

# **Act 222 Affirmative Consent Task Force Report**

**Submitted to:**

**Hawaii State Legislature  
2016 Regular Session**

## **Foreword & Acknowledgements**

The Affirmative Consent Task Force created by Act 222, signed into law on July 9, 2015, is pleased to submit its first Report to the Hawaii State Legislature for the 2016 Session.

We would like to thank each of the members of the Task Force and the members of the public for their participation in the Task Force and acknowledge their important contributions to this Report.

We also wish to express our gratitude to the staff of the University of Hawaii's Office of Institutional Equity who prepared the minutes of every meeting of the Task Force, assisted the Task Force's Permitted Interaction Groups in notetaking and compilation of their individual preliminary findings and recommendations, and assisted the Task Force with the production of this Report.

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## TABLE OF CONTENTS

I.	Establishment of the Act 222 Affirmative Consent Task Force .....	1
II.	Historical Overview of UH Executive Policy 1.204.....	2
III.	Formation & Structure of the Task Force .....	2
IV.	Format of This Report.....	3
V.	Preliminary Findings.....	3
A.	Interim Executive Policy 1.204 Regarding Sex Discrimination and Gender-Based Violence .....	4
1.	Language and Content of the Policy .....	4
2.	Implementation and Operationalization of the Policy .....	4
3.	UH Policies and Procedures Relating to EP 1.204 .....	5
4.	Community Accountability.....	5
B.	Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources.....	5
C.	Training of Employees and Best Practices .....	6
1.	Implementation of Training .....	6
2.	Training Curricula and Development .....	7
3.	Evaluation of Training Programs and Curricula.....	8
D.	Direct Services, Resources and Support, MOUs & Community Collaboration .....	8
1.	Access to Services.....	8
2.	Development of Services & Programs.....	9
3.	Memoranda of Understanding .....	10
VI.	Preliminary Recommendations .....	10
A.	Interim Executive Policy 1.204 Regarding Sex Discrimination and Gender-Based Violence .....	10
1.	Language and Content of the Policy .....	10

2.	Implementation and Operationalization of the Policy .....	11
3.	UH Policies and Procedures Relating To EP 1.204 .....	11
4.	Community Accountability.....	12
B.	Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources.....	12
C.	Training of Employees and Best Practices .....	13
1.	Implementation of Training .....	13
2.	Training Curricula and Development .....	13
3.	Evaluation of Training Curricula .....	14
D.	Community Collaborations.....	14
1.	Access to Services.....	14
2.	Development of Services & Programs.....	15
3.	Memoranda of Understanding .....	15
VII.	Initial Action Plan.....	16
A.	Executive Policy 1.204 Regarding Sex Discrimination and Gender Violence.....	16
B.	Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources.....	17
C.	Training of Employees and Best Practices .....	17
D.	Community Collaborations.....	18
E.	Further Research .....	18
VIII.	Conclusion .....	18
IX.	Appendices.....	18

## **APPENDICES**

Appendix A: 2015 Act 222

Appendix B: UH News Announcement – UH Adopts Interim Policy on Sex Discrimination and Gender-Based Violence & President Lassner’s Letter to the UH ‘Ohana

Appendix C: November 2015 Interim Policy EP 1.204

Appendix D: 2015 Affirmative Consent Task Force Members

Appendix E: August 11, 2015 Meeting Minutes (Approved)

Appendix F: October 21, 2015 Meeting Minutes (Approved)

Appendix G: November 17, 2015 Meeting Minutes (Approved)

Appendix H: December 9, 2015 Meeting Minutes (Draft)

Appendix I: 2015 Permitted Interaction Group Participants

Appendix J: Summary Notes of Permitted Interaction Group Meetings

Appendix K: ATIXA Title IX and VAWA Section 304 Training Checklist

## **I. Establishment of the Act 222 Affirmative Consent Task Force**

Title IX, a historic, comprehensive federal law to address gender equity on college campuses (now known as the Patsy Takemoto Mink Equal Opportunity in Education Act) was enacted in 1972. The law's principal objective is to avoid the use of federal money to support sex discrimination in education programs and provide individual citizens effective protection against such discriminatory practices. Title IX states that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.<sup>1</sup>*

Sexual violence is a form of sex discrimination prevalent on campuses across our nation. The prevalence of violence, committed not only against women but against men, and the fact that it continues to impact the educational opportunities of its victims, including those who may never come forward to report their experiences, is unacceptable.

Recognizing that ending sexual violence on campuses is a combined endeavor of effective response and intervention; education to change attitudes and behaviors; and reflect the University of Hawaii's ("University") commitment to maintaining safe, respectful campus environments free from discrimination, harassment, and sexual violence, the 2015 Hawaii State Legislature passed SB 387 Relating To Affirmative Consent. The Bill was signed into law by Governor David Ige as Act 222, Session Laws of Hawaii 2015, on July 10, 2015 ("Act").<sup>2</sup>

The purpose of the Act is to review the University's executive policy concerning sexual harassment, sexual assault, domestic violence, dating violence, and stalking adopted by the UH Board of Regents in February 2015 ("February 2015 policy"), guided by a number of factors set forth in the Act to ensure that comprehensive education and prevention programs, information and assistance for individuals reporting sexual harassment and sexual violence, prompt and equitable complaint procedures, and corrective action to prevent and end incidents of harassment and sexual violence are addressed by the policy and the University. The Affirmative Consent Task Force<sup>3</sup> ("Task Force") is required to submit the first report of its findings and recommendations no later than 20 days before the convening of the Regular Session of 2016. Its second report is due 20 days before the convening of the Regular Session of 2017.

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<sup>1</sup> The U.S. Department of Education Office of Civil Rights ("OCR"), referred to in this report, enforces Title IX to ensure that institutions that receive federal financial assistance comply with the law. OCR evaluates, investigates, and resolves complaints alleging sex discrimination, conducts proactive investigations (known as "compliance reviews") to examine potential systemic violations based on sources of information other than complaints, and provides technical assistance, information and guidance to schools, universities and other agencies to assist them in voluntarily complying with the law. The University of Hawaii at Manoa was one of the campuses nationwide selected for a compliance review by OCR. The multi-year review culminated in a site visit in 2014. UH Manoa is awaiting the results of this review.

<sup>2</sup> See Appendix A.

<sup>3</sup> See Appendix A.

This report is being submitted less than five months after the Task Force was established and met for the first time. The findings and recommendations are preliminary in nature and subject to change as the Task Force continues its work during its inaugural year.

## **II. Historical Overview of UH Executive Policy 1.204**

At the initial convening of the Task Force on August 11, 2015, Jan S. Gouveia, University of Hawaii Vice President for Administration, provided a historical overview of the University's February 2015 policy. This policy left each of the ten campuses to develop its own procedures and practices, an approach yielding inconsistent responses to complaints, including those involving parties or incidents on multiple campuses<sup>4</sup>. With the support of President David Lassner and the Council of Chancellors, the University, guided by the work of President Lassner's Title IX Advisory Group, began the process of developing a new, system-wide executive policy that would provide basic resources and programs and establish minimum standards to ensure consistency and excellence in the University's response to sex discrimination and gender-based violence on its campuses.

Balancing the importance of having a system-wide policy at the commencement of the school year with the University's commitment to continue consulting with various stakeholders, including the exclusive collective bargaining representatives of UH's faculty and staff, student representatives and members of the community, President Lassner authorized Interim EP 1.204, an updated policy on sex discrimination and gender-based violence, on September 1, 2015 ("Policy"). The Policy establishes system-wide standards and procedures that seek to ensure a consistent institutional response across the 10 UH campuses, clarifies the types of conduct prohibited by the University, and identifies how and from whom students, faculty and staff can seek confidential support or report incidents of sex discrimination and gender-based violence. To assist with the implementation of the Policy, the University also established the Office of Institutional Equity, which opened its doors on September 1, 2015.<sup>5</sup> The Policy, subsequently revised in November 2015 to clarify the age of consent to sexual contact, is included as an Appendix to the Report for ease of reference.<sup>6</sup>

## **III. Formation & Structure of the Task Force**

The Task Force consists of 15 members who serve without compensation and are listed in Appendix D. Since its creation, the Task Force met on August 11, 2015<sup>7</sup>, October 21, 2015<sup>8</sup>, November 17, 2015<sup>9</sup>, and December 9, 2015.<sup>10</sup>

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<sup>4</sup> The University of Hawaii System consists of three four-year campuses (Manoa, Hilo and West Oahu) and seven community colleges (Honolulu, Leeward, Windward, Kapiolani, Hawaii, Maui College, and Kauai). Consequently, students may enroll in classes on multiple campuses over time in order to complete their education at the University. It is also not unusual for faculty to teach or work on more than one campus.

<sup>5</sup> See Appendix B.

<sup>6</sup> See Appendix C.

<sup>7</sup> For minutes of the August 11, 2015 meeting, see Appendix E.

<sup>8</sup> For minutes of the October 21, 2015 meeting, see Appendix F.

<sup>9</sup> For minutes of the November 17, 2015 meeting, see Appendix G.

<sup>10</sup> For minutes of the December 9, 2015 meeting, see Appendix H.

To guide the work relating to the Policy that will be conducted during the life of the Task Force,<sup>11</sup> members considered the concepts outlined in the Act.<sup>12</sup> To investigate these concepts further, and in the interest of efficiently providing preliminary findings and recommendations for its first Report to the Legislature, the Task Force formed four Permitted Interaction Groups. The participants for each of these four groups are listed in Appendix I.

To fully embrace the diverse range of perspectives, knowledge, experience and expertise within the Task Force and the robust and nuanced discussion that occurred at every meeting, a deliberate process was undertaken when consolidating the information forming the basis of the Task Force's preliminary findings and recommendations. Information gathered by various groups was compiled and presented in a draft report, then discussed during the Task Force's December 9, 2015 meeting. Unless otherwise noted, the preliminary findings and recommendations in this report reflect the combined views of the Task Force members.

#### **IV. Format of This Report**

The scope of the Task Force's work mirrors that of the issues being addressed. Capturing the essence of the Task Force's dynamic work in a report, while honoring the voices of all who participated in the process and the complexity of issues relating to sexual assault as well as other forms of gender based discrimination and violence, is challenging. As such, the Task Force elected to organize its Preliminary Findings (Section V), Preliminary Recommendations (Section VI), and Initial Action Plan (Section VII) within four areas:

- **The Policy regarding sex discrimination and gender-based violence**, which includes how it is drafted and how its content is implemented, operationalized, and evaluated for effectiveness;
- **Education and prevention programs, notification and resources**, which includes how to raise awareness of and prevent sexual assault and other forms of gender-based violence, how students and others such as those involved in Title IX proceedings are made aware of their rights and responsibilities, as well as what resources are available and how they can be accessed;
- **Training of University employees**, which encompasses who should be trained, how training should be done, development and selection of training curricula, and coordination and centralization of campus and system-wide training; and
- **Community collaborations**, which includes identifying processes to navigate the University system, increase access to community resources, and strengthen relationships between the University and community programs to ensure a coordinated response to incidents of sexual assault and other forms of gender-based violence.

#### **V. Preliminary Findings**

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<sup>11</sup> Pursuant to Act 222, the Task Force shall cease to exist on June 30, 2017.

<sup>12</sup> See Appendix A.

**A. Interim Executive Policy 1.204 Regarding Sex Discrimination and Gender-Based Violence<sup>13</sup>**

**1. Language and Content of the Policy**

There are specific areas and definitions that may need clarification or re-examination:

- “Responsible Employee.” The employees who receive, and are required to report, allegations of violations of the policy are defined more narrowly in the Policy than by OCR.
- “Decision Makers.” Clarity is needed about who should decide outcomes and disciplinary actions or sanctions when violations of the policy occur.
- Whether the processes and procedures for referring matters involving students (to the System under the Policy) vs. employees (to Human Resources pursuant to AP 9.920) with respect to sanctions or disciplinary action are consistent and fair.

**2. Implementation and Operationalization of the Policy**

The Task Force acknowledges the University’s efforts in exploring ways to streamline access to information and centralizing university content. In particular, the Task Force commends the creation of a University System Title IX site that consolidates the information from each of the campuses in one centralized location.

The Task Force was made aware of concerns raised when implementing the Policy, namely that:

- When reviewing campus websites for access to the Policy, information was sometimes outdated or difficult for students to access.
- Programs and offices on campuses may not be providing services as described on websites.

OCR guidelines indicate that each campus should have a dedicated Title IX Coordinator<sup>14</sup>. Students as well as Coordinators are extremely concerned that the responsibilities of the Coordinators not be diluted because they are wearing multiple administrative “hats.” Multiple roles may create conflicts of interest, reduce levels of trust, or create other barriers (particularly for students) to reporting allegations or accessing services.

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<sup>13</sup> See Appendix C.

<sup>14</sup> Educational institutions must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX.

### **3. UH Policies and Procedures Relating to EP 1.204**

In addition to the Policy, there are other UH System policies and procedures, available in the UH System Policies and Procedures Information System, that relate to sex discrimination and gender based violence. These overlapping policies and procedures include, but are not limited to, the following subjects:

- Student Conduct
- Nondiscrimination and Affirmative Action
- Discrimination Complaint Procedures
- Workplace Non-Violence
- Alcohol Use
- Housing

Additionally, individual campuses also have their own campus-specific policies and procedures.<sup>15</sup>

### **4. Community Accountability**

Continued guidance and advice by stakeholders will help the University achieve its policy related objectives of maintaining safe, respectful campus environments free from discrimination, harassment, and sexual violence.

## **B. Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources**

### **1. Information About Programs/Education**

While some programs or initiatives on campuses are clearly understood, there appears to be limited understanding of the exact role and services offered by other programs or initiatives. Although general information about offices and programs exists, specific information regarding program initiatives is lacking.<sup>16</sup> The Task Force is still gathering information about various programs and education efforts.

### **2. Accessibility of Programs/Information**

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<sup>15</sup> See Appendix J.

<sup>16</sup> See Appendix J.

The University has a wide variety of services available on all 10 campuses, as displayed on the University’s System Title IX site.

Some campuses offer 24 hour on call counseling services, because typical “service from 9 to 5” programs often do not account for the practical reality that incidents, including sexual assault, can occur at any time.

Some employees and individual first responders are not aware of the resources available on campus, and which resources are confidential resources,<sup>17</sup> or where such resources can be accessed.

The process of accessing needed information for victims is unclear. There are many numbers to call, descriptions, and program titles on websites but they are not streamlined. Additionally, “lay” language is not used by the websites with respect to topics relating to violence.

There are many resources available on the campuses. However, there is also potential for information overload, and trying to find services or help can be challenging because there are multiple phone numbers and different descriptions affiliated with each number.

The goal of information or help being “two clicks away” in the creation of UH System’s Title IX & UH Office of Institutional Equity website is appropriate as this approach increases accessibility.

The University has made efforts to ensuring information is available on a variety of mediums. The Task Force recognizes that not everyone on campus has access to or understands how to use the Internet. Accordingly, different mediums of distributing information are considered by the University, such as information posted in various places on each of the campuses.

There are limited English speaking students on campuses who may require translation of informational materials as well as interpretation of oral communications, especially if they are distressed or victims of trauma. There are campus programs that utilize translated materials provided by various community partners. There are also University efforts to create translated materials.

## **C. Training of Employees and Best Practices**

### **1. Implementation of Training**

Each campus is working toward implementing the Policy, and campuses have initiated mandatory trainings for all employees regarding Title IX, VAWA, and implementation of the Policy.

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<sup>17</sup> “Confidential resources” in the Title IX context are where victims can seek assistance without automatically placing an institution on notice of an incident.

Related trainings have been conducted by System, EEO/AA,<sup>18</sup> and Human Resources offices. However, overall, with respect to Title IX-related trainings, there is inconsistent tracking of which employees are being trained as well as how employees are being held accountable and placed on notice. Additionally, new employees may not know that Human Resources has an online module for sexual harassment and that the EEO office has a different training module on VAWA<sup>19</sup>.

The Task Force acknowledges the efforts of various members of leadership at the campus level (including Deans and Chairs) in implementing mandatory Title IX training for their unit employees. The Task Force recognizes the level of discretion afforded to individual departments. With greater autonomy, there is also potential for inconsistencies regarding individual levels of training.

There are currently efforts being made to develop “train-the-trainers” programs.

It is noted that individual groups have expressed an interest for certain types of training. Employee requests for training have included intersections of gender violence and mental health as well as domestic violence related training, including how to assess for domestic violence and batterer status, how to respond in immediate crisis safety situations, how to conduct further safety planning, and how to conduct lethality and risk assessments. Title IX Coordinators have also requested training to help identify the best models for developing confidential advocacy services and case management.

## **2. Training Curricula and Development**

A five day Title IX coordinator and investigator training which also covered domestic violence was conducted in October 2015 for UH System and campus staff dealing with Title IX and VAWA. Future system-wide trainings have been scheduled.

The types of mandatory training considered include:<sup>20</sup>

- VAWA mandated training for all new students and staff including stalking, sex assault, bystander intervention, consent, and domestic violence

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<sup>18</sup> Equal Opportunity Employment (EE) refers to various protections from discrimination in all aspects of employment. Affirmative Action (AA) refers to remedies designed to address historical discriminatory practices. The University has EEO/AA offices whose staff address these issues.

<sup>19</sup> The Violence Against Women’s Act of 2013 (VAWA), specifically Section 304 of the Act, mandates certain campus sexual violence, domestic violence, dating violence, and stalking education and prevention programs.

<sup>20</sup> See Appendix J.

- Other training suggested or required by Title IX guidance and contemplated in various Voluntary Resolution Agreements
- Bystander awareness – how to help a friend
- Substance abuse and risk factors
- Rights and responsibilities under Title IX and under the policy
- University policies and procedures related to Interim EP 1.204
- Advanced domestic violence training
- Tailored training modules regarding consent/affirmative consent

An appropriate breakdown of optional and mandatory Title IX and VAWA Section 304 training and students and employees who should be trained is provided by the Association for Title IX Administrators (ATIXA). This document is included in Appendix K.

Different training and educational modules are currently available. However, further research on quantitative data and social norm change needs to be conducted when selecting training modules.

### **3. Evaluation of Training Programs and Curricula**

There is a need to consider prevention initiatives that are evidence-based, such as Safe Dates, found to be effective by the CDC.<sup>21</sup>

Certain awareness efforts, while well intentioned, may not have a positive impact on campus culture.

The usage rate of the current EverFi Haven online program being employed on all campuses has been insufficient. Only a small minority of students have utilized the program.

## **D. Direct Services, Resources and Support, MOUs & Community Collaboration**

### **1. Access to Services**

The Task Force commends the University on the variety of services available on all of its campuses.

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<sup>21</sup> See Appendix J.

The Task Force is aware of the following concerns with respect to access and availability of services:

- Some victims who disclose allegations of sexual assault and misconduct may not want formal investigations to be initiated or alleged perpetrators to be “punished.” Others may initially choose not to disclose out of concern that an investigation may be more harmful than helpful. Rather, these victims want to be safe and the conduct to stop. They are satisfied with interim measures or immediate relief without interfering with the responding party’s due process rights. Many victims want access to confidential or advocacy services. In this light, many individuals expressed a desire for dedicated advocates on every campus.
- There is confusion regarding what campus and community resources are available. For example, based on student testimony and a review of one program website, the nature of the advocacy and other services actually offered by that program is not clear. This is also true for other campus resources. Moreover, although general information about certain programs is available, more specific information about the initiatives of those programs is needed.
- Staff at off-campus resources, including community programs, may not be aware of what is available for victims on campuses. As an example, if a student victim walks into an off-campus sex assault or domestic violence center, the center’s staff may not know who to refer the student to for on-campus assistance or how the student can navigate the administrative process at the University.
- Individuals currently need referrals to resources and services in the early evening and morning. Moreover, sources for referrals may not be well known or publicized on campus.

## **2. Development of Services & Programs**

The University community is very diverse and presents a wide range of backgrounds. The Task Force recognizes that this diversity contributes to a need for equally diverse services and programs. These cultural concerns are particularly relevant when considering campus first responders.

Campus security and police procedures are not always aligned, especially for complex cases. In such cases, police resources are likely better equipped to handle the interviews of the victims as well as evidence preservation.

A standard, effective procedure for generating sanitized reports exists and is currently being used by the Sex Abuse Treatment Center (“SATC”). The procedure appears to address concerns relating to victims’ confidentiality and

consent while providing information needed by law enforcement. Both UH and the Honolulu Police Department (HPD) have an interest in collaborating regarding information for the purposes of tracking patterns of sex assault.<sup>22</sup>

The Sex Abuse Response Teams (“SARTs”) are a best practice model and implemented in nearly every jurisdiction in the country. Many universities participate on SARTs and seek their involvement and input to address how to respond to reports of sexual violence.

### **3. Memoranda of Understanding**

Close relationships between System and campus resources, and those in the greater community could use further strengthening. The desired collaboration, including between SATC, local police departments, and UH, may be formalized either through contracts or MOUs.<sup>23</sup>

There is a lack of understanding of funding available for MOUs and contracts with outside resources. Congress may be examining funding MOUs on university campuses on a national scale. In this regard, the University may benefit from identifying sources of additional state or federal funding for community collaborations.

There are concerns about the adequacy and accessibility of confidential resources on campus.

## **VI. Preliminary Recommendations**

The following recommendations are preliminary and based on the initial findings of the Task Force and its Permitted Action Groups as well as the contributions by students and members of the public:

### **A. Interim Executive Policy 1.204 Regarding Sex Discrimination and Gender-Based Violence**

#### **1. Language and Content of the Policy**

Further examine the viability of adopting a “one policy / one process” model for use on all campuses and for all groups (employees and students).

Continue to involve key stakeholder groups in reviewing any proposed “final” policy before its implementation. The policy should be continually reviewed and revisited with their involvement.

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<sup>22</sup> See Appendix J.

<sup>23</sup> See Appendix J. Memoranda of Understanding (MOU) are formal agreements between two or more parties to establish official partnerships. Although they are not legally binding, they reflect a mutual commitment to enact steps to achieve programmatic goals.

## **2. Implementation and Operationalization of the Policy**

The University should determine the best method to strengthen the UH Office of Institutional Equity's ability to oversee Title IX processes on each campus to ensure adherence to the policy and to best practices.

Establish clear reporting channels for each campus to ensure/enforce uniform responses and case management.

Important portions of the Policy be highlighted on the UH website for ease of reference.

Information available on campus websites should be uniform, consistent, and current.

Develop additional F.A.Q.s, communicating information in a clear and readily accessible way.

Consider how to best ensure a strong working relationship between campus security departments and local police departments, including developing procedures that reflect best practices.

Consider the viability of establishing dedicated Title IX Coordinators as well as dedicated advocates on every campus.

## **3. UH Policies and Procedures Relating To EP 1.204**

The University should conduct additional review of System and campus policies and procedures potentially overlapping or impacting EP 1.204 to identify possible inconsistencies and any needs for further clarification.

The policies and procedures to be reviewed include the following:

- Student Conduct
- Nondiscrimination and Affirmative Action
- Discrimination Complaint Procedures
- Workplace Non-Violence
- Alcohol Use
- Housing

#### **4. Community Accountability**

The University should consider establishing a working group that includes interested community experts to continue advising and working with UH on Title IX issues beyond the life of the Task Force.

### **B. Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources**

#### **1. Information About Programs/Education**

Use education curricula that emphasizes primary prevention of sex assault for students, are evidence based and proven to be effective, and are not potentially traumatizing or offensive. For example, discussion ensued about the University's use of the EverFi online program being potentially traumatizing for students and not being approved by the CDC as an effective tool for social norm change. The University should also tailor educational efforts to specific audiences, covering topics and risk factors relevant to the young adult.

Education and training programs should occur on an ongoing basis to ensure sufficient dosage and repeated exposure to information.

Consider including off-campus, community resources and on-campus resources, confidential as well as non-confidential, on all informational notices and other materials, so that victims are fully informed of all of the support services available to them.

Clear descriptions of the types of services currently available at the University be provided on System and campus websites. Provide a visual flowchart displaying which services are confidential, and which are not.

Campus Title IX Coordinators should clearly identify key areas as well as specific groups on their respective campuses for prevention and education efforts to ensure transparent and appropriate allocation of resources to such efforts.

Consider connecting student registration with signing a Code of Conduct Agreement so that failure to sign the Agreement has sufficient consequence, i.e., placing a hold on that student's registration.

Clearly define Title IX processes and procedures for students experiencing gender-based violence for UH employees, State of Hawaii Department of Education employees, and students enrolled in early high school and/or "running start" classes.

Conduct a campus climate survey to gauge education, prevention and other needs.

## **2. Accessibility of Programs/Information**

Adopt the “two clicks away” approach to accessing needed information when mapping out campus websites and campus services. A link within each larger section of campus websites should enable easy access to Title IX related support and assistance. Additionally, a “click-here” link to a separate portal that displays all the Title IX information and services on campuses should be mapped out. A similar link available on the East West Center website for international students should also be pursued.

Each Title IX office should have a staff member who always answers the phone. If someone is not available to answer, i.e. during weekends, a voice message directing students to another resource for assistance should be in place.

Consider offering services and support during non-traditional hours, including instituting a 24-hour hotline for students so they may access a live person. Information on needed intervention and information on options (including medical-legal exams even if the victim is not ready to report to the police) should be provided.

## **C. Training of Employees and Best Practices**

### **1. Implementation of Training**

Consider various methods in which training will be accomplished. For example, certain training may be mobile-friendly as well as available on line.

The University’s Office of Institutional Equity, with support from the System Community College’s Compliance and Title IX Office, should consider centralized implementation of the University’s training programs for each campus.

Consider the differences between the campuses when implementing system-wide training programs. For example, training curricula for a community college which is a commuter school may differ from curricula for a 4-year University with student housing.

### **2. Training Curricula and Development**

Consider implementing the following training and education initiatives:

- Primary prevention and education on sex assault; bystander awareness; substance abuse & risk factors; rights & responsibilities; policies; reporting; domestic violence; mental health issues; and consent

- Respect Campaign on every campus
- Training mandated by VAWA, suggested by Title IX guidance (OCR), implied by Voluntary Resolution Agreement, and/or recommended by experts as best practices
- Curricula that is relevant, comprehensive, culturally competent
- In-person or online training for students that is accessible and tailored to the community on each campus
- Mandatory training for faculty
- Training for non-confidential resources such as first responders (including campus security, graduate assistants, staff and faculty) on how to address reports of alleged policy violations in a trauma-informed, safety oriented way, the distinction between providing privacy vs. confidentiality, and obligations to report

### **3. Evaluation of Training Curricula**

Consider monitoring all training programs for effectiveness through evaluation and participant feedback.

Consider which awareness campaign efforts are non-offensive as well as evidence-based and relevant. Each campaign should produce data regarding its effectiveness to ensure the campus community is impacted in positive and meaningful ways.

Further clarify the scope of each program's or office's responsibilities to ensure that resources for different types of programs and offices are allocated appropriately.

Evaluate training programs annually with students involved in focus groups and participating in the evaluation process.

## **D. Community Collaborations**

### **1. Access to Services**

Consider ways to provide 24-hour access to advocacy and crisis support services. Such services should provide needed information on various options including medical-legal exams even if the student is unsure about whether to report to police, campus crisis resources and staff information, and resources available outside UH to respond to the full spectrum of victim needs.

## **2. Development of Services & Programs**

Implement services and support that are trauma-informed, empower students before incidents occur, and are safety oriented.

Consider cultural competency and demographic data, especially when planning outreach to students.

Ensure that all campus first responders are trained in victim-centered methods and evidence preservation.

Identify on-campus resources and homegrown projects so that expert training resources are properly utilized for each campus, including subject matter experts amongst faculty and staff.

Develop a seamlessly integrated response system both within and outside UH for sex assault survivors, including University participation in sexual assault response teams (“SARTs”) as a best practice.

Develop flowchart(s) showing on- and off-campus service and program options.

Develop a third party reporting process for students who do not wish to report a crime to police and remain anonymous, with the goal of generating important intelligence for police while maintaining student confidentiality.

Clarify the role of campus security regarding how they respond to and handle complaints of violence. Ensure that campus security and local police understand their respective roles and coordinate the handling of safety issues and transition to possible investigation(s).

Work with community service providers so that information for University students and staff is included on the community service providers’ websites.

## **3. Memoranda of Understanding**

Develop MOUs with community service providers to clarify roles and respective UH employee responsibilities regarding implementation of the policy.

Conduct research to identify potential sources of state and federal funding to support MOUs.

Security on each campus should coordinate their work with local police with a procedure to accomplish this, including a clear mechanism for reporting reflected in the University’s policies and procedures.

Consider scheduling regular meetings between on-campus response system staff (i.e., Title IX Coordinators; crisis and case management teams; campus security; and administrators) and community partners (i.e., police; prosecutors; sex assault and medical personnel; and DV service providers) and participating in community sexual assault response teams.

## **VII. Initial Action Plan**

The Task Force has adopted the following Initial Action Plan based on its preliminary findings and recommendations:

### **A. Executive Policy 1.204 Regarding Sex Discrimination and Gender Violence**

Perform a comparative analysis of the Policy's definition of "responsible employees" with that endorsed by U.S. Department of Education Office of Civil Rights and adopted by other universities/colleges.

Research definitions of "consent" adopted by other universities/colleges, endorsed by ATIXA, and addressed in various statutory schemes.

Review who "Decision Makers" should be, how they should be selected to ensure competency and lack of bias, and the training they should be required to complete.

Review the Policy's ability to provide a clear avenue for students to report alleged violations or non-enforcement of the policy by Title IX Coordinators, Investigators, Decision-Makers, and Appeals Officers.

Examine the data available from each campus regarding the outcomes of complaints to identify any possible needs for additional institutional support.

Research different models of the "one policy / one process" including for appeals on all campuses, including the model endorsed by ATIXA. Once the policy is revised, the University will involve stakeholder groups such as students, unions, and faculty in the final review.

Conduct additional research and identify ways in which the "one policy / one process" could be strengthened to further ensure timely, fair, and consistent outcomes (including sanctions) on all campuses and for all groups affected (employees and students).

Research the viability of dedicated Title IX Coordinators on every campus.

Conduct a review of information on each campus website.

Research how students search for information on websites and identify search engines and key terms to ensure relevant websites/information can be readily accessed.

Review the related UH policies and procedures referred to above for consistency and make a final recommendation.

**B. Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources**

Gather additional information, including testimony and/or interviews of staff members of the various education, awareness, and prevention offices which directly interface with students on the University's campuses. After this research is conducted, the Task Force will present additional findings regarding program efforts and further discuss possible recommendations regarding how to best support each office's efforts.

Contact housing and other larger portals/points of entry and any relevant information technology and web services staff to gather additional information and discuss possible recommendations regarding building the University's capacity to distribute information. Larger points of entry where a victim might have first contact include the East-West Center, Student Housing, and athletics.

Engage the Vice Chancellors for Student Affairs to gather more information regarding implementation of and access to basic preliminary education around student codes of conduct, to further discuss how to best support these efforts.

Identify interested community resources for possible opportunities to conduct cross-training or develop resources for different services and programs to conduct peer review and learn from each other.

Further research effective training, education, and prevention programs, including culturally relevant media campaigns. Research shall include gender role analysis and quantitative data relating to social norm change. Input shall be elicited from students.

**C. Training of Employees and Best Practices**

Review and discuss the possibility of the UH Office of Institutional Equity and other relevant UH System offices having strengthened centralized oversight of training programs for new employees. Include discussion on potential recommendations regarding ways the University can enhance its implementation and monitoring efforts, for both in-person and online training.

Gather additional information from the UH Office of Institutional Equity and other relevant offices regarding mandatory and other training for employees, including graduate assistants.

Gather additional information around the need to further strengthen the working relationship between the University and the State of Hawaii Department of Education to ensure Title IX processes and procedures for students experiencing gender-based

violence are known to UH employees, State of Hawaii Department of Education employees, and students enrolled in early high school and/or running start classes.

#### **D. Community Collaborations**

Gather additional information from off campus, community resources to discuss their work/services and how the Task Force can promote their efforts. In addition, discuss how to best connect resources at the University with resources in the community.

#### **E. Further Research**

The Task Force will need to complete further research and discuss additional recommendations based on that research. The Task Force will also need to develop action plans for future implementation not specifically set forth above but discussed at various meetings and referred to in the minutes.

### **VIII. Conclusion**

The Action Plan introduced in this report reflects the initial, first steps that will be taken by the Task Force to address the vast, complex, and nuanced challenges that many universities, including the University of Hawaii, face in order to honor the legacy of U.S. Representative Patsy T. Mink. The Task Force members and the University of Hawaii are committed to this and any future plans that may be developed as well as continuing their work to end sexual and other forms of gender-based violence at the University in a comprehensive, transparent, and collaborative way.

### **IX. Appendices**

**Appendix A: 2015 Act 222**

Approved by the Governor

on JUL 9 2015

THE SENATE  
TWENTY-EIGHTH LEGISLATURE, 2015  
STATE OF HAWAII

**ACT 222**

**S.B. NO.** 387  
S.D. 2  
H.D. 3  
C.D. 1

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**A BILL FOR AN ACT**

RELATING TO AFFIRMATIVE CONSENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that while Congress has  
2 enacted several historic and significant federal laws to address  
3 sex-based discrimination and violence against women and girls,  
4 including Title IX of the Education Amendments of 1972, renamed  
5 the Patsy Takemoto Mink Equal Opportunity in Education Act in  
6 2002 in recognition of the late United States Representative  
7 Patsy Mink's tireless efforts regarding Title IX, and the more  
8 recent Violence Against Women Act, sexual violence is prevalent  
9 on college campuses. Nationally, one in five women is sexually  
10 assaulted while in college. Approximately one-third of these  
11 sexual assaults are perpetrated on women who are first-year  
12 students between the ages of seventeen and nineteen. Also,  
13 women aged sixteen to twenty-four are at the highest risk for  
14 experiencing abuse by an intimate partner.

15           The legislature concludes that violence against women is a  
16 continuing problem that must be addressed. Ending campus sexual  
17 violence is a combined endeavor of effective response and

2015-2677 SB387 CD1 SMA.doc



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1 intervention, awareness education to change attitudes and  
2 behaviors, and clear policies that do not tolerate such conduct.

3       The legislature acknowledges that the University of Hawaii  
4 is committed to maintaining and promoting safe, respectful  
5 campus environments that are free from discrimination,  
6 harassment, and sexual violence. The University of Hawaii board  
7 of regents recently adopted an executive policy concerning  
8 sexual harassment, sexual assault, domestic violence, dating  
9 violence, and stalking that requires the various campuses to  
10 implement comprehensive education and prevention programs,  
11 information and assistance for individuals who report alleged  
12 sexual harassment and sexual violence, prompt and equitable  
13 complaint procedures, information for respondents and  
14 complainants about their rights, and corrective action to  
15 prevent and end incidents of harassment and sexual violence.  
16 The policy also provides a comprehensive definition of  
17 affirmative consent.

18       The purpose of this Act is to provide for a review of the  
19 university's policy.

20       SECTION 2. (a) There is established the affirmative  
21 consent task force to review and make recommendations on the



1 University of Hawaii's executive policy on sexual harassment,  
2 sexual assault, domestic violence, dating violence, and  
3 stalking.

4 (b) The task force shall comprise:

5 (1) The president of the University of Hawaii, or the  
6 president's designee;

7 (2) The vice president for community colleges, or the vice  
8 president's designee;

9 (3) The chancellor of the University of Hawaii at Manoa,  
10 or the chancellor's designee;

11 (4) The chancellor of the University of Hawaii at Hilo, or  
12 the chancellor's designee;

13 (5) The chancellor of the University of Hawaii at West  
14 Oahu, or the chancellor's designee;

15 (6) The executive director of the Hawaii state commission  
16 on the status of women, or the executive director's  
17 designee;

18 (7) The chair of the University of Hawaii commission on  
19 the status of women, or the chair's designee;



- 1           (8) At least two students at the University of Hawaii to  
2           be chosen by the president of the University of  
3           Hawaii, or the president's designee;
- 4           (9) The executive director of the Sex Abuse Treatment  
5           Center, or the director's designee;
- 6           (10) A member of the American Civil Liberties Union;
- 7           (11) A member of the National Association of Social  
8           Workers;
- 9           (12) A representative of the Hawaii State Coalition Against  
10          Domestic Violence;
- 11          (13) A representative of the Honolulu police department;  
12          and
- 13          (14) A member of the women's legislative caucus of the  
14          legislature.
- 15          (c) The members of the task force shall elect a  
16          chairperson from among themselves.
- 17          (d) The task force shall consider the following concepts  
18          when reviewing and revising the University of Hawaii's current  
19          policy:
- 20               (1) Affirming the University of Hawaii's commitment to  
21               increasing resources and strengthening the



- 1 institutional infrastructure of all of its campuses to  
2 more effectively address the issue of affirmative  
3 consent;
- 4 (2) Considering best practices and current professional  
5 standards in reviewing and revising the current  
6 policy;
- 7 (3) Using contemporary corrective actions consistent with  
8 academic environments, standard business practices,  
9 and the laws of the State; and
- 10 (4) That the University of Hawaii's policy shall provide  
11 guidance to each campus within the University of  
12 Hawaii system on the following:
- 13 (A) Comprehensive education and prevention programs  
14 that inform the University of Hawaii community  
15 about the policies, resources, complaint options,  
16 remedies, and the risks and myths that contribute  
17 to sexual harassment, sexual assault, domestic  
18 violence, dating violence, and stalking;
- 19 (B) Information and assistance for individuals who  
20 report alleged sexual harassment and sexual  
21 violence, including informing individuals about



1 their right to file criminal charges as well as  
2 the availability of on- and off-campus resources  
3 (e.g., medical, counseling, advocacy, legal, and  
4 other support services, including confidential  
5 options) and alternative remedies, such as  
6 housing, academic, or workplace accommodations,  
7 if appropriate and reasonably available,  
8 regardless of whether the individual chooses to  
9 file a complaint with or report a crime to campus  
10 security or a local law enforcement agency;  
11 (C) Prompt and equitable complaint procedures for  
12 students and employees that are accessible and  
13 widely publicized on a regular basis;  
14 (D) Information for both respondents and complainants  
15 regarding their rights during a student  
16 disciplinary hearing or investigation, including  
17 the right to a fair and impartial process, to be  
18 accompanied by an advisor, to give their side of  
19 the story and present all relevant evidence, to  
20 receive simultaneous updates on the status of the  
21 investigation and written notice of the outcome,

1 including relevant sanctions imposed on student  
2 respondents, and to appeal;

3 (E) Provisions for corrective actions that the  
4 campuses will implement or instill, including  
5 remedies and disciplinary sanctions, to end  
6 incidents of harassment or sexual violence and to  
7 prevent their recurrence;

8 (F) Training on non-judgmental, victim-centered  
9 communication for university staff who receive  
10 and handle complaints of harassment or sexual  
11 violence; and

12 (G) Procedures for the university's coordination and  
13 cooperation with police and prosecutors if an  
14 individual decides to report an incident of  
15 harassment or sexual violence.

16 (e) The task force shall submit a report of its findings  
17 and recommendations, including any proposed legislation, to the  
18 legislature no later than twenty days prior to the convening of  
19 the regular sessions of 2016 and 2017.

20 (f) The task force shall cease to exist on June 30, 2017.

21 SECTION 3. This Act shall take effect on July 1, 2015.

S.B. NO. 387  
S.D. 2  
H.D. 3  
C.D. 1

APPROVED this 9 day of JUL , 2015



GOVERNOR OF THE STATE OF HAWAII

## Appendix B: UH News Announcement – UH Adopts Interim Policy on Sex Discrimination and Gender-Based Violence & President Lassner’s Letter to the UH ‘Ohana

 [hawaii.edu](http://www.hawaii.edu) <http://www.hawaii.edu/news/2015/09/01/uh-adopts-interim-policy-on-sex-discrimination-and-gender-based-violence/>

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### UH adopts interim policy on sex discrimination and gender-based violence

UH  
News

On September 1, 2015, [University of Hawai‘i](#) President **David Lassner** authorized an updated executive policy on sex discrimination and gender-based violence. The policy is interim while the university continues to consult with various stakeholders, including the exclusive collective bargaining representatives of UH’s faculty and staff. The interim policy establishes systemwide standards and procedures that ensure a consistent institutional response across the 10 UH campuses; clarifies the types of conduct prohibited by the university; and identifies how and from whom students, faculty and staff can seek confidential support or report incidents of sex discrimination and gender-based violence.

- [Download the executive policy on sex discrimination and gender-based violence \(Interim Executive Policy, EP 1.204\)](#)

To assist with the implementation of the interim policy, the university has launched the [Office of Institutional Equity](#) (OIE). OIE will build the foundation for a safe, nonviolent and non-discriminatory community for students, faculty and staff. The office will be primarily responsible for overseeing the university’s initiatives on Title IX, a legacy of the late Congresswoman Patsy T. Mink, and the Violence Against Women Act (VAWA).

“This has been a priority of my administration ever since I started serving as the interim president,” said [UH President Lassner](#). “This is not solely about compliance. It’s about doing the right thing and standing behind it. We need to thank the Hawai‘i State Legislature, and the Women’s Legislative Caucus in particular, for their critical role in investing in the university to maintain the highest standards of prevention, response and reporting.”

Along with the opening of OIE, UH is also unveiling its new Title IX and OIE website at [www.hawaii.edu/titleix](http://www.hawaii.edu/titleix). The website provides information on campus, local and national resources regarding sexual violence, stalking, domestic violence, dating violence and other forms of sex discrimination as well as [Interim Executive Policy, EP 1.204](#), the university’s recently updated policy which will help to establish best practices for responding to sexual violence, sex and gender-based discrimination, domestic and dating violence, stalking and retaliation on every campus.

#### President Lassner’s letter to the UH ‘Ohana

Dear University of Hawai‘i ‘Ohana,

One of my highest priorities has been to ensure that all of our campuses maintain and promote safe and respectful environments for all students, faculty, staff, and visitors. To that end, as we celebrate the start of the fall 2015 semester, I am pleased to announce the establishment of the Office of Institutional Equity (OIE) at the UH System. This office will build upon our foundation and commitment to provide a safe, nonviolent and non-discriminatory community for students, faculty, staff and visitors across the 10 UH campuses and our community based learning centers. It will be primarily responsible for overseeing the Federal legislation governing Title IX and the Violence Against Women Act (VAWA), as well as collaboratively establishing system-wide best practices for responding to sexual violence, sex and gender-based discrimination, domestic and dating violence, stalking and retaliation.

We are also unveiling the UH System Title IX and OIE website at [www.hawaii.edu/titleix](http://www.hawaii.edu/titleix). The new website provides

campus, local and national resources and information for students, faculty and staff regarding sexual violence, stalking, domestic violence, dating violence and other forms of sex discrimination.

Finally, I have just approved an updated Interim Executive Policy EP 1.204, which expands on the University of Hawai'i's existing policy and procedure on sex discrimination and gender based violence. It is an interim policy as we continue to work with the respective exclusive collective bargaining representatives who represent our valued faculty and staff to meet our compliance, contractual and statutory obligations. And while this interim policy is the result of a collaborative effort by many university and community stakeholders, we will continue to seek feedback from students, staff and community groups as we work toward its finalization. Some of the highlights of the interim policy are:

- Establishes systemwide standards and procedures that ensure a consistent institutional response across the 10 UH campuses;
- Clarifies the types of conduct prohibited by the university; and
- Identifies how and from whom students, faculty and staff can seek confidential support or report incidents of sex discrimination and gender-based violence.

Interim EP 1.204, as well as other information designed to support our university community, will be available on the University of Hawai'i System website at [www.hawaii.edu/titleix](http://www.hawaii.edu/titleix).

The University of Hawai'i is deeply committed to preventing sex discrimination, sexual violence, stalking and domestic and dating violence. If you have any questions or concerns about these prohibited behaviors, I encourage you to contact your respective campus Title IX coordinator. For confidential resources, go to [www.hawaii.edu/titleix/confidential](http://www.hawaii.edu/titleix/confidential).

In the coming months, you will hear more information about the evolution of our policies and other resources and efforts to ensure campus safety.

Best regards,  
David Lassner  
President

## Appendix C: November 2015 Interim Policy EP 1.204

<b>Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence</b>	
<b>Header</b>	<b>1</b>
<b>I. Purpose</b>	<b>1</b>
<b>II. Policy</b>	<b>1</b>
A. Scope	2
B. Prohibited Behavior	2
C. Related Definitions	7
D. University Computer/Networks	9
E. Standard of Review	9
<b>III. Retaliation</b>	<b>9</b>
A. Retaliation Prohibited	9
B. Procedure	10
<b>IV. Institutional Responsibilities</b>	<b>10</b>
A. Responsible Employees	10
B. All Other University Employees	10
C. University of Hawaii Office of Institutional Equity	11
D. Campus Responsibilities	11
<b>V. Confidentiality Limitations</b>	<b>13</b>
<b>VI. Reporting and Investigation Procedures</b>	<b>13</b>
A. Parties	13
B. Notice and Report of Prohibited Behavior	14
C. Interim Measures	15
D. Informal Resolution	16
E. Formal Investigation and Resolution	17
F. Timing	25
G. Participation	25
<b>VII. Resources</b>	<b>25</b>
A. University Reporting Options	26
B. University Title IX Coordinators	26
C. University Confidential Resources	26
D. Community Resources	26
<b>VIII. Contact Information</b>	<b>26</b>
<b>IX. Related Policies</b>	<b>26</b>
A. EP 1.202 (Nondiscrimination and Affirmative Action)	26
B. EP 7.205 (Systemwide Student Disciplinary Sanctions)	26
C. EP 7.208 (Systemwide Student Conduct Code)	26
D. EP 9.210 (Workplace Non-Violence)	26
E. AP 9.920 (Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission)	27
F. Link to Superseded Policy	27

**Title**

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

**Header**

Executive Policy Chapter 1, General Provisions

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

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

Prior Dates Amended: February 2015; January 2006

Responsible Office: Office of the President

Governing Board of Regents Policy 1-5

Review Date: August 2017

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

**I. Purpose**

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

This includes:

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

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

**II. Policy**

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

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

**A. Scope**

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

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

**B. Prohibited Behavior**

The University prohibits the following:

**1. Sex Discrimination**

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

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

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

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

## **2. Sexual Harassment**

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

- a.** Submission to or rejection of the conduct is either an explicit or implicit term or condition of an individual's employment, education, or participation in a University program, activity, or service;
- b.** Submission to or rejection of the conduct by an individual is used as a basis in decisions affecting that individual's employment, education, or participation in a University program, activity, or service; or
- c.** When such conduct is unwelcome to the person to whom it is directed or to others directly aware of it, and when such conduct is:
  - i.** Severe or pervasive; and
  - ii.** Has the purpose or effect of either:
    - (1) Unreasonably interfering with the employee's work performance or student's academic performance; or
    - (2) Creating an intimidating, hostile, or offensive work or educational environment.

The conduct must be both objectively and subjectively perceived as offensive. That is, the reporting party must view the conduct as offensive, and a reasonable person with the same fundamental characteristics as the reporting party (e.g., actual or perceived sex, age, race, gender, sexual orientation, gender identity, or gender expression) must also view the conduct as offensive.

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

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

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

### 3. Gender-Based Harassment

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

### 4. Sexual Exploitation

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

Sexual Exploitation includes but is not limited to:

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

activity, regardless of whether sexual activity actually takes place

**5. Sexual Assault**

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

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

**6. Domestic Violence**

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

**7. Dating Violence**

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

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

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

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

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

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

#### 8. Stalking

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

Stalking may occur:

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

### C. Related Definitions

#### 1. Sexual Contact

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

#### 2. Consent

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

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

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

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

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

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

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

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

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

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

**D. University Computer/Networks**

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

**E. Standard of Review**

**1. Preponderance of the Evidence**

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

**2. Jurisdiction**

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

**III. Retaliation**

**A. Retaliation Prohibited**

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

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

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

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

**B. Procedure**

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

**IV. Institutional Responsibilities**

**A. Responsible Employees**

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

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

**B. All Other University Employees**

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

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

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

The Office of Institutional Equity shall, among other things:

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

**D. Campus Responsibilities**

**1. Title IX Coordinator**

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

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

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

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

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

## **2. Confidential Resources for Students**

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

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

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

### 3. Advocacy Offices

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

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

## V. Confidentiality Limitations

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

## VI. Reporting and Investigation Procedures

### A. Parties

#### 1. Reporting Party

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

**2. Responding Party**

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

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

**1. Reporting to the University**

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

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

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

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

**2. Multiple Campuses**

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

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

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

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

**C. Interim Measures**

**1. Definition**

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

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

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

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

**2. Procedure**

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

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

**3. Requests for Interim Measures**

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

**D. Informal Resolution**

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

Mediation is inappropriate when violent behavior is involved.

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

**E. Formal Investigation and Resolution**

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

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

**3. Voluntary Agreement**

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

**4. Fact-Finding Investigation**

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

The Investigating Officer(s) will:

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

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

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

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

**5. Fact-Finding Report**

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

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

**6. Decision Maker**

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

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

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

7. Outcome Report and Notification Requirements

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

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

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

**a. Title IX Requirement**

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

**b. Clery Act Requirement**

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

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

**8. Sanctions**

**a. Employees**

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

**b. Students**

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

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

**i. Warning**

A Warning is a formal written admonition.

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

**ii. Disciplinary Probation**

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

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

**iii. Suspension**

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

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

**iv. Suspension with Conditions**

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

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

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

**v. Withholding of Degree**

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

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

**vi. Expulsion/Discharge**

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

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

**vii. Censure**

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

**viii. University Housing Restrictions**

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

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

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

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

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

**x. Other Sanctions**

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

**9. Educational Refresher Programs**

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

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

**10. Right to Appeal**

**a. Student**

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

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

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

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

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

**b. Employee**

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

**F. Timing**

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

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

**G. Participation**

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

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

**VII. Resources**

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

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

The following resources are organized by category:

**A. University Reporting Options**

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

**B. University Title IX Coordinators**

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

**C. University Confidential Resources**

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

**D. Community Resources**

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

**VIII. Contact Information**

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

**IX. Related Policies**

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

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

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

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

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

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

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

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

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

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

F. **Link to Superseded Policy**

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

INTERIM

## Appendix D: 2015 Affirmative Consent Task Force Members

Current:

- The designee of the President of the University of Hawaii:  
**Jennifer Solidum Rose**, UH Office of Institutional Equity Director,  
Chair of the Task Force
- The designee of the Vice President for Community Colleges:  
**Christine Chun**, UH Community Colleges Compliance and Title IX Office Director
- The designee of the Chancellor of the University of Hawaii at Manoa:  
**Dee Uwono**, UH Manoa Title IX Coordinator
- The designee of the Chancellor of the University of Hawaii at Hilo:  
**Jennifer Stotter**, UH Hilo EEO/AA Director
- The designee of the Chancellor of the University of Hawaii at West Oahu:  
**Judy Oliveira**, UH West Oahu Vice Chancellor for Student Affairs
- **Catherine Betts**, Hawaii State Commission on the Status of Women Executive Director,  
Vice Chair of the Task Force
- **Farrah-Marie Gomes**, University of Hawaii Commission on the Status of Women Chair
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Naomi Iwabuchi**, William S. Richardson School of Law Student
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Jonathan Dial**, UH Manoa Graduate Student
- The designee of the Executive Director of the Sex Abuse Treatment Center:  
**Justin Murakami**, SATC Policy Research Associate
- Member of the American Civil Liberties Union:  
**Mandy Finlay**, ACLU of Hawaii Advocacy Coordinator
- Member of the National Association of Social Workers:  
**Sonja Bigalke-Bannan**, NASW Hawaii Region Executive Director
- Representative of the Hawaii State Coalition Against Domestic Violence:  
**Michelle Rocca**, HSCADV Training and Technical Assistance Director
- Representative of the Honolulu Police Department:  
**Larry Lawson**, HPD Criminal Investigation Division Major

- Member of the Women's Legislative Caucus of the Hawaii State Legislature:  
**Linda Ichiyama**, Hawaii State Legislature House District 32 Representative

Former:

- The designee of the Vice President for Community Colleges:  
**Mary Perreira**, UH Community Colleges EEO/AA Director
- The designee of the Chancellor of the University of Hawaii at West Oahu:  
**Beverly Baligad**, UH West Oahu Title IX Coordinator

## Appendix E: August 11, 2015 Meeting Minutes (Approved)

### MINUTES OF THE ACT 222 AFFIRMATIVE CONSENT TASK FORCE MEETING OF AUGUST 11, 2015

DATE OF MEETING: Tuesday, August 11, 2015

TIME: 9:00 a.m.

LOCATION: University of Hawaii at Manoa, Information Technology Center  
Conference Room 105A

PRESENT: Jennifer Solidum Rose, *Director, Office of Institutional Equity, University of Hawaii System*  
Michael Wong, *Campus Coordinator, EEO/AA, Leeward Community College (for Designee Mary Pereira, Director, EEO/AA for Community Colleges)*  
Jennifer Stotter, *Director, EEO/AA, University of Hawaii at Hilo*  
Beverly Baligad, *Director of Compliance & Title IX Coordinator, University of Hawaii at West Oahu*  
Catherine Betts, *Executive Director, Hawaii State Commission on the Status of Women*  
Farrah-Marie Gomes, *Chair, University of Hawaii Commission on the Status of Women*  
Justin Murakami, *Policy Research Associate, Sex Abuse Treatment Center, Kapiolani Medical Center for Women & Children (for Designee Adriana Ramelli)*  
Mandy Finlay, *Advocate Coordinator, ACLU of Hawaii (for Designee Vanessa Chong)*  
Sonja Bigalke-Bannan, *Executive Director, National Association of Social Workers, Hawaii Chapter*  
Michelle Rocca, *Director of Training & Technical Assistance, Hawaii State Coalition Against Domestic Violence (for Designee Marci Lopes)*  
Major Larry Lawson, *Honolulu Police Department*  
Representative Linda Ichiyama, *Hawaii Women's Legislative Caucus*  
Naomi Iwabuchi, *Student Representative, University of Hawaii*  
Jonathan Dial, *Student Representative, University of Hawaii*

ALSO PRESENT: Jan S. Gouveia, *Vice President for Administration, University of Hawaii System*  
Jan M. Tamura, *Senior Advisor, Office of Institutional Equity, University of Hawaii System*

ABSENT: Dee Uwono, *Title IX Coordinator, University of Hawaii at Manoa*

#### I. CALL TO ORDER & INTRODUCTION OF TASK FORCE MEMBERS

The meeting was convened and called to order at 9:10 a.m. by Facilitator Jan S. Gouveia.

Task Force members introduced themselves. VP Gouveia announced that the meeting was an "open" meeting subject to Hawaii's Sunshine Law and would be recorded.

#### II. OVERVIEW OF ACT 222

Copies of Act 222, approved by Governor David Ige on July 9, 2015, were circulated to members of the Task Force. VP Gouveia provided a brief history of the Act. She noted that the Act brought together

various stakeholders interested in violence against women, Title IX, and sex discrimination to evaluate the University's existing policy, EP 1.204, signed by UH President David Lassner in February 2015. Any new policy will need to be aligned with the considerations set forth in the Act and address the Legislature's concerns about the University's capacity to address sex-based discrimination and violence on its campuses. VP Gouveia described the University's strategic initiative to address these concerns in a more comprehensive, coordinated, and cohesive way. To support this initiative, the Legislature provided approximately \$1 million which will enable the University to hire Title IX Coordinators and create the programs needed on each of its campuses. VP Gouveia reviewed each of the concepts listed in Sections 2(d) (1) through 2(d) (4) of the Act to guide the development of the University's policy.

A. Discussion

Sonja Bigalke-Bannan inquired about the University's interpretation of the training described in Section F of the Act. VP Gouveia responded that many factors will need to be considered during the development of the University's training programs. Certain training will be required for University System and campus executives as well as Title IX coordinators. These and other training initiatives will incorporate best practices identified by Task Force members, each of whom have relevant expertise. Training initiatives will be incorporated in the Task Force's report to the Legislature, which will be submitted to the UH Government Relations by December 20, 2015 (for submission before the deadline set forth in the Act). Task Force member Jennifer Rose added that initial training efforts will focus on campus "first responders" and cover Title IX, VAWA and their intersections with Title VII with the ultimate goal of helping to build the capacity of and provide support to every campus. Mike Wong (sitting in for Task Force Member Mary Pereira) indicated that his particular campus and others in the UH System such as Kapiolani Community College had forged ahead with their own training efforts, not waiting for the UH System to develop its training program. He noted that the community colleges do not have the luxury of dedicated Title IX Coordinators, nevertheless, all of the staff on his campus have been trained.

VP Gouveia noted that historically each of the ten campuses had been left to develop its own policies and practices which produced inconsistent responses to complaints. One of the goals will be to provide basic resources and programs as well as establish minimum standards to ensure consistency and excellence in the University's response.

B. Action

None proposed/voted on.

III. UNIVERSITY OF HAWAII'S EXISTING AND PROPOSED EXECUTIVE POLICIES

VP Gouveia provided a brief history of EP 1.204, the University's current policy on sexual harassment and sex discrimination. The policy (available on the University's website) was displayed on the screen and noted to be extremely lengthy with multiple appendices. The consensus was that the policy, although an improvement from the previous policy, was written from a "technical perspective" and not user friendly.

Accordingly, President Lassner reconvened his Title IX Advisory Group in February 2015 to create a new policy. Since then, the Advisory Group, consisting of representatives from every UH campus, has been meeting every two weeks. VP Gouveia noted that the U.S. Department of Education Office of Civil Rights conducted a compliance audit of UH Manoa in 2013. At the time OCR was not aware that UH Manoa was a “flagship” campus - only one of multiple campuses within the UH System. Although the compliance audit focused on UH Manoa, she noted that OCR could decide to audit UH’s other campuses in the future. Preliminary conversations with OCR since the audit influenced the Advisory Group’s decision to generate a System-wide policy. VP Gouveia described robust discussion within the Advisory Group, including weighing whether the new policy should be highly prescriptive or set minimum standards that each campus could execute based on their specific needs. VP Gouveia stated that drafts of the new policy, including the most recent dated August 4, 2015, were provided to the unions for their feedback. With their permission, copies of the most recent draft were made available to Task Force members and distributed at the meeting.

A. Discussion

Beverly Baligad opined that the February 2015 Policy was never intended for students but to assist administrators. She felt that this policy was posted on the University’s website without any guidance. She stated that administrators tasked with implementation were not adequately trained on the policy and how to appropriately establish procedures based on it. VP Gouveia acknowledged that communication about the previous policy was less than ideal and created operational challenges. The new policy is evolving differently, with improved communication involving all the campuses, and is intended to address the operational shortcomings. The policy is expected to be revised again in response to the Task Force’s work as well as the University’s forthcoming post-compliance audit Voluntary Resolution Agreement with OCR.

Mike Wong noted that historically, policies have ultimately been the responsibility of each of the Chancellors. VP Gouveia responded that with respect to the issue of autonomy for each campus, questions were raised about the inconsistent execution of multiple policies. She explained that the Council of Chancellors had met, concluded that the need for consistency outweighed their interest in autonomy, and supported the concept of a System wide policy. She noted, however, that the Task Force could decide to have each of the ten campuses generate its own policy, holding each of the Chancellors accountable and responsible for testifying at the Legislature if questions about their respective policies arise. She cautioned, however, that the Legislature was concerned that this approach was not what the community expected. She hopes that members of the Task Force, even if they disagree about certain points, will ultimately say that the policy is a unanimous representation of collective input generated by a very broad, diverse, and intelligent think tank.

Jennifer Rose wanted to clarify, for the benefit of members who may not know about what had been transpiring at the University, that the OCR amassed considerable findings about the frustrations of students, faculty, staff, and community members regarding the Manoa campus. She shared that the OCR

is auditing another multi-campus university like the UH which not only had undergraduate students but graduate students and employees as well as perpetrators moving between campuses. This related directly to VP Gouveia's point about the challenges faced by the University with developing its new policy. With respect to the capacity of community colleges, she reported that over the past eight years they have expressed the need for and welcomed help from the UH system since their staff wear multiple hats and do not have the time to develop their own policies or, from a best practices standpoint, their own operating procedures. She agreed that each campus is unique and needs to do what is right for its own culture so a balance must be met. She stated that even if the spirit and components of the February 2015 policy were great, something was wrong if people did not understand its purpose. She acknowledged that the University did not have a plan to roll out the February 2015 policy.

Farrah Marie Gomes stated that some Chancellors have determined that it would be more appropriate for their respective campus to have programs coordinated by one side of the shop as opposed to the other, i.e. academic vs. student affairs. She felt that there is a way to provide the flexibility needed by each campus – the new System wide policy could serve as a guide to be interpreted by each of the ten campuses during roll out.

Catherine Betts reiterated concerns about the University's institutional responses to the concerns of victims. She referenced the Dear Colleague Letters issued by OCR raising various issues of important to the University, including the lack of uniformity in response to complaints. She acknowledged the importance of weighing due process rights of respondents but felt that there needs to be more focus on student safety as a primary area of concern. She further elaborated that the loss of any student as a result of the University's failure to respond appropriately to that student's complaint was unacceptable. She agreed that the University's existing policy needed to be replaced.

Sonja Bilgake-Bannan opined that evidence-based mandatory training, including for union members, can be done. She noted that sexual harassment training has been ongoing on campuses. She offered additional history behind Act 222, saying that it was needed to address the lack of help for students who left UH campuses and how these students were treated. She described the February 2015 policy as a panicked, rushed response to the bill that was eventually passed as Act 222. She added that it was very positive that a better policy was being generated and that everyone will move forward.

Jennifer Stotter elicited ideas about how unions can be motivated to be trained. Jennifer Rose shared that faculty and others have been attending sexual harassment trainings offered in the past, even if they were not mandatory. In her experience, attendance at voluntary training in some UH colleges and departments has been as high as 95% and that the Deans of certain colleges and departments have provided very strong leadership in this regard. She emphasized that future training, which will incorporate VAWA, will be particularly critical for individuals and staff such as teaching assistants who are trusted by students and can occur in different ways, including on line as well as in person. She did not feel that unions have been resistant to training and has seen change in response to these training initiatives. Mike Wong added that union contracts require that the University provide a safe environment and trainings

arguably address this. VP Gouveia agreed that the unions have not been resistant to training but that there has been frustration with the piecemeal approach. She stated that changing the University culture and accomplishing gender equity at all levels is what Title IX is all about. The hope is that the new policy, which must be developed first, will provide standards and that the UH's training system will be developed around them. She noted that the question is whether the new policy is heading in the right direction. In addition to content, the University will need to consider how the new policy will be delivered including timing and audience, the messaging behind it, and the outreach strategy for every campus. She stated that this is a very different approach to the way things have been done in the past and was pleased that the University now has the resources to support every campus.

Beverly Baligad opined that a lot of the Task Force members in the room do not have an understanding of the law and the intersections of Title IX, VAWA, Clery and Campus SaVE and without this understanding the problem will not be fixed. She stated that even if the policy and procedures are changed, there are people on campuses who will not know how to effect the changes. She asserted that there is a risk of being too victim centered and screwing respondents' rights and the institution's due process obligations. She stated that Title IX requires the institution to be equitable, that there's a potential private right of action, and that she felt people are not having the conversation about equity. She also stated that she has conducted national training and that the training should not scare faculty by forcing it down their throats with administrative action but be supportive by offering help. She stated that if faculty are approached through an offer of providing help, then they will be receptive and have the information to help their students.

Justin Murakami emphasized that it would be helpful to shift the paradigm and frame the issue as providing technical assistance to help with complicated policies and procedures. VP Gouveia noted that she was not part of developing the February 2015 policy and therefore could not speak to its intent. The intent of the new policy is to provide support to the campuses, in whatever way it is needed. She acknowledged that one of the campuses requested to "opt out" from the new policy but felt that the policy is not that prescriptive and allows flexibility for implementation by each campus. There are, however, certain things that must be done to ensure due process for both the respondent and the claimant as well as a safe working and educational environment. To address Beverly Baligad's concern about respondents' rights to due process, VP Gouveia pointed out that the discussion on page 6 of the 8-4-15 draft of the new policy addresses the goal of providing a fair, impartial, and balanced process for all parties. She agreed that although there are nuances in the law and that compliance is an issue, outcomes must also be considered. She added that when coming up with the work plan, the Task Force must identify its goals and objectives. Act 222 provides a guide, but we must ask ourselves what do we ultimately want to accomplish for the University and what are we trying to affect? Hopefully, in the end, a balance will be achieved between all the moving parts and relationships that will be impacted by the policy. The Task Force will be addressing hard, difficult issues and that is why its work will take place over two years. Once goals and objectives are agreed to and identified, the policy can be evaluated and addressed in the report to the Legislature.

Catherine Betts addressed the opinion expressed earlier by Beverly Baligad that others in the room did not know about the law. She responded that every person in the room has different areas of expertise, which was the whole point of forming the Task Force. She noted that there were lawyers and others in the room with experience working in this community who actually know a lot about VAWA and Title IX. She agreed that the issues are complicated, but beyond trying to ensure compliance, emphasized the importance of trying to do the right thing.

Linda Ichiyama, who was involved in passing the legislation signed as Act 222, offered additional insight. She stated that the genesis of the Task Force was in response to the University's February 2015 policy. The Legislature was concerned about how the University was conducting investigations and the stories they were hearing from victims. The Legislature also learned from community stakeholders that they were not being heard by the University. She stated that Legislature respects the University's autonomy and wanted to provide an opportunity for it to draft a new policy to chart its own course as well as to give community stakeholders a chance to be heard. She indicated that the House Higher Education Committee felt that the piecemeal approach was not working or in the best interest of students, and hoped that the Task Force's work plan will make it better. She also stated that there will always be complications when dealing with collective bargaining, but that the right tone will be to raise the bar and try to lift everyone up.

Beverly Baligad restated a few of the points raised by other Task Force members and emphasized the importance of equity and doing the right thing for the right reasons.

Justin Murakami agreed that it was critical for the needs of various stakeholders to be acknowledged and to effect a paradigm shift. A website with comprehensive, accessible and clear information is needed. Victims don't want to have to navigate the UH's system. (VP Gouveia provided the test link to the System's new website). He also felt that individuals needed to take ownership of their responsibilities to ensure a seamless transition for victims from standing alone to empowerment through advocacy. He emphasized that any burden should be carried by the system, not the victim.

Michelle Rocca agreed that the UH is a complex system to navigate, and that she had received previous feedback emphasizing that same opinion. She felt that the system needed to be further streamlined, validate victims, and ensure outcomes that will enable students to finish their education.

Farrah Marie Gomes stated that the primary aspiration of any training initiative is increasing the knowledge of faculty and staff. One outcome of training should be their ability to explain what Title IX and VAWA are when asked about it. She noted that compliance with the law is one consideration, but training outcomes are important. She also stated that a University website was being developed with a test site. She noted that the Manoa campus Gender Equity website was the farthest along but other campuses may not have one at all. VP Gouveia explained that the UH System website referred to earlier is close to launching, noting that a "two click" approach (i.e., can someone find the information he or she needs in two clicks?) was adopted for ease of use. She also said that each campus had been asked to put

its IT staff in touch with David Yamashiro of the Office of Institutional Equity to coordinate linkages between and within sites and upload current, accurate information for every campus. Although the goal is to have the new policy on the System's website when it launches for the 2015 fall semester, there have been a number of hurdles to generating the final version of the new policy. Thus, the new website will have to be launched with the old policy.

Catherine Betts commented that although the new policy may need to change in response to feedback from the unions and OCR, important stakeholders were brought to the table, everything was converging, and the University's collaborative model will work well.

B. Action

VP Gouveia invited Task Force members to provide feedback on the 8-4-15 draft of the new policy provided at the meeting. An electronic copy of this draft will also be distributed to members.

IV. OVERVIEW OF SUNSHINE LAW

VP Gouveia presented some of the highlights of the law governing the work of the Task Force. These included limitations on discussing potential agenda items outside its meetings and publishing its agenda and meetings. She emphasized the public nature of the Task Force's work. (Links regarding the law were provided to Task Force members before the meeting).

A. Discussion

Catherine Betts noted that the Task Force will be able to form permitted interaction groups (PIGs) to accomplish certain tasks as needed. PIGs will be required to report back to the Task Force as a whole.

VP Gouveia suggested that each Task Force member identify one to three high level objectives as well as outcomes for the next meeting. Outcomes can be included in the Task Force's initial report to the Legislature. The question is: what do Task Force members want accomplished through the new University policy?

B. Action

All Task Force members present at the meeting concurred with the above.

V. ITEMS FOR DISCUSSION AND APPROVAL

A. Election of Chair

Discussion:

VP Gouveia elicited nominations for Chair of the Task Force. Linda Ichiyama nominated Jennifer Rose to serve as Chair. No other nominations offered.

Action:

Vote taken and Jennifer Rose was elected unanimously by members present at the meeting.

B. Election of Vice-Chair

Discussion:

VP Gouveia elicited nominations for Vice-Chair of the Task Force. Naomi Iwabuchi nominated Catherine Betts to serve as Vice-Chair. No other nominations made.

Action:

Vote taken and Catherine Betts was elected unanimously by members present at the meeting.

C. Selection of Recorder

Tabled. Chair Rose and Vice Chair Betts will address this. They will likely arrange for the staff from the Office of the UH System VP for Administration to record meetings and prepare the minutes.

D. Development and Adoption of Task Force Work Plan

Due to time constraints, a Task Force Work Plan was not discussed. This will be placed on the agenda for the next meeting.

A different date and time for the next meeting was discussed and agreed to so that travel and other schedules of Task Force members could be accommodated.

No testimony was received or given at this meeting.

VI. ADJOURNMENT

The meeting was adjourned at 10:55 a.m.

NEXT MEETING: October 21, 2015, 10 a.m. – 12 noon, University of Hawaii Information Technology Center Conference Room 105A, 2520 Correa Road, Honolulu, HI 96822

## Appendix F: October 21, 2015 Meeting Minutes (Approved)

### MINUTES OF THE ACT 222 AFFIRMATIVE CONSENT TASK FORCE MEETING ON OCTOBER 21, 2015

DATE OF MEETING: Wednesday, October 21, 2015

TIME: 10:00 a.m.

LOCATION: University of Hawaii at Manoa, Information Technology Center  
Conference Room 105A

PRESENT: **Jennifer Solidum Rose** (Chair), Director, University of Hawaii Office of Institutional Equity  
**Mary Ferreira**, Director, EEO/AA, University of Hawaii Community Colleges  
**Jennifer Stotter**, Director, EEO/AA, University of Hawaii at Hilo  
**Catherine Betts** (Vice Chair), Executive Director, Hawaii State Commission on the Status of Women  
**Farrah-Marie Gomes**, Chair, University of Hawaii Commission on the Status of Women  
**Justin Murakami**, Policy Research Associate, Sex Abuse Treatment Center, Kapiolani Medical Center for Women & Children  
**Mandy Finlay**, Advocate Coordinator, ACLU of Hawaii  
**Sonja Bigalke-Bannan**, Executive Director, National Association of Social Workers, Hawaii Region  
**Michelle Rocca**, Director of Training & Technical Assistance, Hawaii State Coalition Against Domestic Violence  
**Major Larry Lawson**, Honolulu Police Department  
Representative **Linda Ichiyama**, Hawaii Women's Legislative Caucus  
**Jonathan Dial**, Student Representative, University of Hawaii at Manoa  
**Dee Uwono**, Title IX Coordinator, University of Hawaii at Manoa

ALSO PRESENT: **Kara Teng**, Student, William S. Richardson School of Law & President, Lawyers Against Sexual Violence  
**Hannah Liebreich**, Graduate Student, Sociology, UH at Manoa  
**Elizabeth Bowman**, Student, William S. Richardson School of Law & Member of Lawyers Against Sexual Violence  
**Jan M. Tamura**, Senior Advisor, University of Hawaii Office of Institutional Equity

**David Yamashiro**, Junior Advisor, University of Hawaii Office of Institutional Equity

**Jeanilou Maschoff**, Program Specialist, University of Hawaii Office of Institutional Equity

ABSENT: **Judy Oliveira**, Interim Vice Chancellor for Student Affairs, University of Hawaii at West Oahu

**Naomi Iwabuchi**, Student Representative, William S. Richardson School of Law

I. Call To Order

Chair Jennifer Rose called the meeting to order at 10:09 a.m. Chair Rose and Vice Chair Catherine Betts stated that members of the public and guests were invited to comment after each topic on the agenda and at the end of the meeting.

Each of the Task Force Members of the Task Force and members of the public introduced themselves. Chair Rose noted that Task Force member Farrah-Marie Gomes would be joining the meeting later.

Chair Rose expressed appreciation to Representative Ichiyama for providing refreshments for meeting.

II. Items For Discussion and Approval

A. Minutes of August 11, 2015 Meeting

Chair Rose indicated that a draft of the minutes for the August 11, 2015 meeting, prepared by Jan Tamura, was previously circulated for review by members of the Task Force. Questions and comments regarding the draft minutes were elicited. No questions raised or comments offered.

A Motion to approve the minutes as drafted was made by Jonathan Dial and seconded by Michelle Rocca. Minutes were approved without abstention or objection.

B. Development of Task Force Work Plan

Chair Rose stated that the discussion of the work of the Task Force and formation of the Permitted Action Groups would be deferred to later in the meeting. This will allow the

members to be updated on the Interim Policy since the Policy will inform the group's work.

C. Future Meeting Schedule

Chair Rose also noted that this will be deferred to later in the meeting.

III. Update Re UH Interim EP 1.204, OIE office and System Website (taken out of order)

Chair Rose summarized the Task Force's last meeting, stating that UH Vice-President for Administration Jan Gouveia had provided a lengthy history about the vetting of the University's Interim EP 1.204 ("Interim Policy"). She stated that VP Gouveia's research for the Interim Policy began in March 2015 and continued up to the time of the Task Force's August 11 meeting. Since that meeting, the Interim Policy was expanded to cover sex discrimination. Minor changes to the version previously circulated to Task Force members were also incorporated and the Policy was implemented on September 1, 2015. Extra copies of the September 1, 2015 Interim Policy were made available at the meeting. The UH Office of Institutional Equity, represented by Chair Rose, David Yamashiro, Jan Tamura, and Jeanilou Maschhoff, and the new website for the UH System were also rolled out with the Policy on September 1 and received widespread media coverage. The link to the website and video was also provided to Task Force members. Chair Rose explained that part of UH OIE's function is not just developing the University's Policy but also implementation. She commented that Act 222 provides an opportunity to ensure that the Policy, which at the moment is provisional due to the University's continued work with the exclusive collective bargaining unit representatives, is a living breathing document. She added that the CBUs agreed to publication of Interim Policy, pending final review, as a provisional policy since it made sense to have something available at the start of the school year. The unions will continue to make suggestions and the review is ongoing. Additionally, it was very important for members of the Task Force to have a document to work with. At this point, the Interim Policy is being utilized on all campuses, being referenced for many cases and provides systematic guidelines across all campuses. The Interim Policy, along with the requirements of Act 222, will provide the basis for setting permitted interaction groups.

Questions regarding the Interim Policy were elicited. None elicited.

Questions about or additions to the agenda were elicited. None elicited.

Chair Rose added that the Interim Policy underwent stringent review and that many eyes had reviewed it. In addition to the Task Force, the Title IX Advisory Group reviewed various

versions along the way. Nearly 50 drafts of the Policy were generated on record but in actuality closer to 60-70 drafts were generated since the vetting process began. Since the Policy went into effect a number of multiple campus, multi-jurisdictional cases have arisen so people were relieved to know that systematic guidelines were in place across all campuses.

Call for additional questions about the policy or vetting process were elicited by Chair Rose. None raised.

Chair Rose stated that Task Force members will play a critical role in developing the University's final policy. Any final policy passed will be based on community as well as union feedback and vetting. Task Force members will provide advice before next month's meeting. They will also continue to review the Policy and make any suggested changes for the final Policy as well as part of an annual review. These are not official timelines, but timelines that Act 222 Task Force members could establish.

Chair Rose also raised the fact that the age of consent cited in the September 1 Interim Policy was incorrect. She explained that the unions commented that if the age of consent was to be mentioned in the Policy, the actual age should be cited. The age of majority in Hawaii was mistakenly inserted instead of the age of consent to sexual contact in Hawaii. The correction would not have impacted a live case since Hawaii criminal law supersedes any language in the Policy, i.e., any violation of criminal law would also be a violation of the policy. The unions are in agreement with this non-substantive fix. The change correcting the age of consent to sexual contact from 18 to 16 (generally) will likely be made in the next few days. Jan Tamura added that in all other respects the definition of "consent" in the Interim Policy remains the same until such time that the Task force or other stakeholders propose any modifications.

Call for any questions about the discussion were elicited.

Chair Rose added that when changes to policies are made University officials are notified through the University's electronic PPS system which allows modifications to be tracked over time. In the interest of transparency, Title IX Coordinators will also be given notice of this change via email and an opportunity to comment. Only Vice President Gouveia can make the changes as part of the approval process before any policy is published through the University's electronic PPS system. Chair Rose does not have this authority or responsibility.

Jonathan Dial inquired about the unions' feedback. Chair Rose indicated that the question about the age of consent was raised by the unions. She noted that UHPA has been involved primarily but that the unions have been acting pretty consistently as a group. She also noted that no major delays regarding the Policy are expected as the negotiation process, as reported to her, has been

going very well. She added that there might be some things that Act 222 members might not agree with but they will be able to make recommendations to the Legislature.

Chair Rose asked if there were any other questions. None raised.

#### IV. Development of Task Force Work Plan

A handout listing proposed areas to be addressed by the Permitted Interaction Groups was circulated to Task Force members. Chair Rose wanted to provide an opportunity for the larger group to review and determine whether the proposed committees reflect the spirit and substance of the Act. She and Vice Chair Cathy Betts developed these areas, which are identified in the Act itself, with feedback from OIE staff and comments offered by Lawyers Against Sexual Violence. Task Force members were asked to review the bottom of page 4 and page 5 of the Act where various policy revision and infrastructure issues are listed. Generally, the categories outlined in the Act focus on education and prevention. At the Task Force's last meeting, the focus was on education, prevention and training. Chair Rose wanted to make a distinction between II and IV education and prevention programs whether mandated or not by federal law or by the University and training leading to social norm change versus employee training for handling allegations. This was discussed in depth at the last meeting. Chair Rose also opined that there was a lot of concern expressed by Task Force members about training on being victim centered and victimology. She suggested that members could refer to the minutes of the last meeting for a more nuanced flavor of the components of the Act. In terms of best practices, Item 6 could stand alone or be incorporated into other committees. The policy (under number 1) is huge as there is both the process of vetting the policy using best practices and professional standards and substantive areas including definitions and corrective actions. This was included because they are contained in the policy itself. The definition of affirmative consent and other definitions related to sexual violence will be established. Corrective action is also named on page 5. Direct services, resources and support are listed in the Act and are in Section III. They are now raised as an infrastructure issue and the hope is that resources will be strengthened by providing more efficient and effective infrastructure. This was discussed at the last meeting as well. Training for employees handling allegations is under Section V. Best practices under V and VI could be merged together.

Chair Rose suggested members take 5 - 10 minutes to review and talk about these committees and decide which committees to sit on. Then, additional time can be taken to set times to meet in the future. One more meeting in November is being suggested so that the Task Force can make recommendations to the Legislature.

Chair Rose inquired if there were any questions or glaring omissions in terms of what's required in the Act. None raised.

Dee Uwono asked why Sections V and VI were not combined and elicited Chair Rose's thoughts. Chair Rose stated that she struggled with this because having MOUs is a best practice. They could go together but were separated since the issue of training is very large and specifically mentioned in the Act along with community collaborations. There is now mandatory training required by VAWA and Campus SaVE for all new employees in such areas as consent, bystander intervention, dating and domestic violence, etc. There are also training requirements for Title IX coordinators, first responders, investigators, etc. On that note, she indicated that a five-day Title IX and domestic violence training begins next week for UH employees from all ten campuses and the UH System. Training will focus on coordinator responsibilities and investigator duties, techniques and skills. Training on criminal domestic violence will also be conducted by the Prosecuting Attorney's Office. Chair Rose and the Hawaii State Coalition Against Domestic Violence will also conduct training on civil domestic and dating violence. The UH is embarking on this training and it is a huge issue. She stated that doesn't feel strongly about combining V and VI. Ms. Uwono stated that she understands that training is huge since training for employees on the ground who deal with the nitty gritty issues will look very differently from training for others heavily involved with processing the cases.

A task force member (inaudible) commented that training on best practices will differ depending on the employee's role and that there is a distinction between process and substance.

Farrah-Marie Gomes inquired whether Permitted Interaction Groups are limited to members of the Task Force. Vice Chair Betts stated that these groups are allowed to meet for information gathering and are required to report back to the Task Force. The hope is that in the interim the groups will get together, discuss the issues or section that each is focusing on, make recommendations or changes, and then report back to group. It is not required that these groups be limited to Task Force members. Ms. Gomes noted that other groups governed by the sunshine law that she's been involved in operate in this manner. The reason she asked is that as the process is rolled out, it might be important to keep training on its own since not all the members in the room are not experts and the committee will need to reach out to those who have more knowledge for support. Having a separate group on training will be more inviting.

Chair Rose stated that drawing upon local experts like the Sex Abuse Treatment Center which has its Respect Campaign and emerging leaders program would be a good example of collaboration. In fact, SATC has expressed an interest in participating in system wide training.

If their staff saw that there is a best practices as opposed to a training group they may not participate. She agreed that lifting out training would make it easier to focus.

Ms. Gomes noted that everyone's time is limited so people who are interested in certain issues will want to focus on those. She suggested that would be helpful to carve out specific issues, then individuals will make the time and commitment on their own behalf.

Chair Rose suggested that if key task force members could sit on more than one committee along with those who actually conduct training this would achieve a nice balance.

Vice Chair Betts suggested that to support cross collaboration and ongoing communication it would be helpful for each group to share their comments and report back to the larger group. Chair Rose suggested that the groups send their notes to OIE, which will distribute them to the other groups.

Chair Rose recommended leaving the list "as is" but that everyone be mindful that the folks in group V will need to address best practices along with the training group. She offered that the Task Force can see how that plays out but, as previously raised by Mr. Murakami, consider the community members' time. She noted that there will be overlap in Group IV and V in terms of best practices and direct services. Certainly, each campus' infrastructure and ability to address direct services, case management, reproductive health, etc. is a best practices issue.

Ms. Uwono suggested that groups V and VI be combined so that standardized training on best practices be given to all employees including those who handle the nitty gritty cases, as a baseline. Then, as needed, we can break out training for Title IX Coordinators, Deputy Title IX Coordinators, Investigators, Decision Makers, Appeal Officers, etc.

Questions regarding the proposal above were elicited. None offered.

Task Force members reviewed components of Act 222. Members must consider the following concepts in reviewing the policy (Chair Rose reads each of the components set forth in the Act itself):

1. Affirming the University of Hawaii's commitment to increasing resources and strengthening the infrastructure of all of its campuses to more effectively address the issue of affirmative consent;
2. Considering best practices in current professional standards in reviewing and revising the current policy;

3. Using contemporary corrective actions consistent with academic environments standard business practices and the laws of that State;
4. That the University of Hawaii's policy shall provide guidance to each campus within the University of Hawaii System on the following:
  - a. Comprehensive education and prevention programs that inform the University of Hawaii 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 individuals who report 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 such as medical, counseling, advocacy, legal, other support service and confidential options and alternative remedies such as housing, academic, workplace accommodations, etc.
  - c. Prompt and equitable complaint procedures for students and employees that are accessible and widely publicized. (Ms. Rose noted that this makes sure that our policy has these components but also a training as well as an information component and assurance that there is wide dissemination per Title IX).
  - d. Information for both respondents and complainants regarding their rights during a student disciplinary hearing or investigation. (Ms. Rose noted that this relates to education and prevention which can be covered in both Title IX rights as well as employee training).
  - e. Provisions for corrective actions that the campuses will instill including remedies and disciplinary action.
  - f. Training on non-judgmental victim centered communication for university staff who receive and handle complaints of harassment or sexual violence.
  - g. Procedures for the university's coordination and cooperation with police and prosecutors if an individual decides to report an incident of harassment or sexual violence.

Chair Rose pointed out that the only thing that wasn't strictly required was Community Collaborations. As Mr. Murakami noted previously, this is necessary in order to inform people of off-campus resources as well as having local experts assist with training.

General comments were elicited by Chair Rose. None offered.

Brief discussion ensued regarding merging III and IV as well as V and VI (as proposed by Ms. Uwono).

Subcommittees will be:

1. Policy (substance as well as process)
2. Education and Prevention
3. Combination of Direct Services and MOUs with Law Enforcement/Partnerships and Community Collaborations
4. Training and Best Practices

Additional thoughts elicited. Rep. Ichiyama clarified that a break will be taken so members can sign up then reconvene to complete the agenda and meet briefly again in groups. Break taken at 10:51 a.m. to allow members to sign up, including for more than one subcommittee, and decide when sub committees will meet.

Mr. Dial was excused during the break.

Meeting reconvened at 11:00 a.m.

Chair Rose noted that Task Force members can have someone from their organization, i.e., a staff member or another Title IX Coordinator who might be more appropriate to sit on these sub committees but that task members need to sign/provide their names so that they receive all meeting notices. Also, if members don't have time, she indicated they provide their comments and feedback to the subcommittees. She suggested that a lead from each committee be selected for this purpose and stated that members can also always send feedback to OIE, even if they are not officially on the subcommittee.

V. Public Comment

Meeting opened for public comment.

Kara Teng spoke on behalf of Lawyers Against Sexual Violence. She noted that there is confusion in general among students about who the new Title IX coordinators are and their duties. Questions from LASV were read and included:

1. What are the basic requirements and qualifications and to be hired for Title IX Coordinators and how are their performances evaluated?

Chair Rose stated that generally speaking each campus has different job/position descriptions and that there is a Title IX Coordinator on each campus. There is a UH System Title IX Coordinator for employees, Mie Watanabe. OIE is not a Title IX Coordinator. That Office does not receive direct complaints although it is an Office of Notice. OIE handles policy development and implementation but a substantial part of its function is to provide support to campus Title IX Coordinators with their cases, policy interpretation as well as infrastructure that they need to be able to do their jobs as required by VAWA and Campus SaVE provisions as well as Title IX. Per the Policy and guidance from OCR under the US Department of Education there are certain requirements of Title IX Coordinators but they don't mandate what the skill sets are.

Ms. Teng asked if there are minimum requirements for Coordinators. Chair Rose indicated that these can be set by campuses but the issue is also something that the Task Force can consider as far as best practices. Ms. Gomes inquired whether LASV was asking about experience versus education background. Ms. Teng clarified that by "experience" LASV was inquiring about experience working with people in crisis and victims of violence. Ms. Gomes offered that HR would probably be the best unit in the UH to address this. Task Force member Mary Perreira added that the Chancellors at the community colleges designate existing employees such as Vice Chancellors as Title IX Coordinators and Deputy Title IX Coordinators to work with students or employees. The UH CC System, headed by the Vice President for Community Colleges, has just advertised a new Title IX Coordinator (APT) position for the UH CC System to work with coordinators on the CC campuses and to oversee training of community college employees. They are looking for someone with a BA, preferably a law degree, and certain number of years of experience in Title IX investigations rather than advocacy. The application process closes at the end of October with the hope that the person will be hired by the end of this year. The UH CC system will also be establishing two investigator positions.

Ms. Uwono stated that as far as the four year colleges, it is a little uncomfortable since she and Jennifer Stotter are currently their campuses' Title IX Coordinators. She noted that there are three four-year campus Title IX coordinators have 5-10+ years of doing this type of work and that both she and Ms. Stotter have their doctorates. The third 4 year UH campus Title IX Coordinator is an attorney by trade. Ms. Uwono explained that if you look nationally at job descriptions for Title IX coordinators they require a bachelor's and about 8 years of experience in the field. Many prefer JDs. They need to be highly qualified in areas of Title IX, VAWA, ADA, and Title VII. She added that there are trained people to act as advocates but Title IX Coordinators are not trained as such. Ms. Uwono said she is not going to pretend to be an advocate. Nationally, the McCaskill bill will be mandating advocates on each campus.

Advocates can deal with students in a more confidential manner as Title IX Coordinators are mandated to do something about a claim.

Vice Chair Betts stated that the LASV question was a good one and something she has wondered about. She noted that OCR has provided some guidance as far as voluntary resolutions for other schools who have been audited across the nation. It has noted that it is not a best practice to have existing employees perform Title IX duties “ad hoc”. She has heard from students at other campuses that when there is a Title IX Coordinator that’s already in another role and has added Title IX ad hoc duties, students not the most comfortable going to that person. She has heard about this confidentially from a couple of students across the State. Thus, it will be important to figure out how to best serve students and not have coordinators saying “I just got this duty two days ago and I think I know what I’m doing.”

Chair Rose added that a Dear Colleague Letter was recently issued by OCR which contains recommendations for Title IX Coordinator duties and expectations. This was part of best practices and can be addressed by the merged committee.

Chair Rose stated that one or two more questions could be taken.

Ms. Teng asked:

2. Does the university think that Title IX Coordinators should be appointed to act independently or “ad hoc” and if “ad hoc” how do you prevent the diluting of the coordinator’s duties with other professional capacities. Their concern is that students might not necessarily feel comfortable going to or will be confused if someone has another job title. This also raises concerns about a conflict of interest.

Chair Rose stated that the University has not taken an official position although as Vice Chair Betts previously stated OCR is very clear on what they think should happen. She indicated that this is a good question and can be addressed by the permitted interaction groups.

Chair Rose expressed appreciation to Ms. Perreira for sharing the announcement about what’s going on with the UH CC System. Ms. Perreira stated that they really want to get going on that. Chair Rose stated that OIE looks forward to working with the UH CC System Coordinator. Ms. Perreira said that collaboration with OIE will definitely happen.

Ms. Uwono said that based on her personal experience as a CC Dean/Deputy Title IX Coordinator, it was very difficult to do both jobs. She understands why students could feel

uncomfortable because they wear a lot of hats. Administratively there are 100 things going on at one time and these staff are pulled in different directions. Ms. Uwono advocates for each campus to have their own dedicated Title IX Coordinator. This is on her ultimate wish list and states this on behalf of her community college colleagues. Ms. Uwono stated that she took the UH Manoa Title IX position so that she could advocate for this at the System level. Ms. Perreria agreed.

Chair Rose stated on her own behalf and on behalf of OIE that she also agreed. Previous models in which the position was an add-on at the administrative level. She noted that universities across the country believed that if Title IX Coordinators weren't at the high administrative level they did not have the authority to impose interim measures but she does not believe is true. Deans and Title IX Coordinators have very different roles. To the extent that we have the resources, the Title IX Coordinator should be a stand-alone position, which would confusion about that person's role. She felt we need to acknowledge that a students' hesitation to speak to a Dean and concern with whether they are on record and what for. Chair Rose added that she received this feedback from a lot of students in her former capacity over many years as the UH Manoa Gender Equity Specialist.

Task Force member Michelle Rocca inquired whether in light of the barriers felt by students if there was anything the Task Force could do to increase comfort/visibility to the students.

Ms. Teng responded that the answer is two-fold. If you were just raped, or something just happened, you're in crisis, probably freaking out and just need to tell someone. If the person you're seeing is also in charge of your grades or other determinant factors for your career you're not going to be inclined to talk. Suggestions to address this would be the more obvious one of better training for people in these positions. She also personally advocates for an independent campus Title IX Coordinator whose sole responsibility is to address the best interests of the student as well as Title IX policy.

Task Force member Jennifer Stotter indicated that she is grateful that the UH Hilo is now actively interviewing for full-time, dedicated Title IX Coordinator. Just as importantly, she noted that the Coordinator cannot be an advocate but needs to be a neutral, unbiased fact finder who will make recommendations. There is a fine line that people have to walk in terms of believing people when they come to a Coordinator and people understanding that the Coordinator is not their advocate but can implement interim measures, make recommendations and referrals to other resources. The next really important big piece is to have a dedicated advocate position. That will resonate better with the students. She felt there needs to be a push on what a Title IX Coordinator is and foster recognition of that term and what confidential offices and coordinators can do. From what she hears, students are not looking for an

investigation or someone to talk about the legal side but someone who will listen to them and help them work through it. This is different from a counselor as well. For the advocate and Title IX Coordinator to work together, that's what's ideal but she would like to make a big push, on the record, for advocates.

Chair Rose indicated support for Ms. Uwono and Ms. Stotter. She said one of the roles OIE can play is to help develop the infrastructure and assist the Title IX coordinators figure out what are the best models for developing the confidential advocate and case manager. If they go to the confidential person first, they don't have to be on the record yet, the clock doesn't start ticking and the university is not put on notice. When you are sexually assaulted or violated, the first thing you want to do is think about the crisis that you're in and deal with your well-being. Advocates can do many things like case management and help coordinate a case which could definitely help a Title IX Coordinator who's not supposed to be in the weeds of a case. It is a best practice, and Chair Rose is happy to hear that Title IX coordinators want to push for that model. She stated that OIE is there to support them.

Attendee Hannah Liebreich stated that the UH Manoa is a commuter school and will need to address how to disseminate information since not as many people living on campus. Chair Rose suggested that the training and education subcommittees take note of how to disseminate information to new students, the majority of who are essentially commuters and implement best practices in this regard. Chair Rose indicated that the training and education committee can think about how to conduct new student orientation and how to get to commuting students.

Attendee Jan Tamura noted that the distinction between Title IX Coordinators and Advocates is very important but the coordinators will not be robots either. One of the aspects of next week's all campus training is providing trauma-informed services whether someone is going through the formal investigation or another process. It will be important for coordinators implementing interim measures – who will be attentive to victims' needs. Investigators are also being trained. They are indeed fact finders but the trauma-informed skill set will be needed to get the complete story. There's always a tension between the legal or adjudicatory and advocacy pieces but in many respects they blend together.

Ms. Teng also raised concerns regarding the lack of confidential services on campuses. It seems you would want to speak to a Title IX coordinator and decide whether or not you want to proceed with investigation/claim but there is a need more confidential services where the needs of the individual, not the University, are of sole interest.

Mr. Murakami and Ms. Liebrich both voiced their concerns for and Chair Rose reiterated the need for more access to confidential services on campus perhaps through MOUs with other

community providers to ensure closer interaction and support. Efforts toward transparency as to which campus resources are confidential and which ones are not is also needed.

Chair Rose also voiced her support of Ms. Tamura's input regarding the need for Title IX coordinators to have various experiences and skill sets. It will be helpful to have advocates on campus as well as in the community because a Title IX coordinator cannot be an expert on everything. Coordinators are not going to be experts on safety planning. She noted what happens is exactly as Ms. Stotter stated, namely, students aren't interested in taking down the perpetrator, having a formal investigation or ruining someone's career. They just want to be safe and the conduct to stop. Most students are in fact satisfied with the interim measures/immediate relief without interfering with the respondents' due process rights which is why it's important to have a Title IX coordinator work closely with an advocate and the student.

A break was taken so that permitted interaction groups (subcommittees) could schedule their 1 ½ hour meetings. After the break, the tentative composition of subcommittees, which include Task Force members and members of the public, was as follows:

**\*\* SUBCOMMITTEES FORMED and MEETING TIMES\*\***

I. Policy Issues

Catherine Betts

Mandy Finlay

Linda Ichiyama

Justin Murakami

Jennifer Stotter

Jennifer Rose

Farah-Marie Gomes

Dee Uwono

**\*\*\* NOV. 6<sup>th</sup> @ Noon (SATC) \*\*\* Park inside Harbor Court**

II. Education/Prevention/Notification of Rights/Resources

Michelle Rocca

Cathy Betts

Johnathan Dial

Hannah Liebreich

Mandy Finlay

Justin Murakami

Jennifer Rose

Jennifer Stotter

UH-CSW Rep

**\*\*\* NOV. 5<sup>th</sup> @ 2pm \*\*\* Gold Bond Building – Ala Moana**

III. Direct Services/Resources/Support and MOUS with Law Enforcement/Community Collaborations

Michelle Rocca  
Sonja Bigalke-Bannan  
Larry Lawson  
Justin Murakami  
Farrah-Marie Gomes  
Jennifer Rose  
Jennifer Stotter  
Dee Uwono  
Rep from HSCSW

**\*\*\* NOVEMBER 5<sup>th</sup> @ 10am \*\*\* Gold Bond Building – Ala Moana**

IV. Training/ Best Practices

Michelle Rocca  
Kara Teng  
Johnathan Dial  
Hanna Liebrich  
Jennifer Stotter  
Jennifer Rose  
Justin Murakami  
UH-CSW rep  
Dee Uwono  
Rep from HCSW  
Mary Perreira

**\*\*\* NOV. 5<sup>th</sup> @ Noon \*\*\* Gold Bond Building – Ala Moana**

VI. Announcement: Next Meeting

Discussion about when Task Force's report is due was held. UH Government Affairs has requested the report by the first Friday in December (December 4). Accordingly, the next meeting of the Task Force will be Tuesday, November 17 at 1:00 p.m. so that preparation of the report can be addressed.

Major Lawson indicated that he will not be able to attend so a representative from his Department will attend on his behalf.

VII. Adjournment

Meeting adjourned at 12:04 p.m.

## Appendix G: November 17, 2015 Meeting Minutes (Approved)

### MINUTES OF THE NOVEMBER 17, 2015 MEETING OF THE ACT 222 AFFIRMATIVE CONSENT TASK FORCE

DATE OF MEETING: Tuesday, November 17, 2015

TIME: 1:00 p.m.

LOCATION: University of Hawaii at Manoa, Information Technology Center  
Conference Room 105A

PRESENT: Jennifer Solidum Rose (Chair), *Director, UH Office of Institutional Equity*  
Catherine Betts (Vice Chair), *Executive Director, Hawaii State Commission on the  
Status of Women*  
Rep. Della Au Bellati, *Hawaii Women's Legislative Caucus (for Rep. Linda  
Ichiyama)*  
Jonathan Dial, *Student Representative, UH at Manoa*  
Mandy Finlay, *Advocate Coordinator, ACLU of Hawaii*  
Tammy Kuniyoshi, *UH Commission on the Status of Women  
(for Farrah-Marie Gomes, Commission Chair)*  
Justin Murakami, *Policy Research Associate, Sex Abuse Treatment Center*  
Captain John McCarthy, *Honolulu Police Department (for Major Larry Lawson)*  
Judy Oliveira, *Interim Vice Chancellor for Student Affairs, UH West Oahu*  
Mary Perreira, *Director, EEO/AA, UH Community Colleges*  
Jennifer Stotter, *Director, EEO/AA and Title IX Coordinator, UH Hilo*  
Dee Uwono, *Title IX Coordinator, UH Manoa*

ALSO PRESENT: Kara Teng, *Student, William S. Richardson School of Law & President, Lawyers  
Against Sexual Violence*  
Hannah Liebriech, *Graduate Student, Sociology, UH Manoa*  
Jan Tamura, *Senior Advisor, UH Office of Institutional Equity*  
David Yamashiro, *Junior Advisor, UH Office of Institutional Equity*  
Jeanilou Maschhoff, *Program Specialist, UH Office of Institutional Equity*  
Jisella Saito, *Guest*

ABSENT: Sonja Bigalke-Bannan, *Executive Director, National Association of Social  
Workers, Hawaii Region*  
Naomi Iwabuchi, *Student Representative, William S. Richardson School of Law*  
Michelle Rocca, *Director of Training & Technical Assistance, Hawaii State  
Coalition Against Domestic Violence*

#### I. Call To Order

Chair Jennifer Rose called the meeting to order at 1:07 p.m. Eric Basa of the IT Center explained the use of the microphones to the Task Force members.

Chair Rose stressed the importance of everyone speaking in their microphones, which is especially critical for the purposes of Hawaii's Sunshine Law. The minutes should capture everything said for the benefit of members who were not able to attend, such as Sonja Bilgake-Bannan. The members will rely on the minutes to make their own recommendations, which will also be critical for generating the Task Force's report to the Legislature by the December 31 deadline.

Each of the members of the Task Force and members of the public introduced themselves.

Chair Rose expressed appreciation to Ms. Bigalke-Bannan for hosting and validating parking for most of the P.I.G. meetings last week. (Thanks also to Justin Murakami of the Kapiolani Sex Abuse Treatment Center for hosting the Policy P.I.G. meeting at his office). Chair Rose also thanked the members of the Task Force and other attendees for their contributions and enthusiasm, noting how quickly the Task Force was progressing and the impressive work of the P.I.G.s reflected in their observations, findings and preliminary recommendations. The "Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)" ("Summary") will be distributed at the meeting. She was optimistic that the Task Force will be able to submit an excellent report to the Legislature.

## II. Items for Discussion and Approval

### A. Review & Approval of Minutes of October 21, 2015 Meeting

Chair Rose indicated that the 12 page draft of the minutes for the October 21, 2015 meeting produced by Jan Tamura and Jeanilou Maschhoff was previously circulated for review by members of the Task Force. Questions and comments were elicited. No questions raised or comments offered.

A Motion to approve the minutes as drafted was made by Vice Chair Catherine Betts and seconded by Mr. Murakami. The minutes were approved without abstention or objection.

Chair Rose added that the minutes of the Task Force's meetings will be the source of many individual recommendations as well as provide context for the report that will be written by herself and Vice Chair Betts. She encouraged Task Force members to go back and review the minutes to take note of what was said by themselves and others.

### B. Reports of Permitted Interaction Groups

Chair Rose indicated that the Summary had not yet been circulated to the members. Regardless of whether the document was in front of them, she planned to read the document anyway since so many points were collated in the document. Attendees were asked to clarify any necessary points and those who were unable to attend the meetings were encouraged to ask questions. Chair Rose informed everyone that recommendations based on the findings accumulated at the P.I.G. meetings would not be made at the November 17 Task Force meeting. On this note, she summarized the procedure under Hawaii's Sunshine Law, indicating that three meetings were required for a board to take action on any matter investigated by a P.I.G. At the first meeting of the full board, the scope as well as the authority of each member would be defined. The P.I.G. may then conduct its investigation. At the third meeting, the Task Force may discuss, deliberate and make any changes regarding a report of a P.I.G. After the

meeting when findings and recommendations of the P.I.G. investigations were presented, the required (third) meeting would be held to approve recommendations. Chair Rose clarified that the November 17 meeting was to present any findings, observations, and individual preliminary recommendations by P.I.G members generated during their meetings.

Chair Rose reiterated that the groups that met on November 5th and 6th, 2015 consisted of less than quorum as outlined by the Sunshine Law. The first group was formed to discuss issues relating to the Policy, the second group to address Education/Prevention/Notification of Rights and Resources, the third to address Direct Services/Resources/Support/MOUs/Community Collaborations, and the fourth to address Training/Best Practices.

Chair Rose expressed her gratitude to members who stepped down from attending certain meetings (in order to comply with the Sunshine Law). She encouraged those members to get as much information as needed so that they could also make their own recommendations.

At this point in the meeting Representative Della Belatti arrived and introduced herself. She stated that she was attending on behalf of the Women's Legislative Caucus and Representative Linda Ichiyama who was not able to attend.

Chair Rose stated that she had attended all four meetings, since Vice Chair Betts had to bow out of a couple. She had prepared her own notes and offered to provide context as needed.

1. Interim Executive Policy 1.204

With respect to the Policy committee, Chair Rose indicated that the charge of this group was to review Interim EP 1.204 and any relevant policies. She indicated that she would read the findings and preliminary recommendations offered by this group and invited any questions or comments. [Preliminary Findings are listed on page 1 of the Summary].

Preliminary recommendations of individual members were [listed on Pages 1-2 of the Summary]:

- Generate clear reporting lines of authority for each UH campus with goal of OIE to be accountable for ensuring/enforcing uniform responses and case management
- Review campus and system policies that may overlap and affect interim policy, *i.e.* student conduct code, alcohol policies, housing policies in terms of sexual misconduct and gender based discrimination
- Consider banning alcohol altogether on campus.

Chair Rose commented that Dee Uwono will be happy with this because the issue of amnesty will be discussed.

- Examine who should be "responsible employees" and the definition of "consent"
- Clarify process of appeal under interim policy, what is appropriate deadline to file appeal, etc. (Note: UH currently consulting with CBUs, UH General Counsel and others on this issue)

- Website(s): extract parts of policy to summarize on website, generate FAQs (perhaps by prohibited conduct), uniformity among campus websites vs only one website

Chair Rose commended FAQs as a brilliant idea, noting that there are many ways a policy can be disseminated. Many universities completely translate their policy into a website but the substance is the same. Other universities simply "pdf" or post their policies on their websites, which is not ideal for students. Others format FAQs. Questions regarding the recommendations for website were elicited. None raised.

- Form a working group/panel to continue working with and advising UH on Title IX

Chair Rose clarified that several groups talked about possibly extending the work of the Task Force depending on what the need might be, noting that this decision could be made later. Alternatively, the Task Force could form a working group or panel to continue to work/advise UH on issues such as collaboration with the community. She elicited additional comments. None elicited.

- Operationalize working relationships between campus police and local police departments through MOUs to ensure policy implementation

Chair Rose noted that there was a lot of discussion about this in all four groups witnessed by her and David Yamashiro. Of interest was to hear the same themes repeatedly raised by members from the UH and the community with completely different perspectives and experiences.

- Clarify who should be Decision Makers under Policy (i.e., Deans so that they are aware of potentially problematic hires/behaviors and make informed hiring decisions vs. others including skilled community members who are not necessarily directly invested in outcome and are properly trained vs. both)

Chair Rose commented that clarification about who should be Decision Makers was needed. This issue has been raised by and discussed with Title IX Coordinators.

- Strengthen system ability to oversee Title IX processes and staff at individual schools. We understand that there is a norm of school self-determination, but there must also be a means of ensuring that Title IX staff and processes adhere to best practices and this policy, Interim EP 1.204 (accountability). May clarify that students can complain about violations or non-enforcement of the policy by procedural actors (Title IX Coordinators, investigators, decision makers, and appeals officers) to the University System, and the expected outcomes should this be occurring.

Chair Rose noted that if Task Force members see that a lot of these items were stated as full sentences, this resulted from OIE's request asking members to submit what they thought were the outcomes and relevant findings from their individual standpoints. Some individuals wrote up their recommendations which OIE copied and pasted in the summary.

Questions regarding the preliminary findings and recommendations or clarifications regarding the Policy group, which met for an hour and a half, were elicited by Chair Rose. None elicited.

Chair Rose indicated that a member of the Policy committee had recommended the establishment of a timeline for finalizing recommendations. Chair Rose stated that the process (of reviewing the policy) could go on forever. She reminded the group that OIE does not know when OCR will release its findings for the anticipated Voluntary Resolution Agreement with UH Manoa, which will have mandates about policy changes. Given this "X Factor", the Task Force will have to guess where it will be at the end of the year and a half - will this be enough time to develop an affirmative consent definition, to review all the recommendations made reflected in the document including appeals and intersections between alcohol and amnesty, etc.? The members of the Policy group acknowledged that a hard and fast linear timeline wasn't feasible, but something along the lines of a work plan could be suggested. Chair Rose offered this as something to think about.

Chair Rose reiterated that anyone can submit additional items in writing at any point. The final meeting required by the Sunshine Law will hopefully be held around December 7<sup>th</sup> or 8<sup>th</sup>, pending members' availability. She asked that everyone submit their written recommendations one week before this meeting, *i.e.*, possibly by November 31 or December 1. Submissions will be compiled by the OIE and a report for consideration and approval at the final meeting will be drafted. She shared that between the minutes and what occurred at the P.I.G. meetings, which was a lot, there will be more than enough to make initial recommendations to the Legislature.

Questions were elicited from Task Force and Policy committee members. Mr. Murakami shared that a periodic review of the policy had also been discussed. This would serve to update the policy with regard to new requirements that may come out from the Federal government or new cultural or campus issues that may arise in the execution of the policy.

Questions or clarifying comments were elicited from members or the audience and OIE staff. None offered.

## 2. Education/Prevention & Notification of Rights/Resources

Chair Rose offered some historical background about the preliminary findings. She noted that individual campuses having the autonomy to determine their individual program needs – what should happen in a centralized system fashion and what should be the authority amongst the individual campuses or system wide – was also discussed along with various efforts on campuses to raise awareness.

Preliminary Findings [listed on page 2 of the Summary] included:

- Desire to enlist community resources in education efforts
- Conducting further research into various online education programs.

Chair Rose shared that EverFi was raised. She informed the group that OIE is currently looking into other possibilities for online education programs that will fulfill the VAWA mandate for new employees and new students.

- Notifications to the community about various websites, E mail, flyers, etc.

Chair Rose elicited additional feedback about the discussion. None offered.

- Brief overview of education/training through evidence-based models (Green Dot and Safe Date are two programs that have both been evaluated and approved by CDC as effective and something that actually results in social norm change).

Questions were elicited regarding this finding. Vice Chair Betts noted that this was raised based on the discussion of ineffective and perhaps inadequate prevention and education efforts. The distinction between prevention and education was raised as well as awareness of the issue of gender-based violence, etc. There was concern that this distinction was a bit muddled and difficult to discern on different campuses. Chair Rose added that the clear focus of this group was about prevention programs particularly for students. This is why notification of rights and resources was included. Another group is addressing training and best practices which is more focused on employees although both overlap.

- Future training needs. Overall, training for students based on what is mandated under VAWA and what's recommended under Title IX guidance, implied as necessary based on various VRAs, and what is recommended as best practice by various bodies of experts

Chair Rose clarified that the point was made by a number of people that training should not be provided simply because it is mandated. There is training that is required by VAWA because it's law and there is guidance as outlined in Title IX. There is some training required regarding competency for Title IX coordinators, but some of that is just guidance. One piece might be looking at the ATIXA spreadsheet showing training various bodies need, for example first responders and campus security, Title IX staff, decision makers, investigators, regular employees, supervisors and students. Also, if you look at the trend of VRAs that have been coming out, they have been making lots recommendations about what kind of training is needed and who should get the training. Also, the latest Dear Colleague Letter has pages and pages about what the competencies of a Title IX Coordinator and Deputies need to be.

Mr. Yamashiro added that it was commented in the group discussion that the OIE has devoted a lot of time to researching where the law is headed and anticipating what types of training needs are being recommended as best practices and where any push-back is avoiding "training for training's sake." We want to be informed in how we make recommendations for training priorities.

Chair Rose stated that other training needs included:

- Bystander awareness and how to help a friend
- Substance abuse and risk factors.

Chair Rose noted the importance of understanding the intersections of substance abuse/alcohol use and sexual assault. This has been an ongoing criticism of the movement.

- Training regarding rights and responsibilities, particularly regarding the policy and reporting

Chair Rose relayed that all of the groups emphasized whether students know where to report. Do they feel safe going to whatever resources exist for them? Do they know what is confidential? Do we provide enough in-services during orientation?

- Domestic violence, consent as well as bystander training was also raised and should include idea of affirmative consent and framework.
- Limited Understanding of the exact role of certain programs on the campuses.

Chair Rose added that the need for some clarification about who does what and the desire and consensus of community or campus mapping. This was raised so that who does what and where somebody would go and for what purpose are really clear. As an example, there was general information about the UH Manoa's Women's Center, PAU Violence, etc., but a stated need for more specific information regarding their initiatives and clarification of what is confidential and what is not.

Preliminary recommendations of individual members were reviewed by Chair Rose [listed on pages 2-3 of Summary]:

- Distinction needed between primary prevention vs. efforts to raise awareness
  - Offices should clearly define the scope of their responsibilities to ensure an appropriate allocation of resources for the different types of program efforts.
  - Focus more on identifying the different ways of accomplishing prevention and education
- Eliminate awareness activities that are no longer relevant and/or perhaps offensive to groups
- Further research needed for quantitative data on social norm change
  - Consider gender-role analysis in the additional research
- Identify all groups/areas of campuses to do prevention and education
  - Title IX Coordinators should have this role moving forward, system wide
- Conduct campus wide surveys first to gauge areas or prevention needed. There was discussion about how OIE is in charge of initiating a system wide survey and on campus surveys to capture this as well.
- Consider RESPECT campaign cross campuses, enlisting SATC to assist with efforts
- Further information gathering needed. We should interview various education, awareness, and prevention offices on the campuses to get a better understanding of their functions.
- In addition to on-campus resources and identification of confidential/non-confidential spaces for victims to report, also provide off-campus/community resources in notification of rights and resources materials. This will inform victims of all the support services available to them.

Chair Rose indicated that whatever materials are distributed or whatever trainings conducted whether online, on paper, or live, should always include campus resources, particularly those that are confidential. The group also wanted to ensure that direct services would not simply be a referral but an explanation of the program areas and functions of the community resources. For students, prevention and education programs should emphasize primary prevention of sexual assault and be informed by available evidence and best practices.

- Education should be tailored to the audience and risk factors of the young adult population
- Education and training should occur on an ongoing basis to ensure sufficient dosage and repeated exposure to information. Brief exposure or one time presentation is not effective for changing behavior.
- Monitor all programs for effectiveness and evaluation with participant feedback.

Chair Rose commented that everyone was blown away by the expertise of this group.

Questions were elicited from attendees and the audience. Mr. Murakami added that the context for the preliminary finding regarding notifications to UH community through various mediums was that not everyone on campus is going to be a young person who has access to the internet or have an understanding of how to use the internet. They want to make sure that posters and other written materials with that information should be distributed to accommodate those individuals.

Mr. Yamashiro added that there was an elaboration on ways campuses are already doing that. There are flyers in bathrooms around different departments. In pushing initiatives forward, OIE has performed analytics on key groups that have large campus populations such as traditionally aged students and their access to mobile content. So there is a joint effort to target all members of the campus community.

Vice-Chair Betts inquired whether or not any of the materials are translated for non-English speaking students. Chair Rose responded that from what she has seen generated from Manoa or through System materials haven't been translated. However, translated materials created by other organizations are available. For example, the Hawaii Immigrant Justice Center at Legal Aid has provided her former office, the UH Manoa Office of Gender Equity, with materials translated in various languages. She is aware that Brenda Ivelisse at Kapiolani Community College has also translated some of her Title IX documents in various languages and plans to do more. Ms. Ivelisse has developed some of these resources on her own. She has both a VAWA resource brochure for students as well as a Title IX brochure and is having them translated since there are a lot of international students at KCC as well as at UH Manoa. Chair Rose said this has been discussed in the past. From a state and language access perspective, there has been a common misunderstanding that because students have to speak English well enough to get into higher education translation of documents unnecessary. However, many students accessing Health Services would not know what a "forensic exam" is. They don't understand what the word "forensic" is since there's no equivalent word in their native language. Individuals who are trauma informed and trained in victimology know that when you are in distress, you need to go back to thinking and speaking in your primary language. As a fact finding point, this is information Chair Rose has gathered as a person one who is a big supporter of international immigrant students'

rights and violence against women. Chair Rose asked if anyone had anything to add on this point. No additional comments made.

Mary Perreira added that if anyone is looking for places to obtain translations, they can contact her as she has recently had outsource translating their non-discrimination policy for CTE requirements. This was part of an audit. It was a bit of a struggle, but they were able to find someone who was able to translate the policy in brochure form in different languages. Chair Rose commended this effort.

Chair Rose added that she has worked in the past with college of LLL at Manoa and Professor Sue Zeng who is fabulous. Prof. Zeng has been a critical resource for training new interpreters in emerging languages for example Chuukese and Marshallese. Beyond that resource, there have been community organizations that have located resources for other translation services. The Office of Language Access could be a source for individual interpreters and translators. Chair Rose also explained that “translation” refers to the written word and “interpretation” is verbal. This also relates to direct services and was brought up by the Direct Services group who noted that considerations must be given to how materials are presented to special populations, particularly immigrant students.

### 3. Direct Services/Resources/Support/MOUs/Community Collaboration

Chair Rose reviewed the Preliminary Findings for this group [listed on pages 3-4 of Summary]:

- Background regarding statewide master contract for SATC, and desire for collaboration between SATC, HPD, and UH
- Example of standard procedure for sanitized report: SATC reporting general information to HPD for pattern tracking, and addressing victim consent when providing additional information
- Both UH and HPD have an interest in collaborating regarding shared information for the purposes of pattern tracking.

Chair Rose asked Mr. Murakami to elaborate on this point and how it involves the Sex Abuse Treatment Center. He relayed that SATC maintains a confidential database where information about sex assaults can be reported without revealing the information of the victim. That information can then be provided to the police in order to inform them about patterns of potential assailants or offenders in the community. This was suggested during the meeting as something that the University could possibly develop or participate in. This would assist victims who in many cases do not want to participate in the full process, understandably because of the difficulties of going through the criminal justice system. However, it can be healing in many ways and assist them to provide information to the police in the event that there is a pattern of offenses. A number of other sex assault centers across the United States have developed similar programs and it is a sort of trend in addressing the issue of pattern offenders.

Chair Rose reviewed the Preliminary Recommendations for this group [listed on pages 4-5 of Summary]:

- Develop a flow chart of the various options on and off campus

- 24 hour access to an advocate

Chair Rose elaborated that this was raised as an issue due to limited advocacy services. One of the things discussed in several meetings was that there seems to be an interest in developing more advocacy support for each of the campuses. It was recommended that if you are going to provide that kind of program, 24 hour access to that kind of advocacy should be provided, especially if it's crisis advocacy.

- Need clear mechanism for reporting relationship between police and UH (MOUs and building collaborations)
- Remember need to keep victim safe
- How do we empower students before an incident occurs- what is it that we need to be doing during orientation, etc.
- Need further explanations and notifications for confidential offices and their function on campus
- Consider cultural competency and demographics data, especially when planning outreach for students
- Determine how to best utilize the University resources and homegrown projects

Chair Rose added that this was a fascinating discussion. UH Manoa is a research university with so much expertise and a lot that can be done in our own backyard. This is true both in terms of website development and training curricula that would be culturally relevant and created through partnerships with community organizations. Chair Rose inquired if anyone wanted to add to this. No additions.

- Need for trauma informed support and services.
- Survivors of sexual assault benefit from a seamlessly integrated response system, including elements both within and outside of the University System. This includes campus security and police understanding their respective roles and coordinating in the handling of safety issues and the transition to possible investigation. This also means on campus crisis resources and staffing that interacts with resources outside of school to respond to the full spectrum of victim needs.

Chair Rose indicated that she wanted to take this and break this down. She clarified that there were a lot of questions around what is actually working and what kind of coordinated response was set up at each of the campuses. Knowing that this is specific and unique to the campus, what are ways that the coordination of a response could be more seamless and the coordination of response could better include community and law enforcement?

- Explore if regular meetings between on campus response system elements (e.g. Title IX coordinators, on campus crisis and case management teams, campus security, school administration) and outside partners (police, prosecutors, sexual assault and domestic violence service providers,

medical personnel) are possible, including school participation in Sexual Assault Response Teams (SARTs).

Chair Rose called on Mr. Murakami to provide some background information on SARTs. He elaborated that SARTs are a best practice implemented in pretty much every jurisdiction in the United States. SARTs generally consist of local sex assault service providers such as SATC, police and prosecuting units. He added that sometimes people from the attorney general's office or their counterparts come in. It also includes members of the community that have subject matter specific issues that might be discussed. This is all to coordinate the criminal justice process in your state or city. It is his understanding that various counties in Hawaii have their own sexual assault response teams. For a number of years the Hawaii Sexual Assault Response and Training Program, which was essentially a statewide SART, shared best practices information amongst the different counties. It hasn't been active over the past couple of years. When he attended a recent conference on the mainland for sexual assault issues involving campus and prosecution of University sex crimes, one of the things that was mentioned by our counterparts in other states was that universities tend to be involved in their local SARTs and seek involvement in their local SARTs. That is a venue for having the ongoing conversation between different campuses and local police and prosecutors and the sexual assault resources in the community. Chair Rose asked if there were any questions about this point. None raised.

Chair Rose added that whether or not it was something that is an increasing trend, she views it as something critical. This group felt that the model is something that could be followed. One point is that the campus community should not work in isolation and look at how we have been dealing with individual responses to allegations as a coordinated response and what best practices we can take from that using the SART model and considering our campuses as part of the SART team. Chair Rose believes that SATC and Hawaii were recognized for developing a model or some kind of curricula around SART. She will research that and add that to her written recommendations if she can find something on that.

Questions were elicited on SARTs. None raised.

- Consider coordinating with service providers in the community to add information for the University's students and staff on their websites. For example, a search of "sexual assault" and "Hawai'i" returns SATC as a first result. Similar searches could be done for "domestic violence" and HSCADV will come up.

Chair Rose commented that doesn't believe that students in crisis or looking for confidential offices will type in "Title IX". This will be important to look at and think about for the Task Force's recommendations. It could be included in the policy that memoranda of understanding will be sought with service providers in the community to clarify roles and respective responsibilities.

- Research could be conducted to determine what state and federal funding is available for service memoranda of understanding, and how it may be obtained.

Chair Rose elaborated on the context in that if you are looking to establish a stronger trust relationship with the police and campus security, there may be some models that you could actually get funding for to initiate and facilitate collaboration and trust building. This is something to explore.

- Develop a third party reporting process so that students who do not wish to report to the police can provide information on the crime anonymously (this will give HPD important intel for public safety while maintaining the student's confidentiality).
- Provide quick access to a crisis support person 24/7 who can provide necessary intervention and information on options (including accessing the medical-legal exam which would result in obtaining evidence even if the student is unsure about reporting to the police)

Questions were elicited regarding this point. None elicited.

- Clarify the role of campus security with regard to how they respond to and handle complaints of violence. To the extent that they may be first responders, they must be trained in victim centered methods and evidence preservation. In addition, they must coordinate with the police department, and this could be reflected in campus policies and procedures.

Chair Rose commented that this group was very busy and generated many findings. She encouraged attendees to review the points and ask questions. She reminded everyone that this an opportunity for members of the groups who attended the meeting to clarify or elaborate on any points that they made and for members of the public to ask questions as well. She also reminded everyone that the purpose of the Permitted Interaction Groups is to do fact finding and investigation and report back.

Chair Rose recapped that some of the re-occurring themes that were developed in addition to 24 hour access to crisis were ways that we can work better with the community. One of the fact finding points was that there must be a state-wide master contract to work with other non-profits across the state. That means other CCs and universities not on Oahu would also have access to sex assault crisis services. She also added Mr. Murakami's point of utilizing SARTs.

Chair Rose expressed that she found this really helpful. Despite being previously trained by SATC, she learned a lot about the nuances of protocols and some of the concerns that some of the community members had about our existing infrastructure for responding to sexual violence.

Questions elicited from Title IX Coordinators, members of the community or members. None raised.

#### 4. Training/Best Practices

Chair Rose indicated that she would only review the main themes. She shared that there were numerous questions about the University that Mr. Yamashiro and herself along with other University members tried their best to field.

Chair Rose provided an overview of the recent system-wide five-day training, its components and what was covered in that training. There were many training requests made after this training by specific campuses but also campuses speaking on behalf of all. There were requests around the intersections of gender violence and mental health issues. She noted a consensus among the attendees and a lot of the Title IX Coordinators that they wanted advanced training on domestic violence - how to assess for domestic violence, how to assess for batterer status, how to respond in immediate crisis safety situations, how to do further safety planning, and how to conduct risk and lethality assessment. There was a panoply around domestic violence training.

Chair Rose had Task Force members take a quick look at the Preliminary Findings of this group as well as its Preliminary Recommendations [listing on pages 5-8 of Summary].

One point was the need to build capacity of important resources to conduct training. There was also a theme around training the trainers and discussion around minors and early college education programs.

Chair Rose added that an additional theme reiterated by all four subcommittee meetings focused on confidential offices as well as training faculty and staff about receiving disclosures. This is really critical for all employees, whether they are part of the Title IX team or not. Faculty and TAs who students trust the most, in particular, need to know how to be victim sensitive and how to receive disclosures. There was also a lot of talk regarding institutional response and making sure that people were not re-traumatized. Chair Rose was not sure whether this was accurately captured in outcomes as it was in the context of those outcomes. Members were sort of clear that whether or not our policy would continue not to designate faculty and staff as “responsible employees” therefore requiring them to report, they should know how to do that properly in a way that would not re-victimize.

Questions elicited but none offered. Chair Rose added that this was challenging for this group because best practices sometimes translates into best practices and sometimes they don't. It's about protocols. For example, what are our protocols with the police, or with campus security and the police?

Questions elicited. Mr. Dial inquired about the definition of a “responsible employee.” Chair Rose responded that “responsible employee” is a term used by the Office of Civil Rights (OCR) which enforces Title IX. “Responsible employees” are those University employees who are required to report any allegations that look or smell like they could be Title IX violations. Purely from the perspective of sexual harassment or sexual violence, anything that looks like sexual harassment or sexual violence, as long as that “responsible employee” has identifying information, knows or has a sense of what occurred, whether it happened two years ago or not, he or she must report. From OCR's perspective, responsible employees are mandated to report to the Title IX Coordinator. There are three criteria defining “responsible employees”: (1) is one who has the authority to act (for example, someone who has the ability to end the hostile environment or initiate interim measures to end the hostile environment); (2) those who are required by law; and (3) those who are perceived to have authority.

Mr. Yamashiro elaborated that the main idea is actual vs. perceived authority. He stated that as Chair Rose previously mentioned, there is a bright line of those who actually can redress the situation but as part of the third, most “catch all prong” are those the student perceives as having authority to act. This is a sliding scale depending on the circumstances and people involved. For example, middle school students would perceive any adult employee that you see, such as a janitor, to have authority to act. As you move on to college students this perceived authority narrows to where the janitor no longer has authority to act but faculty members and grad student teaching assistants or lecturers fall into a gray area where students believe they have authority. Therefore, when looking at best practices, it's important to also look at training students because they may be expected to behave as employees as well in areas thought of as gray areas such as resident advisors who are traditionally thought of as students but other students may perceive them to have authority, then we must consider them as “responsible employees” as well.

Chair Rose added that the current Interim Policy does not consider faculty and staff as “responsible employees.” There are many people, including those in this room, who disagreed with the approach that the interim policy took. Most universities across the country require faculty and staff to be responsible employees for the purposes of Title IX allegations. That being said, the interim policy is being negotiated with the UH collective bargaining units’ exclusive representatives. The policy currently says that if you are not an executive or a director, you “should” (but are not required to) report. This is a very important point.

Hannah Liebreich stated that she always assumed that GAs who teach at other universities were mandatory reporters but the conversation at this meeting made her realize that she doesn’t necessarily know this to be true. She only knows that she’s had training at other universities as a GA. She inquired about the climate at other universities since she knows that UH GAs are not trained.

Chair Rose responded that her personal opinion, as one who has conducted these trainings at Manoa for many years and based on on-the-ground experience, is that students will always go to their TAs. The TA is the person that they trust and actually believe, even though they are older and can make the distinction between a custodian and another employee that might have authority within an academic unit. TAs can help you change a lab. They can help you get safety planning. They can walk you over to a confidential resource and they often do. That said, there is training on what OCR requires and training on what is in the interim policy. Chair Rose was unsure whether the question is more specific to what’s happening on other campuses, but the practice has been if you, for example, are a resident advisor or a TA, and you are required to report other things like civil rights violations, you should be required to report other things like Title IX violations. You have to look at the practice of the University as one consideration. In terms of training that is received, Chair Rose thought Ms. Liebreich made a good point. Do grad students know either way what their obligations could be or what their ethical considerations should be? Chair Rose noted that she has trained TAs in the past but that doesn’t mean that GAs and research assistants are trained even though they interact with students as well and are also employees.

Questions elicited regarding this issue. She indicated this will likely come up again.

Kara Teng wanted to share on a similar note that was also touched on briefly by Mr. Yamashiro regarding resident advisors in the dorms. Naomi Iwabuchi and Ms. Teng have been conducting their own little investigation in the process of making a video for their group on confidential services. They have been calling all the dorms asking them whether or not they provide a confidential resource to students and if the resident advisors knew if there were confidential advisors. Virtually nobody knew the answer. They found one person who told them that there was an on-site person from the Counseling Center on upper campus who will come during a crisis. However, the resident advisors themselves did not know the answer. Ms. Teng’s suggestion was to provide training to resident advisors, even if they are students because they are who students will disclose to.

Chair Rose responded that from what she knows, there has been training for resident advisors on the Manoa campus regarding what their responsibilities are with regard to Title IX. She noted that several good points were brought up by Ms. Teng. For one, who is considered confidential in resident halls? Students may be getting confused if they believe confidential resources are available and think that

their RA is confidential when they are not. No one but designated offices and those who have privileged communication based on state licensure can say that they can be confidential. That said, it can be seen how an 18 year old could be confusing RAs with therapists. There are actually therapists at the Counseling Center who are designated to be accessible to students in the dorm 24/7. This is a wonderful resource and a resource that OCR staff commended when they conducted their UH Manoa site visit. She also noted the need to provide training regarding the difference.

Jennifer Stotter explained that UH Hilo trains the RAs and that Dee Uwono at UH Manoa does training as well. Sometimes it's a matter of who is paying attention. Sometimes you look out and see people sleeping. She shared that she tries to do her best to keep people engaged and involved. During the training, Ms. Stotter talks about privilege as opposed to confidentiality because you do want people to maintain confidentiality to the point that they are able so that they aren't talking to their friends, co-workers, or anyone else about what happened. She distinguishes what is privileged and what must be reported versus what to keep to yourself or keep close. Another really good point is that for people who were snoozing or sick during training, perhaps a one-page summary on "what to do" if something happens could be created so that there is a constant reminder in the dorms if they need to make a call or get a report and were zoned out or were in the restroom when that specific issue was discussed during the training. This brings up another point that the trainings and reinforcement for people like RAs should happen more than once a semester. Ms. Stotter currently tries to train them in the beginning or during their training period, but perhaps we should be doing periodic reminders as well. She thanked Ms. Teng for raising the issue.

Ms. Teng expressed that those points were exactly what she was concerned about, *i.e.*, the resident advisors don't even know that these services were available. They were asked, "Are there confidential services in the dorms if I were to report something?" and they replied, "No, we have to report everything." So these RAs didn't even realize that these on-site counselors were available. Ms. Teng lived in the dorms as an undergraduate and she never got a piece of paper indicating who to talk to in the dorms or if something did happen, who was confidential and who wasn't. It's important to make sure the "trickle down" happens to the RAs.

Ms. Uwono thanked Ms. Teng for the research. Ms. Uwono noted that there was actually going to be a training that evening. She will, with Ms. Teng's permission, like to provide that feedback at the training. The mantra has been when you get it, report. You are a CSA for Clery and you're a responsible employee. Although the trainees are receiving the mantra, perhaps they don't realize that there are confidential offices that they can refer to "off the cuff". This might be more of a Level II or advanced training so it would be good for them to cover this at tonight's training. She agreed with Ms. Stotter that having several trainings throughout the year would be helpful. The RAs are trained at the beginning of the school year and in January, but it is on everything. She noted that these are 19 and 20 year olds being trained on protocols for what to do when there is a fire, what to do if there is an emergency, what to do when there's a mental health issue, and now, what to do with Title IX. It's a lot of information so ongoing training would be helpful. She also thanked Ms. Teng for her feedback.

Chair Rose added that what Ms. Uwono referred to is a professional development two week special training for RAs. There is a sexual violence, Title IX component that Ms. Rose has presents during this training. There is also an evening training where they go further into these issues although they have

never really been lifted out. The Counseling Centers have counselors who are housed in the residence halls to provide 24 hr services for confidential discussions or for people in crisis. But there may be confusion between the roles of the RA who does not provide confidential services versus a counselor. RAs may also not know to make the proper referral or to explain that a student does not to tell the RA what happened now but can be walked over to Fear Hall to talk to the counselor. This goes back to what community members were reporting – that victims were not really clear about where confidential services are located. She added that Ms. Uwono and Ms. Stotter make a good point about what are our training modules – what are the ways we train, what is privileged vs. confidential, etc. The challenge of our Interim Policy is that only executives, deans, etc. are responsible employees and students assume that others who are not “mandated” to report can keep discussions confidential. We try not to use the words “mandated reporting” because they have to do with a different kind of legal term around child and elder abuse. “Responsible employee” under the policy is who is required to report. This is something that needs to be lifted out regardless of what the final version of the policy looks like. We do need better training modules on confidentiality. Additional questions were elicited. None raised.

Mr. Dial asked for more information about designating “responsible employees” and whether this was due to restrictions under union contracts. Chair Rose indicated that she was not sure about how much she could disclose but would share that there were people in the room on the Title IX Advisory Group that wanted a version of the policy designating all faculty and staff as “responsible employees”. She noted that the issue is something that “remains on the table”. A prior version of the policy provided that all employees were “responsible employees” but the version that went out was agreed to as a provisional policy subject to further consultation.

Mr. Yamashiro stated that generally whenever you require employees to do something, one of the concerns is “what are the consequences if you don’t do it?” Oftentimes, this tends to be the hold up for anything required of employees. Chair Rose noted that faculty members are concerned about sharing what was disclosed because they don’t want to betray the trust of their students. What has not been seen in the field is people being sued for breaching confidentiality. What has been seen are lawsuits related to withholding of information. In these instances, faculty, whether union or not, are being held personally liable for seemingly acting with deliberate indifference. Chair Rose stated that this is a really critical point for the Task Force members.

Ms. Rose again elicited questions, thoughts, and clarification regarding confidentiality, responsible employees, the policy, etc. She reminded the Task Force that they would be making specific recommendations at the third meeting.

### C. Report To the Legislature

Before moving on to the report to the Legislature, Chair Rose indicated that had been a miscommunication about whether the Summary would be distributed ahead of time. Hard copies were distributed before the end of the meeting.

Mr. Yamashiro recapped that the November 17 meeting was the second of three. At this time the larger groups can hear what the groups talked and about and what their findings and recommendations

are. The third meeting (in December) will provide (time) for everyone to digest the information, deliberate, and make decisions that provide the basis of the report.

Ms. Rose also explained that the initial understanding was that the Task Force needed to turn its report into the UH President. This vetting is not required since this is not a University task force. Thus, the Task Force has more time to prepare its report and should now consider when to hold its next meeting in light of a later deadline to upload its report, *i.e.* December 29 (instead of the first Friday of December). Task force members will deliberate at the next meeting and the public can testify about any items including the P.I.G. reports. A draft report will need to be approved. OIE will need time to finalize the report so it hopes to have feedback by December 1, followed by a Task Force meeting on December 8 or so. Chair Rose stated that the first item to discuss is whether this is a realistic time frame. Chair Rose would like members to have time to review the voluminous observations and findings of the P.I.G.s which were impressive.

There was agreement that the deadline to submit comments will be December 1. Since the next meeting will be really critical (members will be asked to vote on the substance of the report formatted by OIE) Chair Rose asked for full participation whether by phone, skype or in person. OIE is flexible about the date of the next meeting. Mr. Dial suggested Wednesday, December 9. The group felt an afternoon meeting time was best and agreed to meet from 1:00 p.m. until 3:30 p.m.

Chair Rose elicited any questions about what the Sunshine Law requires. She also inquired if there were any other findings that were not captured in the Summary. She encouraged members to make any recommendations they desired by the close of business on December 1 based on the draft findings and observations. She indicated that her office will try to get the minutes out as soon as possible. She also wanted to note for the record that the minutes will be attached to the Task Force's report to ensure total transparency. Vice Chair Betts commented that given the December 9 meeting date the notice and agenda would have to be posted tomorrow. Discussion ensued and it was noted that the deadline is actually six days before the December 9 meeting. Since uploading of the Task Force's report will be facilitated by UH staff on December 28, the final report will need to be complete by that date. Chair Rose indicated this schedule should give her office sufficient time to format the report for the December 28 uploading. She reiterated that written recommendations utilizing the P.I.G. document (reports) should be submitted by December 1 and that the Task Force will conduct its final meeting for the year on December 9.

### III. Update on University of Hawaii Interim EP 1.204

Chair Rose indicated that at the last meeting a change to the Interim Policy regarding the age of consent would be made. She announced that the change was accomplished and the updated policy is available. She also shared that her office had recently been in communication with the OCR, which indicated that the UH Manoa audit findings were not complete. Thus, we have no idea when the findings will be generated and when the negotiations for the voluntary resolution agreement process will begin with UH Manoa. She stated this doesn't sound like it will happen "any time soon" so this is something the Task Force will have to work around.

Vice Chair Betts asked whether the findings by OCR will be made public. Chair Rose replied “yes” and that OCR will give the UH Manoa 24 hours’ notice before the findings are released and made public. She expected that there will be media coverage. She elicited additional questions about the policy. She did note that OCR apologized for the delay, that she doesn’t see any pattern in terms of how long it’s taking, and the findings for the UH Manoa will be the first released in Region IX (Pacific Northwest, Hawaii, Pacific Territories). She hoped the Task Force won’t need to wait until next summer, given the possible change in administration, but she has not heard of any findings involving Washington or Alaska, the other universities being released.

#### IV. Public Comment/Testimony

Final public comment/testimony was elicited. None offered.

#### V. Announcements

Mary Perreira shared that a NACUA webinar on investigative reports was being held on Thursday. Chair Rose explained that NACUA is the National Association of College & University Attorneys. She stated that the training is geared to general counsel but Ms. Perreira was inviting Oahu staff who conduct investigations to the training.

The next meeting will be at 1:00 p.m. on Wednesday, December 9.

#### VI. Adjournment

Meeting was adjourned at 2:45 p.m.

Attachment:

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)(7 pages)

## Appendix H: December 9, 2015 Meeting Minutes (Draft)

### MINUTES OF THE DECEMBER 9, 2015 MEETING OF ACT 222 AFFIRMATIVE CONSENT TASK FORCE

DATE OF MEETING: Wednesday, December 9, 2015

TIME: 1:00 p.m.

LOCATION: University of Hawaii at Manoa, Information Technology Center  
Conference Room 105A

PRESENT: Jennifer Solidum Rose (Chair), *Director, UH Office of Institutional Equity*  
Catherine Betts (Vice Chair), *Executive Director, Hawaii State Commission on  
the Status of Women*  
Rep. Linda Ichiyama, *Hawaii Women's Legislative Caucus*  
Christine S.Y. Chun, *Director of the Compliance & Title IX Office, UH Office  
of the Vice-President for Community Colleges*  
Dee Uwono, *Title IX Coordinator, UH Manoa*  
Jennifer Stotter, *Director, EEO/AA and Title IX Coordinator, UH Hilo*  
Leslie Opulaoho, *Deputy Title IX Coordinator, UH West Oahu*  
Farrah-Marie Gomes, *Chair, UH System Commission on the Status of Women*  
Justin Murakami, *Policy Research Associate, Sex Abuse Treatment Center*  
Mandy Finlay, *Advocacy Coordinator, ACLU of Hawaii*  
Sonja Bigalke-Bannan, *Executive Director, National Association of Social  
Workers, Hawaii Region*  
Michelle Rocca, *Director of Training & Technical Assistance, Hawaii State  
Coalition Against Domestic Violence*  
Major Larry Lawson, *Commander, Criminal Investigation Division, Honolulu  
Police Department*  
Naomi Iwabuchi, *Student Representative, William S. Richardson School of  
Law, UH Manoa*  
Jonathan Dial, *Student Representative, UH at Manoa*

ALSO PRESENT: Stephanie Steuri, *Student Assistant at the UH Manoa Office of Title IX*  
Trisha Kimura, *Chancellor's Office, UH Manoa*  
Brenda Ivelisse, *Vice Chancellor for Student Affairs & Title IX Coordinator,  
Kapiolani Community College,*

Jan Tamura, *Senior Advisor, UH Office of Institutional Equity*  
David Yamashiro, *Junior Advisor, UH Office of Institutional Equity*  
Jeanilou Maschhoff, *Program Specialist, UH Office of Institutional Equity*

I. Call To Order

Chair Jennifer Solidum Rose called the meeting to order at 1:07 pm. She welcomed and thanked everyone, and reminded members and guests to sign in on the attendance sheets being circulated.

Chair Rose noted how hard the Task Force has been working as evidenced by the minutes, the Permitted Interaction Groups, and the very preliminary first draft of the Task Force's report that had been distributed to all members via email. Hard copies of the draft report were also made available at the meeting. Chair Rose acknowledged how busy everyone's lives are and how it is not easy for everyone to do the necessary tasks. She thanked everyone on behalf of herself and co-chair Catherine Betts for their wisdom and commitment.

Each of the members of the Task Force and members of the public introduced themselves. Leslie Opulauoho from UH West Oahu attended on behalf of Julie Oliveira. Christine Chun was also welcomed as the new Director of the Compliance and Title IX Office for the UH Community Colleges. Brenda Ivelisse, Vice Chancellor for Student Affairs and Title IX Coordinator at Kapiolani Community College was also present. Chair Rose thanked the new members and these attendees, noting that the meeting was an opportunity to highlight the findings and work of the Task Force.

II. Items For Discussion and Approval

A. Review & Approval of Minutes of November 17, 2015 Meeting

Chair Rose stated that she had received a lot of great feedback from all of Task Force members and non-members about how accurate and pristine the minutes were. She thanked Jan Tamura and Jeanilou Maschhoff for their work in drafting the minutes which reflected the rich discussion for everyone to see. Chair Rose elicited any edits, discussion or suggestions to the minutes. No questions raised or comments offered.

A motion to approve the minutes as drafted was made by Vice Chair Betts and seconded by Jonathan Dial. The minutes were unanimously approved without abstention or objection.

Chair Rose stressed the importance of the minutes as they will ultimately be the source of the Task Force's findings and recommendations and will be provided to the Legislature. She noted that all of the minutes will be attached to support the Task Force's report.

## B. Recap of Permitted Interaction Group Reporting Process

Chair Rose began by stating that she did not want the discussion to be about her own perspectives but a process of sharing and capturing everyone's sentiments and concerns. Chair Rose informed those who had not been part of the process that the Task Force is not fond of the Sunshine law's term P.I.G. for the "Permitted Interaction Groups". The term "P.I.G. committees" is preferred and these allow members to interact without violating Sunshine Law. She also noted that people tend to participate more when groups are small so they help achieve in-depth discussions about Act 222's various mandates. Chair Rose explained that together with Chair Betts, they identified the 10-12 topics from the Act's mandates, brought them to the Task Force at large at a previous meeting which then consolidated them into four groups: 1) Policy, 2) Education/Prevention Programs & Notification of Rights/Resources, 3) Direct Services/Resources Support/MOUs/Community Collaborations, and 4) Training/Best Practices.

Chair Rose commented that there was a lot of deliberation on how the various topics for the groups came together. She attended all four P.I.G meetings and felt the groups really worked out conceptually. Meeting times were set up for each, people chose to attend certain groups, and meeting outcomes were written in fair detail, almost like minutes, then approved by the Task Force. Questions, thoughts or opinions about this process were elicited by Chair Rose. She offered that she learned so much and felt so humbled by the feedback from the community about what they saw as some of the challenges that the UH faced institutionally in terms of the policy, providing direct services, collaborating with community partners, trying to be more homegrown about using all of the institutional resources to provide access to rights and responsibilities as well as train students, staff and faculty. Chair Rose encouraged people to share their thoughts and/or experiences.

Chair Rose noted that the outcome from the P.I.G. meetings then became the basis for the summary presented at the last meeting of the Task Force which was approved and incorporated pretty much "as is" into the minutes. There were really no changes and no guests who felt that their ideas, proffered concerns, or findings were left out. It was felt that the essence of the conversations were captured.

Chair Rose explained that this was the Task Force's final meeting (for the year) and that the final report of recommendations to the Legislature needed to be turned in before December 31<sup>st</sup>. She reminded the members that despite her election as Chair, the Task Force is not a task force of the UH but specifically created to be a collaboration between relevant community stakeholders and representatives from the UH's community colleges, the System and its three four-year universities. She emphasized that the Task Force was the members' and that no one should feel silenced. She noted that many people submitted written recommendations and that the report being reviewed at today's meeting was not

simply a summary of what occurred during the PIG process, but reflected all of the rich conversations held during the meetings as well as the written recommendations provided by members of the Task Force and public.

Questions were elicited by Chair Rose. None raised.

Chair Rose then asked everyone to look at the recommendations as categorized, recognizing that there was a lot of crossover within each of the categories and written recommendations received. She commented that it was really hard to contain the conversation any time people spoke about best practices or direct services, as they may impact the policy as well as training. Because of this, she did not want people to feel stuck with the categories. The draft report was produced based on initial feedback that members liked the way it was written and the actual substance behind particular concepts. For example, although accountability to the community was not part of any of the four subcommittees, the consensus seemed to be that the committees should go on beyond the Task Force's "sunset date" to continue to have accountability and oversight of the University's Title IX activities.

Questions were elicited by Chair Rose. None elicited.

Since this was the last meeting where the Task Force would be voting on outcomes, Chair Rose inquired if there were any specific findings that were missing, noting that the meeting would be the time to comment. She clarified that although the word "recommendations" was being used, it was so early in the Task Force charge that many of the outcomes in the draft report should be viewed as preliminary findings. Recommendations are often concrete and made after research is completed. For example, a preliminary finding would be "the policy committee thinks that there should be more research done on the definition of 'consent' rather than saying, "we want the definition to be this..."

Rep. Ichiyama inquired whether Chair Rose was referring to the recommendations only in the section of the report regarding the policy or the whole document. Because there are some instances where the report actually states, "the task force recommends that the University consider xyz" Chair Rose indicated that she was referring to the process as a whole even though the policy subcommittee's findings ended up being more preliminary than the far more concrete findings of some of the other groups where they stated "this is our recommendation" or "we need to do this."

Rep. Ichiyama also commented that although the draft report was very comprehensive and detailed, she did not get a clear sense of 1) what the task force findings were, 2) what the task force is suggesting or recommending, and 3) what the Task Force's plan was for the future. The report was structured by topic but all three things were kind of "mushed together." She felt that the report needed to be parsed out by 1) findings, 2) recommendations, and 3) work that needed to be done. Chair Rose expressed that having

that feedback from a legislator is helpful and encouraged conversation about this at the meeting.

Vice Chair Betts added that what Rep. Ichiyama indicated is in fact part of the report, however, it may just be a matter of reorganizing the report or parsing it out so that it is really clear to the reader which category each thing falls in according to the Act or the three topics. She was open to whichever approach would be clearest to communicate this. Chair Rose asked for an example and Rep. Ichiyama elaborated by saying that each section starts off with Background Information and then goes off into different subsections. Although Rep. Ichiyama was not sure everyone read it the same way she did, she felt the Background Information contained "findings", then went into more particular topics. For example, on Page 8, B. Trainings for Employees background is given but "some future training needs were discussed." This seems to be recommendations followed by the UH being asked to consider "possible training topics. She felt that findings and recommendations were put together.

Member Farah Marie-Gomes suggested that one thing that could be done organizationally with the report would be to create an outline and stay within the concept of the four groups followed by "Findings, Recommendations, and Future Action". Or, the Task Force could take the three topic areas as the main headings and under each of them list the four groups. This way, the Findings would all be addressed in one section, then Recommendations and so forth. She also added that one thing that should be considered in figuring out an appropriate format is to think about how disconnected the recommendations would be if we used one format over the other. Currently, the report is organized by group so the Task Force may just want to stick with that and then indicate Findings, Recommendations and Future Action. It might also be helpful to have a conclusion that ties it all together and presents the big picture. Chair Rose stated that these were both good ideas.

Rep. Ichiyama added that when thinking about which model to use, the Task Force may also want to keep in mind what it wants people to get out of the report when they read it. She shared that what she looks for when reading a reports is what are the next steps, what the consensus or recommendations of the group, and what the next steps are for the Task Force.

Chair Rose indicated that the Task Force could go either way and understands that they may want to make the (report) more crisp as far as which recommendations are unclear. She completely agreed with the proposed approach. She observed that many of the conversations did not reach the point of making recommendations so what her office did was to write everything "as-is" so her staff was not "speaking" for other people. She said that next steps could be that for a particular topic, the Task Force could have a separate subcommittee address what those would be or the Task Force could invite someone to the

next meeting. She was glad that this discussion was happening, noting that this was why they allocated an additional 30 minutes for this meeting. She hoped that the Task Force could get a little more concrete about things and outline actual next steps. Additional questions and comments were elicited.

Member Gomes commented that based on Rep. Ichiyama's comments, if a legislator were to pick up our report and was interested in finding out what we were going to do next, the model that lays it out as I) Findings, II) Recommendations and III) Next Steps would actually be more efficient. This would enable the reader to just turn to the proper page rather than sorting through each PIG committee and looking for findings on page 4, then 7, then page 11 and page 14. For the Task Force, as long as all the information is there that's the main point so staying with the groups makes sense and flows better. If the Task Force is thinking from the reader's point of view, then that may need to be factored in more heavily.

Chair Rose responded that she is leaning toward staying with the (P.I.G.) group organization because it would the process of (pushing for more concrete recommendations and next steps) easier now. Once the Task Force's blessing is obtained, her staff can format the report differently. She added that if she was a legislator she may not want to read a 20 page report that isn't clear about where the Task Force is headed. Rep. Ichiyama added that when she receives an audit, she flips to the back of the audit to find the recommendations. Chair Rose agreed, commenting that people often look at the executive report or at the back. She asked if anyone had strong feelings.

Member Jennifer Stotter commented that we should consider whether or not it is important to make the distinction about why some of the groups were recommending needing to do more research or having further discussion, unless we do say that is the next step. She acknowledged that each group is at different points; some are ready to be really active and push forward whereas others require more consultation. She felt this was another piece to consider.

Chair Rose added that some people may need more time to consider things because they are still educating themselves on certain topics. There are a few experts, but not all of the Task Force members have background on prevention initiatives that have been evaluated. She felt Member Stotter's point was a good one.

Chair Rose felt that "report-wise" Member Gomes was right - it is better to organize by Findings, Recommendations and Next Steps - but that it is easier for the purposes of discussion to finalize concrete recommendations and next steps by P.I.G.s as currently written.

Chair Rose elicited comments from Rep. Ichiyama, noting that she felt it was important to look at what each group included and the formation and structure of the Task Force. Rep.

Ichiyama suggested that perhaps everyone could spend some time in small groups to review the bullet points and identify findings, recommendations and next steps. They could then report back to the big group rather than having the big group go through each one. Chair Rose agreed and sought clarification from Rep. Ichiyama, Chair Betts and David Yamashiro, who are familiar with Sunshine Law, on whether the meeting could recess since the P.I.G. meetings do not need to be recorded. They would then return to the big group for recordation of the discussion. Vice Chair Betts inquired whether there were unlimited P.I.G. meetings since the third meeting was set to finalize the recommendations and adopt them. If the Task Force meeting recessed, then a new cycle of P.I.G. meetings/discussions would be started. She recommended not recessing, but was not certain. Vice Chair Betts would say not to recess. Chair Rose indicated she was trying to figure out how to do this logistically.

Jan Tamura suggested that the break out groups would not actually be discussing new matters or conducting new investigations but addressing how to structure or organize findings and whatever else had already been reported out to the Task Force. She noted that the discussions would be held specifically to address formatting of the Task Force's report.

Member Gomes recommended, to avoid technicalities, four groups be set up around the room. Members of the Task Force could choose the group they were most interested in contributing discussion points to. So, it's not a P.I.G. meeting because members are on multiple committees and perhaps members who were not in a group but wanted to contribute could join the discussion. This way, the Task Force was not recessing at all.

Chair Rose added that the purpose of P.I.G. committees is to conduct investigations and as Ms. Tamura pointed out, no new investigations would be performed in these groups. As Member Gomes pointed out they are not re-convening the P.I.G. subcommittees because members will pick the groups they'd like to participate in. Chair Rose and Vice Chair Betts agreed with the idea of breaking into groups. Chair Rose indicated which corners of the conference room were for each P.I.G. topic. She suggested 20 minute discussions with groups checking in at 2:05 p.m. to see where people are.

Justin Murakami sought clarification (inaudible) and Chair Rose responded that each point should be broken down or merged/consolidated. Rep Ichiyama added that the Next Steps should be for the Task Force and the Recommendations would be what the Task Force wants the University to do. She further defined each of the terms. "Findings" are what's out there, what are the existing threats and strengths. "Recommendations" are "The University of Hawaii shall...xyz." Lastly, "Next Steps" would be "The task force will...set up a meeting or create a work plan, further research, etc."

Chair Rose noted that guests were welcome to participate in the groups. She asked members not to jump around, offering that she would walk around and sit in on all

meetings to make sure things are moving forward. She requested that each group designate a "Note Taker".

Members and other attendees then held separate discussions on each of the P.I.G. topic areas. Chair Rose called for each group to spend 5-7 minutes sharing their Findings, Recommendations and Next Steps. She also invited members who did not sit in on a group or who sat in another group to chime in.

C. Recommendations of Task Force Relating To:

1. Interim Executive Policy 1.204

Rep. Ichiyama spoke on behalf of the group and shared that they split up all of the bullet points and labeled them "F" for Findings, "R" for Recommendations and "A" for Action. On page 5, Section IV.A.1. "During a Policy Subcommittee meeting, it was mentioned that there are related UH System policies and procedures, available in the UH System Policies and Procedures Information System. It was also mentioned that campuses have their own campus specific policies and procedures." This was a Finding.

Regarding page 6, Subpoint 2.A, "[t]he Task Force finds that further research is needed on the following definitions and areas in the interim Policy before specific recommendations are made" was determined to be a broad Action. The discussion further delved into each bullet point and indicated "why" further research was needed. For example, the first bullet point, "Which employee groups should be specifically be identified as 'Responsible Employees'," the finding was that there was a difference in definition by the Office of Civil Rights, and a difference in the definition of UH Policy and there's a slightly different definition in practice. The designated Action was that further research was needed to clarify the issue.

Regarding page 6, Section IV.3, all of the bullet points under number were Policy related. They made additional findings to support each of the recommendations. Some of the broad findings were that there were inconsistent procedures and policies across the different schools and different campuses. There was outdated information on websites that were difficult for students to access. These were some examples of the findings that were supplemented to make recommendations.

With respect to page 7, Section IV.4, Review of Related UH Policies and Procedures, there was an overall Action that further research is needed to turn the finding into a recommendation that the Policy needs to be consistent and that once the policy is revised the UH should involve stakeholder groups, like students, the Union, and faculty in the final review.

Regarding page 7, Section IV.5, Community Accountability, there was a Recommendation to have the group continually review and revisit the policy.

Questions were elicited by Chair Rose from group members or attendees. None was raised. Chair Rose requested that all those who sat in the group raise their hands so that she could acknowledge and thank them.

2. Education/Prevention Programs & Notification of Rights/  
Resources

Vice Chair Betts spoke on behalf this group. They reviewed the minutes and recommendations of the group.

- Finding: The process of accessing information for victims is unclear. There are lots of numbers, weird descriptions and titles on different websites that were not streamlined. Specifically regarding violence against students, the language in the website is not in laymen's terms, so it is not clearly understood.

Recommendations: Help really should be "2-clicks away." This is something that was discussed in one of the larger meetings. Campus services need to be mapped out with clear descriptions and definitions of what those services are and what is offered. There should be a 24-hour hotline for students because obviously trauma doesn't happen between 9 and 5. So, when a student is trying to access services, he or she should be able to access someone, a live person, via phone. There should be a link within each larger section of the website to access Title IX and assistance. For example, if you access Student Housing because you're in the dorms and an assault happens, trying to find services or help is difficult because there are numerous numbers and different descriptions under each number. It is very hard for people to identify where to get help. There should be a "click-here" linking to a separate portal that displays all the Title IX information and campus services mapped out. That also goes for international students going to the East-West Center website looking for services.

There should also be a visual flow chart of who is confidential and who is not. There should be someone in each Title IX office who always answers the phone and if no one is there to answer the phone, for example on the weekends, there should be a voicemail directing students to another resource for assistance. Another recommendation is that UH should offer services in non-traditional hours.

Next Steps: Contact housing and other larger portals and IT people to see if this is something they can make happen. They invite all the respective services and organizations on campus who have direct interface with victims to one of our larger meetings for further information on what services they offer. Entry points to where a victim might have first contact need to be identified, *i.e.*, East-West Center, Student Housing, athletics, etc.

- Finding: Education efforts cross-campus are lacking and UH is currently not using verified evidence based prevention and education programs to create social norm change.

Recommendation: UH should tie registration to student's signing a Code of Conduct Agreement and there should be, for example, a hold on registration if you don't sign the agreement to adhere to student codes of conduct. Next Steps: Engage with Vice-Chancellors within Administration to implement basic preliminary education about student codes of conduct. Chair Betts raised the question of whether this should be similar for faculty.

UH should use prevention and education curricula that is evidence based and proven to be effective. UH should eliminate any prevention and education efforts that are not evidence based and proven to be effective. For example, the group had a discussion in an earlier P.I.G. meeting about EverFi being potentially traumatizing to students and not being approved by the CDC as an effective tool to create social norm change.

UH should also identify awareness efforts that are separate from prevention and education curriculum and cease using any offensive or potentially traumatizing programs and practices.

In the smaller group, they talked about "Walk a Mile" which basically makes fun of women walking in heels. The question of whether or not that actually creates even awareness about the problem or effective social norm change was raised. There was recognition that it's an awareness effort, not a prevention and education effort.

Next Steps: Further investigation and identification of what services are really being offered. Actual services provided should be clear and publicized.

- Finding: There is a discrepancy between what services are advertised and what services are actually offered. Student testimony on their experiences was previously provided. For example, it was noted that with the Women's Center, the services that are advertised are not the services that were received.

Recommendation: Invite different services and departments on campus that interface with victims to one of our bigger meetings to provide information on what they do and what services they offer.

Next Step: Look for opportunities to do cross-training or set-up resources for different services and programs to learn from each other and do peer review. There are

potentially programs that people have experiences with as not always effective or helpful.

Chair Rose requested that all those who sat in the group raise their hands so that they could acknowledge and thanked them.

### 3. Direct Services/Resources/Support, MOUS & Community Collaborations

Member Justin Murakami spoke on behalf of this group. The group noted that the community collaboration section mostly dealt with recommendations to the UH System. They believe that findings would be appropriate to clarify the problems that the recommendations addressed.

First, there hasn't been a close relationship formalized either through contract or MOUs between System and campus resources and those in the greater community.

They also noted that campus security and police procedures are not always in alignment, especially with regard to complex cases with special victims where police resources are better specialized both to handle the interviews of the victims and evidence preservation.

There isn't a clear understanding even on campuses of what resources are available. For example, what advocates and advocacy services might be available through resources such as the Women's Center at UH Manoa.

Next Step: This Task Force may be interested in having additional meetings where we bring in the resources that have been identified and ask them what they're currently doing and how we can be supportive of those efforts in addition to how we might integrate them with known resources.

There is not 24 hour campus assistance especially for crisis services. People currently require a referral to outside resources for the periods of the early evening and morning. There needs to be publicity on campus as it is not well publicized to date. In addition, website development is also noted as a finding.

Off-campus resources are not aware of what is happening on campus. If a victim walks into a sex assault center or a domestic violence center, they would be a loss and have to start calling people on campus to find out where they should refer this individual to for assistance with the administrative process so all of that is also being addressed by some of the recommendations made in this section.

They know that the response system is currently fractured and not well integrated between on-campus and off-campus resources. UH internal resources for the development of things like trainings and programs are not being utilized to their fullest at this time which leads to the recommendation that we need to determine how best to utilize on campus resources. For

instance, the professors who are currently training social workers could potentially be some of the expert training resources being looked at as campus resources.

It was noted that there is not a good understanding of what funding is available for MOUs and contracts with outside resources. On a national scale it was discussed in some of the P.I.G. groups that Congress may be looking funding MOUs on university campuses specifically. If so, there would need to be an effort by the University coordinated with off-campus resources to seek and better understand funding. The Task Force could also look into federal and state funding. This could be recommended in a subsequent report.

It was also noted by the group that the population of the students and faculty at the University is very diverse and present a wide range of backgrounds. The response system needs to consider this with regard to service delivery. This recommendation exists in the current report and the accompanying finding.

Member Jonathan Dial inquired about the recommendation regarding current faculty members who are teaching social work classes possibly teaching some other type of course. This is a great idea but his only concern is that this may pose an issue or conflict with Union contracts. He does not have any recommendation as to how to get around that other than simply renegotiate the contracts but it's something that should be paid attention to. Member Murakami clarified that this was just an example. A lot of what occurred in the P.I.G. meetings was brainstorming about potential opportunities so there will be some disadvantages to some of the recommendations. Another idea that was brought up was developing some of the training resources like videos or surveys using media or social work schools or the department of sociology.

Chair Rose requested that all those who sat in the group raise their hands so that she could acknowledge and thank them.

#### 4. Training for Employees/Best Practices

Jenn Rose spoke on behalf of this group since Member Gomes had to leave to catch her flight. The caveat was that they spent more time talking about training and training around best practices as well.

She referred the Task Force to Page 8, Section IV.C.1. Background Information. The first two paragraphs should be part of the Findings. Some of the other findings include that the University had recently conducted trainings related to Title IX and the Violence Against Women Act (VAWA). Part of what will go into the findings will be a list of the trainings that have been conducted and a list of all future trainings being scheduled. For example, the Office of Institutional Equity (OIE) has trainings scheduled as far out as September, 2016 and these are massive system-wide trainings similar to the recently completed 5-day training that included

125 employees from all 10 campuses and system wide who deal with Title IX and VAWA complaints and allegations.

It was also recommended to attach trainings required by VAWA and Title IX. Which groups, particularly employees, are required to have training? For example, VAWA and Title IX require Title IX Coordinators to have a certain level of training. First responders also must have a certain level of training. They all agreed that it would be easier for the findings to be recommended to this group to be attached. Chair Rose noted that a wonderful matrix developed by ATIXA, a group that falls under NCHERM (the National Center for Higher Education Risk Management, a group that is already working with all of the UH's 10 campuses) lists all the relevant laws related to sexual discrimination and gender violence. The list shows what training is mandatory vs. optional and which students and groups of employees should be trained. She noted that as a task force we know the bare minimum VAWA requires to be on line and the kind of mandatory training necessary for new employees and new students. All of this will be included in the findings.

Also, as mentioned, the findings will include trainings that are conducted not just through the Office of Institutional Equity but trainings that are related to each of the topics that individual campuses as well as System offices, i.e., EEO/AA office or Human Resources offices, have been doing.

The rest of the background information in the draft will remain and be converted into recommendations.

Chair Rose then pointed to the Recommendations at Page 9, Section IV.C.2 Training Topics and 3. Evaluation of Training Curricula. The list of topics and recommendation for evaluation of training curricular will remain as-is.

There was also some discussion about student training in terms of the VAWA mandates. One of the findings is that it has been challenging to try to find appropriate training that is effective. It was noted that there has not been a very high usage rate of the current EverFi Haven online program that is being used on all campuses. Only a very small minority of students have utilized the program. As noted by other committee groups, there have been other challenges and criticisms of the EverFi program. This has been turned into a recommendation, namely, that the UH consider relevant, comprehensive, culturally competent training whether in-person or online for students that are accessible and unique to each campus community. For example, other forms of training that are not just online but mobile, for example, Vines, etc. should be examined as a system-wide alternative taking into consideration the difference between a community college which is a commuter school and a 4-year University that has housing in which most of the scenarios are about the dorms.

It is also recommended that UH initiated programs both for students and employees be evaluated annually with students involved as a focus group and part of the evaluation process.

There was a lot of discussion about bystander training and that would be encompassed in the VAWA mandate. The bystander training is just one module required by VAWA. Another is consent along with domestic violence, stalking and sex assault. There are certain mandates for substantive training that have to be done for all employees and all students.

Another recommendation is that OIE along with Christine Chun's office (Compliance and Title IX for the Community Colleges) try to centralize implementation of these programs.

Recommendations were also discussed regarding what is minimally required by VAWA and what should be mandatory. There was a recommendation for UH to review and consider making training mandatory for faculty members. This was discussed by other groups.

Next Steps: The task force will consider and develop a mechanism along with possibly a timeline of accountability for the implementation and monitoring of in-person and online programs using various vehicles that will be initiated through UH. The Task Force will request an update from OIE and other relevant offices regarding mandatory training for new employees and also consider reviewing new employee orientation.

It was noted that there really hasn't been coordination around new employee training by UH. For example, if you are a new employee, you might not know that HR has an online module for sexual harassment and that the EEO office has a different module covering VAWA. So, the recommendation to UH is that it try to coordinate these programs and for the Task Force to monitor that the coordination is happening.

Next Steps: The Task Force will continue to discuss how OIE and other relevant offices will have a centralized oversight for the implementation and coordination of all new employee programs.

Chair Rose requested that all those who sat in the group raise their hands so that she could acknowledge and thank them. She feels they now have everything they need for the report. Questions elicited.

Rep. Ichiyama shared that some of the feedback that she has been getting from some of the legislators is that each campus is doing a good job at implementing the policy but a more strategic approach to training around the policy is lacking. Also lacking is tracking who is taking training and holding people accountable and putting people on notice. Chair Rose agreed and indicated that it would be included in the recommendations. She inquired whether part of the recommendation would be OIE having central oversight and being accountable to the Task Force. [Note: some of Rep. Ichiyama's comments were inaudible].

It was also brought up that as a finding training is “spotty” and depends on the Dean. There could be an entire department that has been properly trained and then another that has not received training since 1986. The question is how can we better monitor that and incentivize with a “carrot and a stick” to make sure that the Title IX Coordinators not only have the authority but the backing from leadership to get training done. Chair Rose inquired whether this covered Rep. Ichiyama’s concern and Rep. Ichiyama responded in the affirmative.

D. Drafting & Submission of Task Force’s Report On Findings & Recommendations To Hawaii State Legislature

Chair Rose inquired whether they could get the consensus of the group to now draft the second version of the report once the Task Force approved the content. Chair Rose asked for any additions, comments or problems with anything that was read into the record as a Finding, Recommendation or Next Step. None offered.

A motion was made by Member Sonja Bigalke-Bannan to adopt all of the Findings, Recommendations and Next Steps proffered by each of the four groups today into the report. Member Chun seconded the motion. Passed without abstention or objection.

A motion was made by Member Bilgalke-Bannan to provide OIE along with Chair Betts the liberty of synthesizing a new draft and merging some of the crossover topics without changing the substance of the report. The Motion was seconded by Member Dee Uwono. Passed without abstention or objection.

Chair Rose also reiterated that the report’s content will remain with regard to the historical background, but there might be a little bit of “tweaking” in light of today’s meeting’s discussions. Rep. Ichiyama shared that although it is good to have a descriptive and detailed report, most of it is already in the minutes. It would be helpful to include some of the statistics that were in the Bill to explain some of the context. Chair Rose indicated that no new information will be added. She noted that the report is mostly comprised of attachments already reviewed by Task Force members.

The final report is not due to the legislature until December 31<sup>st</sup>. However, a copy needs to be submitted to UH Government Relations to upload it into the system ideally before Christmas but at the very latest, December 28<sup>th</sup>. Member Leslie Opulauoho inquired whether the Task Force would get a copy of the final draft. Chair Rose responded that her office will try to get a copy distributed early but there will be no meeting to discuss. It was noted that if there are any comments, they can be submitted electronically without replying to all.

### III. Permitted Interaction Groups for 2016

Chair Rose asked David Yamashiro to provide an explanation about the issue of P.I.G.s under the Sunshine Law as there had been a request by Member Gomes to have various people on the UH Commission on the Status of Women which she represents sit in for her on the P.I.G.s. Mr. Yamashiro explained that as discussed at the previous meeting, there is a three meeting requirement where the initial meeting defines the scope of the groups and the scope of membership and each member's authority. When the 2015 groups were formed, it was a rough preliminary assessment of where everyone wanted to be in terms of their memberships and which groups they wanted to participate in. There was an overabundance of participation so the number of group members needed to be reduced under quorum. He noted that looking forward to 2016, the Task Force will redefine the scope of membership. He added that if there are groups that members want to participate in, this will be the opportunity to restructure them. Another "first meeting" will be required where the scope of membership and member authority will be defined. The second meeting will be somewhere down the line and a third meeting to deliberate will take place later.

Chair Rose added that given that there were so many wonderful recommendations and next steps, the Task Force has a lot of work cut out for it next year. She suggested that this discussion occur at the next meeting in early 2016. Once everyone reviews the report, the Task Force members should have a better idea of whether the scope of the groups needs to be redefined or if more groups need to be created. It was challenging to lump all of the mandates into four different groups as there was some overlap and redundancy. This was good, however, because it meant that many members were thinking the same thing.

### IV. Public Comment/Testimony

Final public comment/testimony was elicited. None offered.

### V. Announcements

#### A. Next Meeting Date

The next meeting will be at 1:00 p.m. on Wednesday, January 27<sup>th</sup>.

#### B. Other

Linda Ichiyama shared that the Hawaii Commission on the Status of Women and the Women's Legislative Caucus is holding a screening of the Hunting Ground at the State Capitol and will be distributing information and details about the event.

Chair Rose also reminded everyone that the Task Force meetings are open to the public and strongly encouraged members to invite others.

VI. Adjournment

The meeting was adjourned at 2:45 p.m.

DRAFT

## Appendix I: 2015 Permitted Interaction Group Participants

- Policy Group.  
Participants:  
**Mandy Finlay**  
**Linda Ichiyama**  
**Justin Murakami**  
**Jennifer Stotter**  
**Jennifer Rose**  
**Farrah-Marie Gomes**  
**Dee Uwono**
- Education / Prevention Programs & Notification of Rights / Resources Group.  
Participants:  
**Michelle Rocca**  
**Jennifer Rose**  
**Jonathan Dial**  
**Mandy Finlay**  
**Justin Murakami**  
**Jennifer Stotter**  
**Hannah Liebreich** (member of the public – UH Manoa Graduate Student)
- Direct Services / Resources / Support / MOUs / Community Collaborations Group.  
Participants:  
**Michelle Rocca**  
**Sonja Bigalke-Bannan**  
**Larry Lawson**  
**Justin Murakami**  
**Jennifer Rose**  
**Jennifer Stotter**
- Training / Best Practices Group.  
Participants:  
**Jonathan Dial**  
**Catherine Betts**  
**Jennifer Rose**  
**Justin Murakami**  
**Farrah-Marie Gomes**  
**Dee Uwono**  
**Mary Perreira**  
**Kara Teng** (member of the public – William S. Richardson School of Law Student & President, Lawyers Against Sexual Violence).  
**Hannah Liebreich** (member of the public – UH Manoa Graduate Student).

## Appendix J: Summary Notes of Permitted Interaction Group Meetings

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)

### 1. Policy

#### Preliminary Findings

- UH System Interim EP 1.204: <http://www.hawaii.edu/titleix/policy/>
- UH System Policies and Procedures Information System: <http://www.hawaii.edu/policy/>
- Campuses have campus specific policies and procedures

#### Preliminary recommendations of individual members of the Permitted Interaction Group

- Generate clear reporting lines of authority for each UH campus with goal of OIE to be accountable for ensuring/enforcing uniform responses and case management
- Review campus and system policies that may overlap/affect interim policy, i.e. student conduct code, alcohol policies, housing policies, etc. in terms of sexual misconduct and gender based discrimination
  - Consider amnesty clause in policy
  - Consider banning alcohol altogether on campus
- Examine who should be “responsible employees”, definition of consent
- Clarify process of appeal under interim policy, what is appropriate deadline to file appeal, etc. (note: UH currently consulting with CBUs, UH General Counsel and others)
- Website(s): extract parts of policy to summarize on website, generate FAQ (perhaps by prohibited conduct), uniformity among campus websites vs only one website
- Form working group/panel to continue work/advising UH on Title IX
- Operationalize working relationships between campus police and local police departments through MOUS to ensure policy implementation
- Clarify who should be Decision Makers under Policy (i.e., Deans so that they are aware of potentially problematic hires/behaviors and make informed hiring decisions vs. others including skilled community members who are not necessarily directly invested in outcome and are properly trained vs. both)
- Strengthen system ability to oversee Title IX processes and staff at individual schools. We understand that there is a norm of school self-determination, but there must be a means of ensuring that Title IX staff and processes adhere to best practices and this policy (accountability). May clarify that students can complain about violations or non-enforcement of the policy by procedural actors (Title IX Coordinators, investigators, decision makers, and appeals officers) to the University System, and the expected

outcomes should this be occurring.

2. Education/Prevention Programs & Notification of Rights/Resources

**Preliminary Findings**

- Historical Background
  - Brief discussion of individual campuses having the autonomy to determine their individual program needs
  - Discussion of various awareness efforts.
- Current Overview
  - Desire to enlist community resources in education efforts
  - Conducting further research into various online education programs
  - Notifications to UH Community through various mediums (website, email, flyers posted in various locations on campus, etc.)
- Brief overview of education/training through evidence-based methods (Green Dot and Safe Date have both been approved by CDC as effective)
- Some Future Training Needs:
  - Overall: Training for all new students and staff mandated by VAWA
    - Also, need to plan training based on what is recommended under Title IX guidance, implied as necessary based on various VRAs, and what is recommended as best practice by various bodies of experts
  - Bystander awareness – how to help a friend
  - Substance abuse and risk factors
  - Rights and responsibilities, policies, reporting, etc.
  - DV, consent and bystander training; should include idea of affirmative consent and framework
- Limited understanding of the exact role of certain programs on the campuses.
  - Examples – Some general information of Women's Center, PAU Violence, etc., but there is a need for more specific information regarding their initiatives.

**Preliminary recommendations of individual members of the Permitted Interaction Group**

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)

- Distinction needed between primary prevention vs. efforts to raise awareness
  - Offices should clearly define the scope of their responsibilities to ensure an appropriate allocation of resources for the different types of program efforts.
  - Focus more on identifying the different ways of accomplishing prevention and education
- Eliminate awareness activities that are no longer relevant and/or are offensive to groups
- Further research needed for quantitative data on social norm change
  - Consider gender-role analysis in the additional research
- Identify all groups/areas of campuses to do prevention and education
  - Title IX Coordinators should have this role moving forward, system wide
- Conduct campus wide surveys first to gauge areas of prevention/need
- Consider RESPECT campaign cross campuses, enlisting SATC to assist
- Further information gathering needed: Should interview various education, awareness, and prevention offices on the campuses to get a better understanding of their functions.
- In addition to on-campus resources and identification of confidential/non-confidential spaces for victims to report, also provide off-campus/community resources in notifications of rights and resources materials. This will inform victims of all the support services available to them.
- For students, prevention/education programs should emphasize primary prevention of sexual assault, and be informed by available evidence and best practice. Education should be tailored to the audience and cover topics and risk factors relevant to the young adult population.
- Education and training should occur on an ongoing basis to ensure sufficient dosage and repeated exposure to information. Brief, one-time presentation of information is consistently shown to be ineffective in changing behavior.
- Monitor all programs for effectiveness through evaluation and participant feedback.

3. Direct Services/Resources/Support/MOUs/Community Collaborations

**Preliminary Findings**

- Background regarding statewide master contract for SATC, and desire for collaboration between SATC, HPD, and UH

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)

- Example of standard procedure for sanitized report: SATC Reporting general information to HPD for pattern tracking, and addressing victim consent when providing additional information
- Both UH and HPD have an interest in collaborating regarding shared information for the purposes of pattern tracking

**Preliminary recommendations of individual members of the Permitted Interaction Group**

- Develop a flowchart of the various options on and off campus
- 24 hour access to an advocate
- Need clear mechanism for reporting relationship between police and UH
- Remember need to keep victim safe
- How do we empower students before an incident occurs?
- Need further explanations and notifications for confidential offices and their function on campus
- Consider cultural competency and demographics data, especially when planning outreach to students
- Determine how best to utilize the university resources and homegrown projects
- Need for trauma informed support and services
- Survivors of sexual assault would benefit from a seamlessly integrated response system, including elements both within and outside of the University System. This includes campus security and police understanding their respective roles and coordinating in the handling of safety issues and the transition to possible investigation. This also means on campus crisis resources and staffing that interacts with resources outside of school to respond to the full spectrum of victim needs.
- Explore if regular meetings between on campus response system elements (e.g. Title IX coordinators, on campus crisis and case management teams, campus security, school administration) and outside partners (police, prosecutors, sexual assault and domestic violence service providers, medical personnel) are possible, including school participation in Sexual Assault Response Teams (SARTs).
- Consider coordinating with Service Providers in community to add information for the University's students and staff on their websites. For example, a search of 'sexual assault' and 'Hawai'i' returns SATC as a first result (similar with 'domestic violence' and HSCADV).

- It could be included in the policy that memoranda of understanding will be sought with service providers in the community to clarify roles and respective responsibilities.
- Research could be conducted to determine what state and federal funding is available for service memoranda of understanding, and how it may be obtained.
- Develop a third party reporting process so that students who do not wish to report to the police can provide information on the crime anonymously (this will give HPD important intel for public safety while maintaining the student's confidentiality).
- Provide quick access to a crisis support person 24/7 who can provide the necessary intervention and information on options (including accessing the medical-legal exam which would result in obtaining evidence even if the student is unsure about reporting to the police)
- Clarify the role of campus security with regard to how they respond to and handle complaints of violence. To the extent that they may be first responders, they must be trained in victim centered methods and evidence preservation. In addition, they must coordinate with the police department, and that could be reflected in campus policies and procedures.

#### 4. Training/Best Practices

##### Preliminary Findings

- Overview of recent systemwide training:
  - Collaboration between NCHERM/ATIXA, the Honolulu Department of the Prosecuting Attorney, HScADV, and UH. Organized by OIE.
  - About 130 employees trained
  - Focus was on Title IX Coordinator & Investigator training, with many decision-makers also in attendance.
  - Also focused on DV related issues as a primary area of concern
  - Overall theme:
    - Differing evidentiary standards – civil rights vs. criminal cases
    - Difference between the university disciplinary process vs. the legal system
- Future trainings planned, taking into consideration mentioned training needs and desire to reach out to various local experts
  - Examples of proposed training priorities include sex assault, VAWA, advocacy, and case management.

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)

- Campuses have campus specific training needs based on current infrastructure
  - Example - Hilo has a counseling center, but the staff is not specifically trained in sexual assault services and other issues relevant to certain victims.
  - Other campuses may similarly have general services that could benefit from more specific training.

**Preliminary recommendations of individual members of the Permitted Interaction Group**

- Need further discussion regarding areas of training
- People need training on various issues including direct services, trauma informed services, etc.
- We must take into consideration the unique training needs of special populations. For example, High school students in UH early college programs and/or those high schools with which UH has an MOU (Hilo is tasked to implement the MOU with Kamehameha Schools)
- Need to train faculty members on how to receive disclosures, whether they are required to report allegations or not
- Need to implement best practices for MOUs between campus police/public safety and police departments
- Need to be culturally specific, accessible (language)
- Need more research into best practices for women's centers on campuses
- Need more research into UH doing own advocacy work and/or providing counseling services vs. referring to outside agencies or providers
- Confidential offices – which ones have been designated and how are students informed of this?
- Recommend that the difference between confidential resources and Title IX resources (triggering investigation) be emphasized on the front page of the website. Information for first responders should also be available (organization chart and services mapping).
- Need to discuss who should be trained
- Recommend that as both a training tool and for further discussion, an organizational mapping should be generated by the task force, to include all university resources and another layer of community resources

Summary of Notes Submitted by Members of Act 222 Affirmative Consent Task Force Permitted Interaction Groups (Subcommittees)

- Need to discuss training for faculty and staff, including those who are not “responsible employees”
- Need more information regarding Trainers who will be conducting training
- Need more information on how to accomplish training
- Need to build capacity, support and resources to enable this (i.e., ATIXA webinars and training slides; UH will be conducting another 4 day training in 2016)
- Further review on training software/programs (instead of one size fits all, survey on age and gender first)
- On campus resources should receive training specific to violence topics

# Appendix K: ATIXA Title IX and VAWA Section 304 Training Checklist

## ATIXA Title IX and VAWA Sec. 304 Training Checklist



### Checklist Key:

- ✓ Title IX required
- ◆ Clery Act (VAWA Sec. 304) required
- + ATIXA added recommendation
- Ⓢ Primary Prevention Recommended

* ATIXA recommends making all Faculty and Staff "Mandatory Reporters" for both Title IX and Clery-based incidents. Accordingly, this checklist reflects that approach. Those wishing to differentiate between Title IX and Clery Act reporting responsibilities can parse the two out based on the Title IX and Clery Act (VAWA Sec. 304) symbols.		Level A	Level B	Level C*	Level D
		Title IX Compliance Officers	First Responders	All Faculty & Staff; ATIXA Mandatory Reporters	All Students
<b>Overview of Title IX and Clery Act (VAWA Sec. 304): Law and Regulations</b>					
1	Institution's Title IX responsibilities to address sex- and gender-based harassment	✓	✓	✓	✓
2	Institution's Clery Act (VAWA Sec. 304) responsibilities to address Sexual Assault, Domestic Violence, Dating Violence, and Stalking	◆	◆	◆	◆
3	Role of federal government (especially OCR) in enforcing Title IX and DOJ's role with Title IX	✓	✓	✓	✓
4	Overview of the rights Title IX and Title IV confer on students and employees	✓	✓	✓	✓
5	What is sexual harassment, sex discrimination, sexual assault, and sexual violence, and what are the differences between them	✓	✓	✓	✓
6	Differences between criminal and Title IX investigations	✓	+	✓	✓
7	Title IX and Clery Act prohibitions on and protections against retaliation	✓◆	✓◆	✓◆	✓◆
<b>Institutional Policy Overview</b>					
8	Institution's policies and prohibitions regarding Title IX-based harassment	✓	✓	✓	✓
9	Institution's policies and prohibitions regarding Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+	+	◆	◆
10	When institution exercises off-campus jurisdiction over Title IX complaints	✓	✓	✓	✓
11	Institution's policies prohibiting retaliation	✓◆	✓◆	✓◆	✓◆
<b>Institutional Procedure Overview</b>					
12	Institution's disciplinary procedures to address Title IX-based complaints and how victims can invoke them	✓	✓	✓	✓
13	Preponderance of Evidence standard used to address all Title IX-based complaints and evidentiary standards used to address all Sexual Assault, Domestic Violence, Dating Violence, and Stalking complaints	✓	✓	✓◆	✓◆
14	How institution analyzes whether conduct was unwelcome	+	+	✓	✓
15	How institution analyzes whether conduct creates a hostile environment	+	+	✓	✓
16	Institutional disciplinary procedures used to address Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+	+	◆	◆
17	How to evaluate and weigh evidence in an impartial manner	✓			
18	Appeals procedures for Title IX	✓	✓	✓	✓
<b>Reporting</b>					
19	The identity, role, function of, and how to contact the Title IX Coordinator	✓	✓	✓	✓
20	When (upon notice), how, what, and to whom to report sex- and gender-based harassment	✓	✓	✓	✓
21	Consequences for mandatory reporters failing to report sex- and gender-based harassment	+		✓	
22	How to contact OCR	✓	✓	✓	✓
23	Recognizing, responding to, appropriately addressing, and reporting allegations and complaints	✓	✓	✓	
24	Procedures victims should follow if a Title IX violation or Sexual Assault, Domestic Violence, Dating Violence, or Stalking has occurred, including: 1) The importance of preserving evidence; 2) How and to whom to report such alleged offenses; and 3) Victims' options to notify law enforcement and campus authorities (if victim so chooses)	+	+	✓◆	✓◆
25	Appropriate interaction with victims	✓	✓	✓	
26	Providing fair and objective communication and resources that do not discourage reporting	✓	✓		
27	Victimology/psychology of the victim/neurobiological effects of trauma	✓	✓	✓	✓
28	Cultural competence in working with victims, reporting parties, witnesses, and responding parties	✓	✓		
<b>Confidentiality</b>					
29	Confidential reporting options on- and off-campus	✓	+	✓	✓
30	Responding to victim/reporting party request for confidentiality	✓	✓	✓	
31	Information about how the institution protects the confidentiality of victims and other parties when: 1) providing accommodations and protective measures; and 2) working with publicly available documents	+	+	◆	◆
32	Confidentiality/privacy of reports and other investigative information	✓	✓	✓	✓

**Checklist Key:**

- ✓ Title IX required
- ◆ Clery Act (VAWA Sec. 304) required
- + ATIXA added recommendation
- Ⓟ Primary Prevention Recommended

**ATIXA Title IX and VAWA Sec. 304 Training Checklist (Cont.)**

	Level A Title IX Compliance Officers	Level B First Responders	Level C* All Faculty & Staff; ATIXA Mandatory Reporters	Level D All Students
<b>Victim Resources &amp; Remedies</b>				
33	Resources available to victims of sex- or gender-based discrimination	✓	✓	✓
34	Rights of victims and institution's responsibilities for orders of protection, "no contact" orders, restraining orders, or similar institutional/legal orders	+	+	◆
35	Information about on- and off-campus counseling, mental health services, victim advocacy, legal assistance, student financial aid, etc.	+	+	◆
36	Victims' options to request/get changes to academic, living, transportation, and working situations (if reasonably available); such changes are available whether or not a crime is reported to police or whether or not victim pursues formal campus action	+	+	◆
<b>Investigative Complaints</b>				
37	Conducting/documenting adequate, reliable, and impartial investigations	✓◆	+	
38	How to conduct an investigation and hearing process that protects the safety of victims/reporting parties and promotes accountability	✓◆	+	
39	Coordinating and cooperating with law enforcement (campus and local) during parallel criminal and Title IX proceedings	✓	+	
40	How to encourage victims, reporting parties and witnesses to cooperate with investigations when they are concerned about conduct/disciplinary implications of alcohol or drug use (e.g., amnesty/immunity policies)	✓	✓	✓
41	Determine credibility and impartial evaluation/weighting of evidence	✓		
42	Address link between alcohol/drugs in sex-based harassment allegations	✓	✓	
<b>Consent in Sexual Interactions</b>				
43	Force and consent (including examples)	✓	✓	✓
44	Capacity/incapacity, including the role and correlation of alcohol and other drugs (including examples)	✓	✓	✓
45	Effective Consent – "Yes" through clear word or action (including examples)	✓	✓	✓
<b>Rights of Parties in a Complaint, Investigation, Hearing and Appeal</b>				
46	Both parties have same rights to have others present and to present evidence during proceeding and participate in hearings and/or appeals	✓	✓	✓
47	Both parties are entitled to have an advisor of their choice present for all investigative and disciplinary proceedings (note that participation level of advisor may be constrained by the institution)	◆	◆	◆
48	Both parties will be simultaneously informed in writing of the outcome of any disciplinary proceeding that arises from an allegation of Sexual Assault, Domestic Violence, Dating Violence, or Stalking	◆	◆	◆
49	Both parties are entitled to the same options and opportunities for appeal	✓	✓	✓
50	Both parties will be notified of changes in results that occur prior to when results become final, and will be notified when final	◆	◆	◆
<b>Sanctions/Repercussions</b>				
51	Importance of accountability for those found responsible of sexual violence	✓	+	+
52	Criminal, academic, housing, athletic, and student record-related consequences of a Title IX violation	✓	✓	✓
53	Possible sanctions and protective measures an institution may impose following an institution's disciplinary procedure involving Sexual Assault, Domestic Violence, Dating Violence, or Stalking	+	+	◆
54	Consequences of lying during an investigation	✓	✓	✓
<b>Prevention, Awareness and Community Education</b>				
55	Definitions of Consent, Sexual Assault, Domestic Violence, Dating Violence, and Stalking in the applicable jurisdiction	+	+	◆
56	Risk reduction measures – to increase victim empowerment, promote safety, and help community address conditions facilitating violence	+	+Ⓟ	◆Ⓟ
57	Strategies and skills for bystanders to intervene to prevent sexual violence; attitudes of bystanders that may allow behavior to continue	+Ⓟ	+Ⓟ	✓Ⓟ
58	Safe and positive options for Bystander Intervention pertaining to Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+Ⓟ	+Ⓟ	◆Ⓟ
59	How to prevent and identify sexual violence	✓Ⓟ	✓Ⓟ	✓Ⓟ
60	Prevention mechanisms and strategies targeted to stop harassment or discrimination, remedy its effects, and prevent its recurrence	✓Ⓟ	✓Ⓟ	✓Ⓟ
61	Awareness programming to prevent violence, promote safety and reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+Ⓟ	+Ⓟ	◆Ⓟ
62	Potential for revictimization by responders and its effects on students	✓	✓	✓
<b>Assessment of Training</b>				
63	Annual Climate Survey			+
64	Assessments that demonstrate the efficacy of training	✓	✓	✓

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