further undermining her confidence in front of the team. The atmosphere becomes tense, and other resident physicians notice the dynamic but feel uncomfortable intervening.

At your institution, if this situation were reported, what would happen next:

- a. A formal investigation
- b. Nothing
- c. Referral to a leader for intervention
- d. A peer would give feedback

Provider Feedback is the Missing Link

“Big P”

Serious adverse events



Provider root cause



Coaching or practice evaluation

Little “p” events



COPHE Program Overview

COPHE uses a data-driven, evidenced based approach to provide systematic feedback to providers on unprofessional behaviors to promote self- and group-regulation

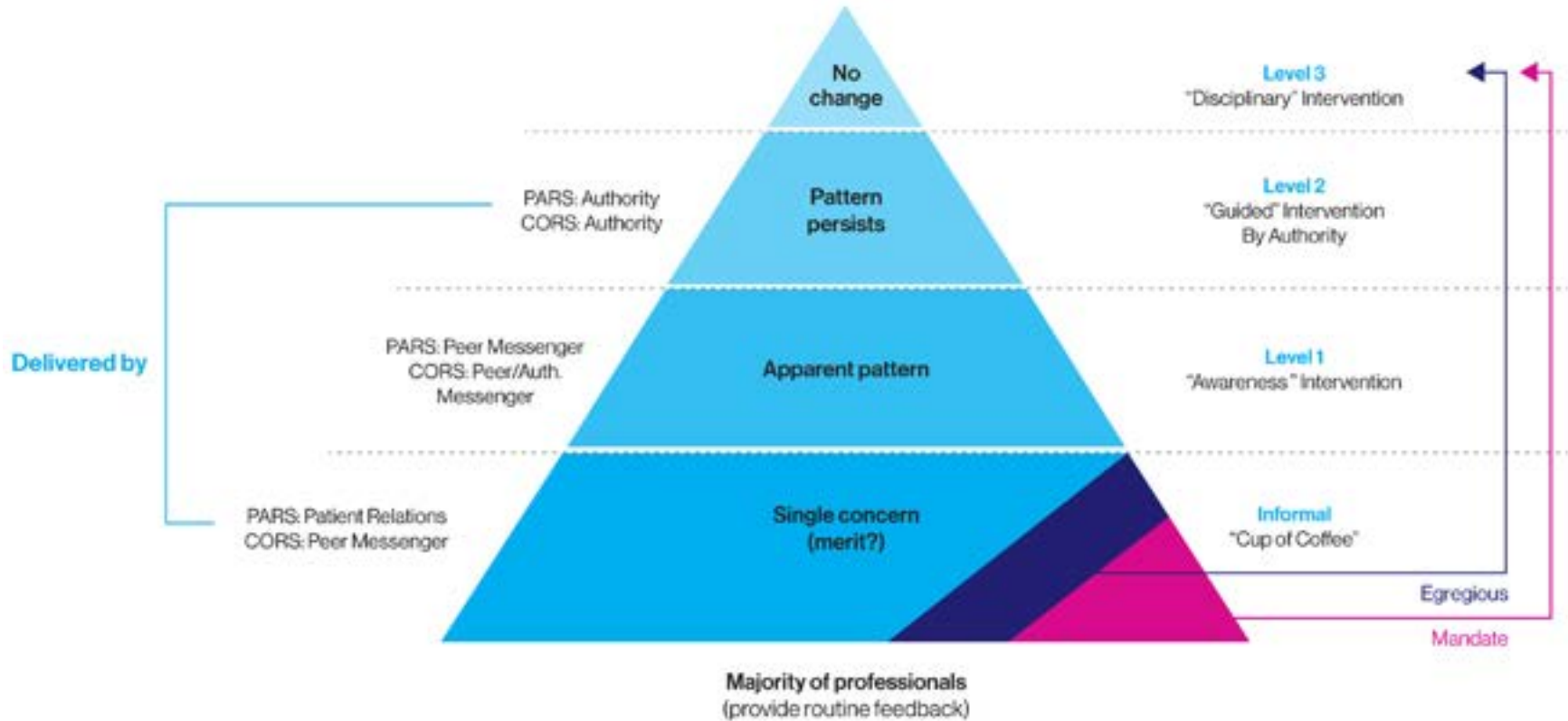
Co-Worker Observation Reporting System (CORS)

- Launched July 2021
- Audits Safety Net, Mistreatment Portal, OB Code, Compliance Helpline to identify behavior concerns of providers
- Relies on unsolicited **co-worker observation reports**
- **Cup of Coffee Intervention**: Trained peer messenger delivers a single report and lets the receiver know the behavior/ performance was observed
- **Awareness Intervention** when pattern is observed

Patient Advocacy Reporting System (PARS)

- Launched December 2022
- Audits patient complaint database to identify sources of dissatisfaction
- Relies primarily on **unsolicited patient complaint reports**
- **Awareness Conversation Intervention**: Trained peer messenger communicates that there is a pattern of observed behaviors/performance (based on cumulative data)

Promoting Professionalism Pyramid



Hickson GB, Pichert JW, Webb LE, Gabbe SG. A complementary approach to promoting professionalism: Identifying, measuring, and addressing unprofessional behaviors. *Acad. Med.* 2007 Nov;82(11):1040-1048.

COPHE Data Overview: CORS

Between July 1, 2021 and October 11, 2024:

- **125** trained peer messengers
- **980** Total CORS Reports To Date
- **637** Cups of Coffee delivered
- **298** Huddles convened
- **60%** of reports about Attendings, followed by **24%** Residents/Fellows and **10%** APPs
- **11%** of reports from the Compliance Hotline, **22%** from Mistreatment Portal, **59%** from SafetyNet
- Top 5 specialties involved include **OBGYN, Cardiology, Anesthesiology, Emergency Medicine, and General Surgery**

COPHE Data Overview: CORS

Bias and Discrimination Code: The reporter expresses concern about a professional's discriminatory or harassing behavior.

Includes:

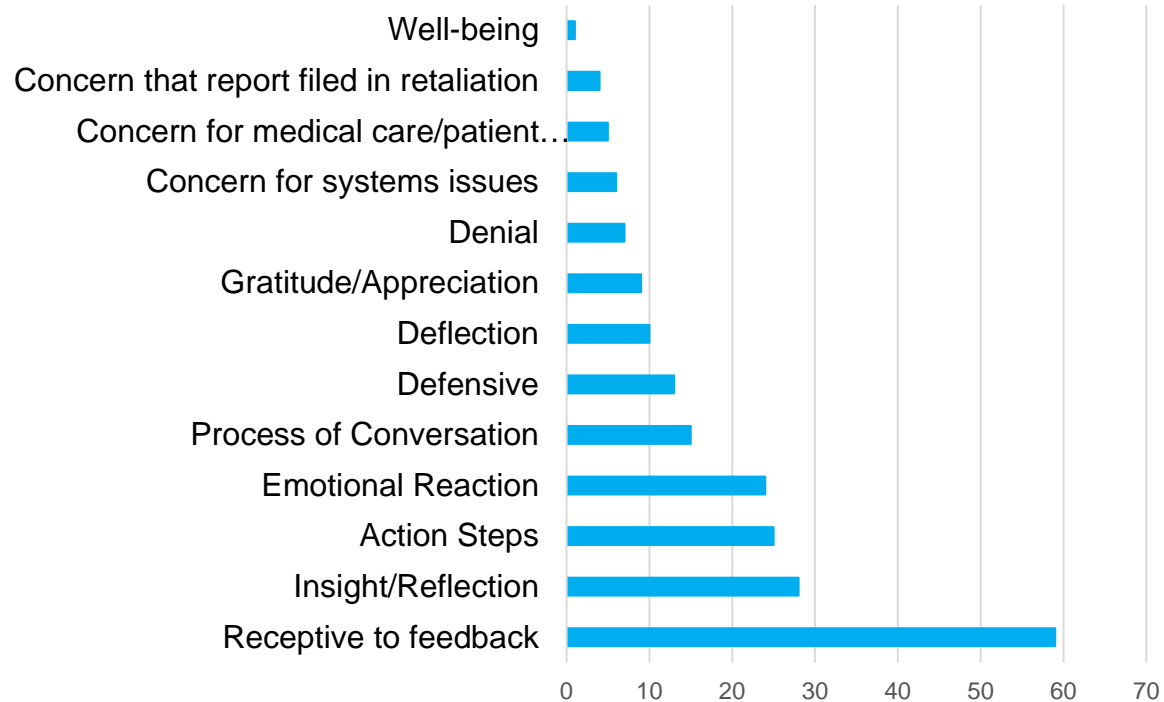
- Unwanted/inappropriate sexual comments
- Inappropriate touching
- Sexual harassment
- Discriminatory, biased, or derogatory comments or actions or false assumptions based on another's race, ethnicity, religion, age, gender, sexual orientation, or disability.
- Allegations of retaliation

Report Status	Count
Cup of Coffee Assigned	69
Escalated/ Locally Addressed	103
Pending Messenger Assignment / Delivery Assignment Unknown	0
No Assignment Due to Departure	1
Total	173
<small>*Distinct report count = 163</small>	

What Peer Messengers Can Tell Us About Professionalism

- We coded 424 messenger reports submitted between July 2021 to December 2022
- Attending, APP and Trainee messengers report similar themes, though most feedback is about Attendings
- Many recipients receptive to feedback, acknowledging unprofessional behavior and showing insight/reflection

Common Themes in Messenger Feedback



CORS Messenger Feedback

- “She stated that she “had a bad moment” because of feeling the stress of handling multiple issues at the same time. She is aware that **perception is everything** and that **exhibiting professionalism is key** to being a good provider.” – P.S.
- “Employee was open and willing to partake in the conversation...**She took ownership of her words** and does think she could have acted better in some of the instances. She felt she can address her team in a **more productive way** while staying true to herself and will take time to reflect on that.” – J.B.
- “He acknowledged what happened and that the interaction had **opportunity for improvement.**” – P.D.
- “Dr. T listened respectfully to the information shared from the report. While he strongly disagreed with the characterization of his behavior from the report...he did acknowledge that it is important to demonstrate a **culture of respect**...But overall, he was respectful in our discussion and acknowledged that he will take time to **reflect on the situation and how it was perceived by the other party.**” – S.M.

Elements for a Feedback Conversation

OPENING

“You are an important team member..”

“I observed...”

SHARE FEEDBACK

Describe what was observed

Avoid seeming judgmental

“This behavior does not appear to be consistent with our values and commitment to safety...”

“I know there are two sides...”

Pause

RESPOND

Pushbacks

Questions

Emotions

Avoiding the pivoting “but”

CLOSE

Express appreciation

Ask to reflect

Encourage alternative response in future

PUSHBACK

Deflection

Denial

Dismissal

Know the mission • Stay on the mission • Don't expect thanks

Anticipate Pushback



Deflection



Dismissal



Distraction



It's Not a Control Contest

Features of a system

Shared leadership with the target group

Training, education and feedback

Data collection

Senior leadership support

Fidelity to process

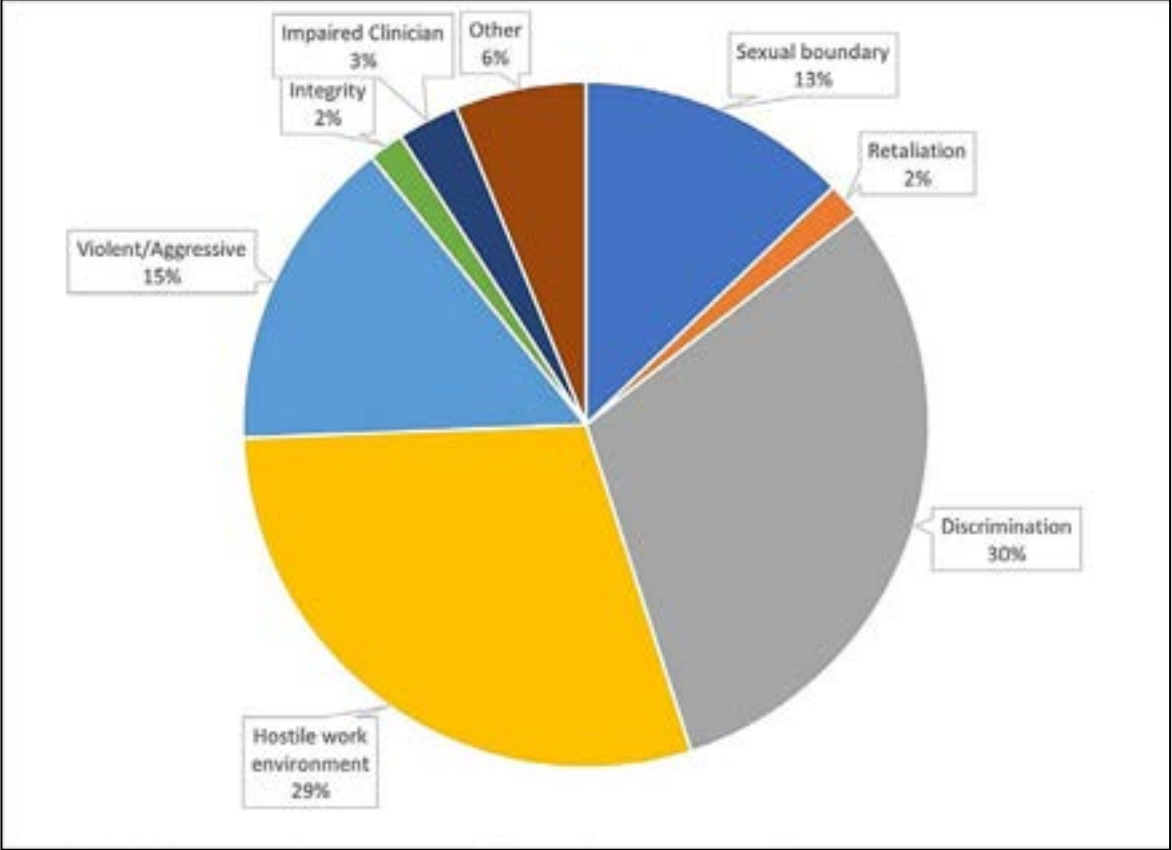
Case

Dr. Thompson had two more episodes in the next two months with similar behavior. One report was entered into your facility's event reporting system and the other was verbally reported to a clinical leader.

At this point, what do you recommend doing?

- a. A formal investigation
- b. Nothing
- c. Conduct a climate review of the department
- d. Ask the leader to address this

Triggers for a Huddle



Leadership Huddle

Goals: Share information, determine next steps, ensure consistency of process

Stakeholders:

- Human Resources
- Chief Medical Officer
- Department Chair
- Legal and Medical Affairs
- Medical Education
- Risk Management
- Nursing
- Compliance

Leadership Huddle



Information sharing



Determine if an investigation is needed



Implement any temporary sanctions



Assess wellbeing concerns

How COPHE Addresses Current Challenges

Coordination

One clear group who reviews
Central repository of data

Transparency

Sharing of data

Consistency

Same process for all
Evidence based coding

Accountability

Escalation pathway
Connection to medical affairs and school



University of Minnesota: Responsive Action Strategies in Grievance Processes With Faculty Respondents

Tina Marisam, Title IX Coordinator
Associate Vice President, Office for Equity and Diversity

October 29, 2024
ATIXA Conference



OFFICE FOR EQUITY AND DIVERSITY



Responsive Action Strategies in Cases With Faculty Respondents

- Providing the same grievance process for student, staff, and faculty respondents
- Publishing a framework for responsive action decision-making
- Setting decision-makers up for success
- Double-checking responsive action decisions and implementation



Providing the Same Grievance Process for Student, Staff, and Faculty Respondents

Providing the Same Grievance Process for Student, Staff, and Faculty Respondents

Poll Question

Describe your institution's procedures for responding to sexual misconduct by faculty and staff.

- a. Uniform grievance procedures for faculty and staff
- b. Grievance procedures for faculty and staff respondents differ in some ways, but are generally equivalent in terms of length and procedural fairness protections offered
- c. Procedures for faculty respondents are more time-consuming, more involved, or have other features that may hinder the institution's ability to hold faculty respondents accountable

Providing the Same Grievance Process for Student, Staff, and Faculty Respondents

Prior to 2020, Minnesota's procedures in sexual misconduct cases with faculty respondents made it more difficult to discipline faculty members for sexual misconduct than it was to discipline students or staff.

- A “clear and convincing evidence” standard was applied to faculty respondents, whereas a “preponderance of the evidence” standard was applied to staff and students.
- Faculty discipline required a longer and more involved process, with consultation with tenured faculty in the unit and a hearing before an all-faculty panel.

Providing the Same Grievance Process for Student, Staff, and Faculty Respondents

- Minnesota added a new section in its Faculty Tenure policy stating that reports of faculty sexual misconduct will be addressed under the same procedures applicable to all other University members.
- Resulted in a consistent grievance procedures for all respondents:
 - the “preponderance of the evidence” standard;
 - a decision-making panel consisting of five panelists, including at least one panel member of the same job classification (faculty, staff, or student) as each party; and
 - a standard sanctioning process for all employees with built in checks to ensure consistency across employee classes, colleges, and campuses.



Publishing a Framework for Decision-Making on Responsive Action

Publishing a Framework for Decision-Making on Responsive Action

Poll Question

Select the answer that best describes the sanctioning guidelines used by your institution:

- a. Sanctioning guidelines for students and employees
- b. Sanctioning guidelines for students only
- c. Sanctioning guidelines for employees only
- d. No sanctioning guidelines

Framework for Responsive Action Decision-Making

[Responsive Action Framework](#)

Purposes of responsive action

- Hold the respondent accountable in a way that communicates the seriousness of their conduct.
- Prevent further misconduct from occurring.
- Address the harm caused to the complainant and community.
- Foster an organizational climate where community members perceive that discrimination and sexual misconduct is not tolerated, that reports of this conduct will be taken seriously, and that retaliation for reporting this conduct is unlikely to occur.

Principles for responsive action

- Effectiveness, proportionality & consistency

Framework for Responsive Action Decision-Making

Types of responsive action:

- **Disciplinary measures** - designed to hold respondents accountable and prevent recurrence of the misconduct.
- **Rehabilitative measures** - designed to prevent recurrence of the misconduct through learning, skill building, expectation-setting, and behavior change.
- **Restorative measures** - designed to address the harm to the impacted person or community by the misconduct
- **Monitoring measures** - designed to ensure that the implemented disciplinary, rehabilitative and restorative measures are effective in meeting our goals.



Framework for Responsive Action Decision-Making

Provides examples of the types of responsive action (termination, serious or moderate disciplinary action, or responsive action other than disciplinary action) that may be effective and proportionate where an employee is found to have engaged in different types of discrimination or sexual misconduct.

Setting Decision-Makers Up For Success

The background features a large, abstract graphic composed of yellow and white geometric shapes. A prominent white arrow points upwards and to the right, starting from the bottom left and extending towards the top right. To its right, a yellow arrow points downwards. Below these, there are several white rectangular blocks of varying sizes, some with yellow arrows pointing upwards from their top edges. The overall composition is clean and modern, with a strong emphasis on upward movement and positive direction.



Setting Decision-Makers Up For Success

To ensure decision-makers (Deans) have maximum information:

- they receive written recommendations and information about past reports/offenses from the Title IX office.
- if there is a hearing, they receive written recommendations from the hearing panel, and an opportunity to meet with the panelists.
- they meet with representatives from the Title IX office, Human Resources, and the Office of the General Counsel to discuss the findings, the recommendations, and prior responsive action in similar matters.

The background features a yellow gradient with several white rectangular boxes and yellow arrows. Two boxes at the top have arrows pointing down towards the text. Two boxes at the bottom have arrows pointing up towards the text. The overall design is clean and modern, emphasizing the central text.

Double-Checking Responsive Action Decisions and Implementation

Double-Checking Responsive Action Decisions and Implementation



- Required approval by the Provost where the proposed responsive action differs meaningfully from the Title IX office's (or hearing panel's) recommendation.
- The Title IX office submits quarterly accountability reports to the University Auditor on any decided-upon responsive actions that have not been implemented.

Strategies for Meeting Current Challenges

Coordination

Invest in resources that set sanctioning decision-makers up for success and in structures that provide checks on responsive action decisions and implementation.

Transparency

Publish a framework for decision-making on responsive action.

Consistency

Provide the same grievance process for students, staff, and faculty respondents. Identify principles and strategies to guide sanctioning decision-making.

Accountability

All of these strategies contribute to accountability measures that are effective, proportionate, and consistent.



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