

UH Mānoa
SEXUAL HARASSMENT COMPLAINT PROCEDURE

(Effective March 31, 1995 and Updated January 2006)

The UH Mānoa Chancellor is responsible for implementing the following complaint procedure.

I. PURPOSE

This complaint procedure is intended to provide a fair, prompt, and reasonable determination regarding complaints from UH Mānoa students and employees alleging violations of the University's Executive Policy E1.203 on sexual harassment. E1.203 prohibits sexual harassment as a form of sex discrimination, in compliance with Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and the Hawai'i State Fair Employment Practices Act, Chapter 378 HRS.

The information in this procedure is organized as follows. After the definitions, the options and procedures for filing a complaint are presented. Included in this section are procedures for obtaining information, making anonymous inquiries, and filing informal and formal complaints. Following this are sections describing how investigations are conducted, the fact finding report, the decisions, sanctions, the appeals process, retaliation, release of information, and annual reporting requirements.

II. DEFINITIONS

As used in this campus procedure:

- A. "Office of the Chancellor" is the principal administrative office for the Mānoa Campus. This office coordinates the sexual harassment complaint process. The Chancellor referred to here and below may mean a designee. The appropriate Vice Chancellor means the Vice Chancellor or designee who has authority over the unit in which the harassment was alleged to have occurred.
- B. "The Gender Equity Counselor" provides assistance to students and employees on issues related to sexual harassment and conducts educational workshops. This Counselor will assist students and employees by providing information on complaint options, facilitating informal resolutions, and providing counseling during the formal sexual harassment complaint process. This Counselor will not provide assistance to complainants in non-UH Mānoa proceedings, including without limitation federal and state compliance proceedings and judicial proceedings.

- C. "Office of the Vice Chancellor for Students" is charged with investigating formal complaints of sexual harassment when the complainant is a UH Mānoa student, including Graduate Assistants and student employees.
- D. "Student" means a person registered for coursework at UH Mānoa at the time of the alleged incident. "Student" includes Graduate Assistants and student employees.
- E. "EEO/AA Office" coordinates the Mānoa Campus equal employment opportunity and affirmative action programs and educates the campus community on EEO/AA issues related to employment. The EEO/AA Office is charged with investigating formal complaints of sexual harassment when the complainant is an employee of a UH Mānoa program.
- F. "Employee" means a person hired full-time or part-time by the University, including faculty and other instructional personnel, administrators, and staff. Graduate Assistants and student employees are covered in II.C. and II.D. above.
- G. "Investigating Office" refers to the Office of the Vice Chancellor for Students or the EEO/AA Office.
- H. "Reporting Party" is an individual(s) who makes a report of sexual harassment that he or she has either experienced or observed.
- I. "Respondent" is an individual(s) alleged to have violated the sexual harassment policy, E1.203.
- J. "Complaint" means allegations of sexual harassment subject to complaint procedures outlined in Section III.
- K. "No Cause Finding" by the appropriate Vice Chancellor means a finding based on the University's record of the case as a whole, issued when the preponderance of the evidence does not support the Reporting Party's allegations.
- L. "Cause Finding" by the appropriate Vice Chancellor means a finding based on the University's record of the case as a whole, issued when the preponderance of the evidence supports the Reporting Party's allegations (the formal complaint of sexual harassment is upheld).
- M. "Sexual Harassment" is defined in Executive Policy E1.203
 - 1. *Quid pro quo* sexual harassment is defined as sexual advances, requests for sexual favors, and/or verbal or physical conduct of a sexual nature when submission to such conduct is either explicitly or implicitly
 - a. a condition for advancement;
 - b. a factor in performance evaluation;

- c. a condition for participation in University activities; or
 - d. a condition for receiving any other benefit given by the University.
2. Hostile environment sexual harassment is defined as sexual advances, requests for sexual favors, and/or verbal or physical conduct of a sexual nature, when such conduct is unwelcome to the person to whom it is directed or to others directly aware of it, and when such conduct is
- a. severe or pervasive; and
 - b. has the purpose or effect of either:
 - (1) unreasonably interfering with the employee's work performance or student's academic performance, or
 - (2) creating an intimidating, hostile, or offensive work or educational environment.

The conduct must be both objectively and subjectively perceived as offensive. That is, the Reporting Party must view the conduct as offensive, and a reasonable person with the same fundamental characteristics as the Reporting Party (e.g., age, race, gender) must also view the conduct as offensive.

- N. "Retaliation" is defined in E1.203 as adverse action or hostile treatment against any individual because he or she has engaged in any of the following activities
- sought advice or assistance about sexual harassment;
 - reported sexual harassment;
 - opposed sexual harassment or filed an informal or formal complaint; or
 - assisted or participated in a sexual harassment complaint resolution process or investigation.

III. OPTIONS AND PROCEDURES FOR FILING A COMPLAINT

A complaint alleging violations of the University's policy on sexual harassment and retaliation may be filed by any student or employee of a UH Mānoa program. The complaint process may also be initiated by the Chancellor. The Gender Equity Counselor, the Office of the Vice Chancellor for Students, and the EEO/AA Office are authorized to respond to informal sexual harassment complaints (see III.A. below). Formal complaints by a UH Mānoa employee are filed with the EEO/AA Office; formal complaints by a UH Mānoa student are filed with the Office of the Vice Chancellor for Students. The Gender Equity Counselor is available to assist students and employees throughout the informal and formal process.

Colleges and departments shall not develop internal procedures for the resolution of sexual harassment complaints. Administrators and unit heads should refer persons with inquiries or complaints of sexual harassment to the offices listed above for information on University policies and complaint procedures and options available through state and federal enforcement agencies.

Employees covered by collective bargaining grievance procedures may file sexual harassment complaints either through the applicable union grievance process or through this campus procedure.

When individuals wish to remain anonymous and will not identify the Respondent, information provision, referral, and counseling may take place; however, the Reporting Party should understand that his or her refusal to cooperate may prevent the University from pursuing the complaint to full resolution. Statistical information regarding such inquiries shall be compiled and maintained by the relevant offices.

A. INFORMAL COMPLAINT AND RESOLUTION OPTION

This option is provided for Reporting Parties who are willing to identify themselves and the Respondent, and who wish to seek a mutually agreeable resolution without the filing of formal charges. This option offers various ways to resolve complaints of sexual harassment by the Gender Equity Counselor, the Office of the Vice Chancellor for Students, or the EEO/AA Office. Student and employee Reporting Parties and Respondents will be advised of their right to obtain assistance from the Gender Equity Counselor or union agent, as appropriate, or to seek representation of their own choosing.

Procedures

1. If an informal complaint is brought to the Gender Equity Counselor, the Office of the Vice Chancellor for Students, or the EEO/AA Office, these offices will actively seek to resolve the issues short of filing a formal complaint.

When cases are brought to the attention of a Dean, Director, and/or Department Chair by the office handling the complaint, the Dean, Director, and/or Department Chair shall consider the advice offered by that office and, to the extent appropriate, shall attempt to resolve the matter informally.

2. If the Reporting Party consents, and informal resolution options are accessible and appropriate, the Gender Equity Counselor, the Office of the Vice Chancellor for Students, or the EEO/AA Office will attempt to facilitate a mutually agreeable resolution. This informal resolution process shall include participation by the Reporting Party and the Respondent. Participation in an informal resolution procedure does not imply an admission of guilt by any participant. Where appropriate, an informal resolution may be documented in writing.

3. If an allegation of retaliation is raised by the Reporting Party during the use of this informal option, it will be handled as a separate complaint under the procedures outlined in this document.

B. FORMAL COMPLAINT OPTION

The formal complaint procedures in this policy require thorough investigations of all formal charges of sexual harassment. Formal complaint and investigation procedures will not protect the identity of the Reporting Party from the Respondent.

Any person who wishes to file a formal sexual harassment complaint is advised to do so as soon as possible after the harassment occurs. Complaints should be filed within 180 calendar days of the last incident of harassment. If the Reporting Party can show good cause for a later filing, (e.g., an informal complaint had been initiated at a previous date or other extenuating circumstances exist), the complaint may be filed within 300 calendar days of the last incident.

Formal complaints by employees must be filed with the EEO/AA Office; formal complaints by students must be filed with the Office of the Vice Chancellor for Students. A Reporting Party may either file a formal complaint initially or after unsuccessful efforts to reach a resolution under the informal option of this procedure.

Students will be advised of their right to assistance from the Gender Equity Counselor or to seek representation of their own choosing; employees will be advised of their right to request assistance from the Gender Equity Counselor or their union representative, or to seek representation of their own choosing. Students and employees shall be advised that the Counselor's assistance is limited to the informal and formal sexual harassment complaint process provided in this procedure.

1. Predecisional Relief (e.g., temporary relocation of the Reporting Party to a new work site.)

In all cases of alleged sexual harassment, the Respondent is deemed innocent until such time as a final University decision has been reached under this procedure.

Predecisional relief is available only where both the Reporting Party and Respondent agree in writing to the relief or in extenuating circumstances. In the former instance, the Office of the Vice Chancellor for Students or the EEO/AA Office must have discussed the situation and alternative solutions with both parties. In the latter instance, the appropriate Vice Chancellor must have approved in writing the proposed predecisional relief. Such relief shall be designed so as not to alter the condition of employment of an employee.

2. Complaint Statements

The complaint statement must contain the name of the Respondent and a clear and concise description of the circumstances and behavior(s) upon which the complaint is based. The complaint statement must include as much detail as the Reporting Party can recall, including dates, approximate times, and locations of the incident(s) and the names (including phone numbers and addresses, if known) of any witnesses. The Reporting Party shall also list and/or attach to the complaint statement copies of any document or material thought to be relevant to the complaint. Each item listed or attached should include a concise explanation of the relevancy of the item.

If the Reporting Party has other discrimination claims related to the sexual harassment claim, these claims should also be raised in the complaint statement and be dealt with under this procedure rather than being addressed separately under the University procedures for discrimination claims (Administrative Procedure A9.920).

A complaint statement must be signed and dated by the Reporting Party. The complaint statement must have sufficient detail to determine the nature of the harassment and to determine whether the allegations, if true, would constitute sexual harassment. A complaint statement should also include an address and phone number to which all future correspondence should be addressed (either the Reporting Party or the Reporting Party's representative).

The complaint statement should also contain the following statement:

Reporting Party affirms that this complaint statement is true, accurate, and complete to the best of his/her knowledge.

Complaints should be comprehensive when filed; additional allegations should be based on new acts not discovered or known at the time of filing.

In cases where there is more than one Reporting Party and the alleged factual basis of each Reporting Party's claim is substantially similar, the Reporting Parties may file a joint complaint. If separate complaints are filed in which the alleged factual basis for each Reporting Party's claim is substantially similar, the complaints may be treated as a joint complaint for the purposes of this procedure.

3. Screening of Complaint Statements

The Investigating Office will screen each complaint to assess whether:

- a. The complaint is sufficiently clear, coherent, and detailed in order for the Investigating Office to be able to understand and articulate the Reporting Party's allegation;

- b. The complaint includes sufficient information with respect to the factual basis for the Reporting Party's belief that sexual harassment has occurred; and
- c. The allegation, if true, would constitute sexual harassment under Title IX, Title VII, or as defined in the University's sexual harassment policy (Executive Policy E1.203) and this campus procedure (UH Mānoa Sexual Harassment Complaint Procedure).

The Investigating Office must screen each complaint statement and, if appropriate, issue a detailed Notice of Insufficient Complaint within ten (10) working days of receipt of a complaint statement.

The Reporting Party has ten (10) working days from receipt of a Notice of Insufficient Complaint to file an appeal from such notice with the appropriate Vice Chancellor detailing the grounds for the appeal.

The Vice Chancellor's decision on the appeal must be announced to the Reporting Party within five (5) working days of receipt of the appeal. If the appeal is denied, this decision is final within the University. If the appeal is upheld, the Reporting Party has five (5) working days within which to resubmit the complaint to the Investigating Office with any necessary revisions.

4. Response to Complaint Statement

Once the complaint statement is deemed sufficient, the Investigating Office will notify the Respondent of the filed complaint by hand delivery or mail (with delivery confirmation) within ten (10) working days of the date the complaint was accepted for investigation. The notice shall include a copy of the complaint statement with copies of any appended documents. Nonrelevant information or names and addresses may be redacted. The notice will inform employee Respondents of their right to consultation or representation from their union agent. Student Respondents will be informed of counseling support available through the Counseling and Student Development Center. Respondents also have the right to seek representation of their own choosing. The Respondent will have ten (10) working days from the date of receipt of the letter within which to submit to the Investigating Office a written response to the complaint. The Respondent may make a written request to the Investigating Office for an extension of not more than twenty (20) working days for extenuating circumstances.

The Respondent's response to the complaint should contain a clear, detailed, and concise response to the allegations raised in the complaint statement. The response to the complaint should include as much detail as the Respondent can recall, including the date, approximate time, and location of relevant incident(s) and the names (including phone numbers and addresses, if known) of any witnesses.

The Respondent should also attach to the response copies of any document or material thought to be relevant to the matter. If the documents and/or materials are not available

to the Respondent, a list of those documents and/or materials should be provided. For each item attached or listed, there should be a brief, concise explanation of the relevancy of the item.

The response must be signed and dated by the Respondent. The response to the complaint should also include Respondent's phone number and an address to which all future correspondence will be addressed (either the Respondent or Respondent's representative).

The response should also contain the following statement:

Respondent affirms that this response to the complaint is true, accurate, and complete to the best of his/her knowledge.

A copy of the Respondent's response to the complaint will be sent to the Reporting Party by the Investigating Office within five (5) working days of receipt by the Investigating Office.

C. OTHER OPTIONS

In addition to the informal and formal options outlined in this procedure, individuals may pursue the following complaint and counseling options:

1. CONTACTING STATE, COUNTY, AND FEDERAL AGENCIES

The Gender Equity Counselor, the Office of the Vice Chancellor for Students, and the EEO/AA Office are available to provide information to Reporting Parties on state and federal civil rights agencies.

Nothing in this procedure shall affect the right of the Reporting Party to pursue his or her complaint with an appropriate law enforcement agency. Sexual harassment complaints may be filed concurrently with an external agency to meet state and federal agency deadlines without jeopardizing an individual's right to a University investigation under this procedure.

In cases in which criminal acts are alleged to have occurred, Reporting Parties who wish to pursue a criminal case should contact the appropriate Police Department to file a police report.

2. COUNSELING AND REFERRAL

The Gender Equity Counselor is available to provide information on counseling options available to the Reporting Party. These options include: (i) referral to a counselor at the Counseling and Student Development Center; (ii) discussing his or her experience with

the Gender Equity Counselor; or (iii) referral to outside counselors who are trained to deal with the issues of sexual harassment and sexual abuse.

IV. UNIVERSITY INITIATED INVESTIGATION

When the UH Mānoa Administration has reason to believe that behavior constituting sexual harassment or retaliation against parties involved in a sexual harassment complaint has taken place or is taking place, the Chancellor shall promptly initiate an investigation through this procedure and take immediate and appropriate corrective action.

Procedures

- A. All UH Mānoa administrators are required, and other members of the campus community are encouraged, to notify the Chancellor or appropriate Vice Chancellor when allegations are made of a violation of Executive Policy E1.203 on sexual harassment and retaliation.
- B. Upon notification of such allegations, the Chancellor or Vice Chancellor shall promptly institute an investigation and, if the report is substantiated, take immediate and appropriate corrective action to ensure such conduct does not recur. Reporting Parties shall be notified of their right to file a complaint under this procedure and of their right to recourse through external agencies.

V. INVESTIGATION

Investigation of the complaint is conducted by the Investigating Office. The investigator contacts witnesses and obtains signed statements. The investigator may also gather information in addition to that provided by the Reporting Party and/or Respondent.

The investigation will be completed within forty-five (45) working days of the submittal deadline for the Respondent's response to the complaint. Should an extension of time be required for any reason, the extension shall not exceed twenty (20) working days. Additional ten (10) working day extensions may be requested from the appropriate Vice Chancellor in extraordinary cases for compelling reasons. The Reporting Party and the Respondent (the parties) will be notified in writing of all extensions.

During the course of the investigation, should the Investigating Office determine that there is no factual basis for the complaint, the Office may issue a no cause finding. The Reporting Party may appeal a no cause finding to the appropriate Vice Chancellor. The Reporting Party must file an appeal within ten (10) working days of receipt of the finding. The Vice Chancellor has ten (10) working days from receipt of the appeal to respond to the appeal.

VI. FACT FINDING REPORT

Upon completion of the investigation, the Investigating Office has fifteen (15) working days to prepare a fact-finding report. The Office may request one ten (10) working day extension from the appropriate Vice Chancellor. Additional ten (10) working day extensions may be requested in extraordinary cases for compelling reasons. The parties will be notified in writing of all extensions.

VII. VICE CHANCELLOR DECISION

The appropriate Vice Chancellor shall review the fact finding report and make a "cause" or "no-cause" determination.

1. NO CAUSE FINDING

A no cause finding shall be based on the record of the case as a whole and issued when the preponderance of the evidence does not support the Reporting Party's allegations.

2. CAUSE FINDING

A cause finding shall be based on the record of the case as a whole and issued when the preponderance of the evidence supports the Reporting Party's allegations.

Within twenty (20) working days of receiving the fact finding report, the Vice Chancellor shall issue a written decision on the complaint to the Reporting Party, the Respondent, and the Investigating Office. One ten (10) working day extension may be utilized by the Vice Chancellor upon written notice to the parties. A copy of the written decision shall be sent by hand delivery or mail (with delivery confirmation) to the Reporting Party and Respondent. If a cause finding is issued, the Vice Chancellor shall determine the remedial action to be taken by the University. If a no cause finding is issued, no University adverse action shall be taken against the Reporting Party unless there is a specific finding by the Vice Chancellor (or the Investigating Office, in cases where a complaint is rejected) that the complaint was knowingly false.

VIII. CORRECTIVE ACTIONS

Executive Policy E1.203 outlines corrective actions as follows:

For students and excluded employees, the University will impose disciplinary actions against any individual found to have violated E1.203. Disciplinary actions shall be reasonably calculated to

1. be commensurate with the seriousness of the offense;

2. stop the harassment;
3. ensure the harassment will not recur; and
4. assure a workplace and educational environment free from sexual harassment.

For included employees, the responsible administrator will follow the collective bargaining agreement provisions related to disciplinary actions.

To maintain consistency, the Chancellor and Vice Chancellors will consult with the System Office of Human Resources prior to imposing employee disciplinary actions. Disciplinary actions against students should be consistent with the UH Mānoa Campus Student Conduct Code.

IX. APPEALS PROCESS

Either the Reporting Party or the Respondent may appeal the decision of the Vice Chancellor.

The Vice Chancellor's decision may be appealed by the Reporting Party or the Respondent to the Chancellor within twenty (20) working days of receipt of the decision. The Chancellor or designee will render a decision on the appeal within twenty (20) working days of receiving the appeal. If an extension of time is needed, the Reporting Party and Respondent shall be notified in writing, and a decision will be made within fifteen (15) working days of the extension.

The standard of review for an appeal of a cause or no cause finding is whether the finding is against the clear weight of the evidence in the record of the case.

If the decision being appealed involves disciplinary action, included employees should appeal under the collective bargaining agreement provisions and timeframes related to disciplinary action.

X. RETALIATION

Retaliation is a violation of UH policy and applicable law and is a serious offense. Any person bringing a sexual harassment complaint or assisting in the investigation of such a complaint, who believes that he or she has been or is being subjected to retaliatory actions related to his or her involvement in the case, should immediately notify the Investigating Office or the Gender Equity Counselor.

- A. Persons who believe that they have been subjected to retaliation may file a separate complaint under the procedure outlined in this document.
- B. The Chancellor or Vice Chancellor may initiate an investigation of retaliation, as outlined in Section IV.

XI. RELEASE OF INFORMATION

Complete confidentiality cannot be maintained in the process of handling informal and formal complaints. Certain information may be disclosed to appropriate administrators, the Respondent, and witnesses, among others, in order to conduct fact finding, institute remedial action, or informally resolve a complaint. Information may also be disclosed if required by law, rule, regulation, or by order of a court of competent jurisdiction or arbitrator selected under a collective bargaining agreement.

XII. ANNUAL REPORT

Each February the Gender Equity Counselor shall make public (e.g., post on a UH website) a report on the past calendar year's activities at the UH Mānoa Campus related to sexual harassment complaints. The report will include information from the Office of the Vice Chancellor for Students and the EEO/AA Office.

The report will provide statistics on anonymous complaints, informal complaints, formal complaints, and University-initiated investigations. For each formal complaint, the report will indicate the classification of the Reporting Party and Respondent, the nature of the complaint, the disposition of the complaint, and whether a cause or no cause finding was made, and in the case of a cause finding, whether sanctions were imposed.

The report should also detail all educational efforts made by the UH Mānoa Campus during the past year.