



Executive Policy Chapter 1, General Provisions

Executive Policy EP 1.204 – Policy and Procedural Guidelines on Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking

Effective Date: February 2015

Prior Dates Amended: January 2006

Responsible Office: Office of the President

Governing Board of Regents Policy 1-5

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I. Purpose

The purpose of this policy is to prohibit sexual harassment, sexual assault, domestic violence, dating violence, and stalking and to provide guidance to Chancellors and other administrators who are responsible for developing and implementing accessible campus procedures and prevention programs for students and employees. This policy is intended to assist campus administrators in complying with the complex and interrelated requirements of sex discrimination and sexual violence laws that cover students, employees, and third parties, involving both on- and off-campus situations. These laws include but are not limited to the Jeanne Clery Disclosure of Campus Security Policy & Campus Crime Statistics Act, as amended (“Clery Act”); the Violence Against Women Act, as amended (“VAWA”); Title IX of the Education Amendments of 1972 (“Title IX”); Title VII of the Civil Rights Act of 1964, as amended (“Title VII”); Hawai‘i Revised Statutes (“HRS”) Title 21, Chapter 378 (employment practices); HRS Title 31, Chapter 586-1 (domestic abuse) HRS Title 37, Chapter 707 §§ 707-730 to 707-759 (sexual offenses). Adding to this complexity is the manner in which employment laws, collective bargaining agreements, Chapter 92F HRS, and other employment matters intersect with Title IX & VAWA. Campus administrators are advised to consult with their lead Human Resources (HR) specialist or other employee relations experts in cases involving employees, for example, when implementing interim measures, disclosing investigation results (including sanctions), offering confidential reporting, investigating anonymous complaints, or other situations, as appropriate.

Specifically, each campus is required to implement:

- A. comprehensive education and prevention programs that inform the University community about the policies, resources, complaint options, remedies, and the risks and myths that contribute to sexual harassment, sexual assault, domestic violence, dating violence, and stalking
- B. information and assistance for those who report alleged sexual harassment and sexual violence, including informing individuals about their right to file

criminal charges as well as the availability of on- and off-campus resources (e.g., medical, counseling, advocacy, legal, and other support services, including confidential options) and alternative remedies such as housing, academic, or workplace accommodations, if appropriate and reasonably available, regardless of whether the individual chooses to file a complaint or report a crime to campus security or local law enforcement

- C. prompt and equitable complaint procedures for students and employees that are accessible and widely publicized on a regular basis
- D. information for both respondents and complainants that they have the same rights during a student disciplinary hearing or investigation, including the right to a fair and impartial process, to be accompanied by an advisor, to give their side of the story and present all relevant evidence, to receive simultaneous updates on the status of the investigation and written notice of the outcome (including relevant sanctions imposed on student respondents¹), and the opportunity to appeal
- E. corrective actions the campus will take (including remedies and disciplinary sanctions) to end incidents of harassment or sexual violence and to prevent their recurrence

II. Definitions

The definitions below are based on state and federal laws, regulations, and case law. Campuses may abbreviate the definitions and include examples and scenarios in order to offer student-oriented, effective, and readily accessible training and outreach materials. VAWA also requires educational programs to inform students and employees of State of Hawai'i definitions of criminal sexual offenses. The relevant sections of the laws are summarized in **Appendix A** to provide technical references for campus educational programs, websites, and complaint procedures. However, it should be noted that EP 1.204 is a civil rights policy that prohibits hostile environment harassment including sexual violence, and that the standard of proof is the preponderance of the evidence, and not a criminal standard of evidence.

A. Affirmative Consent²

Consent in relationship to sexual activity is defined in accordance with its plain and common meaning. With respect to sexual activity, "consent" means affirmative words or actions that show a knowing and voluntary agreement to engage in mutually agreed sexual activity (including pictures/video). For the purposes of this section, "affirmative consent" means affirmative, conscious,

¹ Disclosure of student information must comply with FERPA. Employee sanctions must follow confidentiality requirements of collective bargaining procedures and Chapter 92F HRS.

² The term "consent" with respect to sexual activity is not specifically defined by Hawai'i Revised Statutes.

and voluntary agreement by both parties to engage in sexual activity. Mere assent (an affirmative statement or action) does not constitute consent if it is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of her or his incapacitating intoxication, unconsciousness, youth, language, intellectual or other disability, or other incapacity; or if the assent is the product of threat, coercion, or fraud. Past consent does not imply future consent; silence or an absence of resistance does not imply consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent must be ongoing throughout sexual activity and can be withdrawn at any time.

B. Dating Violence

VAWA defines “dating violence”³ as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse (For the purpose of Clery reporting, dating violence does not include acts covered under the definition of domestic violence.)

C. Domestic Violence

VAWA defines “domestic violence”⁴ as a felony or misdemeanor crime of violence committed by: a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, a person similarly situated to a spouse of the victim under the domestic or family violence laws of the local jurisdiction. Hawai’i law on “domestic abuse” includes persons who have or have had a dating relationship.⁵

³ 42 USC § 13925(a)(10)[40002(a) of VAWA] and 34 CFR Part 668 § 668.46 Oct. 20, 2014 Final Rule

⁴ Ibid

⁵ See Appendix A - HRS § 586-1. Hawai’i domestic violence law covers other household members such as roommates, relatives, and children. However, for the purpose of EP 1.204, which is a gender nondiscrimination and sexual violence policy, the applicable definition of domestic violence focuses on people cohabitating who are spouses or who have or have had a romantic or intimate relationship. See 34 CFR Part 668 § 668.46 comments on the definition of “Domestic Violence” and the issue of roommates. (Federal Register, Vol. 79, No 202, October 20, 2014, p. 62757)

D. Indecent Exposure⁶

Under Hawai'i law, "indecent exposure" involves a person intentionally exposing their genitals to another person under circumstances in which the conduct is likely to cause affront.

E. Retaliation

Retaliation is defined as adverse actions taken against a person because of their 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 of discrimination, sexual harassment, sexual assault, domestic violence, dating violence, or stalking.

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.

F. Sexual Assault⁷

Under Hawai'i sexual offense laws, a person commits sexual assault, including but not limited to, when the person knowingly or recklessly subjects another person to an act of nonconsensual sexual penetration or sexual contact. This includes knowingly engaging in the behavior with a person who is unable to give consent due to incapacitation, intellectual disability, and age. Sexual assault also includes statutory rape, indecent exposure, and voyeurism or trespassing on property to engage in surreptitious surveillance for sexual gratification. Sexual assault can be committed by men or women and can occur between persons of the same or different sex.

⁶ See Appendix A - HRS § 707-734.

⁷ See Appendix A - HRS §§ 707-730 to 733.

Hawai'i law categorizes sexual offenses as first, second, third, or fourth degree sexual assault, which takes into account factors such as severity, context, age of the victim, capacity for giving consent, and whether the acts involved forcible compulsion, lack of consent, threats of property damage, etc.

For the purpose of this policy "incapacitation" means the person's decision-making ability is impaired such that the person lacks the ability to make a rational, reasonable decision due to an intellectual or other disability, sleep, involuntary physical restraint, alcohol, drugs, or so-called "date-rape" drugs.

Examples of sexual assault include but are not limited to:

- Acts of sexual intercourse where such an act is accomplished against a person's consent by means of force or threat of harm.
- Nonconsensual intercourse by a friend or acquaintance.
- Sexual assault with an object.
- Acts of sexual fondling or sexual intercourse where the person is prevented from resisting or is incapable of giving consent because of her or his youth, intellectual or other disability, or is unconscious at the time of the act, and this fact is known or reasonably should be known to the person committing the act.
- Electronic surveillance, recording, photographing, or transmitting identifiable images of private sexual activity and/or intimate body parts without the knowledge and consent of the parties involved.

G. Sexual Harassment

Sexual harassment is a form of sex discrimination that is strictly prohibited by this policy, as well as by UH Executive Policy EP 1.202 which prohibits discrimination and harassment based on protected categories, including sex, gender identity or expression, and sexual orientation.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when

1. 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;
2. 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
3. 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.

The following are examples of behavior that can 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 sex, sexual orientation, or gender identity
- sexual assault, domestic violence, dating violence, stalking

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.

H. Sexual Violence

The U.S. Department of Education Office for Civil Rights (OCR) considers sexual violence to be a form of sex discrimination and a violation of Title IX of the Education Amendments of 1972. The term "sexual violence"⁸ refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

I. Stalking

VAWA defines "stalking"⁹ as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

"Course of conduct" means two or more acts, including, but not limited to, unwelcome acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means (including cyberstalking) follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

"Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

"Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

⁸ OCR Questions and Answers on Title IX and Sexual Violence, April 29, 2014

⁹ VAWA and 34 CFR Part 668 § 668.46 Oct. 20, 2014 Final Rule

III. Executive Policy

A. Statement on equal opportunity and prohibition against sex discrimination and sexual violence

The University of Hawai'i ("University") is committed to maintaining and promoting safe, respectful campus environments that are free from discrimination, harassment, and sexual violence. The University prohibits and does not tolerate sexual harassment, sexual assault, domestic violence, dating violence, and stalking. These forms of sex discrimination and sexual misconduct¹⁰ are prohibited by law and are serious offenses that violate the basic standards of behavior expected of members of the University community. Such conduct substantially interferes with a person's civil rights to equal opportunity in employment, education, and/or access to University programs, activities and services, whether on- or off-campus. The University will take appropriate action to prevent sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Each campus will implement prevention and response procedures that include providing information on Title IX Coordinators and other designated personnel, law enforcement options, safety, interim measures, education and prevention services, and on- and off-campus resources. Each campus will investigate complaints in a manner that is equitable and reasonably prompt. Where appropriate, the campus will take prompt and effective steps (including disciplinary sanctions) reasonably calculated to end the sexual misconduct, eliminate the hostile environment, prevent its recurrence, and remedy its effects.

B. Retaliation prohibited

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

C. Scope

EP 1.204 prohibits sexual harassment, sexual assault, domestic violence, dating violence, and stalking in any University workplace, educational program, activity, or service, which includes all academic, extracurricular, student housing, athletics, and other programs. The policy covers sexual

¹⁰ "Sexual misconduct" as used in this policy refers specifically to "sexual harassment, sexual assault, domestic violence, dating violence, and stalking."

harassment and sexual violence based on gender identity and gender expression. The policy applies to all members of the University community (students, faculty, and staff). The prohibition against sexual misconduct also applies to third parties, such as volunteers, visiting interns, guests, patrons, independent contractors, or clients of the University. The policy applies to persons regardless of their sex, sexual orientation, gender identity, or gender expression.

This policy applies to sexual misconduct:

1. on University premises, in any University facility, or at any University sponsored, recognized or approved program, regardless of location; and
2. that impedes equal access to any University education program or activity or that adversely impacts the education or employment of a member of the University community; or
3. otherwise threatens the health or safety of a member of the University community.

A member of the University community who reports to the University that they believe they have experienced or observed sexual harassment or sexual violence, whether the offense occurred on- or off-campus, should be offered appropriate assistance, including referral to the campus Title IX Coordinator or other designated offices, and be provided with a written explanation of rights and options under campus procedures. Complaints by or against third parties should also be reported to the Title IX Coordinator or designee who will initiate appropriate follow up depending on the circumstances. Similarly, if an incident occurs off-campus, the Title IX Coordinator or designee should be consulted in determining whether the conduct occurred in the context of a University education program or activity or had continuing effects on campus or in an off-campus education program or activity.¹¹

D. Guidelines for campus programs and procedures

Chancellors or their designees must implement educational programs, provide Title IX & VAWA notice to students and employees, provide written information on resources and complaint options, and implement a protocol for responding to reports of sexual harassment and sexual violence. Campuses must also implement student conduct procedures and administrative complaint investigations (e.g., *AP 9.920 – Discrimination Complaint Procedure for Students, Employees, and Applicants for Employment or Admission*) in an equitable and reasonably prompt manner, and in compliance with these guidelines. Information on campus resources,

¹¹ OCR Questions and Answers on Title IX and Sexual Violence, April 29, 2014

protocol, and complaint options should be presented in a manner that is easily understood, easily located, and widely distributed.

Campuses should use this executive policy and procedural guidelines to develop a protocol tailored to their respective campus. University campuses have significant differences in student populations, programs, and missions, and corresponding differences in staffing, organizational structures, and campus resources. The following guidelines are intended to assist campuses in meeting the requirements of Title IX, VAWA, Clery Act, and Title VII while allowing the necessary flexibility to tailor their procedures or protocol to their specific campus communities.

1. Prevention and awareness education

It is the collective responsibility of all members of the University community to foster a safe and secure campus environment. In an effort to promote this environment and to prevent acts of sexual misconduct from occurring, Chancellors or their designees are charged with implementing educational programs to raise awareness about the myths and risks that contribute to sexual harassment, sexual assault, domestic violence, dating violence, and stalking, as well as risk prevention, campus resources, reporting options, and campus procedures. Education and information should be available through multiple sources. Examples include: websites, new student and new employee orientations, campus women's centers, residential life programs, campus health and counseling services, campus security. Specialized training should also be provided to Title IX Coordinators, investigators, student conduct panels, and others as appropriate.

a. Primary prevention and ongoing awareness education

Prevention programs should include:¹²

- (1) primary prevention and awareness programs that all incoming students and new employees are expected to participate in; and
- (2) ongoing prevention and awareness programs that all members of the University community are encouraged or requested to participate in.

b. Topics for prevention and awareness programs

See **Appendix B** for the recommended topics.

¹² See 20 U.S.C. § 1092(f)(8)(B)(i).

2. Designate a lead Title IX Coordinator

Campuses should identify one individual who serves as the lead Title IX Coordinator to oversee the institution's efforts and results in complying with Title IX regulations. Depending on the campus size and organizational structure, a Title IX Coordinator's duties may be full-time or part-time, and there could be one or numerous Title IX Coordinators. However, one individual must be assigned ultimate oversight responsibility as the lead Title IX Coordinator, and the titles or descriptions of the other coordinators should show that they serve in a deputy or supporting role and their area of responsibility.

The lead Title IX Coordinator's core responsibilities are as follows:

- oversee the campus's response to Title IX reports/complaints and identify and address any patterns or systemic problems
- ensure that reports and complaints are handled through consistent practices that are equitable and reasonably prompt
- coordinate with other complaint offices so as to be informed of all complaints that raise Title IX issues throughout the campus
- maintain current knowledge and expertise on Title IX and related sex discrimination statutes and regulations

In addition to the above core responsibilities, Title IX Coordinators or deputies may have additional responsibilities such as:

- meet with complainants or persons who request information
- investigate Title IX complaints
- evaluate student requests for confidentiality in the context of the campus responsibility to provide a safe and nondiscriminatory environment for all students
- provide training to students, faculty, and staff
- coordinate services with local advocacy and service providers
- coordinate with campus security and local law enforcement

Based on these duties, Title IX Coordinators and deputies can include Student Affairs professionals, Human Resources (HR) officers, Administrative Officers, Equal Employment Opportunity and Affirmative Action (EEO/AA) coordinators, or other personnel who are knowledgeable about and/or receive training on Title IX, sexual harassment, sexual violence, investigating misconduct, and/or resolving disputes, as appropriate. Campuses should avoid appointing persons who have other duties that would create a conflict of interest

such as serving as a victim advocate, confidential counselor, student conduct decision maker, or University general counsel.

3. Publicize Title IX & VAWA Notice to all students and employees

See **Appendix C** for details on the topics to be included. Campuses can use a variety of methods for providing Title IX & VAWA notice to students and employees. For example, comprehensive notice covering the topics in Appendix C can be included on campus websites, in new student orientation, new employee orientation, new hire packets, and ongoing training sessions. A briefer notice with contact information for Title IX Coordinators and campus resources can be included in websites and print information such as school catalogs, college and department websites, with links to the main Title IX & VAWA websites. The UH System website also publicizes contact information for Title IX Coordinators, links to relevant policies and procedures, Clery Act captions on job announcements, and an EEO/AA caption on UH System web pages that contains a link to EEO policies and Title IX Coordinators.

Include the following items in the Title IX & VAWA notice:

a. Policy statement

The policy is provided in section III (above), parts A, B, and C.

b. Availability of immediate assistance and reporting options

See **Appendix C**, part B for details. All members of the University community are urged to seek assistance and report conduct of concern before it becomes severe, pervasive, or persistent. The Title IX Coordinator and other designated campus offices will provide information to the reporting party on available resources and will seek to prevent harassment from continuing and perhaps escalating and to otherwise assist the person harassed, including implementing accommodations or interim measures, if appropriate and reasonably available (e.g., no-contact orders, campus security escort services, counseling, changes in class schedules, changes in living arrangements, etc.).

On- and off-campus resources, including confidential options

The Title IX & VAWA notice should list the names and contact information for relevant resources, including designated campus

reporting options as well as confidential options both on-campus and off-campus. For example:

Designated reporting options:

- Title IX Coordinator
- Complaint offices that receive or investigate complaints or handle student judicial affairs
- Campus security and local law enforcement

Confidential options:

- Confidential professionals – licensed counselors, physicians, and other professionals legally obligated to maintain confidentiality
- Advocates, victim services, non-licensed counselors designated by the campus to provide services to students in a private, anonymous setting
- Community based resources for domestic violence, sexual abuse treatment centers, legal services

c. Interim measures

See **Appendix C**, part C for details and examples. The Title IX & VAWA notice should include information for students and employees about options for, and available assistance in changing academic, living, transportation, and working situations, if requested by the student or employee and if such accommodations are reasonably available, regardless of whether the person chooses to report the crime to campus security or local law enforcement.

d. Confidential offices and resources

See **Appendix C**, part D for details and examples. Any person who has experienced sexual harassment or sexual violence is strongly urged to contact their campus Title IX Coordinator or campus security, as needed in an emergency. However, if a person desires to keep the details of an incident confidential, she or he can speak with individuals who have professional or legal obligations to maintain confidentiality. Students may also speak privately with designated campus student services such as advocacy offices and sexual assault services. When seeking advice and support, students who are concerned about

confidentiality and privacy should discuss their concerns with the person with whom they are speaking. To the extent feasible, the campus Title IX & VAWA notice will indicate which offices listed in the notice are confidential and whether the student can remain anonymous.

e. Filing complaints

See **Appendix C**, part E for sample language. The Title IX & VAWA notice should include contact information for informal and formal complaint options.

(1) Where to file an administrative or student conduct complaint

Students and employees are strongly encouraged to report incidents of harassment and sexual misconduct as soon as possible to prevent escalation, preserve evidence, and to give campus administrators an opportunity to intervene. The Title IX & VAWA notice should list the designated complaint officers and offices.

(2) Where to file a criminal complaint

Complainants can file criminal complaints with local law enforcement, in addition to pursuing administrative remedies through campus student conduct procedures or discrimination complaint procedures.

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.

(3) Filing with a state or federal agency

Complainants can file charges with state and federal enforcement agencies at any time and do not need to wait for the conclusion of a campus student conduct hearing or campus investigation.

f. Administrative responsibilities and confidentiality

See **Appendix C**, part F. The Title IX Coordinator, complaint offices, executives, supervisors, and Campus Security Authorities have administrative or reporting responsibilities for incidents of sexual harassment and sexual violence. In order to carry out their responsibilities, these offices and individuals may need to share information but will do so only on a need to know basis. They will treat the complainant, respondent, and witness information in a confidential manner.

g. Title IX & VAWA requirement to notify the Title IX Coordinator¹³

See **Appendix C**, part G. The Title IX & VAWA notice should inform students that all University employees are subject to Title IX & VAWA. In order for the University to comply with these laws, all employees are expected to notify the campus Title IX Coordinator if they observe or otherwise become aware of sexual harassment and sexual violence. This gives the University the opportunity to prevent escalation, offer assistance and other remedial action, and to prevent future incidents.

In most situations, employees can notify the Title IX Coordinator without disclosing the identities of the parties involved; however, executives, managers, and supervisors are expected to provide detailed information to the Title IX Coordinator.

Pursuant to Title IX, in situations where a student requests confidentiality and that the campus not investigate or seek disciplinary action against the respondent, the Title IX Coordinator or other designee must consider the request and assess whether the campus can honor the request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual misconduct.

By informing students of the campus obligations under Title IX & VAWA and the role of the Title IX Coordinator, students can make informed decisions about whether to disclose detailed information to staff members who are not covered by legal privilege¹⁴ or other designated resource persons or offices

¹³ OCR Questions and Answers on Title IX and Sexual Violence, April 29, 2014, parts D and E.

¹⁴ HRS §626, Article V (Privileges)

that can maintain confidentiality or privacy, e.g., a licensed counseling psychologist, physician, health care provider, clergy, domestic violence or rape crisis center.

h. Confidentiality requests

See **Appendix C**, part H. The notice should indicate the designated officer (usually the Title IX Coordinator) who can review requests for confidentiality. If a student requests confidentiality (e.g., after having reported an incident to staff member or campus administrator), this request should be considered by the appropriate campus designee in an effort to respect the request in the context of the University's responsibility to provide a safe, nondiscriminatory environment for all students and employees.

4. Provide written procedural information to individuals who report incidents or file complaints

Title IX & VAWA require the University to provide written procedural information to any person who reports an incident or files a complaint. See instructions and procedural guidelines in **Appendix D**.

5. Develop and disseminate a campus process for responding to incidents and complaints

See **Appendix D** for key elements to include in the process.

E. Evidentiary Standard

Determinations of whether or not a policy violation has occurred will be based on "the preponderance of the evidence" standard. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude that it is more likely than not that the policy has been violated.

F. Corrective action, including sanctions and remedies

Campus procedures should contain a statement regarding corrective actions, including possible remedies and a list of all possible sanctions¹⁵ that the campus may implement following a final determination of an investigation or student disciplinary procedure regarding sexual harassment or sexual violence. See **Appendix D**, part B.4.h for details and examples.

¹⁵ VAWA and 34 CFR Part 668 § 668.46 Oct. 20, 2014 Final Rule

G. Confidentiality

Efforts to maintain confidentiality of victims will be exercised to the greatest extent possible. EP1.204 requires each campus to provide information regarding on- and off-campus resources where students and employees may discuss their concerns in a confidential or private (anonymous) setting.

Pursuant to the Clery Act, when an incident of sexual assault has been reported, appropriate members of the University community will be informed, and public safety announcements, as required by law, and publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

The University will do a preliminary investigation of any report of sexual harassment or sexual violence that is brought to the attention of the Title IX Coordinators or when the University otherwise has reason to believe that there has been a violation of EP 1.204. Since all members of the University community are urged to report incidents before they become severe or pervasive, the Title IX Coordinators may receive information involving anonymous individuals. Title IX Coordinators may also receive requests for confidentiality which they will assess in the context of providing a safe, nondiscriminatory campus environment for all students and employees, including the student who reported the alleged sexual misconduct. Thus, not all reports result in formal complaints and investigations. However, the Title IX Coordinator will provide the reporting parties with written information on the University's policies and may implement other prevention or remediation efforts.

When an informal or formal complaint is filed, information will be handled in a confidential manner. Certain information may need to be disclosed to appropriate administrators, the respondent, and witnesses in order to conduct the investigation. Information may also be disclosed if required by law, rule, regulation, or by order of the court or arbitrator pursuant to the appropriate collective bargaining agreement.

There may be instances when a victim of sexual violence declines to file a complaint but where the University must take action to prevent future incidents and to provide a safe and nondiscriminatory environment for all students and employees, including the reporting party. In these instances, where the more limited remedial options are deemed to be insufficient, the University has a duty to investigate to the fullest extent possible in an effort to remedy the situation or stop the pattern of violence, despite the lack of information or cooperation by the victim. The University may initiate an investigation of its own when the President or a Vice President, Chancellor, Vice Chancellor, Dean of Students, or designee receives a report (including third party) or otherwise and has reason to believe that a violation of EP 1.204

has occurred. These executives have the authority to initiate an informal inquiry or formal investigation.

H. Right to alternative procedures

It is the right of any individual to pursue other avenues of recourse which may include initiating civil action or seeking redress under state criminal statutes (e.g., the Hawai'i Penal Code, Chapter 707, Part V. Sexual Offenses, §707-730 to 707-733) and/or federal law. These avenues of complaint may be pursued concurrently without jeopardizing an individual's right to use on-campus complaint procedures, including student disciplinary procedures.

Individuals may also pursue civil rights complaints through state and federal agencies, including OCR (students), EEOC (employment), and HCRC (employment). Complainants should contact these agencies directly regarding agency procedures and deadlines for filing complaints.

IV. Delegation of Authority

Vice Presidents and Chancellors are hereby charged with the authority to implement this policy on Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

V. Contact Information

For contact information, go to www.hawaii.edu/eeo. This website contains contact information for campus Title IX Coordinators and copies of relevant policies.

VI. References

A. Relevant Federal and State Laws and Regulations

The relevant laws for this policy on sexual harassment and sexual assault include but are not limited to the following: the Clery Act, as amended; VAWA; Title IX; Title VII; HRS Title 21, Chapter 378 (employment practices); HRS Title 31, Chapter 586-1 (domestic abuse); HRS Title 37, Chapter 707 §§ 707-730 to 707-759 (sexual offenses); other applicable laws and regulations.

B. Related Executive Policies and Administrative Procedures

1. UH Executive Policy EP 1.202, *Nondiscrimination & Affirmative Action Policy*.
2. UH Executive Policy EP 9.210 – *Workplace Non-violence: Sexual assault, domestic violence, dating violence, and/or stalking are prohibited conduct under the workplace nonviolence policy.*

3. UH Executive Policy EP 7.208 – *University of Hawai'i Systemwide Student Conduct Code*.
4. UH Executive Policy EP 2.210 – *Executive Policy on the Use and Management of Information Technology* includes guidance on complying with University policies on sexual harassment, email harassment, and community standards regarding privacy. The policy also references Hawai'i law prohibiting the use of computers to commit sexual assault and child abuse.
5. UH Administrative Procedure AP 9.920 – *Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission*
6. UH Administrative Procedure AP 9.900 – *Policy and Complaint Procedure for Members of the Public Who Have Discrimination Complaints Regarding Public Accommodations or ADA Complaints Regarding Disability Access to University Services, Programs, and Activities*

Approved:

signed
David Lassner
President

2/7/2015
Date

Appendix A **Hawai'i Criminal Definitions**

Hawai'i criminal definitions are included here as required by VAWA for information purposes. The definitions applicable to EP 1.204 are found on pp. 2-7 of the policy.

A. Domestic Abuse (HRS § 586-1)

Under Hawai'i Revised Statutes Title 31, Chapter 586-1, "domestic abuse" includes physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members.

"Family or household member" means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, persons jointly residing or formerly residing in the same dwelling unit, and persons who have or have had a dating relationship.

"Dating relationship" means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context."

"Extreme psychological abuse" means: An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.

"Malicious property damage" means: An intentional or knowing damage to the property of another, without his/her consent, with intent to cause emotional distress.

B. Sexual Assault (HRS § 707-730 to 733)

Hawai'i Revised Statutes Chapter 707 defines "Sexual Offenses" to include sexual assault and indecent exposure:

1. Sexual assault in the first degree (HRS § 707-730):
 - a. The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
 - b. The person knowingly engages in sexual penetration with another person who is less than fourteen years old;

- c. The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:
 - (1) The person is not less than five years older than the minor; and
 - (2) The person is not legally married to the minor;
 - d. The person knowingly subjects to sexual penetration another person who has an intellectual disability; or
 - e. The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.
2. Sexual assault in the second degree (HRS § 707-731)
- a. The person knowingly subjects another person to an act of sexual penetration by compulsion;
 - b. The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless.
3. Sexual assault in the third degree (HRS § 707-732)
- a. The person recklessly subjects another person to an act of sexual penetration by compulsion;
 - b. The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
 - c. The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
 - (1) The person is not less than five years older than the minor; and
 - (2) The person is not legally married to the minor;
 - d. The person knowingly subjects to sexual contact another person who has an intellectual disability, or who is mentally incapacitated or physically helpless, or causes such a person to have sexual contact with the actor.

4. Sexual assault in the fourth degree (HRS § 707-733)
 - a. The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;
 - b. The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or
 - c. The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.

C. Sexual assault and use of computers HRS §708-893(b)

1. A person commits the offense of use of a computer in the commission of a separate crime if the person knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:
 - c. Section 707-731, relating to sexual assault in the second degree;
 - d. Section 707-732, relating to sexual assault in the third degree;
 - e. Section 707-733, relating to sexual assault in the fourth degree;
2. Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated.

D. Stalking (HRS § 711-1106.5)

1. A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.
2. For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or electronic mail transmission.
3. Harassment by stalking is a misdemeanor.

Appendix B

Topics for Prevention and Awareness Programs

The following recommended topics are based on VAWA regulations at 34 CFR § 668.46(j)(1)(i)(A)-(F) and the definition of “programs to prevent dating violence, domestic violence, sexual assault, and stalking” in § 668.46(a).

A. Topics for prevention and awareness programs for students

1. Policy

A statement of the University’s commitment to Title IX and nondiscrimination; prohibition against sexual harassment and, in particular, the offenses of sexual assault, domestic violence, dating violence, and stalking; policy against retaliation; commitment to provide confidentiality to reporting parties to the extent permissible by law (including regard for the safety of others).

2. Definitions

- Title IX and what constitutes sexual violence, including same-sex sexual violence
- The definition of consent, including examples
- Hostile environment sexual harassment; how to identify it, and how the campus analyzes whether conduct was unwelcome, and whether the conduct created a hostile environment
- Hawaii’s criminal definitions of sexual assault, domestic violence, dating violence, and stalking

3. Prevention and risk reduction

- Information on risk reduction; consent; the role of alcohol and drugs, including the deliberate use of alcohol and/or drugs to perpetrate sexual violence
- Safe and positive options for bystander intervention that may be carried out by an individual(s) to prevent harm or intervene when they observe a possible risk of sexual assault to another person
- The effects of sexual assault and trauma to the victim

4. Reporting options

- Timeframes for reporting

- Informal and confidential or anonymous options, in the context of the University's duty to ensure a safe and nondiscriminatory campus for all students and employees
- Formal reporting options
- How to report sexual violence to campus or local law enforcement; assistance provided by the campus; and the person's right to pursue law enforcement proceedings simultaneously with a campus Title IX complaint
- Names and contact information for the campus Title IX Coordinator and other designated offices, as appropriate (e.g., Deputy Title IX Coordinator(s), Vice Chancellor/Dean for Student Affairs, Campus Security) and an explanation of their responsibilities

5. Procedures

- Student conduct code relating to sexual misconduct
- Campus procedures, including impartial investigations, timeframes, importance of preserving evidence, rights of complainants and respondents to present evidence and to be accompanied by an advisor, notification of outcome, rights to appeal

6. Remedies and campus resources

- Possible sanctions and remedies that may be implemented following a campus disciplinary proceeding involving sexual misconduct
- Written notification of on- and off-campus resources, such as counseling, health, advocacy, and legal assistance, including confidential resources
- Availability of interim measures, upon request of the complainant and subject to reasonable availability of such accommodations, e.g., no contact orders, safety plans, academic adjustments, or changes to living arrangements

B. Topics for prevention and awareness programs for employees

The topics for employee training are similar as for student training; however, the employee information should also cover

1. For executives, managers, and supervisors – recommended responses to reports of sexual harassment and sexual violence, including practical information about identifying and preventing sexual violence, using nonjudgmental language, and importance of referral to Title IX Coordinator.
2. All University employees are subject to Title IX & VAWA. In order for the University to comply with these laws, all employees are expected to notify the campus Title IX Coordinator if they observe or otherwise become aware of sexual harassment and sexual violence. This gives the University the opportunity to prevent escalation, offer assistance and other remedial action, and to prevent future incidents.
3. The recommended responses for employees if they receive a report or observe a situation that might constitute sexual harassment or sexual violence.
4. That employees do not need to make a determination of whether sexual harassment, hostile environment, or sexual violence occurred – that is the job of the Title IX Coordinator and allied offices.
5. Specialized training for investigators, Title IX Coordinators, and others as needed.

Appendix C
Topics to Be Included in Title IX & VAWA Nondiscrimination Notice
for All Students and Employees

The following topics should be included in the campus Title IX & VAWA Nondiscrimination Notice. The information below is not meant to be quoted verbatim but is meant to guide the campus administrator on the purpose of each notice item and to provide sample language.

A. Policy statement

Campuses should notify members of their campus community of the University's commitment to equal opportunity and nondiscrimination and the specific prohibition against sexual harassment, sexual assault, domestic violence, dating violence, stalking, and retaliation pursuant to Title IX & VAWA. This policy covers allegations of sexual harassment and sexual violence carried out by employees, students, and third parties. (See part III.A. above for sample language, III.B. for retaliation policy, and III.C. for coverage.)

Include adequate policy definitions for:

- sexual harassment (and definition of hostile environment)
- sexual assault
- domestic violence
- dating violence
- stalking
- consent

Include the Hawai'i criminal code definitions of sexual offenses.

B. Availability of immediate assistance and reporting options

The notice should include contact information for designated reporting options and complaint offices and campus resources. The listing should include both on- and off-campus resources that are prepared to assist persons who report incidents of sexual harassment and sexual violence, regardless of whether the person chooses to file a complaint. The resources will vary based on what is reasonably available on campus and in the community.

1. Examples of on- and off-campus resources, including confidential options

Designated reporting options:

- Title IX Coordinator
- Complaint offices that receive or investigate complaints or handle student judicial affairs

Safety and law enforcement:

- Campus security
- 911 and local law enforcement

Confidential advocacy, crisis counseling, and health services options available on campus:

- Confidential professionals – licensed counselors, physicians, and other professionals legally obligated to maintain confidentiality
- Employee assistance programs
- Student health services
- Advocates (LGBTI student services, Women’s Centers), victim services (Sexual Violence Prevention Programs, Sexual Assault Response Teams), disability access services, i.e., non-licensed counselors designated by the campus to provide services to students in a private, anonymous setting

Off-campus resources:

- Community based resources for domestic violence, gay and lesbian anti-violence programs, sexual abuse treatment centers, legal services, visa and immigration assistance

Other informational resources:

- Campus Title IX – VAWA website and online training resources
- U.S. White House: <http://www.notalone.gov>
- U.S. Department of Education, Office for Civil Rights:
<http://www2.ed.gov/ocr>
Office for Civil Rights - Seattle Office
U.S. Department of Education
915 Second Avenue Room 3310
Seattle, WA 98174-1099
Telephone: 206-607-1600
FAX: 206-607-1601; TDD: 800-877-8339
Email: OCR.Seattle@ed.gov
- U.S. Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov>
US Department of Justice
Office on Violence Against Women
145 N Street, NE, Suite 10W.121
Washington, DC 20530

(202) 307-6026

2. Sample language for a resource list:

Availability of immediate assistance and interim measures

Emergency situations

If you are in the midst of any kind of emergency, immediate harm, stalking, or threat of harm: call Campus Security [number] or 911 local law enforcement.

Immediate and ongoing assistance

If you have been threatened with or experienced sexual violence, stalking, or sexual harassment, you are encouraged to contact the campus Title IX Coordinator for information on campus and community based resources; confidential resources; your rights to file (or not to report) a criminal complaint; campus options for student conduct or administrative complaints; how confidentiality is handled; and other important information.

All members of the University community are urged to seek assistance and report conduct of concern before it becomes severe, pervasive, or persistent. Students and employees can contact the Title IX Coordinator and/or the offices listed below for information or to discuss their concerns.

Regardless of whether a person elects to pursue a criminal complaint or administrative complaint, and regardless of whether the incident occurred on- or off-campus, the University will offer and provide assistance. The Title IX Coordinator, Deputy Title IX Coordinators, Campus Security, and other designated offices will provide verbal and written information and referral.

To the extent of the person's cooperation and consent, campus offices will work cooperatively to ensure that the person's health, physical safety, and academic status are protected. Designated campus resource offices will provide information to the reporting party and will seek to prevent harassment from continuing and perhaps escalating and to otherwise assist the person harassed. Examples of accommodations (if appropriate and reasonably available) include no-contact orders, campus security escort services, nonretaliation notices, counseling, changes in class schedules, changes in living arrangements, safety plans, disability student services, and training.

When seeking advice and support, persons who are concerned about confidentiality and privacy should discuss their concerns with the person with whom they are speaking. Some campus and community resources offer services on a confidential basis. Others offer privacy but may need to report anonymous information to the Title IX Coordinator. Other offices are places to

file informal and formal complaints, to contact campus security or be assisted in contacting local law enforcement.

Title IX Coordinator and Deputy Coordinators

Title IX Coordinator and the Deputy Title IX Coordinators (if applicable) are designated to oversee Title IX compliance and provide information on Title IX rights and responsibilities, complaint investigation and resolution, student conduct procedures regarding allegations of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Members of the campus community are encouraged to refer individuals with complaints of sexual harassment and sexual violence to these complaint officers.

- *name*
- *address*
- *email*
- *phone*
- *web link*

[if there are deputy Title IX Coordinators, list each one separately and indicate their area of responsibility]

Campus Security, Local Police

Campus Medical & Professional Counseling Services

Advocacy, Rape Crisis service, Women's Center, LGBT Center

Off-Campus Community Based Services

C. Availability of interim measures

Provide written notification for students and employees about the range of options for, and available assistance in changing academic, living, transportation, and working situations, if requested by the student or employee and if such accommodations are reasonably available, regardless of whether the person chooses to report the crime to campus security or local law enforcement. These accommodations should be handled in a confidential manner, to the extent that maintaining such confidentiality would not impair the ability of the campus to provide the accommodations or protective measures.¹⁶

1. Interim measures for students

Appropriate interim measures may be implemented for student complainants and respondents. In most situations the interim measure will be made in response to a request by the student, and when such accommodations are

¹⁶ VAWA and 34 CFR Part 668 § 668.46

appropriate and reasonably available. In rare instances, interim measures may be initiated and/or implemented by the Title IX Coordinator or other campus officer due to imminent health and safety concerns for the campus. The following are examples of possible interim measures for students:

- safety plan
- security escort on campus
- change in campus housing location to alternate housing location
- assistance in transferring to another class section
- assistance in arranging for incompletes, leaves or withdrawals
- assistance in arranging for alternate University student employment arrangements
- “no contact” directive pending the outcome of the investigation. Such notice serves as notice to both complainant and respondent that they must not have verbal, electronic, written or third party communication with one another.

2. Interim measures for employees

Appropriate interim measures may be implemented for employee complainants and respondents. In most situations the interim measure will be made in response to a request by the employee, and when such accommodations are appropriate and reasonably available. In rare instances, interim measures may be initiated and/or implemented by the Title IX Coordinator or other campus officer due to imminent health and safety concerns for the campus. In cases where an employee’s work arrangements may be affected, it is recommended to inform covered employees of their opportunity to discuss the matter with their union representative. Interim measures for covered employees shall be taken in accordance with the applicable collective bargaining agreement. The following are examples of possible interim measures for employees:

- safety plan
- modifications in work arrangements
- temporary reassignment to other work groups or teams
- temporary changes in office location or work area or in access to workplace areas
- “no contact” directive pending the outcome of the investigation. Such notice serves as notice to both complainant and respondent that they must not have verbal, electronic, written or third party communication with one another.
- reasonable workplace accommodations in accordance with victims protection and leave policies pursuant to Chapter 378, Part VI, Victims Protections, Hawai’i Revised Statutes

3. The following is sample language for a notice regarding interim measures:

Availability of Interim Measures

Students and employees are strongly encouraged to report incidents of sexual harassment and sexual violence as soon as possible to prevent escalation, preserve evidence, and to give campus administrators an opportunity to intervene. The Title IX Coordinator will discuss with you any appropriate and reasonably available assistance in changing academic, living, transportation, and working situations that the campus may be able to offer prior to filing a complaint or during an investigation, so as to provide interim relief and a safe academic or work environment. Interim measures can be provided regardless of whether you decide to file a complaint or report the incident to Campus Security or law enforcement. Examples of interim measures include:

*Contact information for the Title IX Coordinator is listed above. Other offices that may be able to assist with interim accommodations include:
----- (include a confidential resource, if available)*

D. Confidential offices and resources

Any person who has experienced sexual harassment or sexual violence is strongly urged to contact their campus Title IX Coordinator or campus security, as needed in an emergency. However, if a person desires to keep the details of an incident confidential, she or he can speak with individuals who have professional or legal obligations to maintain confidentiality. Pursuant to Title IX guidance, students may also speak privately with designated campus student services offices such as advocacy offices and sexual assault services. When seeking advice and support, students who are concerned about confidentiality and privacy should discuss their concerns with the person with whom they are speaking. To the extent feasible, the campus Title IX & VAWA notice will indicate which offices listed in the notice are confidential and whether the student can remain anonymous.

1. Confidential professionals

Confidential professionals include licensed counselors, physicians, clergy, and other professionals legally obligated to maintain confidentiality.

Campuses that have physicians, psychologists, employee assistance programs, or other professionals covered by the Hawai'i law on privileged communication can identify these confidential resources in their Title IX & VAWA notice. Unless there is an imminent threat to health or safety, or other basis for disclosure pursuant to law (e.g., mandatory child abuse reporting for

persons under 18), confidentiality applies when persons seek services from the following professionals¹⁷:

- A licensed counseling psychologist
- Physician or health care provider
- Trained victim counselor working for a domestic violence or sexual assault crisis center (under direct control of social worker, nurse, psychiatrist, psychologist)
- Member of the clergy
- A personal attorney

2. Confidential advocacy and support services for students¹⁸

Pursuant to Title IX guidance, campuses may designate non-licensed counselors, advisors, or advocates (e.g., counselors in sexual assault center, victim advocacy office, women's center, wellness or health center) to provide confidential services to students. These counselors are not covered by State law on confidential, privileged communication; however, they can assist students by coordinating support services or interim measures and by providing information on reporting options in a private (anonymous) setting. These counselors or offices report information to the Title IX Coordinator without including personally identifying information about the student.

If the student requests to remain confidential and to have their name withheld, the counselor should:

- explain that this will limit the campus's ability to conduct an investigation or pursue disciplinary action against the accused and
- inform the student that the University's Title IX policy includes strong prohibitions against retaliation and that campus officials will take steps to prevent or address retaliation.

The counselors or advocates are obligated to report the nature, date, time, and general location of an incident to the Title IX Coordinator to help keep the Title IX Coordinator informed of the general extent and nature of sexual violence on- and off-campus so the coordinator can track patterns, evaluate the scope of the problem, evaluate the effectiveness of interim measures, and formulate appropriate campus-wide responses. The counselor or advocate is not obligated by Title IX to report individually identifiable information about students without the student's consent unless otherwise required by law or in instances where there is a real and significant threat of repeat incidents of sexual harassment and sexual violence. In these limited situations where the remedial options are deemed to be insufficient, the University has a duty to

¹⁷ HRS §626, Article V (Privileges)

¹⁸ OCR Questions & Answers on Title IX and Sexual Violence, April 29, 2014

investigate to the fullest extent possible in an effort to stop the alleged violence or discrimination, despite the lack of information or cooperation by the victim. The designated campus officer (e.g., Title IX Coordinator) will evaluate the student's request for confidentiality and consult with the counselor or sexual assault coordinator.

In an employment context, Title VII and Chapter 378 HRS principles apply. If the alleged conduct is severe or pervasive, involves a tangible employment action and/or a respondent who is a supervisor, the counselor or Title IX Coordinator is advised to consult with the lead HR specialist for the campus. The counselor may need to report sufficient information so that the campus can take prompt action to correct the adverse action or sexual misconduct, including hostile environment harassment. If informal remedial measures are not effective or are insufficient to address the situation, the campus may need to initiate an investigation and take corrective action.

E. Informal and formal reporting and complaint options

a. Where to file an administrative or student conduct complaint

Campuses should include in their Title IX & VAWA notice the contact information for designated complaint officers or offices that can receive and handle Title IX & VAWA complaints. It is recommended to have more than one complaint option. Examples include: Title IX Coordinator, Vice Chancellor/Dean for Student Affairs, HR Director, EEO/AA Coordinator. Sample language:

Any individual who believes that she or he has been subjected to or observed incidents of sexual harassment, sexual assault, domestic violence, dating violence, or stalking is encouraged to seek assistance immediately from the Title IX Coordinator or other designated complaint officers. These officers will provide advice and written information regarding policies, interim measures, on- and off-campus resources, referrals to appropriate services, the importance of preserving evidence, informal and formal complaint options, and law enforcement options.

Regardless of whether criminal charges are filed, complaints of sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking may also be heard through on-campus procedures, including but not limited to student conduct procedures (applicable in cases where the respondent is a student) and informal and formal discrimination complaint procedures (AP 9.920).

Proceeding with a student conduct complaint or administrative complaint under this policy is independent of any criminal investigation

or proceeding. The University does not normally wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing interim measures, and taking appropriate action. Because the standards for a violation of criminal law are different from the standards for a violation of this policy, criminal investigations and proceedings are not determinative of whether a violation of this policy has occurred. In other words, conduct may violate this policy even if law enforcement agencies or local prosecutors decline to prosecute. Complaints filed through on-campus procedures may occur prior to, concurrent with, or following civil or criminal proceedings off-campus.

STUDENTS may file informal and formal complaints of sexual harassment, sexual violence, and stalking with the following offices:

Title IX Coordinator

EMPLOYEES may file informal and formal complaints of sexual harassment, sexual violence, and stalking with the following offices:

Title IX Coordinator

b. Where to file a criminal complaint

The campus Title IX & VAWA notice should include contact information for law enforcement options – Campus Security and local law enforcement. Campuses should seek to obtain memoranda of understanding with applicable local law enforcement agencies to delineate responsibilities and share information.

Any student, employee, or visitor who is a victim of sexual harassment, sexual violence, or stalking is encouraged, and has the option and right, to report the incident to Campus Security and/or local police at the numbers listed above. Campus Security will provide information on your option to notify law enforcement authorities, including local police, and the option to be assisted by Campus Security in notifying such authorities, if you so choose. You also have the right to decline to notify such authorities.

You have the right to file a criminal complaint with local law enforcement, as well as the right to pursue a concurrent student conduct or discrimination complaint through campus administrative procedures.

c. Filing with a state or federal agency

Include contact information for OCR (for students), Hawai'i Civil Rights Commission (HCRC - employment), U.S. Equal Employment Opportunity Commission (EEOC - employment). Include a statement that complainants can file charges with state and federal enforcement agencies at any time and do not need to wait for the conclusion of a campus student conduct hearing or campus investigation.

F. Administrative responsibilities and confidentiality

The following types of offices and individuals have administrative or fact finding responsibilities; however, they will protect and respect the complainant's privacy to the extent possible. In order to carry out their responsibilities, these offices and individuals may need to share information but will do so only on a need to know basis. They will treat the complainant, respondent, and witness information in a confidential manner.

- Title IX Coordinator – responsible for overseeing the campus response to Title IX reports and complaints, and identifying and addressing any patterns or systemic problems revealed by such reports.
- Complaint officers – designated to receive and investigate complaints or to handle student judicial affairs.
- Executives, managers, and supervisors have administrative or reporting responsibilities
- Campus Security Authorities who may be called upon to issue timely warnings but without personally identifying information about the victim

G. Title IX & VAWA requirement to notify the Title IX Coordinator¹⁹

The Title IX & VAWA notice should inform students that all University employees are subject to Title IX & VAWA, and that in order for the University to comply with these laws, all employees are expected to notify the campus Title IX Coordinator if they observe or otherwise become aware of sexual harassment and sexual violence. This gives the University the opportunity to prevent escalation, offer assistance and other remedial action, and to prevent future incidents.

In most situations, employees can notify the Title IX Coordinator without disclosing the identities of the parties involved; however, students should be informed that executives, managers, and supervisors are expected to provide detailed information to the Title IX Coordinator.

The Title IX Coordinator or relevant designee is responsible for assessing the situation, identifying and addressing any patterns or systemic problems, and other

¹⁹ OCR Questions & Answers. See section D.

appropriate action. For example, the campus can seek to prevent escalation by separating the complainant and alleged harasser and by conducting sexual harassment or violence prevention training.

Individuals who have concerns about confidentiality are urged to discuss their situation with a resource person or office that can maintain confidentiality or privacy, e.g., a licensed counseling psychologist, physician, health care provider, clergy, domestic violence or rape crisis center.

Pursuant to Title IX, in situations where a student requests confidentiality and asks the campus not investigate or seek disciplinary action against the respondent, the Title IX Coordinator or other designee must consider the request and assess whether the campus can honor the request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual misconduct.

By informing students of the campus obligations under Title IX & VAWA and the role of the Title IX Coordinator, students can make informed decisions about whether to disclose detailed information to staff members who are not covered by legal privilege²⁰ or to discuss their concerns with designated resource persons who can maintain confidentiality or privacy, e.g., a licensed counseling psychologist, physician, health care provider, clergy, domestic violence or rape crisis center.

[Note: Pursuant to the Clery Act, each campus also has designated Campus Security Authorities (CSA) who have specific reporting responsibilities regarding campus crimes. If the campus determines that the alleged perpetrator poses a serious and immediate threat, CSAs may be called upon to issue a timely warning to the community. These warnings do not include information that identifies the victim.]

Guidance on Title IX & VAWA notification to the Title IX Coordinator

- Employees are expected to notify the campus Title IX Coordinator or other campus designee if they observe or otherwise become aware of sexual harassment and sexual violence.
- When a person is seeking to confide in a University employee, it is strongly recommended to inform the person that employees cannot maintain strict confidentiality because they may need to report incidents to the campus Title IX Coordinator.
- Students and others seeking advice should be informed that confidential resources are available.

²⁰ HRS §626, Article V (Privileges)

- Employees do not need to determine whether the alleged sexual harassment or violence actually occurred. Title IX Coordinator or designee will assess the situation, respond to requests for confidentiality, provide referral to campus resources, initiate interim measures, provide information on complaint options and law enforcement options, and other assistance.
- Departments should not initiate their own investigations. Consult with the Title IX Coordinator regarding the situation. This applies to Athletics programs and professional schools like Law and Medicine that may have program-specific student conduct or professional ethics policies.
- Questions about confidentiality should be discussed with the Title IX Coordinator or designee. (See parts H. and I. below.)

H. Requests for confidentiality

If a student subsequently requests confidentiality, this request should be considered by the Title IX Coordinator or other appropriate designee, in an effort to respect the request in the context of the University's responsibility to provide a safe, nondiscriminatory environment for all students.

Students and others who are concerned about confidentiality and privacy are encouraged to discuss their concerns with the person with whom they are speaking. Students are also encouraged to use on- and off-campus resources that can provide information in a confidential or private setting. For the University's policy on confidentiality, see part III.G above.

I. Designated individual(s) or office that will evaluate confidentiality requests²¹

Campuses should designate an office or individual (usually the Title IX Coordinator) who can evaluate and respond to a student's or other reporting party's request for confidentiality. For example, a student may have reported an incident of sexual harassment or sexual violence to a University employee and subsequently ask to remain anonymous or confidential. The University employee should consult with the Title IX Coordinator or other designated officer who can respond appropriately to the situation. If the person who allegedly experienced the discrimination is an employee, the designated officer will review the request for confidentiality based on Title VII principles.

²¹ OCR Questions & Answers. See section E-1.

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