

Prepared by the Office of the President.  
This replaces E1.203 dated April 2001.

UNIVERSITY OF HAWAI`I

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EXECUTIVE POLICY - ADMINISTRATION

November 2005

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E1.203 Policy on Sexual Harassment and Related Conduct

I. INTRODUCTION

This policy reflects the University of Hawai'i's systemwide commitment to eliminate sexual harassment. Sexual harassment is a form of sex discrimination. It is the policy of the University of Hawai'i that harassment based on sex is prohibited and will not be tolerated in any part of the University's programs, activities, or employment. Acts of sexual harassment undermine the trust and mutual respect essential to the mission and function of the academy.

State and federal laws protect University of Hawai'i employees, students, and applicants for employment or admission against discrimination. Sexual harassment constitutes illegal discrimination under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, as amended, and the Hawai'i State Fair Employment Practices Act, Chapter 378 HRS, as amended.

Furthermore, Section 1-5, Policy on Nondiscrimination and Affirmative Action, of the Board of Regents' Bylaws and Policies provides the administrative basis for complying with applicable federal and state statutes, rules, regulations, city and county ordinances, and provisions in the collective bargaining agreements governing nondiscrimination. Board Policy is implemented through Executive Policy E1.202, Nondiscrimination and Affirmative Action, and this Executive Policy on sexual harassment.

In addition, sexual assault or any forcible physical sexual behavior is prohibited by each campus's sexual assault policy and may also be prosecuted as a criminal offense.

## II. OBJECTIVE

The purpose of Executive Policy E1.203 is to define the elements of sexual harassment, establish general guidelines for developing complaint procedures, and discuss the difference between sexual harassment and consensual relationships. Chancellors may establish specific procedures for handling complaints of discriminatory harassment, including sexual harassment; or they may use the existing discrimination complaint procedures contained in UH Systemwide Administrative Procedure A9.920. Chancellors are charged with the responsibility and authority to implement Executive Policy E1.203.

## III. DEFINITIONS AND EXAMPLES

Sexual harassment can take many forms. Although sexual harassment often involves an abuse of authority or power, it can also occur between peers. For example, it can occur between students or coworkers. It is also possible for a student to harass a faculty member or employee. In addition, sexual harassment can involve persons of the same or opposite sex, and both men and women can be targets and/or perpetrators of sexual harassment.

There are two kinds of sexual harassment: *quid pro quo* and hostile environment.

A. 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

1. a condition for advancement;
2. a factor in performance evaluation;
3. a condition for participation in University activities; or
4. a condition for receiving any other benefit given by the University.

*Quid pro quo* sexual harassment involves abuse of authority. Some examples include

1. implied or direct promises of academic or work benefits, such as high grades, promotions, or letters of recommendation, in return for sexual favors;
2. implied or direct threats of adverse decisions or evaluations, such as low grades, negative evaluations, or

failure to hire or promote, should conduct of a sexual nature be rejected;

3. adverse decisions or evaluations, such as negative evaluations, failure to hire or promote, low grades, or negative references, because conduct of a sexual nature has been rejected.

B. 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

1. severe or pervasive; and
2. has the purpose or effect of either:
  - (a) unreasonably interfering with the employee's work performance or student's academic performance, or
  - (b) 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.

Examples of behaviors that could constitute hostile environment sexual harassment include but are not limited to

- unnecessary and unwanted touching, patting, hugging, or brushing against a person's clothing or body;
- remarks of a sexual nature about a person's clothing or body;
- remarks about sexual activity or speculations about previous sexual experience;
- pressure for sexual activity, an element of which may be nonverbal conduct, such as repeated and unwanted staring or sexually suggestive gestures;
- display or distribution of sexually offensive literature, images, cartoons, or other audio-visual materials; or
- gratuitous introduction into instruction, discussion, or conversation of material of a sexual nature, such as sexually explicit anecdotes, questions, or jokes.

This policy shall not limit the scholarly, educational, and/or artistic content of any written, oral, or other kind of presentation or inquiry that falls within justifiable academic standards covering course content and pedagogy. The University of Hawai'i is committed to academic freedom for all members of the academic community. Accordingly, academic freedom will be liberally construed but will not be used as a pretext for violation of this policy. When appropriate, faculty are advised to inform students that content and teaching strategies properly employed in higher education may be controversial and/or discomfoting to some individuals.

#### IV. POLICY ON RETALIATION

The University of Hawai'i System prohibits and will not tolerate retaliation. Retaliation is defined 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.

Adverse action or hostile treatment may include, for example, unfair evaluation, unfair assignment, direct or implied threats, coercion, or encouragement of others to retaliate.

Retaliation is a separate complaint and will be investigated accordingly.

The right of individuals to use lawful means to defend themselves against charges of sexual harassment is not abridged by this policy. Such a right and the prohibition against retaliation are not mutually exclusive.

#### V. PROCEDURAL GUIDELINES ON SEXUAL HARASSMENT

Chancellors are directed to refer to the most current policy guidance on sexual or discriminatory harassment issued by the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Education, Office for Civil Rights (OCR). These policies can be obtained from the EEO/AA coordinators on each campus.

- A. Program. To carry out the University's commitment, Chancellors are hereby charged with the responsibility and authority to develop a program to implement this policy on sexual harassment. Preventive and corrective action should include
1. development and implementation of educational programs to prevent harassment;
  2. wide dissemination of the University's policy prohibiting sexual harassment, including a documented receipt of a copy of the University's policy against sexual harassment by each new employee;
  3. procedures for responding to complaints of sexual harassment;
  4. implementation of appropriate remedies; and
  5. imposition of appropriate corrective actions.
- B. Complaint Procedures. Complaint procedures must comply with the principles of due process. The procedures shall also comply with the guidelines in UH Systemwide Administrative Procedure A9.920, Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission. These guidelines include, but are not limited to, the following requirements:
1. appointment of complaint intake officers for each campus whose names, phone numbers, and office locations are well-publicized;
  2. informal as well as formal procedures;
  3. appointment of impartial investigators;
  4. description of each step in the process;
  5. time frames for processing complaints and rendering decisions;
  6. notification of findings to both parties;
  7. specification of administrators who have authority and responsibility to effect remedies and disciplinary actions;
  8. an appeals process;
  9. provisions for confidentiality and appropriate disclosure; and
  10. the statement of non-retaliation policy in Section IV.
- C. Remedies. The University of Hawai'i strives for an environment in which the dignity of all members of the institutional community is respected. Therefore, the University will implement remedies for persons whose rights have been violated by sexual harassment.

Remedies shall be reasonably devised to correct the harmful effects caused by sexual harassment. Remedies for employees may

include, for example, letters of apology, back pay, and reinstatement. Remedies for students may include, for example, letters of apology, review of grades, and tuition refunds.

D. Corrective Actions. For students and excluded employees, the University will impose disciplinary actions against any individual found to have violated this policy. 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, Chancellors will consult with the systemwide Office of Human Resources prior to imposing employee disciplinary actions. Disciplinary actions against students should be consistent with each institution's student conduct code.

E. Monitoring. In accordance with UH Systemwide Administrative Procedure A9.910, Reporting Procedure for Employment Discrimination Complaints, each Chancellor or designee shall maintain an annual (calendar year) log or report on sexual harassment complaints. The Office of the President may periodically request reports from or audit the efforts of Chancellors to prevent and correct sexual harassment.

Annual reports, with personally identifying references removed, shall be widely distributed or posted on an internet site for each campus. These reports shall describe the facts and disposition of all cases investigated and any remedies and disciplinary actions applied.

## VI. CONSENSUAL RELATIONSHIPS

Consensual relationships, by definition, do not constitute sexual harassment. However, such relationships can and have led to charges of sexual harassment. Furthermore, romantic and/or sexual relationships, that appear to be consensual and might be appropriate in other circumstances, are inappropriate when they

occur between teachers or other employees of the University and individuals they teach, evaluate, or supervise.

Consensual relationships are never within the course and scope of an employee's employment.

Even when both parties to a consensual relationship appear to have consented, a power differential can raise serious concerns about the validity of the consent. Furthermore, these relationships can undermine trust and create an appearance of favoritism and unfair treatment of others.

In the event of charges of sexual harassment based on a consensual relationship between teachers or other employees of the University and individuals they teach, evaluate, or supervise, the validity of consent may be called into question.

A faculty member or other employee of the University who enters or has entered into a romantic and/or sexual relationship with a subordinate (or with someone who is likely to become a subordinate) should make arrangements with a supervisor that will ensure all present and future instructional, supervisory, and evaluative obligations will be competently and objectively handled by someone else. The reasons for making alternative arrangements do not need to be disclosed.

A person who ends a consensual relationship should notify a University official of unwelcome conduct of a sexual nature as soon as possible, using the complaint procedure. To assist the University in taking immediate corrective and remedial action, the University must be notified.

## VII. NOTIFICATION OF POLICY VIOLATIONS

All University administrators are required, and other members of the University community are strongly encouraged, by this policy, to notify the appropriate Chancellor, EEO/AA officer, or designated sexual harassment contact person when they are notified of or otherwise become aware of conduct that may constitute sexual harassment.