

Prepared by the Office of the President.
This replaces E1.203 dated April 1983.

UNIVERSITY OF HAWAI'I

EXECUTIVE POLICY - ADMINISTRATION

July 1991

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E1.203 Sexual Harassment Policy and Procedural Guidelines

I. INTRODUCTION

State and federal laws protect University of Hawai'i employees, students, and applicants for employment or admission against sexual harassment. Sexual harassment is a form of sex discrimination and is prohibited under Title VII of the Civil Rights Act of 1964 as amended (employees), Title IX of the Education Amendments of 1972 (students and employees), and Chapter 378 HRS, as amended (employees).



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

II. OBJECTIVE

To charge Vice Presidents and Chancellors with the responsibility and authority to implement this policy.

III. DEFINITION

Sexual harassment is defined as unwelcome sexual advances, or requests for sexual favors, or other physical or expressive behavior of a sexual nature when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational benefits or services;
- B. submission to or rejection of such conduct is used as the basis for employment or academic decisions affecting the individual;

- C. such conduct has the purpose or effect of unreasonably interfering with an individual's professional or academic performance or creating an intimidating, hostile, or offensive educational environment; or
- D. such conduct is sufficiently severe or pervasive as to alter the conditions of an individual's employment and create an abusive working environment.

IV. POLICY AND PROCEDURAL GUIDELINES ON SEXUAL HARASSMENT

- A. Policy. It is the policy of the University to provide a safe and comfortable learning and working environment for students and employees. Sexual harassment is a form of sex discrimination that can undermine the foundation of trust and mutual respect that must prevail if the University is to fulfill its educational mission. Sexual harassment will not be tolerated in any part of the University's programs and activities. Sanctions will be imposed on members of the University community who violate this policy. Disciplinary actions against employees will be subject to the collective bargaining agreements.
- B. Procedural Guidelines. Vice Presidents and Chancellors are directed to use the most current EEOC Policy Guidance on Sexual Harassment. This can be obtained from the EEO Coordinators on each campus.
- C. Program. To carry out the University's commitment, Vice Presidents and Chancellors are hereby charged with the responsibility and authority to develop a program to implement this policy on sexual harassment. Preventive and corrective action shall include: (i) educational programs to prevent harassment, (ii) wide dissemination of the University's policy prohibiting sexual harassment, (iii) establishment of procedures for responding to complaints of sexual harassment, and (iv) imposition of appropriate sanctions. The development of each program will be reviewed by the Council of Senior Executives to insure consistency throughout the system.
- D. Complaint Procedures. Complaint procedures must comply with the principles of due process. They shall comply with the guidelines in Systemwide Administrative Procedure A9.920, Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission. These guidelines include, but are not limited to, the following requirements: (i)



appointment of Complaint Officers for each campus whose names, phone numbers, and office locations are well publicized, (ii) informal as well as formal procedures, (iii) description of each step in the process, (iv) timeframes for processing complaints and rendering decisions, (v) notification of findings to both parties, (vi) specification of administrators who have authority and responsibility to effect remedies and sanctions, (vii) an appeals process, (viii) provisions for confidentiality and appropriate disclosure, and (ix) statement of nonretaliation policy.

- E. Sanctions. Sanctions shall be reasonably calculated to stop the harassment. Based on the circumstances of each case, appropriate sanctions will be imposed to assure a workplace and educational environment free from sexual harassment. To maintain consistency, Vice Presidents and Chancellors will consult with the systemwide Personnel Management Office prior to imposing sanctions. Disciplinary actions against employees are subject to the applicable collective bargaining agreement.
- F. Monitoring Sexual harassment complaints shall be reported annually to the Office of the President in accordance with Systemwide Administrative Procedure A9.910, Reporting Procedure for Employment Discrimination Complaints. In addition, the Office of the President may periodically request reports from or conduct audits of Vice Presidents and Chancellors efforts to prevent and correct sexual harassment.

V. POLICY ON RETALIATION



Retaliation against parties directly or indirectly involved in any discrimination complaint will not be tolerated and will be considered a separate complaint that may merit the imposition of sanctions.

VI. TYPES OF SEXUAL HARASSMENT

Sexual harassment includes conduct of a sexual nature that is unwanted or unwelcome, or creates a hostile environment for other individuals. While sexual harassment often involves an abuse of authority or power, it can also occur between peers such as student-student or coworker harassment, or it can involve a student harassing a faculty member or employee. It can involve persons of the same or opposite sex. Both men and women can be victims of sexual harassment.

Examples of verbal or physical conduct prohibited by this policy include, but are not limited to:

- A. Sexual assault or other forcible physical sexual behavior that is coercive or violent.
- B. Abuse of authority for sexual favors, such as communications of a sexual nature that (i) promise or imply work or academic benefits in return for sexual favors, or (ii) contain direct or implied threats that submission will be a condition of grades, letters of recommendation, admission to or advancement through programs, promotion, employment or educational status.
- C. Sexually offensive environment includes behavior of a sexual nature that fosters an environment of severe or pervasive intimidation, ridicule, and/or insult based on sex. Such an environment would result from a pattern of conduct that would offend and/or humiliate a reasonable person who was subjected to such conduct.

Examples of behaviors which could constitute this form of sexual harassment include but are not limited to: (i) unnecessary and unwanted touching, patting, hugging or brushing against a person's clothing or body; (ii) remarks of a sexual nature about a person's clothing or body; (iii) remarks about sexual activity or speculations about previous sexual experience; (iv) pressure for sexual activity, an element of which may be nonverbal conduct such as repeated and unwanted staring or sexually suggestive gestures and comments; and (v) posting of sexually offensive literature, pictures, or cartoons.

Examples of conduct which could constitute this form of sexual harassment in a teaching context include but are not limited to: (i) using material of a sexual nature out of context, such as sexually explicit anecdotes, questions, or jokes which are viewed as denigrating or (ii) the insensitive use of material of a sexual nature in classes dealing with sexuality, i.e., the use of examples or jokes that humiliate or are sexually offensive.

VII. STATEMENT ON CONSENSUAL RELATIONSHIPS

Consenting romantic and sexual relationships between faculty member and student or between supervisor and subordinate can lead to charges of sexual harassment. Thus, while such relationships are not expressly forbidden, they

are strongly discouraged. Even in relationships where no negative consequences arise for the individuals involved, they can create a conflict of interest and possible use of academic or supervisory leverage to maintain or promote the relationship. In sexual relationships, viewed by the parties as mutual, there may arise questions of favoritism as well as abuse of trust and power.

Codes of ethics for many professional associations forbid professional-client sexual relationships. In an educational setting, the faculty-student relationship is one of professional and client. The respect and trust accorded a faculty member by a student, as well as the power exercised by the faculty member in giving praise or criticism, grades, recommendations for further study and future employment, etc., greatly diminish the student's actual freedom of choice should the faculty members requests for sexual favors be included along with his or her legitimate expectations. Therefore, faculty are cautioned against the possible consequences of even an apparently consenting sexual relationship coextensive with the academic relationship between faculty member and student.

A faculty member who enters into a sexual relationship with a student (or a supervisor with a subordinate) where a professional power differential exists, must realize that although a sexual relationship is not physically compelled, this is no defense to a future charge of sexual harassment.

VIII. NOTIFICATION OF POLICY VIOLATIONS

All University administrators are required, and other members of the University community are encouraged, by this policy to notify the appropriate Vice President or Chancellor when actions are taken in violation of this policy.