

HAWAII ADMINISTRATIVE RULES

TITLE 20

UNIVERSITY OF HAWAII

SUBTITLE 3

STATE POST-SECONDARY EDUCATION COMMISSION

CHAPTER 42

HAWAII STATE POSTSECONDARY REVIEW PROGRAM

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SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§20-42-1 Purpose. This chapter establishes the rules and procedures that govern the Hawaii State Postsecondary Review Program, which was established by the Hawaii State Legislature in accordance with the federal state postsecondary review program set forth in Title IV, part H, subpart 1 of the Higher Education Act of 1965, as amended. The purpose of the federal program is to reduce fraud and abuse in the Title IV, Higher Education Act of 1965, federal student financial assistance programs through state oversight of institutions that participate in a Title IV, HEA program. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-2 Applicability. This chapter shall apply to the administration of the Hawaii State Postsecondary Review Program, as established by Part II of HRS chapter 305H. The Hawaii State Postsecondary Review Program shall be administered in accordance with Title IV, Part H, Subpart 1, of the Higher Education Act of 1965, as it may be amended from time to time, and further in accordance with the implementing federal regulations codified in 34 C.F.R. Part 667. In the event of a conflict between this chapter and Title IV, Part H, Subpart 1, of the Higher Education Act of 1965 or its implementing federal regulations, the federal statute and the federal regulations shall control. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-3 Definitions. (a) The following terms used in this chapter are defined in §20-40-2, Hawaii Administrative Rules, which definitions are incorporated herein by reference:

"Administrative officer,"  
 "Commission,"  
 "Contested case,"  
 "Party,"  
 "Persons," and  
 "Secretary."

(b) The following terms used in this chapter are defined in the implementing federal regulations codified in 34 C.F.R. Part 667, which definitions are incorporated herein by reference:

"Professional program,"  
 "Referred institution,"  
 "Title IV, HEA program," and  
 "Vocational program."

(c) The following definitions apply to the terms used in this chapter:

"FERPA" means the Family Educational Rights and Privacy Act as codified in 20 U.S.C. §1232g, as amended, and implemented by the regulations adopted by the United States Department of Education as codified in 34 C.F.R. §§99.1-99.67.

"Hawaii State Postsecondary Review Program" means the Hawaii State Postsecondary Review Program that was established by Act 189, 1994 Session Laws of Hawaii, which added a new Part II to HRS chapter 305H. The Hawaii State Postsecondary Review Program implements the state postsecondary review program established by the Higher Education Amendments of 1992, P.L. 102-325, by adding a new Part H, Subpart 1, to Title IV of the Higher Education Act of 1965, and implemented by federal regulations codified in 34 C.F.R. Part 667.

"Respondent institution" means an institution that is covered by §20-42-13.

"Review standards" means the standards established by the commission acting as the SPRE, pursuant to HRS §305H-14, to evaluate institutions identified by the United States Secretary of Education for review by the SPRE, as provided in 34 C.F.R. Part 667.

"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. §667.4, pursuant to HRS §305H-12 and this chapter.

"SPRE coordinator" means the administrator of the Hawaii State Postsecondary Review Program.

"State" means the State of Hawaii.  
 [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2)  
 (Imp: HRS Chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-4 Delegation of authority; administration of the Hawaii State Postsecondary Review Program.

(a) The commission, acting as the SPRE, delegates to the SPRE coordinator the authority to administer the Hawaii State Postsecondary Review Program in accordance with these rules.

(b) The Administrative Officer of the commission, who also serves as president of the University of Hawaii, shall not participate in the administration of the Hawaii State Postsecondary Review Program. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-5 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.

[Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2)  
 (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

## SUBCHAPTER 2

## STANDARDS AND PROCEDURES FOR REVIEW OF INSTITUTIONS

§20-42-6 State review standards. (a) Subject to non-disapproval by the United States Secretary of Education under 34 C.F.R. §667.22, the following review standards shall be used by the SPRE to review referred institutions that provide federal student financial assistance under Title IV, HEA programs:

- (1) Standard I: The institution makes available a current catalog and/or other current informational materials to students prior to entering a financial obligation to the institution. The catalog or other informational materials must include current admission requirements to the institution and to any program offered by the institution; the institution's licensure, accreditation, and ownership/control; a schedule of tuition, fees, and other charges; policies regarding course cancellations and withdrawals; the rules and regulations relating to student progress and conduct; and the institution complaint procedures.
- (2) Standard II: The catalogs, addenda, and course outlines and/or descriptions provided must accurately reflect the current requirements, curriculum, and course offerings.
- (3) Standard III: The institution develops and utilizes a method to assess a student's ability to successfully complete a program. The institution publishes and applies the assessment method.
- (4) Standard IV: The institution publishes, maintains, and enforces institutional standards of academic progress.

- (5) Standard V: The institution maintains adequate student records to include: the student's name, permanent or other address, inclusive dates of attendance, date of completion or withdrawal, degree or certificate objective, credit awarded for prior education or experience, record of credit or clock hours completed, course and cumulative grades for completed programs, and all financial aid records, if any. The institution maintains financial aid records including required financial aid counseling, financial aid payments and refunds, authorization documents, and required financial aid transcripts. Provisions are made by the institution for permanent student records to be maintained at an alternate location in the event the institution closes. Financial aid records are maintained for five years.
- (6) Standard VI: The institution complies with all relevant health and safety standards applicable to the location, institution, and program.
- (7) Standard VII: The institution has the financial and administrative resources necessary to provide the services described in its official publications. The institution has the financial and administrative capacity to operate at its given scale of operations. The institution has available annual institutional or systemwide financial statements and audit reports in accordance with generally accepted accounting standards, audited by an independent certified accountant or an appropriate governmental auditing agency.
- (8) Standard VIII: In the event that the SPRE determines an institution is at financial risk and may close, the institution will provide the SPRE with a plan to provide for program completion of currently enrolled students, and retention and access to academic and financial records.

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- (9) Standard IX: Institutions providing vocational programs charge tuition and instructional fees per academic year for those programs which do not exceed the average annual earnings for that vocation as published in the State of Hawaii Occupational Outlook Handbook or other private/public-sector recognized documents. The length of each vocational program, in clock or credit hours, is appropriate to the stated educational objectives of the program.
- (10) Standard X: Upon request, the institution makes available to prospective or enrolled students current information relating to the job market and the job availability for graduates of each occupational, professional, and vocational program. The institution makes available a description of the relationship of its programs to the state licensing or certification requirements for any occupation for which the course of instruction is designed to prepare students.
- (11) Standard XI: The institution has a methodology for determining the appropriate length of each program in clock or in credit hours to reach the program objective.
- (12) Standard XII: The institution demonstrates that length of any program of 600 hours or more is appropriate to the completion objectives of the program.
- (13) Standard XIII: The institution publishes the identity of all owners, shareholders, board members, officers or persons who exercise control over the educational institution. No person exercising control over the institution shall have been convicted of, or plead nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student assistance funds, or have been judicially determined to have committed fraud involving student assistance funds.
- (14) Standard XIV: The institution publishes policies for handling student complaints, including procedures for investigating and resolving student complaints in a timely manner.

- (15) Standard XV: The institution is able to substantiate all claims in advertising and promotional materials.
- (16) Standard XVI: The institution has a fair and equitable written refund policy that is made available to students prior to financial obligation being incurred.
- (17) Standard XVII: The institution measures success by keeping accurate records of student completion/graduation rates, withdrawal rates, placement rates for vocational and professional programs, information on students who achieve other goals, and graduate pass rates for licensure examinations.
  - (A) The institution's programs maintain a minimum completion/graduation rate of 70 percent in programs of 600 hours or less and 50 percent in programs of more than 600 hours unless the institution can otherwise justify a lower rate in terms of its mission, the selectivity of its programs, program length, and/or the extent to which non-completers have demonstrably achieved other goals.
  - (B) The institution maintains an award year withdrawal rate no greater than 33 percent unless the institution can otherwise justify a higher rate in terms of the extent to which students have demonstrably achieved other goals.
  - (C) The institution has evidence that at least 65 percent of the vocational and professional program graduates seeking employment are being placed in jobs which are related to the course of study as determined by reference to the National Occupational Information Coordinating Committee (NOICC) Master Crosswalk.
  - (D) The institution collects information on outcomes related to the objectives of students pursuing goals other than employment, such as transfer to another institution of higher education or entry into military service.



(E) Where a license is required for entry level employment, graduates of the institution achieve an annual licensure pass rate of 50 percent or 80 percent of any published state or national pass rate.

(18) Standard XVIII: To carry out a review of a referred institution, the SPRE shall contract with a nationally recognized accrediting agency or a peer review system which the SPRE determines demonstrates competence in assessing educational programs. Under this contract, the accrediting agency or peer review system shall carry out a review or provide information--with the proviso that the review or information is no more than five (5) years old from the date of the contract--from its previous grant of accreditation or preaccreditation or previous review to the SPRE regarding the agency's or system's assessment of the quality and content of the referred institution's educational programs in relation to achieving the stated objectives for which the programs were offered. In making this assessment, for each educational program, the accrediting agency or peer review system shall take into account the adequacy of space, equipment, instructional materials, staff, and student support services, including student orientation and counseling provided for each program, and any other areas specified in the agency's or system's contract with the SPRE.

(b) In accordance with 34 C.F.R. §667.21(b), the SPRE coordinator shall specify the records and information that a referred institution must maintain to demonstrate to SPRE the institution's compliance with the standards in subsection (a).

(c) The SPRE coordinator shall provide written notice of the review standards contained in subsection (a) to all institutions in the State participating in a Title IV, HEA program. [Eff JUL 24 1995 ]  
 (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-7 Procedures for review of referred institutions. (a) An institution may be reviewed by the SPRE if:

- (1) The United States Secretary of Education refers an institution to the SPRE for review under the referral criteria contained in 34 C.F.R. §667.5(b), or
- (2) The SPRE selects an institution, not referred by the United States Secretary of Education, for review in accordance with 34 C.F.R. §667.6 based on:
  - (A) The determination that the institution meets a referral criteria in 34 C.F.R. §667.5(b) on the basis of the most recent data available to the SPRE; or
  - (B) The SPRE has reason to believe that the institution is engaged in fraudulent practices.

(b) A referred institution may challenge the accuracy of referral data in accordance with 34 C.F.R. §§667.5 and 667.6.

(c) In the event the SPRE coordinator determines that the cost of reviewing all referred institutions will exceed the federal fund allocation for the SPRE's review activity, the SPRE coordinator shall have the discretion to develop a priority system for the review of referred institutions and submit such priority system to the United States Secretary of Education for approval. The development of the priority system shall reflect the objectives of protecting students, saving tax dollars, and promoting education quality, and be guided by the following criteria:

- (1) The top priority shall be those institutions that the United States Secretary of Education has scheduled for recertification for participation in a Title IV, HEA program.
- (2) The lowest priority shall be those institutions that are referred for a reason concerning the untimely submission of an audit report or a change of ownership that results in a change of control, and the SPRE previously conducted a review of the institution and found no significant violation of the state review standards established under this chapter.

Every year the SPRE shall make available information regarding its priority system for reviews of referred

institutions before conducting reviews under such priority system.

(d) The SPRE shall provide at least two weeks prior written notice of commencement of a review to the referred institution, unless an institution requests that the review commence immediately and expeditiously.

(e) All referred institutions shall provide the SPRE with an official contact person who will be responsible for representing the institution during the review process. [Eff JUL 24 1995 ]  
 (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-8 Review process. (a) The review shall be conducted in two parts on the basis of the review standards described in §20-42-6. The SPRE shall conduct an analysis of Standards I through XVII. The review under Standard XVIII shall be carried out by a nationally recognized accrediting agency or a peer review system which the SPRE determines demonstrates competence in assessing educational programs. In determining whether a peer review system is competent in assessing educational programs, the SPRE shall determine that the system has all of the following:

- (1) An established basis for evaluating educational quality;
- (2) Review procedures that include the selection of peer reviewers who have experience in evaluating the types of programs offered by the institution; in the selection of peer reviewers, the system must demonstrate that it has a method for consultation with the referred institution which includes the right of the referred institution to disqualify any reviewer for cause; and,
- (3) Established policies and procedures that guard against bias in conducting reviews of institutions.

(b) The review will be conducted in accordance with the guidelines provided in 34 C.F.R. §§667.21, 667.23 and 667.24. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

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§20-42-9 Report of findings. (a) Upon completion of a review of a referred institution, the SPRE shall issue an initial report of its findings. No later than 45 days after the completion of the review process, a copy of this initial report shall be provided to the referred institution by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

(b) In the event SPRE determines that a referred institution is in violation of a review standard, the initial report shall include the following: a citation of the review standard violated, brief description of the nature of the violation, and a prescription of corrective action the referred institution must take unless SPRE determines on the basis of compelling evidence provided by the referred institution that the failure to satisfy a review standard does not warrant further action by the SPRE.

(c) The referred institution shall be given a minimum of 30 days to respond to SPRE's findings and required corrective action contained in the initial report.

(d) If the referred institution responds to the initial report within the time allowed by SPRE, SPRE shall evaluate the response and issue a final report within 30 days after receipt of the referred institution's response to the initial report. A copy of this final report shall be provided to the referred institution by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

[Eff <sup>JUL 24 1995</sup> ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-10 Report to the United States Secretary of Education. (a) A copy of the final report issued under §20-42-9 shall be provided to the United States Secretary of Education within 30 days after issuance to the referred institution.

(b) In the event the referred institution does not respond to the initial report by the date allowed by the SPRE, the initial report shall become the final report on the day next following the response date. A copy of the report shall be provided to the United States Secretary of Education.

(c) In the event the final report includes a finding of violation of a review standard(s) and no corrective action is required by the SPRE, an explanation of why no corrective action is prescribed shall be included in the report.

[Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-11 Termination of participation in a Title IV, HEA program. (a) In the following circumstances SPRE may recommend to the United States Secretary of Education that a referred institution should no longer participate in a Title IV, HEA program:

- (1) If the SPRE review results in a finding of violation of a review standard established under this chapter;
- (2) If a referred institution does not respond, within the time allowed by SPRE, to SPRE's initial report or comply with SPRE's required corrective action when the SPRE's findings demonstrate a violation of review standard(s);
- (3) If a referred institution does not allow SPRE or its reviewers to enter the premises of the referred institution to conduct a review; or,
- (4) If a referred institution fails to provide SPRE with prompt access to the referred institution's documents and records.

(b) SPRE's recommendation for termination will be submitted to the United States Secretary of Education pursuant to 34 C.F.R. §667.25.

(c) A copy of SPRE's recommendation for termination shall be provided to the referred institution by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

[Eff <sup>JUL 24 1995</sup> ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-42-12 Due process. (a) A referred institution that is the subject of a SPRE recommendation that the institution is in violation of a review standard and should no longer participate in a Title IV, HEA program may institute a contested case under subchapter 5 of chapter 20-40, Hawaii Administrative Rules, to challenge the recommendation within 30 days after receipt of the SPRE's recommendation for termination. The commission's rules applicable to contested cases, which are prescribed in subchapter 5 of chapter 20-40, Hawaii Administrative Rules, shall apply to the contested case. Judicial review of the commission's final decision may be sought pursuant to §91-14, HRS.

(b) Upon conclusion of the process under subsection (a), if the SPRE continues to conclude that the institution should no longer continue to participate in a Title IV, HEA program, the SPRE will inform the United States Secretary of Education of those findings and that determination.

[Eff <sup>JUL 24 1995</sup> ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

## SUBCHAPTER 3

## CONSUMER COMPLAINTS PROCEDURE

§20-42-13 Allowable complaints. (a) Pursuant to 20 U.S.C. §1099a-3(j) and HRS §305H-15, SPRE shall receive complaints from students, faculty, and others, which meet the criteria under subsection (b).

(b) A complaint is allowable for purposes of this subchapter if it meets all of the following requirements:

- (1) The complaint must pertain to an institution of higher education in the State that participates in a Title IV, HEA program.
- (2) The complaint must pertain to one of the following subjects:
  - (A) The respondent institution's management or conduct of its participation in a Title IV, HEA program, or
  - (B) The respondent institution's alleged misleading or inappropriate advertising and promotion of its educational programs.
- (3) The complainant has exhausted all available institutional complaint procedures of the respondent institution.
- (4) The complaint is in writing and filed at the commission's office within 120 days from the date of the alleged misconduct or from the date on which the complainant became aware of the alleged misconduct, whichever date is later.

(c) It is not the function of SPRE to resolve or settle complaints. Upon receipt of an allowable complaint, SPRE shall determine whether the complaint is verifiable by using the complaint procedure described in §20-42-14. In verifying a complaint, the SPRE shall use available governmental and/or professional standards for "truth in advertising" and federal guidelines, such as that set forth in 34 C.F.R. Part 668, for determining administrative capability in managing Title IV, HEA programs. Verification of complaints will proceed without regard to any resolution of the complaint by the respondent institution. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

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§20-42-14 Complaint procedure. (a) The procedure for the receipt and response to consumer complaints shall be as follows:

- (1) All institutions of higher education in the State, which participate in a Title IV, HEA program, shall designate a staff person who shall be the liaison between the institution and SPRE for purposes of this subchapter.
- (2) A complainant may contact SPRE in person, in writing, or by telephone. SPRE shall make an initial determination of whether the complaint is allowable under the terms of §20-42-13(b). If the complainant has not sought resolution through existing procedures of the respondent institution, SPRE shall refer the complainant to the person designated under paragraph (1) above, who shall advise the complainant of all institutional complaint procedures.
- (3) Complainants who have exhausted all available complaint procedures of the respondent institution, regardless of the outcome, may file an allowable complaint with SPRE on a form provided by SPRE for that purpose.
- (4) Upon receipt of a completed complaint form, SPRE shall determine whether the complaint meets the requirements under §20-42-13(b). SPRE shall inform the complainant, in writing, whether the complaint is allowable under §20-42-13(b).
- (5) An allowable complaint shall be referred to the respondent institution for determination as to whether the complainant has followed all institutional complaint procedures. A respondent institution shall respond to SPRE's referral within 10 working days following receipt, and failure to respond will be construed as a positive determination that the complainant has exhausted all institutional complaint procedures. A complainant who has not exhausted institutional complaint procedures will be referred to the person designated under paragraph (1) above for information on available institutional complaint procedures.



- (6) SPRE shall suspend further action on any complaint that has not been pursued through all available institutional complaint procedures.
- (7) When SPRE determines to its satisfaction that the complaint meets all requirements under §20-42-13(b), SPRE shall forward a copy of the complaint to the respondent institution. Within 60 calendar days of receipt of a complaint from SPRE, the respondent institution shall provide to SPRE a written summary of the institution's actions and/or resolution of the matter. Failure to provide a written summary to SPRE shall be construed to be a confirmation of the truth of the allegations in the complaint.
- (8) Regardless of the institutional resolution of a complaint, SPRE shall verify the complaint in the manner set forth in §20-42-13(c). Upon completion of a verification review, SPRE shall provide written notification of its conclusion to the complainant and the respondent institution. Any respondent institution that disagrees with SPRE's conclusion may submit a written statement of objection within 10 working days following receipt of the notification of SPRE's conclusion. The respondent institution's statement of objection shall be retained together with the complaint in SPRE's complaint file until the file is destroyed.
- (9) All allowable and verified complaints shall be recorded in the files of SPRE. The SPRE coordinator shall provide to each institution in the State participating in a Title IV, HEA program, an annual report regarding all recorded complaints against that institution.
  - (b) The SPRE coordinator is authorized to develop procedures, forms, standardized general information notices, and supporting database systems, as necessary, to administer the consumer complaint procedure established by this subchapter.

(c) The SPRE coordinator is authorized to waive this complaint procedure and directly consult with law enforcement authorities if a complaint covers possible criminal activity.

(d) The SPRE coordinator may provide to the United States Secretary of Education information on allowable, verified complaints covered by 34 C.F.R. §667.5(b)(11). [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3; 34 C.F.R. Part 667)

§20-40-15 Disclosure of complaint records. All SPRE records are "government records" and covered by §20-40-4; provided that when SPRE receives from a respondent institution any student's "education record", as defined by FERPA, the commission, acting as the SPRE, shall comply with FERPA and its implementing federal regulations in the handling of such "education record". Complainants shall be informed that all written complaints, institutional responses, and other SPRE records pertaining to a complaint shall be available for inspection and copying to the extent required by HRS chapter 92F. [Eff JUL 24 1995 ] (Auth: HRS §§305H-2, 91-2) (Imp: HRS chapter 305H, Part II; 20 U.S.C. §§1099a-1099a-3 and 1232g; 34 C.F.R. Part 667; 34 C.F.R. §§99.1-99.67)