

## Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence

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**Title**

Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence

**Header**

Executive Policy Chapter 1, General Provisions

Interim Executive Policy EP 1.204 – Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence

Effective Date: September 2015 (Supersedes EP 1.204 and Previously Abolished EP 1.203)

Prior Dates Amended: February 2015; January 2006

Responsible Office: Office of the President

Governing Board of Regents Policy 1-5

Review Date: August 2017

**Note:** The University of Hawaii’s Interim Executive Policy EP 1.204 is a provisional policy to meet the University’s compliance obligations while it consults with various stakeholders, including the exclusive collective bargaining representatives of the University’s faculty and staff under HRS, Chapter 89.

**I. Purpose**

The University of Hawaii is committed to maintaining and promoting safe and respectful campus environments that are free from sex discrimination and gender-based violence.

This includes:

- Sex discrimination;
- Sexual harassment;
- Gender-based harassment, including harassment based on actual or perceived sex, gender, sexual orientation, gender identity, or gender expression;
- Sexual exploitation;
- Sexual assault;
- Domestic violence;
- Dating violence; and
- Stalking.

This policy and procedure (the “Policy”) establishes an integrated and consistent approach to preventing, reporting, and promptly responding to these forms of sex discrimination and gender-based violence across all campuses and centers at the University of Hawaii.<sup>1</sup>

**II. Policy**

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<sup>1</sup> As set forth in Title IX of the Education Amendment of 1972, relevant sections of the Violence Against Women Reauthorization Act of 2013, Title VII of the Civil Rights Act of 1964, and Hawaii laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity.

Any person believing that they have been subjected to sex discrimination; sexual harassment; gender-based harassment, including harassment based on actual or perceived sex, gender, sexual orientation, gender identity, or gender expression; sexual exploitation; sexual assault; domestic violence; dating violence; or stalking should report the prohibited behavior immediately to the respective campus Title IX Coordinator. See Resources Section.

**A. Scope**

This Policy governs the conduct of University students, faculty, staff, and third parties that occur:

1. On University property; or
2. Outside of University property if:
  - a. the conduct was in connection with a University-sponsored program or activity; or
  - b. the conduct may have a continuing adverse effect or could create a hostile environment on campus.

**B. Prohibited Behavior**

The University prohibits the following:

**1. Sex Discrimination**

Sex discrimination is any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual's sex or gender and is sufficiently serious to unreasonably interfere with or limit:

- a. A student's or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities (e.g. admission, academic standing, grades, assignment, campus housing);
- b. An employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g. hiring, advancement, assignment);<sup>2</sup>
- c. An authorized volunteer's ability to participate in a volunteer activity; or

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<sup>2</sup> Please note that complaints of sex discrimination brought by employees of the University may be referred to the EEO/AA Office.

- d.** A guest's or visitor's ability to participate in, access, or benefit from the University's programs.

## **2. Sexual Harassment**

Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a.** Submission to or rejection of the conduct is either an explicit or implicit term or condition of an individual's employment, education, or participation in a University program, activity, or service;
- b.** Submission to or rejection of the conduct by an individual is used as a basis in decisions affecting that individual's employment, education, or participation in a University program, activity, or service; or
- c.** 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:
  - i.** Severe or pervasive; and
  - ii.** 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., actual or perceived sex, age, race, gender, sexual orientation, gender identity, or gender expression) must also view the conduct as offensive.

The following are examples of behavior that may constitute hostile environment sexual harassment if unwelcome and persistent, pervasive, or severe:

- Sexually offensive jokes or ridicule of a person's sexuality, sexual orientation or gender identity
- Remarks of a sexual nature about a person's clothing or body
- Remarks about sexual activity or speculations about previous sexual experiences
- Unnecessary and unwanted touching, patting, hugging, or brushing against a person's clothing or body
- Pressure for sexual activity, an element of which may be nonverbal conduct, such as repeated and unwanted staring or sexually suggestive gestures
- Displays of offensive objects or pictures, including the use of electronic technology to send derogatory, demeaning, threatening, or hostile materials based on sex
- Requests for sexual favors accompanied by direct or implied rewards or threats
- Taking, sending, or sharing photos, videos, or audio recordings of sexual activity without the person's consent, regardless of whether the sexual activity itself was consensual
- Intimidation, threats of harm, or actual assaults against a person based on their actual or perceived sex, gender, sexual orientation, gender identity, or gender expression

The above list of examples is not all-inclusive; in addition, each situation must be considered in light of the specific facts and circumstances to determine if there has been a violation of this Policy. The determination as to whether behavior is sexual harassment will take into account the totality of the circumstances, including the nature of the behavior and the context in which it occurred. Harassing conduct often involves a pattern of offensive behavior. However, a serious incident, such as sexual assault, even if isolated, can be sufficient to establish a hostile environment and a violation of this Policy. Factors considered include the severity or pervasiveness of the conduct; the degree to which the conduct affected the student's education or the employee's work environment; the type and duration of the conduct; and the identity of and relationship between the respondent and the student or employee.

### 3. Gender-Based Harassment

Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex. Gender-based harassment involves verbal, physical, or electronic conduct based on sex, gender, sexual orientation, or sex-stereotyping that creates a hostile, intimidating or abusive environment, even if those acts do not involve conduct of a sexual nature. Gender-based harassment also includes harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression of the individuals involved.

### 4. Sexual Exploitation

Sexual Exploitation is violating the sexual privacy of another, or taking unjust or abusive sexual advantage of another, without Consent (as defined in Section II.C.2. below), and when such behavior does not otherwise constitute Sexual Assault.

Sexual Exploitation includes but is not limited to:

- Photographing or taping someone involved in sexual activity, sexual intercourse/penetration, or in a state of undress, without their knowledge or Consent
- Sharing photographs or video/audio of someone involved in sexual activity, intercourse/penetration, or in a state of undress, without their knowledge or Consent
- Watching someone currently involved in sexual activity without their knowledge or Consent
- Allowing others to watch sexual activity without knowledge or Consent from all parties involved
- Exposing one's intimate parts, such as genitalia, groin, breast and/or buttocks to someone without their Consent.
- Engaging in sexual activity in public and being witnessed by a non-consenting person.
- Tampering with a drink, intending to impair a person's ability to withhold Consent or knowingly Consent to sexual

activity, regardless of whether sexual activity actually takes place

## **5. Sexual Assault**

Sexual Assault is the act of committing unwanted physical contact of a sexual nature, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs:

- a.** Without the Consent (as defined in Section II.C.2.) of at least one of the individuals; or
- b.** When at least one of the individuals is incapacitated or otherwise incapable of giving Consent (as defined in Section II.C.2. below)

## **6. Domestic Violence**

Domestic Violence is physical, sexual, emotional, financial, or psychological abuse or threats of abuse against another person who is a family or household<sup>3</sup> member.

## **7. Dating Violence**

Dating violence is physical, sexual, emotional, financial, or psychological abuse or threats of abuse against another person who is or has been in a social relationship of a romantic or intimate nature with the alleged abuser; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- a.** The length of the relationship;
- b.** The type of relationship; and
- c.** The frequency of interaction between the persons involved in the relationship.

Domestic Violence or Dating Violence, as defined above, may include but is not limited to:

- Physical or emotional abuse;
- Controlling/possessive behavior;

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<sup>3</sup> For the purposes of this Policy, “household member” is a cohabitant who is or was a spouse or intimate partner. See Federal Register, Vol. 79, No 202, October 20, 2014, p. 62757.

- Changing your normal behavior, like making you have to call your friends in secret;
- Preventing you from hanging out with your family.

## 8. Stalking

Stalking is two or more acts of unwanted and harassing behavior, directed at a specific person that is sufficiently serious to cause physical, emotional, or psychological fear or to create a hostile, intimidating or abusive environment. The conduct must be both objectively and subjectively perceived as hostile, intimidating or abusive. That is, the reporting party must view the conduct as hostile, intimidating or abusive, and a reasonable person with the same fundamental characteristics as the reporting party (e.g., actual or perceived sex, age, race, gender, sexual orientation, gender identity, or gender expression) must also view the conduct as hostile, intimidating or abusive if they were in similar circumstances.

Stalking may occur:

- In person or through mail, electronic mail, text messaging, instant messaging, telephone, facsimile, social websites (Facebook, Twitter, MySpace, Tumblr, Instagram, etc.), or other internet communications.
- For several days or for many years.

## C. Related Definitions

### 1. Sexual Contact

Sexual contact is intentional touching or penetration of another person's clothed or unclothed body, including, but not limited to, the mouth, neck, buttocks, anus, genitalia, or breast, by another with any part of the body or any object in a sexual manner. Sexual contact also includes causing another person to touch their own or another body in the manner described above.

### 2. Consent

Consent is affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact.



A person cannot give Consent if the person is under the age of consent for sexual contact<sup>4</sup>, the person is developmentally or intellectually disabled, or the person is mentally incapacitated or physically helpless.

Lack of protest or resistance cannot be interpreted as Consent. Silence cannot be interpreted as Consent. Consent must be ongoing throughout any sexual contact and can be revoked at any time.

The existence of a dating relationship, domestic partnership or marriage between the persons involved, or the existence of past sexual relations between the persons involved, is never by itself an indicator of Consent.

### **3. Incapacitation or Incapacitated**

Incapacitation is a mental or physical state in which a person lacks the ability to understand the consequences of their actions and, therefore, cannot make a rational, reasonable decision. An individual who is incapacitated is unable to give Consent to sexual contact. States of incapacitation includes sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to sexual contact.

Alcohol or drug use is one of the prime causes of incapacitation. Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- a.** Making decisions about the potential consequences of sexual contact;
- b.** Apprising the nature of one's own conduct;
- c.** Communicating consent to sexual contact; or
- d.** Communicating unwillingness to engage in sexual contact.

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<sup>4</sup> In Hawaii, the age of consent is sixteen (16) generally, or the age of consent is between fourteen (14) and fifteen (15) when either the other person is less than (5) years older or when the other person is legally married to the person between the ages of fourteen (14) and fifteen (15). See Haw. Rev. Stat. § 707-732.

An individual's intoxication is never an excuse for or a defense to committing sexual or gender-based harassment, sexual assault, sexual exploitation, or sexual violence.

**D. University Computer/Networks**

Any use of the University's computing and network resources from campus property or a remote location, including but not limited to accessing email accounts, will be deemed to have occurred within the scope of this Policy.

**E. Standard of Review**

**1. Preponderance of the Evidence**

In determining whether alleged behavior violates this Policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged behavior and the context in which it occurred, and determine whether it is more likely than not that the alleged prohibited behavior occurred.

**2. Jurisdiction**

In circumstances involving third parties or conduct that occurred outside of a University-sponsored program or activity, the University will decide whether this Policy applies to a reported incident or complaint on a case-by-case basis.

**III. Retaliation**

**A. Retaliation Prohibited**

The University prohibits and will not tolerate retaliation. Retaliation is adverse actions taken against a person because of his/her good faith participation in the following types of protected activities:

- 1.** Seeking advice or assistance about a discrimination concern or possible incident of sexual violence;
- 2.** Opposing or filing an informal or formal complaint against conduct reasonably believed to constitute discrimination or sexual violence; or
- 3.** Testifying, assisting, or participating in an investigation or other proceeding related to a complaint of discrimination or sexual violence.

Adverse actions are actions that would dissuade a reasonable person from making or supporting a complaint under this Policy.

Examples of adverse actions that might constitute retaliation include a significant change in one's status, such as suspension, unsatisfactory or unfair evaluations, unfair grades, unfair assignments, firing, failing to promote, reassignment with significantly different responsibility or a decision causing a significant change in benefits, direct or implied threats, coercion, harassment, intimidation, or encouragement of others to retaliate.

**B. Procedure**

A retaliation complaint, allegation, or report will be reviewed as a separate offense under this Policy; that is, a person can be found responsible for retaliation even if not found to be responsible for the underlying reported sex discrimination or gender-based violence. All complaints, allegations or reports of retaliation under this Policy should be made and processed by the same procedures set forth in this Policy.

**IV. Institutional Responsibilities**

**A. Responsible Employees**

Responsible Employees are all Executive and Managerial employees, and those individuals/departments designated as Reporting Options. This includes, for example, the President, Vice Presidents, Associate Vice Presidents, Chancellors, Vice Chancellors, Associate and Assistant Vice Chancellors, Deans/Director, Associate and Assistant Deans/Directors, Human Resources Directors, Chief Personnel Officers, and the Chief of the Public Safety Office. For a link to University Reporting Options, See Resources Section.

Confidential Resources, as defined in Section IV.D.2., are not considered to be Responsible Employees. Responsible Employees will safeguard an individual's privacy, but are required by the University to immediately share all details about a complaint (including the known details of the incident (e.g., date, time, location), the names of the parties involved, a brief description of the incident and if the incident has been previously reported) with the Title IX Coordinator, or the EEO/AA Office, by telephone, electronically, or by email. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

**B. All Other University Employees**

All employees of the University (who are not designated as Confidential Resources) should immediately report alleged prohibited behavior to a Title IX Coordinator.

**C. University of Hawaii Office of Institutional Equity**

The University of Hawaii Office of Institutional Equity is responsible for overseeing a centralized program for preventing, reporting, and responding to sex-based discrimination and gender-based violence across all campuses and centers at the University of Hawaii.

The Office of Institutional Equity shall, among other things:

- Ensure this Policy complies with Title IX and VAWA, in addition to related State and federal laws;
- Serve as the University's technical expert on Title IX and VAWA to support the campuses' Title IX programs and compliance initiatives;
- Monitor and support the responses by campuses to reports of alleged prohibited behavior;
- Conduct formal investigations on alleged prohibited behavior, when other resources are not available;
- Develop the training content for this Policy;
- Work with the EEO/AA Office to ensure this Policy complies with Title VII; and
- Coordinate regularly with all campus Title IX coordinators to support compliance with this Policy and identify situations or allegations that impact multiple campuses.

**D. Campus Responsibilities**

**1. Title IX Coordinator**

Each campus shall have a designated Title IX Coordinator who is responsible for complying with and carrying out the responsibilities under this Policy. These responsibilities include, but are not limited to:

- Serving as the primary and central repository for all reports, allegations and/or complaints of violations of this Policy on their campus;

- Promptly responding to all reports, allegations and/or complaints of prohibited behavior under this Policy;
- Collecting, monitoring, and evaluating data and/or indicators of reports or instances of prohibited behavior under this Policy for purposes of identifying and addressing any patterns or systemic problems;
- Providing data and/or indicators of reports or instances of prohibited behavior under this Policy to the Office of Institutional Equity on a monthly basis;
- Providing access to on and off campus support services and programs;
- Ensuring prevention and awareness programs are conducted in an effective and responsible manner;
- Serving as the primary point of contact with all students, educating and informing them of their rights under this Policy and any support services and programs;
- Serving as the primary liaison between their campus and community resources and law enforcement;
- Maintaining an updated list of all Confidential Resources on their respective campus;
- Coordinating and implementing any interim measures imposed under this Policy; and
- Conducting formal investigations on alleged prohibited behavior, when resources are available.

The Title IX Coordinator may designate Deputy Title IX Coordinators to assist with their responsibilities, with notice to the Chancellor and Office of Institutional Equity.

When an allegation may impact multiple University of Hawaii campuses, the Title IX Coordinator also has the responsibility to inform the Title IX Coordinator at any other relevant University of Hawaii campus and the Director of the Office of Institutional Equity.

## 2. Confidential Resources for Students

Confidential Resources are where students can seek assistance related to this Policy in a confidential manner. Going to a Confidential Resource will not put the University on notice of a specific allegation under this Policy.

All campuses should have Confidential Resources for students who would like to share information. Any Confidential Resource must be registered with and sanctioned by the respective Title IX Coordinator and be clearly identified as such. Confidential Resources shall provide the Title IX Coordinator with non-personally identifiable information, in the form of aggregate data for each year, and be responsible for appropriate recordkeeping.

Students who wish to seek University information or support in a confidential manner may contact a Confidential Resource. Confidential Resources will not share information about or received from a student, without the student's express written permission, unless imminent threat to life or of bodily injury exists, or there is a legal obligation to reveal such information, e.g., in an employment context or suspected abuse or neglect of a minor.

### 3. Advocacy Offices

Advocacy Offices are where individuals can seek information, options and specific support about their rights and resources under this Policy. All campuses should have Advocacy Offices and should identify whether they are also a designated as a Confidential Resource.

Any Advocacy Office must be registered and sanctioned by the respective Title IX Coordinator and be clearly identified as such.

## V. Confidentiality Limitations

While the University recognizes the importance of privacy and confidentiality in these matters, only Confidential Resources, as defined in Section IV.D.2., can maintain confidentiality as described above. All other University personnel and programs will uphold the privacy of all parties to the extent practicable, but once the University has notice of alleged prohibited behavior, the Title IX Coordinator, the EEO/AA Office, and/or other appropriate University office is obligated to take appropriate action.

## VI. Reporting and Investigation Procedures

### A. Parties

#### 1. Reporting Party

Reporting Party is a person who alleges being a victim of prohibited behavior under this Policy.

**2. Responding Party**

Responding Party is a person against whom an allegation of prohibited behavior is directed.

**B. Notice and Report of Prohibited Behavior**

**1. Reporting to the University**

All complaints, allegations, and reports of prohibited behavior under this Policy (“Complaints”) should be made to a campus Title IX Coordinator. These personnel will help find available resources and services, explain all reporting options, and appropriately respond to the behavior of concern. All instances of retaliation should be reported and addressed in the same manner.

Upon receiving notice of a Complaint, the campus Title IX Coordinator shall promptly assess the situation and take any of the following actions:

- Except as set forth in the bullets below, if the Title IX Coordinator determines that the Complaint would, if substantiated, constitute a violation of this Policy, the Title IX Coordinator will determine appropriate interim measures and initiate an investigation, in accordance with this Policy.
- If the Title IX Coordinator determines that the Complaint is made by a University employee against another University employee, then such matter will be transferred to the EEO/AA Office. This determination and transfer shall be made in writing by the Title IX Coordinator.
- If the Title IX Coordinator determines that the Complaint, even if substantiated, would not rise to the level of a Policy violation, the Title IX Coordinator will dismiss the Complaint but may recommend follow-up actions to be taken, as appropriate.
- If the Title IX Coordinator determines that the Complaint is outside the scope of this Policy, the Title IX Coordinator may refer the Complaint to another office for review.

The Title IX Coordinator may investigate allegations of violations of this Policy even absent the filing of a formal Complaint, or if a Complaint has been withdrawn.

**2. Multiple Campuses**

When a Complaint may impact multiple University of Hawaii campuses, the Title IX Coordinator who receives the Complaint has the responsibility of informing all other Title IX Coordinators whose campuses may be impacted and the Office of Institutional Equity. The Director of the Office of Institutional Equity shall, based on the circumstances of the Complaint, assign a lead Title IX Coordinator, who shall be charged with coordinating the University's response to the Complaint.

**3. Legal Options Outside of the University**

The University reporting process is separate and distinct from the criminal reporting process. Reports made to the University regarding prohibited behavior will not necessarily trigger a report to law enforcement. Should an individual wish to report allegations to law enforcement or initiate civil proceedings, they may do so at any time, and the University will not interfere with any such processes.

Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this Policy has occurred.

**C. Interim Measures**

**1. Definition**

Interim Measures are services, accommodations, or other assistance that the University puts in place on a temporary basis after receiving notice of a Complaint and before any outcomes - investigatory, disciplinary, or remedial - have been determined. These measures may be instituted to preserve the Reporting Party's educational and/or work experience, ensure the safety of all parties and the broader University community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. The University may provide Interim Measures regardless of whether the Reporting Party seeks formal disciplinary action.

Appropriate Interim Measures shall be available throughout all phases of an investigation.



Interim Measures are initiated based on information gathered following a Complaint and are not intended to be permanent resolutions; hence they may be amended or withdrawn as additional information is gathered.

Failure to comply with the terms of Interim Measures may be considered a separate violation of this Policy, which may result in a separate investigation, findings, and determination.

## 2. Procedure

Upon receiving notice of a Complaint, the Title IX Coordinator shall:

- a. Apprise the Reporting Party of his or her rights under this Policy;
- b. Conduct a safety assessment with the Reporting Party;
- c. Provide the Reporting Party with a written explanation of the Interim Measures available on campus and any relevant community resources and shall ask the Reporting Party what measures they wish to seek; and
- d. Document any Interim Measures implemented, any requests for Interim Measures, the rationale for accepting or rejecting a request for Interim Measures, and any other information related to implementing Interim Measures.

## 3. Requests for Interim Measures

Requests for Interim Measures may be made by or on behalf of the Reporting Party to the Title IX Coordinator, or the EEO/AA Office if it has been assigned the matter. The Title IX Coordinator or the EEO/AA Office shall determine which Interim Measures are appropriate on a case-by-case basis. If the Reporting Party identifies an Interim Measure that is not already provided by the University, the Title IX Coordinator or EEO/AA Office will consider whether the request can be granted. In those instances where Interim Measures affect both the Reporting Party and Responding Party, the University shall minimize the burden on the Reporting Party wherever appropriate. For included employees, the University shall ensure Interim Measures are taken in accordance with the applicable collective bargaining agreement. Any Interim Measures will not disproportionately impact the Reporting Party.

## D. Informal Resolution

The Title IX Coordinator shall attempt to resolve any Complaint at the earliest stage possible with the cooperation of all parties involved. “Informal Resolution” may include an inquiry into the facts, but typically does not include a formal investigation. Means for resolution shall be flexible and encompass a full range of possible appropriate outcomes. Informal Resolution can include options such as discussions with the parties, making recommendations for resolution, and conducting follow-up after a period of time to assure that the resolution has been implemented effectively. Informal Resolution may be appropriate for responding to anonymous reports and/or third party reports. Steps taken to encourage resolution and agreements reached through Informal Resolution efforts shall be documented.

Mediation is inappropriate when violent behavior is involved.

All Informal Resolution Agreements shall be affirmed in writing by both parties, as appropriate.

**E. Formal Investigation and Resolution**

- 1.** Notice of Charge
  - a.** A Notice of Charge shall be issued by a Title IX Coordinator when:
    - i.** An Informal Resolution has not been accomplished;
    - ii.** The Reporting Party requests a Formal Investigation or files a written complaint; or
    - iii.** Because of the frequency or severity of the allegations, the Title IX Coordinator determines a University-initiated investigation is warranted.
- 2.** A Notice of Charge shall be provided to all parties to the Complaint and provide:
  - a.** A summary of the allegations;
  - b.** A copy of the complaint procedures;
  - c.** A confidentiality statement;
  - d.** A non-retaliation statement;
  - e.** A request that the Respondent respond in writing to the allegations by a specified response deadline; and

- f.** The named parties to the Complaint, unless the Reporting Party requests to remain anonymous for University-initiated investigations.

### **3. Voluntary Agreement**

At any time during the course of this Formal Investigation and Resolution process, the parties may voluntarily agree to resolve any allegations of prohibited behavior, in lieu of findings and sanctions under this Policy.

### **4. Fact-Finding Investigation**

The Title IX Coordinator shall transmit the Notice of Charge to the Investigating Officer(s) to conduct a Fact-Finding Investigation. In matters involving claims by a University employee against another University employee, the appropriate University EEO/AA Office shall conduct the Fact-Finding Investigation.

The Investigating Officer(s) will:

- a.** Interview the Reporting Party, Responding Party, relevant witnesses, and individuals with unique knowledge pertinent to the Notice of Charge in order to gather and ascertain case facts and circumstances; and
- b.** Collect all documents, notes and photographs of the incident sites, and materials relevant to the case, to include consultation and research notes and the resulting analysis and organization will be considered confidential.

Each party may have a union agent or an advisor of their choice accompany them to any meeting or related proceeding to advise them. The University's administrative investigatory process is dictated by the University, and therefore:

- a.** The union agent or advisor cannot speak for the Reporting or Responding party nor dictate the line or rationale of questioning;
- b.** Involved parties, e.g., the Reporting Party, Responding Party, or witnesses, will not be allowed to be present during the interviews of others; and
- c.** Involved parties cannot question or cross-examine others during the investigatory interviews.

The Title IX Coordinator, and the EEO/AA Office, has the discretion to consolidate multiple complaints into a single investigation if evidence relevant to one incident may also be relevant to others.

**5. Fact-Finding Report**

Upon completion of the Fact-Finding Investigation, a Fact-Finding Report shall be submitted to the designated Decision Maker and must contain, at a minimum:

- a.** The Investigating Officer's statement on the alleged violations of this Policy;
- b.** Definitions of the relevant standards set forth in this Policy;
- c.** The Investigating Officer's summary of statements of the interviewed parties;
- d.** The Investigating Officer's summary and inventory of all evidence gathered during the investigation;
- e.** A presentation of all evidence gathered;
- f.** Any mitigating circumstances, unique considerations, identified discrepancies or conflict, and/or issues of credibility; and
- g.** Any other relevant information as appropriate.

**6. Decision Maker**

In consultation with the Title IX Coordinator for each campus, the Chancellor shall designate a Decision Maker for the purposes of implementing Findings and Sanctions under this Policy. In the event of a Complaint regarding a System employee, in consultation with the EEO/AA Office, the President or designee shall designate a Decision Maker for the purposes of implementing Findings and Sanctions under this Policy. For incidents that directly involve multiple campuses, a single Decision Maker shall be assigned by the President or designee, in consultation with the Director of the Office of Institutional Equity, based on the facts and circumstances.

Based on the Fact-Finding Report submitted, the Decision Maker shall:

- a. Determine whether, based on the Preponderance of the Evidence Standard, a violation of this Policy occurred; and
- b. Impose any sanctions as deemed appropriate.

**7. Outcome Report and Notification Requirements**

Upon reviewing the Fact-Finding Report, the Decision Maker may request more information from the Investigator. Once the Decision Maker determines that there is sufficient evidence and information to make a decision, they shall issue an Outcome Report. The Outcome Report shall contain:

- a. The Decision Maker's determination of whether this Policy was violated;
- b. Sanctions imposed, if any;
- c. Any accommodations the University will provide to the Reporting Party or safety measure(s) for the University community, if applicable;
- d. Whether any systemic remedies are being considered or implemented;
- e. If appropriate, a recommendation that the matter be referred for additional disciplinary review; and
- f. The appropriate method for filing an appeal.

The Reporting and Responding parties to a Formal Investigation shall receive the Outcome Report, redacted of any personally identifiable information, as appropriate. While federal privacy laws limit disclosure of certain information in disciplinary proceedings, the following notifications are required by law:

**a. Title IX Requirement**

Both the Reporting and Responding Party shall be informed in writing of the outcome of a Formal Investigation. This includes sanctions imposed that directly relate to the Reporting Party.

**b. Clery Act Requirement**

In any Formal Investigation involving sexual violence, both parties shall be informed of the outcome and the sanctions imposed.

Accordingly, the University shall not require the Reporting Party to abide by a non-disclosure agreement, in writing or otherwise.

**8. Sanctions**

**a. Employees**

Sanctions or appropriate administrative actions may be imposed in accordance with the applicable collective bargaining agreements. Possible sanctions may include disciplinary action up to and including termination.

**b. Students**

If the Decision Maker determines, based on the Preponderance of the Evidence Standard, that a student violated this Policy, then Sanctions shall be imposed based on the severity of the prohibited behavior, as well as the Responding Party's past record.

For violations of this Policy, students are subject to several kinds of sanctions, as listed:

**i. Warning**

A Warning is a formal written admonition.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**ii. Disciplinary Probation**

Disciplinary Probation is a more serious admonition assigned for a definite amount of time. It implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or in especially serious cases, expulsion from the University. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction even if the probationary period has expired.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**iii. Suspension**

Suspension is removal from membership in, or employment by, the University for a specified period of time.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**iv. Suspension with Conditions**

Suspension with Conditions is removal from membership in, or employment by, the University for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the appropriate body applying this sanction, have been fulfilled.

These conditions may include, but are not limited to, restitution of damages, formal apology, or counseling.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**v. Withholding of Degree**

In cases involving seniors or graduate students, the University may withhold a student's degree for a specified period of time. This penalty is imposed instead of suspension at the end of senior year where all other degree requirements have been met.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**vi. Expulsion/Discharge**

Expulsion/Discharge is permanent removal from membership in, or employment by, the University.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**vii. Censure**

Censure can be added to any of the other sanctions listed above, except warning. Censure indicates the University's desire to underscore the seriousness of the violation and the absence of mitigating circumstances and to convey that seriousness in response to future authorized inquiries about the given individual's conduct.

**viii. University Housing Restrictions**

In addition to any of the sanctions listed above, a person may be removed from University housing or relocated within University housing.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**ix. Restrictions of Access to Space, Resources, and Activities**

In addition to any of the sanctions listed above, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

Relevant information remains on a student's permanent record at the University and may be disclosed in response to requests for which the student has given permission or as otherwise legally required.

**x. Other Sanctions**

The Decision Maker may also impose other sanctions, such as work assignments, essays, and/or service to a University campus; counseling; participation in alcohol or other drug education programs; restorative justice activities; or other assignments that the Decision Maker deems appropriate.



**9. Educational Refresher Programs**

When appropriate, an employee or student may be required to participate in educational refresher programs. While ordinarily considered as training and not considered as a Sanction, Educational Refresher Programs may be required as part of the University's goal to prevent the recurrence of inappropriate conduct.

Relevant information remains on an employee's personnel records in accordance with the applicable collective bargaining agreement.

**10. Right to Appeal**

**a. Student**

Both parties have equal rights to an impartial appeal under the Reporting and Investigation Procedures. During the appeal process, all imposed restrictions and interim measures and disciplinary sanctions will remain in place pending the outcome of the appeal.

The appropriate method for filing an appeal will be contained in the Outcome Report. If either party files an appeal, the University will notify the other party in writing.

If an appeal is properly filed, the appropriate Appeal Officer will examine the information presented. The Appeal Officer may then decide within 7 calendar days to:

- i.** Uphold the original decision;
- ii.** Grant the appeal if the clear weight of the evidence shows the determination was erroneous;
- iii.** Remand the case because of substantial relevant information that was not presented, and reasonably could not have been presented during the investigation; or
- iv.** Remand the case because of procedural unfairness.

The decision upon appeal rendered under this section of the policy shall be final and binding within the college/University.

**b. Employee**

Employees who are Reporting Parties have rights to appeal equivalent to students' rights to appeal, as stated above. For all included Responding Parties covered by collective bargaining, appeals of disciplinary actions shall be filed in accordance with the applicable collective bargaining agreement. For all excluded Responding Parties, appeals of disciplinary actions shall be filed in accordance with the University's Administrative Procedure A9.110. During the appeal process, all imposed restrictions, interim measures, and disciplinary actions will remain in place pending the outcome of the appeal, and subject to the provisions of any applicable collective bargaining agreement.

**F. Timing**

The University will seek to complete the investigation and any resulting disciplinary process within sixty (60) calendar days from the date of receipt of the Complaint.

There may be circumstances that require the extension of timeframes for good cause. Timeframes may be extended to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the parties; or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged prohibited behavior. The University will notify the Reporting and Responding parties in writing of any extension of the timeframes for good cause, and the reason for the extension.

**G. Participation**

Participation in the investigatory process is entirely voluntary and the University recognizes that an individual may be reluctant to participate in the process. However, if an individual chooses to limit their participation, certain circumstances may require the University to continue with an investigation.

If a Responding Party delays or fails to acknowledge requests from University officials for information, delays or fails to provide availability for meetings with University officials, or chooses not to answer any or all questions in an investigation for any reason, the University's administrative investigatory process will continue, findings will be reached with respect to the alleged prohibited behavior, and the University will issue any sanctions deemed appropriate. The University will not, however, draw adverse inference purely on the basis of a Responding Party's silence, non-participation, refusal or lack of acknowledgement.

**VII. Resources**

A current overview of University and community resources can be found at:

<http://www.hawaii.edu/titleix/overview>

The following resources are organized by category:

**A. University Reporting Options**

<http://www.hawaii.edu/titleix/reporting>

**B. University Title IX Coordinators**

<http://www.hawaii.edu/titleix/coordinators>

**C. University Confidential Resources**

<http://www.hawaii.edu/titleix/confidential>

**D. Community Resources**

<http://www.hawaii.edu/titleix/community>

**VIII. Contact Information**

For questions or concerns regarding this policy, please contact the Office of Institutional Equity at (808) 956-8629 or [institutional.equity@hawaii.edu](mailto:institutional.equity@hawaii.edu).

**IX. Related Policies**

**A. EP 1.202 (Nondiscrimination and Affirmative Action)**

EP 1.202 is the University of Hawaii's Policy on nondiscrimination and affirmative action. EP 1.202 governs all types of non-gender-based claims of unlawful discrimination based on a protected category.

**B. EP 7.205 (Systemwide Student Disciplinary Sanctions)**

EP 7.205 is the University of Hawaii Policy on the application of systemwide student disciplinary sanctions.

**C. EP 7.208 (Systemwide Student Conduct Code)**

EP 7.208 is the University of Hawaii Policy on the systemwide student conduct code.

**D. EP 9.210 (Workplace Non-Violence)**

EP 9.210 is the University of Hawaii's Policy regarding any work related or workplace violence claims that do not fall within the specific scope of this Policy against sex discrimination and gender-based violence.

E. **AP 9.920 (Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission)**

AP 9.920 is the University of Hawaii Policy relating to providing an equitable, timely, and effective means of resolving discrimination complaints.

F. **Link to Superseded Policy**

<https://www.hawaii.edu/policy/?action=viewChapter&policySection=ep&policyChapter=1&archives=true>

INTERIM