

RESOLUTION AGREEMENT
The University of Hawai'i at Mānoa
OCR Reference No. 10136001

The University of Hawai'i at Mānoa (University) agrees to implement this Resolution Agreement (Agreement) to voluntarily resolve a compliance review (Reference No. 10136001) conducted by the U.S. Department of Education, Office for Civil Rights (OCR) under Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation. The Agreement includes terms that resolve issues for which OCR identified violations under section 303(b) of OCR's Case Processing Manual (CPM). The Agreement also includes terms that the University has entered into and agreed to in order to resolve issues that were not fully investigated prior to the conclusion of the investigation in accordance with section 302 of the CPM. This Agreement does not constitute an admission by the University to the findings made by OCR, and the University shall not be deemed or construed to have made any admission of liability.

OCR acknowledges that during the course of the investigation, the University implemented a number of policies, procedures, and practices in order to improve its response to complaints of alleged sex discrimination, including sexual violence and sexual harassment.

I. TITLE IX SEXUAL HARASSMENT POLICIES AND PROCEDURES

- A. The University will review and revise, as necessary, and provide notice of, its policies and procedures (Procedures) used to address sexual harassment, so that they are consistent with Title IX requirements. The University's review and revision process will, at a minimum, ensure that the Procedures include:
1. clear and consistent explanations in all documents of the specific University policy and/or procedure that applies to each type of sexual harassment report or investigation;
 2. an assurance to timely and appropriately respond to all complaints of sexual harassment and sexual violence, as well as other reports of sexual harassment and sexual violence of which it has notice;
 3. an assurance that the University will take steps to prevent recurrence of any sexual harassment and to correct its discriminatory effects on the complainant and others, if appropriate;
 4. a clear explanation to students, employees and third parties about the policy and procedure that shall be utilized for reports of sexual harassment and sexual violence, including an explanation of how and where complaints may be filed;
 5. provisions ensuring that both parties are notified of the availability of interim measures (such as enforced no contact orders, changes in class schedules, counseling, other mental health services, academic assistance, the ability to retake or withdraw from courses without penalty, etc.) to protect students during the investigation of

possible sexual harassment and during any judicial process, including appeals, and identifying how interim measures may be requested;

6. a statement that the University Title IX Coordinator(s) will be responsible for ensuring the implementation of appropriate interim measures and coordinating the University's response with the appropriate offices on campus;
7. a statement that, in determining whether sexual harassment against a student resulted in a sexually hostile environment, the University will consider the conduct in question from both a subjective and objective perspective;
8. a statement clarifying that the Procedures apply to all University professional and graduate schools, facilities, programs, and activities, including harassment that occurs on campus and harassment that occurs at off-campus programs or activities that are sponsored by the University;
9. reasonable and consistent timeframes for each major stage of the procedure, including any sanctions process and appeal, as well as the process for extending timelines;
10. a statement that any opportunity for parties to provide or access information will be given equally to both parties, including, but not limited to, an opportunity to access and review evidence, present witnesses and other evidence, and receive equally comprehensive notice of the outcome of the investigation (cause/no cause) and appeal phases;
11. a clear description of any informal resolution process the university offers, including that it is voluntary and can be terminated by either party at any time;
12. a statement that the University will consider the effects of off-campus sexual harassment and sexual violence when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity;
13. a definition of "responsible employee" that is consistent with Title IX requirements and a statement about the timeframe within which responsible employees must promptly report sexual harassment and sexual violence upon receiving notice;
14. an explanation of the known relevant details a responsible employee must provide to the Title IX Coordinator about alleged sexual harassment that a student or other person reports to them, even when anonymity or confidentiality has been requested;
15. a description of the factors that the University will consider in determining whether and to what extent any investigation is necessary in cases where a report has been received but no investigation has been requested;
16. a clear prohibition against retaliation, which includes, but is not limited to, witness intimidation and interference and clarification that reports of any of the aforementioned will be promptly investigated by the University under processes and standards that meet Title IX requirements;

17. an explanation of the circumstances under which someone other than the Title IX Coordinator or Deputy Title IX Coordinator will be responsible for processing a complaint or report of sexual harassment; and
 18. a clear and consistent assurance that, regardless of which University employee or entity investigates and resolves the report, that the Title IX Coordinator will maintain oversight of the investigation and resolution, will be provided written notice of the report and the investigation determination, and where sexual harassment/sexual violence is found to have occurred, will oversee the steps the University will take in response.
- B. The University will conduct a comprehensive review of any additional published material relevant to sexual harassment, including electronic materials and websites, and will ensure that all materials are internally consistent, and do not conflict with, the Procedures reviewed and approved by OCR, pursuant to Section I.A. above with respect to defined terms, reporting options, timelines, investigation, and appeal procedures. The University will ensure that old policies and procedures and other outdated materials are removed from and are not available anywhere on the University's websites except as clearly archived material, and that all references to them have been removed from current publications, as necessary, to avoid confusion.
- C. Reporting Requirements:
1. By June 1, 2018, the University will provide to OCR, for review and approval, all draft Procedures developed in accordance with Section I.A. above. If OCR requires any changes to the draft of the Procedures, the University will make the changes and re-submit a draft of the Procedures within 90 days of receiving OCR's notice of required edits.
 2. Within 60 days of receipt of OCR's approval, the University will provide documentation to OCR showing that it has adopted the revised Procedures and to the extent necessary, revised additional materials as required by Section I.B.
 3. Within 60 days of receipt of OCR's approval of the Procedures, the University will provide notification of the Procedures on its website and through an electronic mail message to all employees and students, and provide documentation of this notification to OCR.

II. STAFF TRAINING AND PROFESSIONAL DEVELOPMENT

- A. During the 2017-2018 academic year, the University will provide comprehensive training overseen by the Title IX Coordinator to all "responsible employees," as defined in the Procedures required by Section I. A responsible employee includes any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate University officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Specifically, the training will provide an understanding of the

University's responsibilities under Title IX to address allegations of sexual harassment, sexual violence, and retaliation. The training will include, at a minimum:

1. the University's revised policies and procedures for Title IX reports required by Section I.;
 2. how to inform students and complainants of their right to file Title IX reports and criminal complaints simultaneously;
 3. an explanation of the duty for responsible employees to share information with the Title IX Coordinator, including the relevant information to be gathered and shared;
 4. information about the prohibition on retaliation; and
 5. information about interim measures and University resources, such as counseling and support.
- B. Beginning with the 2018-2019 academic year, the University will ensure that all new responsible employees complete the training live or through an OCR approved online training, pursuant to Section II.A., within six months of their employment start date.
- C. The Title IX Coordinator will ensure the development and provision of annual Title IX training for all University employees and contracted persons who are directly involved in investigating and/or resolving reports of sex discrimination for the University, including sexual harassment and sexual violence, including any staff conducting investigations or making decisions regarding student discipline, Title IX Coordinators and Deputy Coordinators, and confidential advocates. This annual training will be conducted live by trainer(s) with expert knowledge and will include, at a minimum:
1. the University's revised policies and grievance procedures for Title IX reports;
 2. the University's responsibilities under Title IX to address allegations of sexual harassment and sexual violence, whether or not the actions are potentially criminal in nature;
 3. recognizing and responding to allegations and reports pursuant to Title IX, including conducting interviews of victims of sexual violence and communicating in an impartial and objective manner;
 4. recognizing and appropriately responding to allegations of retaliation, intimidation, and coercion pursuant to Title IX;
 5. how to conduct and document equitable, adequate, prompt, reliable and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation;
 6. protection of information regarding sexual harassment and sexual violence allegations so that only University employees with a need to know receive such information;

7. how to determine the existence of a hostile environment and methods for eliminating and preventing the recurrence of a hostile environment;
8. the link between alcohol and drug use and sexual harassment and sexual violence, including how to address the challenges of investigating incidents involving alcohol or drug use; and
9. information on the complainant's option to request confidentiality and how such requests will be evaluated, and the impact of such requests on the University's responsibility to investigate.

D. Reporting Requirements:

1. By July 23, 2018, the University will provide OCR with a draft of the proposed staff training materials for review and approval, as described in Sections II.A. and II.C., along with the name(s), title(s) and qualification(s) of the proposed trainer(s) for review and approval.
2. The University will implement the initial staff training as outlined in Section II.A. and initial training for University employees and contracted persons with Title IX responsibilities as outlined in Section II.C. within 60 days of OCR's review and approval of the training materials and provide documentation that the trainings have been conducted. The documentation will include, at a minimum, the dates of the training, a copy of any materials presented or distributed during the training, and a list of the names and position titles of each individual who received the training, along with a list of University employees and contracted persons who have yet to be trained and a plan for make-up training. The documentation for live training will include the name(s), title(s) and qualifications of the trainer(s).
3. By December 31, 2018, and by the same date in 2019 and 2020, the University will provide documentation to OCR demonstrating that it has conducted the trainings of new responsible employees under Section II.B. The documentation will include, at a minimum, the dates of the training, the name(s), title(s) and qualifications of the trainer(s), a copy of any materials presented or distributed during the training, and a list of the names and position titles of the individuals who attended the training, along with a list of new University employees who have yet to be trained and a plan for make-up training.
4. By December 31, 2018, and by the same date in 2019 and 2020, the University will provide documentation to OCR demonstrating that it has conducted annual training of University employees and contracted persons with Title IX responsibilities under Section II.C. The documentation will include, at a minimum, the dates of the training, the name(s), title(s) and qualifications of the trainer(s), a copy of any materials presented or distributed during the training, and a list of the names and position titles of the individuals who attended the training, along with a list of University employees and contracted persons who have yet to be trained and a plan for make-up training.

III. CLIMATE SURVEYS

- A. By March 1, 2019, and again by the same date in 2021, in consultation with the Title IX Coordinator, the University will conduct, as planned, the climate survey of undergraduate and graduate students which includes questions designed to do the following:
1. assess students' attitudes and knowledge regarding sexual harassment, sexual violence, and retaliation;
 2. gather information regarding students' experience with sexual harassment and sexual violence while attending the university;
 3. determine whether students know when and how to report such prohibited conduct;
 4. gauge students' comfort with reporting such prohibited conduct;
 5. identify potential barriers to reporting; and
 6. assess students' familiarity with the University's outreach, education, and prevention efforts to identify which strategies are effective.
- B. Reporting Requirements:
1. By January 30, 2018, the University will provide to OCR, for review and approval, its plan for conducting climate surveys using the climate survey the University launched in spring 2017. The plan will include the University's methodology for conducting the climate surveys and analyzing the results. The University will provide any proposed future revisions to its climate survey plan to OCR, for review and prior approval (allowing at least 30 days for OCR to conduct its review), during the monitoring of the Agreement.
 2. By December 28, 2019, and by the same date in 2021, the University will provide documentation to OCR demonstrating implementation of Section III.A., including a description of how the climate survey was conducted, summaries of any student responses to surveys, summaries of other information obtained, and a summary of any actions the University decides to take based on the results of the surveys, if appropriate.

IV. RECORDKEEPING RESPONSIBILITIES AND FUTURE REPORTS

- A. The University will submit documentation of its centralized record keeping system for documenting, reviewing, and examining complaints, reports, investigations, interim measures, and resolutions of student, employee, and third party conduct that may constitute sexual harassment or sexual violence to ensure that such reports are

adequately, reliably, promptly, and impartially investigated and resolved. The system will require, at a minimum, that:

1. all “responsible employees,” as defined in the Procedures required by Section I, including public safety officers, with the exception of health care professionals and any other individuals who are statutorily prohibited from reporting, will notify the Title IX Coordinator within a designated timeframe of receiving notice of sex discrimination, including sexual harassment and sexual violence, regardless of whether a formal complaint was filed, for the purpose of ensuring that individuals subject to sex discrimination are consistently and promptly receiving necessary services and information;
2. the Title IX Coordinator or her or his designee enters into an electronic, confidential database or other system the following fields of information: the date and nature of the complaint or other report (witness or responsible employee report); the name of the complainant and/or affected party or that the report was anonymous; the location and date of the alleged conduct; the name of the person(s) who received, made or forwarded a report; the name(s) of the respondent; the name(s) of the person(s) assigned to investigate the report; any interim measures taken, and any disciplinary charges issued; the date and a summary of the investigative findings; the date and a summary of the outcome of any appeal; and a summary of the final remedial and disciplinary actions taken, if any;
3. the Title IX Coordinator will ensure the maintenance of records of all reports, investigations, findings, and appeals, including, but not limited to: the location where the incident took place, the name of the individual who reported the allegation, the identification of the alleged victim and respondent, if an investigation is not completed, the reason for not completing the investigation, if the investigation is not completed within established timeframes, the reason why the timeframe was extended, any statements or other evidence submitted or collected, interview notes, correspondence related to the investigation, documentation of investigative steps completed, actions taken on behalf of the complainant, respondent, or third parties, including interim measures, the determination, including disciplinary actions, if any, of all parties involved, including findings and outcomes as communicated to the parties; and records of any appeals;
4. the University will demonstrate that the process developed by the University requires that the University maintain all evidence listed herein pursuant to the University’s document retention policies. The University will also produce documentation evidencing that the process requires the University to maintain information regarding requests for confidentiality, the individual responsible for assessing the University’s determination regarding the request for confidentiality, as well as interim and/or remedial services provided to the parties, including referrals to counseling and/or academic services in accordance with University document retention policies. The University will also indicate the individual(s) responsible for maintaining and reviewing this information and the location where the records will be maintained.

B. Reporting Requirements:

1. By February 1, 2018, the University will provide a proposal of the system for reviewing and examining sexual harassment and sexual violence reports described in Section IV.A. to OCR for review and approval. If OCR requires changes to the proposed system, the University will re-submit its draft of the system within 90 days of receiving OCR's notice of required changes.
2. Within 90 days of OCR approval, the University will adopt the system developed in Section IV.A.
3. Following OCR's approval of the system described in Section IV.A. and until such time as OCR closes the monitoring of this Agreement, within 30 days of the end of each six month period (ending on June 30 and December 31 of each calendar year), the University will provide OCR with a copy of all reports of sexual harassment and sexual violence for which a student was one of the parties, including all fields of information, entered into the electronic database described in Section IV.A. for the preceding six month period.

V. REVIEW OF REPORTS

- A. The University will contact the complainants and respondents who were involved in reports and complaints of sexual harassment and sexual violence from August 1, 2013, to October 1, 2017, for which a student was one of the parties, to provide them with the opportunity to request that the University review any specific concerns they may have about the processing of their report or complaint.

The notice will make clear that the University does not intend to revisit findings, determinations, or sanctions but rather will conduct reviews to assess whether any deficiency on its part in responding or providing a prompt and equitable process may have interfered with a student's educational benefits or services.

If a request is received, the University will review the concerns identified by the requestor to determine if an effective response or the elements of a prompt and equitable process might have been denied. OCR will be available for consultation with the University as they consider requests for review. If the University identifies concerns that a prompt and equitable process might have been denied or that an effective response may not have been provided, the University will determine if there are any appropriate remedies that may still be available for the affected parties. The University will respond to each requestor. The response will include either a determination that the University has not identified any deficiency that may have interfered with a student's educational benefits or services or an offer from the University of remedies and/or an explanation of other actions the University proposes.

- B. Reporting Requirements:

1. By April 30, 2018, the University will provide to OCR, for review and approval, the draft notice to parties or reporters described in Section V.A. above. If OCR requires any changes to the draft notice, the University will make the changes and re-submit a draft of the notice within 30 days of receiving OCR's feedback.
2. Within 30 days of OCR's approval of the notice, the University will issue the notice and provide the identified parties or reporters with a minimum of 60 days to respond.
3. Within 30 days of the closing of the period for requestors to contact the University, the University will provide OCR with copies of the requests received, including name and case number of the requestor, if not included in the request.
4. Within 60 days of sending the list to OCR, the University will submit its proposed responses. If OCR determines that the University should take any different or further action(s) and/or provide any different or further remedies or notifications, OCR will provide the University an opportunity to discuss the scope of the action. The University will issue responses within 45 calendar days of receipt of OCR's approval of the proposed responses.

Monitoring: General Principles

The University understands that OCR will not close the monitoring of this Agreement until such time that OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§ 106.8, and 106.31, which were at issue in the OCR compliance review. The University anticipates that it may complete its obligations under the Agreement by December 28, 2021. The University also understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the University understands that, during the monitoring of this Agreement, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§ 106.8, and 106.31, which were at issue in the compliance review. In addition, the University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings, including to enforce this Agreement, OCR shall give the University written notice of the alleged breach and 60 days to cure the alleged breach. This Agreement does not constitute an admission by the University of any violation of Title IX.

This Agreement will become effective immediately upon the signature of the Chancellor or his designee below.

The University of Hawai'i at Mānoa



David Lassner
Interim Chancellor
University of Hawai'i at Mānoa

28 Dec 2017

Date