

Appendix D
Written Procedural Information for Reporting Parties and
Checklist for Campus Procedural Compliance with Title IX & VAWA

A. Written procedural information

The Title IX Coordinator and other designated offices must provide written information on student disciplinary proceedings and complaint procedures to any individual who reports that she or he has experienced sexual harassment, sexual assault, domestic violence, dating violence, or stalking carried out by students, employees, or third parties, including incidents occurring on- or off-campus.

The written information provided to reporting parties should include all of the information in the Title IX & VAWA notice (**Appendix C**: policy, resources, confidentiality, reporting, complaint options, law enforcement options, interim measures), as well as the more detailed procedural rights listed below.

Appendix D outlines the Title IX & VAWA elements of an impartial and reasonably prompt complaint and investigation process, as well as equitable notice regarding outcomes, including sanctions, remedies, and appeals. Campuses may use existing student conduct procedures and discrimination complaint investigation procedures (AP 9.920). These procedures should be implemented in a manner consistent with the requirements in EP 1.204.

B. Checklist for campus procedures

The University's first responsibility in responding to reports of sexual harassment or sexual violence is attending to the needs of the person(s) affected by the offense (e.g., the individual who reports being sexually assaulted, roommates, and/or family members). All reports of sexual misconduct are taken with utmost seriousness, and the student or employee will be referred to appropriate persons or units for assistance. In the event a member of the University community reports sexual misconduct, the following steps should be taken:

1. Provide immediate assistance

Assistance should include providing written information on University policy, reporting options (including law enforcement), campus and community based resources (including confidential options), and rights to a complaint process that is equitable and reasonably prompt.

2. Encourage the person to seek medical treatment and inform them of the importance of preserving evidence

Any person who reports being sexually assaulted is urged to seek immediate medical treatment for injuries, sexually transmitted diseases, and possible

pregnancy from the campus's student health service or at the emergency room of any local hospital.

Provide written information to reporting parties about the importance of preserving evidence as this may assist in proving that the alleged offense occurred or may be helpful in obtaining a protective order.

A forensic medical exam to preserve evidence of an assault can be performed within 72 hours of a sexual assault by a certified agency. Written campus procedures or resource materials should provide contact information for the certified agency or health provider. Victims of sexual assault should be informed that they have the option of undergoing an exam even if, at the time of the exam, they are not certain they will formally report the assault. To preserve as much evidence as possible, victims should not perform any personal hygiene until the exam is done.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, she or he nevertheless should consider speaking with Campus Security or other law enforcement to preserve evidence in the event of a later change of mind.

3. Protective orders

Where applicable, provide written information on the rights of victims and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal or civil court.

4. Provide rights and written information for both complainants and respondents, regarding investigation and hearing procedures

Complaints filed through on-campus procedures will be addressed promptly. The University will conduct a full investigation of the complaint, to the extent reasonable, based on the victim's options (including informal resolutions) and cooperation (including request for privacy and confidentiality), the possible recurrence and level of threat to safety and security of others, and the effectiveness and availability of remedial and corrective measures. University proceedings need not await the disposition of any related criminal investigation or prosecution. The University has the right to proceed with an administrative investigation at any time.

Campuses may use existing informal procedures and formal investigation and hearing procedures, provided that they include the required elements listed in this Appendix. For example, campuses can use their existing procedures for Student Conduct, sexual harassment, employee misconduct investigations,

workplace violence, and/or UH Administrative Procedure AP 9.920 – *Discrimination Complaint Procedure*, provided the procedures comply with the requirements of Title IX, VAWA, and the Clery Act. However, all campus departments, including but not limited to, Athletics and professional schools such as Law or Medicine shall not initiate their own investigations of sexual harassment and sexual violence incidents, even though they may have their own student conduct codes or professional ethics codes. These programs should refer complaints to the campus Title IX Coordinator or designee.

Procedures for student conduct hearings and complaint procedures regarding formal complaints of sexual harassment and sexual violence should include a clear written statement for both complainant and respondent (in the procedure or investigatory notice) that:

- a. Such proceedings shall:
 - (1) Provide a fair and impartial investigation and resolution.
 - (2) Be conducted within reasonably prompt, designated time frames for the major stages of the complaint process, including a process that allows for the extension of timeframes for good cause with written notice to the complainant and respondent of the delay and the reason for the delay.²² For example, specify the timeframes in which:
 - (a) The campus will conduct a full investigation of the complaint. The University strives to investigate all student conduct complaints within 60 days of the filing of a complaint. Actual resolution time may vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct. Complaints involving employees may follow the time frames, if specified, in the relevant procedure.

If the investigation takes more than 60 days, it is recommended that the parties be notified. Periodic status updates should be given to both parties if the delays depart from the designated timeframes.
 - (b) Both parties will simultaneously be sent a response regarding the outcome of the complaint including relevant sanctions imposed on student respondents.²³

²² VAWA and 34 CFR Part 668 § 668.46

²³ Employee sanctions and disclosure of information must follow collective bargaining procedures and Chapter 92F HRS

- (c) Both parties may file an appeal. Note: For all employees covered by collective bargaining, appeals of disciplinary actions shall be done through the union grievance procedure.
 - (3) Be conducted by officials who receive annual training on the issues related to investigating or hearing cases involving sexual harassment, sexual assault, domestic violence, dating violence, and stalking.
 - (4) Contain a notice that in sexual assault cases mediation is not appropriate, even on a voluntary basis.²⁴
 - (5) Discourage allowing the parties to question or cross-examine each other during meetings, interviews, or hearings (unless required by collective bargaining or other preemptive requirement).
- b. The individual charged with sexual assault is entitled to due process and will be given an opportunity to respond to the allegations.
 - c. Both the complainant and the respondent are entitled to the same opportunities to have others present during campus meetings, interviews, or hearings, including the opportunity to be accompanied to any related interview, meeting or proceeding by an advisor of their choice. Respondent employees should receive written notice regarding union representation rights, as applicable.

While the procedure may not limit the choice of advisor or presence for either the complainant or respondent in any meeting or campus proceeding, the procedure may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties and are consistent with union representation rights, if applicable.²⁵

- d. Both the complainant and respondent have the same opportunity to provide witnesses and evidence.

If there are concurrent investigations, the Title IX/VAWA investigators may coordinate with campus security, criminal, or other investigators and may consider whether it is appropriate to share information so that

²⁴ OCR Dear Colleague Letter, April 4, 2011

²⁵ VAWA and 34 CFR Part 668 § 668.46

complainants and others are not unnecessarily required to give multiple statements.

- e. The evidentiary standard is the preponderance of the evidence (i.e., more likely than not that sexual misconduct occurred).
- f. Both the complainant and the respondent shall be simultaneously informed, in writing, of:
 - (1) the outcome of any University investigation or student disciplinary proceeding that arises from an allegation of sexual harassment or sexual violence; relevant sanctions imposed on student respondents (in a manner consistent with FERPA);²⁶
 - (2) the University's procedures for the complainant and the respondent to appeal the results of the investigation or student disciplinary proceeding (Note: For all employees covered by collective bargaining, appeals of disciplinary actions shall be done through the union grievance procedure);
 - (3) any change to the results that occurs prior to the time that such results become final; and
 - (4) when such results become final.
- g. Retaliation prohibited

The parties should be informed that University policy and state and federal law prohibit retaliation.

The University prohibits and will not tolerate retaliation. Persons who commit retaliation in violation of this policy are subject to appropriate disciplinary action. Retaliation is defined in part II.E. above and includes adverse actions against a person because they have filed a complaint, participated in an investigation, or otherwise opposed discrimination, including sexual harassment, sexual assault, domestic violence, dating violence, or stalking. Retaliation involves adverse actions that would dissuade a reasonable person from opposing prohibited conduct.

²⁶ Disclosure of student sanctions should be consistent with FERPA. Sanctions involving employees must follow confidentiality requirements of collective bargaining procedures and Chapter 92F HRS.

h. Corrective action, including sanctions and remedies

Campus procedures should contain a statement regarding corrective actions, including a list of all possible sanctions²⁷ and examples of possible remedies, that the campus may implement following a final determination of an investigation or student disciplinary procedure regarding sexual harassment, sexual assault, domestic violence, dating violence, or stalking.

The University will take reasonable steps to prevent the recurrence of discrimination, sexual harassment, sexual assault, domestic violence, dating violence, or stalking in any form. Where corrective actions are indicated, they shall be implemented in accordance with applicable conduct codes, policies and procedures, collective bargaining agreements or other relevant provisions. Sanctions may be imposed against any student or employee who is found to have violated this policy. Possible sanctions include, but are not limited to, suspension or dismissal from campus for students, suspension or termination from employment for excluded employees, and disciplinary actions pursuant to collective bargaining agreement provisions for included employees. If the person found to have violated the policy is not a University student or employee, appropriate action will be taken. Examples include notifying the vendor, notifying the third party employer, issuing a trespass notice, or other appropriate measures.

Corrective action may also include remedial actions for the individual (complainant) and the campus community. Remedies for the complainant should remain confidential to the extent feasible. Examples of remedies for the complainant include, but are not limited to, counseling services; escort services to ensure that the student can safely attend classes; changing residence hall assignments for the perpetrator or for the complainant (if requested by the complainant); providing extra time to complete; modifying work arrangements; reviewing an adverse employment action (e.g., correcting unfair evaluations). Examples of remedies for the broader student population or employee work group include, but are not limited to, targeted training (e.g., bystander training, nonretaliation training); informing affected students of available trauma counseling services; issuing or reaffirming policy statements to clearly communicate that the University does not tolerate sexual misconduct or sexual violence and will take appropriate action.

²⁷ VAWA and 34 CFR Part 668 § 668.46 requires a list of all possible sanctions that may be imposed following disciplinary proceedings for allegations of dating violence, domestic violence, sexual assault, or stalking