



Title

Interim Administrative Complaint Procedures Regarding Sex Discrimination

Header

Administrative Procedure Chapter 1, General Provisions
Administrative Procedure AP 1.204, Interim Administrative Complaint Procedures
Regarding Sex Discrimination
Effective Date: August 1, 2024
Prior Dates Amended: January 2022, August 2020
Responsible Office: Office of the President
Governing Board of Regents and/or Executive Policy: RP 1.205, EP 1.204
Review Date: August 2027

Note: The University of Hawai'i's Interim Administrative Procedure AP 1.204 is a provisional procedure 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

To provide an administrative complaint procedure for the University of Hawai'i ("University") for the prompt and equitable resolution of Complaints made by Students, Employees, or other individuals who are participating or attempting to participate in the University's Education Program or Activity, or by the Title IX Coordinator, alleging Sex-Based Discrimination or Retaliation.

II. Scope and Jurisdiction

These procedures apply to all Students, Employees, and third parties with respect to alleged Sex Discrimination or Retaliation that occurred on or after August 1, 2024 in accordance with the Interim Policy on Sex Discrimination, EP 1.204. Conduct that occurred prior to August 1, 2024 shall be addressed in accordance with the appropriate policy and procedure.

III. Definitions

A. Advisor

Advisor means an individual chosen by a Party to accompany the Party to meetings related to the Complaint or administrative complaint procedure and to advise the Party on that process. An Advisor may not have a conflict of interest or be a witness in the case.

B. Appeal Officer

Appeal Officer is the impartial individual(s) designated by the Title IX Coordinator to review appeals related to the University's administrative complaint procedure and who has authority to make a Final Determination. An Appeal Officer can be either an individual or a panel.

C. Coercion

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain Consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be Coercive.

D. Complainant

Complainant means:

1. A Student or Employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination or Retaliation under this policy; or
2. A person other than a Student or Employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination or Retaliation under this policy and who was participating or attempting to participate in the University's Education Program or Activity at the time of the alleged Sex Discrimination or Retaliation.

E. Complaint

Complaint means an oral or written request to the University that objectively can be understood as a request for the University to investigate and make a Decision about alleged Sex Discrimination or Retaliation under this policy.

F. Confidential Employee

Confidential Employee means:

1. An Employee of the University whose communications are privileged or confidential under federal or Hawai'i state law. The Employee's confidential status, for purposes of this policy, is only with respect to information received while the Employee is functioning within the scope of their duties to which privilege or confidentiality applies (e.g., priest, licensed professional counselors, health service providers);
2. An Employee of the University that the University has designated as confidential under this part for the purpose of providing services to persons related to Sex Discrimination or Retaliation. If the Employee also has a duty not associated with providing those services, the Employee's confidential status is only with respect to information received about Sex Discrimination in connection with providing those services (e.g., confidential advocates); or
3. An Employee of the University who is conducting an Institutional Review Board-approved human-subjects research study designed

to gather information about Sex Discrimination – but the Employee’s confidential status is only with respect to information received while conducting the study.

Certain Confidential Employees may nonetheless be required to disclose specific information by law, such as mandatory reporting laws.

G. Consent

Consent means knowing, voluntary, and clear permission by word or action to engage in sexual activity.

A person cannot give Consent if the person is under the age of Consent for sexual activity,¹ the person is unable to Consent due to a mental disability, or the person is Incapacitated or physically helpless. A person also cannot give Consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs.

Lack of protest or resistance cannot be interpreted as Consent. Silence cannot be interpreted as Consent. Consent must be ongoing throughout any sexual activity 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.

H. Decision

Decision means the conclusion of the Decision Maker based on the preponderance of the evidence standard of proof whether the alleged conduct occurred, whether the conduct met the definition of Sex Discrimination or Retaliation, and whether a policy violation occurred. If the Decision Maker is not persuaded under the preponderance of the evidence standard that Sex Discrimination or Retaliation occurred, whatever the quantity of the evidence is, the Decision Maker will not determine that Sex Discrimination or Retaliation that amounted to a policy violation occurred.

1. The Decision Maker will issue a Cause Finding if they are persuaded that a policy violation occurred.
2. The Decision Maker will issue a No Cause Finding if they are not persuaded that a policy violation occurred.

¹ In Hawai'i, the age of Consent is typically sixteen (16). However, the age of Consent is between fourteen (14) and fifteen (15) when either the other person is less than five (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.

I. Decision Maker

Decision Maker means an impartial individual(s) designated by the Title IX Coordinator who has decision-making authority within this administrative complaint procedure. A Decision Maker can be either an individual or a panel.

J. Education Program or Activity

Education Program or Activity means all of the operations of the University in the United States. This includes, but is not limited to:

1. Conduct that occurs in any building owned or controlled by a Student organization that is officially recognized by the University; and
2. Conduct that is subject to the University's disciplinary authority.

The University's Education Program or Activity also includes a Sex-based hostile environment under the University's Education Program or Activity in the United States, even when some conduct alleged to be contributing to the hostile environment occurred outside the University's Education Program or Activity or outside the United States.

K. Employee

Employee means all individuals employed by the University as executive/managerial, faculty, staff, and casual hires.

L. Force

Force means the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce Consent. Sexual activity that is Forced is, by definition, non-Consensual, but non-Consensual sexual activity is not necessarily Forced. Silence or the absence of resistance alone is not Consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-Consent.

M. Fact-Finding Report

Fact-Finding Report is an investigation report compiled by the Investigator. It can include but is not limited to an accurate summary of the allegations of the Complainant and the relevant and not otherwise impermissible evidence, including statements made by the Complainant, Respondent, and other relevant witnesses, and any documentary evidence. The Fact-Finding Report shall not include any Decisions or recommendations.

N. Final Determination

Final Determination means the conclusion of the Appeal Officer to uphold or overturn the Decision of the Decision Maker. A Final Determination cannot be further appealed under this procedure or its related policy, EP 1.204.

O. Incapacitation

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed Consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. Incapacitation also covers a person whose Incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of Incapacitating drugs.

P. Investigator

Investigator is an impartial individual(s) assigned by the Title IX Coordinator to gather facts, assess relevance, synthesize the evidence, and compile the information into a Fact-Finding Report.

Q. Parties or Party

Parties mean the Complainant(s) and Respondent(s), collectively.

Party refers to either the Complainant or Respondent, individually.

R. Pregnancy and Related Conditions

Pregnancy and Related Conditions means:

1. Pregnancy, childbirth, termination of pregnancy, or lactation;
2. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
3. Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

S. Remedies

Remedies are post-finding actions directed to a Party or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the university’s educational program.

T. Report

A *Report* occurs when an individual notifies the University of alleged Sex Discrimination or Retaliation. A Report is distinct from a Complaint because it does not request the University to investigate and make a Decision about the allegations. A Report may, however, include a request that the University provide Supportive Measures.

U. Respondent

Respondent means a person who is alleged to have violated the University’s prohibition on Sex Discrimination or engaged in Retaliation, as defined in EP 1.204.

V. Sex

Sex includes a person's actual or perceived gender assigned at birth, gender identity, and sexual orientation as well as Sex stereotypes, Sex characteristics, and Pregnancy and Related Conditions.

W. Student

Student means a person who has gained admission to the University.

X. Supportive Measures

Supportive Measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that Party's access to the University's Education Program or Activity, including measures that are designed to protect the safety of the Parties or the University's educational environment; or
2. Provide support during the administrative complaint procedure or during an Informal Resolution process.

Y. Title IX Coordinator

Title IX Coordinator is an individual designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator.

IV. Administrative Complaint Procedures for Complaints of Sex Discrimination, Including Complaints of Sex-Based Harassment Not Involving a Student Complainant or Respondent

Complaints of Sex Discrimination or Retaliation addressed under Section IV. of these procedures will proceed in accordance with the following parameters:

A. Complaints

1. The following persons may make a Complaint of Sex Discrimination or Retaliation other than Sex-Based Harassment:
 - a. A Complainant;
 - b. An authorized legal representative with the legal right to act on behalf of a Complainant;
 - c. The Title IX Coordinator;
 - d. Any Student or Employee of the University; or
 - e. Any person other than a Student or Employee who was participating or attempting to participate in the University's

Education Program or Activity at the time of the alleged Sex Discrimination.

2. The following persons may make a Complaint of Sex-Based Harassment:
 - a. A Complainant;
 - b. An authorized legal representative with the legal right to act on behalf of a Complainant; or
 - c. The Title IX Coordinator.

A person is entitled to make a Complaint of Sex-Based Harassment only if they themselves are alleged to have been subjected to the Sex-Based Harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a Complaint.

3. The University may consolidate Complaints of Sex Discrimination or Retaliation against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations arise out of the same facts or circumstances. Consolidation is not permitted if it would violate the Family Educational Right and Privacy Act ("FERPA"). When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

B. Dismissal of Complaint

1. The University may dismiss a Complaint of Sex Discrimination or Retaliation under Section IV. of this administrative complaint procedure if:
 - a. The University is unable to identify the Respondent after taking reasonable steps to do so;
 - b. The Respondent is not participating in the University's Education Program or Activity and is not employed by the University;
 - c. The University obtains the Complainant's voluntary withdrawal in writing of any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex Discrimination or Retaliation even if proven; or
 - d. The University determines the conduct alleged in the Complaint, even if proven, would not constitute Sex

Discrimination or Retaliation. Before dismissing the Complaint, the University will make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the Parties simultaneously in writing.

The University will notify the Complainant that a dismissal may be appealed on the bases outlined in the Appeals section, below. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section.

2. When a Complaint is dismissed, the University will, at a minimum:
 - a. Offer Supportive Measures to the Complainant as appropriate;
 - b. If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
 - c. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Sex Discrimination or Retaliation does not continue or recur within the University's Education Program or Activity.
3. If a Complaint is dismissed, the University may still address the allegations under other University policies or procedures.

C. Informal Resolution

In lieu of resolving allegations or a Complaint through the University's administrative complaint procedures, the Parties may instead elect, with approval from the Title IX Coordinator, to participate in an Informal Resolution process, including, but not limited to, facilitated discussions, mediation, ho'oponopono, etc. A Party may request that the matter be resolved through Informal Resolution at any time prior to reaching a Decision.

Informal Resolution is a completely voluntary process and requires the written consent of the Complainant and Respondent and the approval of the Title IX Coordinator to proceed. The University does not offer Informal Resolution when such a process would conflict with federal, state, or local law.

Before the initiation of an Informal Resolution process, the University will explain in writing to the Parties:

1. The allegations;

2. The requirements of the Informal Resolution process;
3. That any Party has the right to withdraw from the Informal Resolution process and initiate or resume administrative complaint procedures at any time before agreeing to a resolution;
4. That if the Parties agree to a resolution at the end of the Informal Resolution process, they cannot initiate or resume administrative complaint procedures arising from the same allegations;
5. The potential terms that may be requested or offered in an Informal Resolution agreement, including notice that an Informal Resolution agreement is binding only on the Parties; and
6. What information the University will maintain and whether and how the University could disclose such information for use in administrative complaint procedures if such procedures are initiated or resumed.

The terms of an Informal Resolution, may include Supportive Measures, as well as other arrangements agreed to by the Parties. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered to be resolved and the terms are implemented.

D. Written Notice of Allegations

Upon initiation of these administrative complaint procedures under this Section IV., the University will notify the Parties in writing of the following with sufficient time for the Parties to prepare a response before any initial interview:

1. The University's administrative complaint procedures and Informal Resolution process;
2. Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex Discrimination or Retaliation, and the date(s) and location(s) of the alleged incident(s);
3. Retaliation is prohibited;
4. The Respondent is presumed not responsible for the alleged Sex Discrimination or Retaliation until the conclusion of the administrative complaint procedures. Prior to the conclusion, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decision Maker;
5. The Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney. If a Party selects an Advisor

who is not an Employee of the University, the Party does so at their own expense;

6. The Parties are entitled to an equal opportunity to access the draft Fact-Finding Report that accurately describes the relevant and not otherwise impermissible evidence. The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any Party; and
7. The Interim Policy on Sex Discrimination and Section IV.B.1.b. of EP 7.208 Systemwide Student Conduct Code prohibits knowingly making false statements or knowingly submitting false information during the administrative complaint procedures.

If, in the course of an investigation, the University decides to investigate additional allegations of Sex Discrimination or Retaliation by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated Complaint, the University will provide written notice of the additional allegations to the Parties.

E. Administrative Complaint Procedure Requirements

The administrative complaint procedures under this Section IV. incorporate the following general requirements:

1. The University will treat Complainants and Respondents equitably.
2. The University requires that any Title IX Coordinator, Investigator, or Decision Maker not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
3. The University presumes that the Respondent is not responsible for the alleged Sex Discrimination or Retaliation until a Decision is made at the conclusion of its administrative complaint procedures.
4. The University will not impose discipline on a Respondent for prohibited Sex Discrimination or Retaliation unless there is a Decision at the conclusion of the administrative complaint procedures that the Respondent engaged in prohibited Sex Discrimination or Retaliation.
5. The University will not discipline a Party, witness, or others participating in the administrative complaint procedures for making a false statement or for engaging in consensual sexual conduct based solely on the Decision whether Sex Discrimination or Retaliation occurred.
6. The University has established the following timeframes for the major stages of the administrative complaint procedures:

- a. Evaluation: 15 business days from University's receipt of the Complaint.
- b. Investigation: 60 business days from the date the Investigator is assigned and receives the Complaint file.
- c. Decision: 20 business days from the conclusion of the investigation process.
- d. Appeal and Final Determination, if any: 20 business days from the Appeal Officer's receipt of the final written statement or expiration of the deadline to do so.

The above timeframes are good-faith approximations and also may be extended for good cause.

7. The University has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the delay:
 - a. The Title IX Coordinator may reasonably extend timeframes for good cause. Good cause includes the availability of the Parties and witnesses; the timing of breaks; efforts to utilize Informal Resolution; compliance with a request by external law enforcement; accounting for complexities of a case such as the number of witnesses and volume of information provided by the Parties; or addressing other legitimate reasons.
 - b. The Parties or Investigator(s) may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator. Extensions granted to one Party will be granted to the other Party. Requests for an extension for the purpose to simply prolong the process will not be permitted. Deadlines will be enforced, and a failure to meet deadlines may result in forfeiture of a Party's ability to participate in that aspect of the investigation.
8. The University will take reasonable steps to protect the privacy of the Parties and witnesses during its administrative complaint procedures. These steps will not restrict the ability of the Parties to obtain and present evidence, speak with witnesses; consult with family members, confidential resources, or Advisors; or otherwise prepare for or participate in the administrative complaint procedures.
9. The University will objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility assessments will not be based on a person's status as a Complainant, Respondent,

or witness.

10. The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
 - a. Evidence that is protected under a privilege recognized by federal or state law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - b. A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the University obtains that Party's or witness's voluntary, written consent for use in its administrative complaint procedures; and
 - c. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude a Decision that Sex-Based Harassment occurred.
11. Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in these proceedings.

F. Investigation

The Title IX Coordinator will designate an Investigator(s) to conduct a prompt, thorough, and impartial Investigation of the Reported Sex Discrimination or Retaliation and create a Fact-Finding Report.

The Title IX Coordinator will also designate a Decision Maker. The Parties will be provided notice of the name of the Decision Maker, and Parties may request a substitution if Decision Maker poses a conflict of interest or has bias. The request will be considered by the Title IX Coordinator.

During the Investigation:

1. The University will provide for adequate, reliable, and impartial investigation of Complaints.
2. The burden is on the University – not on the Parties – to conduct an investigation that gathers sufficient evidence to determine whether Sex Discrimination or Retaliation occurred.
3. The Investigator(s) will interview the Parties, review any documentary evidence, and interview witnesses deemed by the Investigator(s) to have relevant and material information pertaining to the Complaint.
4. The University will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate. Such notice also will include any applicable rules of order and decorum.
5. The University will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of the Advisor for the Complainant or Respondent in any meeting or proceeding.² However, the University will not unreasonably extend the timelines established in these procedures to accommodate the schedule of a Party's Advisor.

The University may establish restrictions regarding the extent to which the Advisor may participate in these administrative complaint procedures, as long as the restrictions apply equally to the Parties. In particular, the role of a Party's Advisor shall be limited to support and consultation. The Title IX Coordinator and Investigator must be advised in writing that an Advisor will be present at least 24 hours before any scheduled meeting or proceeding.³ The University reserves the right to have its own legal counsel present. If any Advisor's conduct is not consistent with the University's guidelines or any other applicable rules of order and decorum, they may be excluded from the process.

6. The University will provide the Parties with the same opportunities, if any, to have people other than the Advisor of the

² The University may require Advisors to agree to a non-disclosure agreement.

³ This notification should include the full name and title of the Advisor of choice, as well as contact information (phone, email and address.)

Parties' choice present during any meeting or proceeding.

7. The University may include another Employee in the interviews to act as a notetaker or witness.
8. When a Party or witness meets with the Investigator, the Investigator will ask the Party or witness questions related to the allegations, and may ask if the witness has any information to submit (e.g. documents, texts, emails, images, etc.) for the Investigator to review and consider. In some cases, the Investigator may ask to interview a witness more than once if additional information becomes available since the previous interview with the witness and/or to follow up with a witness to clarify information or previous statements.
9. The University will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The University does not permit the Parties to present expert witnesses.
10. The University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
11. The University will provide each Party and the Party's Advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of Sex Discrimination or Retaliation and not otherwise impermissible, in the following manner:
 - a. The University will provide an equal opportunity to access the draft Fact-Finding Report that accurately describes the relevant and not otherwise impermissible evidence. The University will also provide the Parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any Party;
 - b. The University will provide a reasonable opportunity to review and respond to the evidence and/or the draft Fact-Finding Report; and
 - c. The University will take reasonable steps to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the administrative complaint procedures. Disclosures of such information and evidence for purposes of external administrative proceedings or litigation related to the Complaint of Sex Discrimination or Retaliation are authorized.
12. Upon completion of the investigation, the Decision Maker will be

provided with the final Fact-Finding Report, including any responses provided during the investigation, and the relevant and not otherwise impermissible evidence. A copy of this information shall also be provided to the Title IX Coordinator.

13. To the extent credibility is both in dispute and relevant to evaluating one or more allegations, the Decision Maker will conduct their own meeting(s) with any such individuals.

G. Decision on Whether Sex Discrimination or Retaliation Occurred

1. Following the investigation and evaluation of the final Fact-Finding Report and all relevant and not otherwise impermissible evidence, the Decision Maker:
 - a. Will use the preponderance of the evidence standard of proof to determine whether the alleged conduct occurred, whether the conduct met the definition of Sex Discrimination or Retaliation, and whether a violation of EP 1.204 occurred by issuing a Cause Finding or No Cause Finding. The preponderance of the evidence standard means that it is more likely than not that a policy violation occurred and requires the evaluation of relevant and not otherwise impermissible evidence for its persuasiveness. If the Decision Maker is not persuaded under the preponderance of the evidence standard that Sex Discrimination or Retaliation occurred, whatever the quantity of the evidence is, the Decision Maker will not determine that Sex Discrimination or Retaliation amounting to a policy violation occurred;
 - b. May choose to place less or no weight upon all statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decision Maker will not draw an inference about whether Sex Discrimination or Retaliation occurred based solely on a Party's or witness's refusal to respond to such questions. However, the potential impact on the weight to be given to a Party's statements may have a significant effect on the preponderance of the evidence and, consequently, the Decision Maker's ultimate Decision;
 - c. Will notify the Parties simultaneously in writing of the Decision whether Sex Discrimination or Retaliation occurred under EP 1.204, including:
 - i. A description of the alleged Sex Discrimination or Retaliation;
 - ii. Information about the policies and procedures that the

- University used to evaluate the allegations;
- iii. The Decision Maker's evaluation of the relevant and not otherwise impermissible evidence and rationale for the Decision whether Sex Discrimination or Retaliation occurred;
 - iv. To the extent appropriate, when the Decision Maker finds that Sex Discrimination or Retaliation occurred, any disciplinary sanctions that the University is permitted to share pursuant to state or federal law that the University will impose on the Respondent, whether Remedies other than the imposition of disciplinary sanctions will be provided by the University to the Complainant, and other Students identified by the University to be experiencing the effects of the Sex Discrimination or Retaliation; and
 - v. The University's procedures and permissible bases for the Complainant and Respondent to appeal;
- d. Will comply with the Title IX administrative complaint procedures before the imposition of any disciplinary sanctions against a Respondent; and
 - e. Will not discipline a Party, witness, or others participating in the Title IX administrative complaint procedures for making a false statement or for engaging in consensual sexual conduct based solely on the Decision whether Sex Discrimination or Retaliation occurred.
2. If there is a Decision that Sex Discrimination or Retaliation occurred, the Title IX Coordinator, as appropriate, will:
- a. Coordinate the provision and implementation of Remedies to the Complainant and other people the University identifies as having had equal access to the University's Education Program or Activity limited or denied by Sex Discrimination or Retaliation;
 - b. Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions that the University is permitted to share pursuant to state or federal law; and
 - c. Take other appropriate prompt and effective steps to ensure that Sex Discrimination or Retaliation does not continue or recur within the University's Education Program or Activity.

H. Appeals

1. The University will offer an appeal from a dismissal or Decision on the following bases:
 - a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome and that was not reasonably available when the Decision or dismissal was made; and
 - c. The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that would change the outcome.
2. If a Party appeals a dismissal or Decision, the University will:
 - a. Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
 - b. Implement appeal procedures equally for the Parties;
 - c. Ensure that the Appeal Officer did not take part in an Investigation of the allegations, dismissal of the Complaint, or serve as the Decision Maker; and
 - d. Ensure that the Appeal Officer has been trained consistent with the Title IX regulations.
3. An appeal by either Party must be made in writing to the Title IX Coordinator within seven (7) business days after such Party has received notice of the dismissal or Decision. An appeal must state the ground on which the appeal is made.
4. Upon receipt of an appeal, the Title IX Coordinator shall consider the stated basis for the appeal. If the appeal does not set forth a permissible basis, the Title IX Coordinator will make reasonable efforts to clarify the basis for the appeal with the appealing Party. The Party may have an additional seven (7) business days to clarify the basis for the appeal.
5. The Title IX Coordinator shall forward the appeal to the other Party. The non-appealing Party will have five (5) business days to submit a written statement in support of or against the appeal to the Title IX Coordinator. The Title IX Coordinator shall appoint an Appeal Officer and forward the appeal and any additional written statement, if applicable, to the Appeal Officer within five (5) business days of receipt.
6. The Appeal Officer will examine the information presented and

issue a written conclusion or Final Determination, as applicable, regarding the appeal and the rationale for the appeal decision within twenty (20) business days from when the Title IX Coordinator forwarded the appeal documents. This written conclusion or Final Determination will be provided to both Parties simultaneously and cannot be further appealed under these procedures or related policy, EP 1.204.

7. For all included Respondent Employees covered by collective bargaining, appeals of disciplinary actions shall be filed in accordance with the applicable collective bargaining agreement. For all excluded Respondent Employees, appeals of disciplinary actions shall be filed in accordance with Administrative Procedure AP 9.110, Employment-Related Grievance Procedure for Persons (Including Applicants for Positions) Not Covered by Collective Bargaining Agreement Grievance Procedures or Other Applicable Procedures.

I. Disciplinary Sanctions and Remedies

1. Following a Decision without a subsequent appeal or Final Determination that Sex Discrimination or Retaliation occurred, the University may impose disciplinary sanctions upon the Respondent, in accordance with appropriate collective bargaining agreements, which may include but are not limited to:
 - a. For a Student Respondent: disciplinary warning; disciplinary probation; residential probation; residential suspension; suspension; expulsion; fines; behavioral agreements; no-contact orders; letter of apology; reflection/research papers; community restitution; mandatory training and education; mandatory meeting(s) with the Title IX Coordinator or designee; mandatory counseling; withholding or delaying the conferral of degree.

To maintain consistency, the Decision Maker should consult with the Senior Student Affairs Officer prior to imposing Student disciplinary actions.
 - b. For an Employee Respondent: written warning; final written warning; suspension; involuntary termination.

To maintain consistency, the Decision Maker should consult with Human Resources prior to imposing Employee disciplinary actions.
2. Disciplinary sanctions will only be disclosed to the Complainant when there is a finding of Sex Discrimination.
3. The University may provide Remedies designed to restore or

preserve equal access to the University's Education Program or Activity, which may include, but are not limited to: a campus directive of no contact; limiting and/or scheduling access of individual buildings; making an escort available to assist a Complainant or Respondent to move safely between classes and campus activities; adjusting class or work schedules or methods of participating in activities to minimize campus contact between a Complainant and a Respondent; moving a Complainant or Respondent to a different residence hall and/or dining hall; counseling services; medical services; academic support, such as extensions of deadlines or other course-related adjustments; changes in work locations; leaves of absence; increased security and monitoring of certain areas of campus; or adjusting reporting lines. For Employee Respondents, the University may also issue no-contact orders, mandated counseling and/or training, verbal warnings/reprimands, and/or conference summaries as Remedies.

J. Disclosure of Outcome

The University will not share information obtained during the course of a proceeding with individuals or entities external to the University unless required by federal or state law or compelled to do so, such as by receipt of a lawfully issued subpoena or court order. The University may also share information about the proceeding and outcome consistent with FERPA.

K. Special Procedure Concerning Complaints against a Title IX Coordinator

If a Complaint alleges Sex Discrimination or Retaliation by the Title IX Coordinator, the President or Chancellor of the campus, or their designee, will designate the Investigator and Decision Maker and oversee the Supportive Measures, investigation, adjudication, and resolution process under this policy.

V. Administrative Complaint Procedures for Complaints of Sex-Based Harassment Involving a Student Complainant and/or Respondent

Complaints of Sex-Based Harassment involving a Student Complainant and/or Respondent addressed under Section V. of these administrative complaint procedures will proceed in accordance with the following parameters:

A. Complaints

1. The following persons may make a Complaint of Sex-Based Harassment:
 - a. A Complainant;
 - b. An authorized legal representative with the legal right to act on behalf of a Complainant; or

- c. The Title IX Coordinator.

A person is entitled to make a Complaint of Sex-Based Harassment only if they themselves are alleged to have been subjected to the Sex-Based Harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a Complaint.

2. The University may consolidate Complaints of Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations arise out of the same facts or circumstances. Consolidation is not permitted if it would violate the FERPA. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

B. Dismissal of a Complaint

1. The University may dismiss a Complaint of Sex-Based Harassment under Section V. of this administrative complaint procedure if:
 - a. The University is unable to identify the Respondent after taking reasonable steps to do so;
 - b. The Respondent is not participating in the University's Education Program or Activity and is not employed by the University;
 - c. The University obtains the Complainant's voluntary withdrawal in writing of any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment even if proven; or
 - d. The University determines the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment. Before dismissing the Complaint, the University will make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the Parties simultaneously in writing.

The University will notify the Complainant that a dismissal may be appealed on the bases outlined in the Appeals section, below. If the

dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section.

2. When a Complaint is dismissed, the University will, at minimum:
 - a. Offer Supportive Measures to the Complainant as appropriate;
 - b. If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
 - c. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Sex-Based Harassment does not continue or recur within the University's Education Program or Activity.
3. If a Complaint is dismissed, the University may still address the allegations under other University policies or procedures.

C. Informal Resolution

In lieu of resolving allegations or a Complaint through the University's administrative complaint procedures, the Parties may instead elect, with approval from the Title IX Coordinator, to participate in an Informal Resolution process, including, but not limited to, facilitated discussions, mediation, ho'oponopono, etc. A Party may request that the matter be resolved through Informal Resolution at any time prior to reaching a Decision.

Informal Resolution is a completely voluntary process and requires the written consent of the Complainant and Respondent and the approval of the Title IX Coordinator to proceed. The University does not offer Informal Resolution when such a process would conflict with federal, state, or local law.

Before the initiation of an Informal Resolution process, the University will explain in writing to the Parties:

1. The allegations;
2. The requirements of the Informal Resolution process;
3. That any Party has the right to withdraw from the Informal Resolution process and initiate or resume administrative complaint procedures at any time before agreeing to a resolution;
4. That if the Parties agree to a resolution at the end of the Informal Resolution process, they cannot initiate or resume administrative complaint procedures arising from the same allegations;

5. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an Informal Resolution agreement is binding only on the Parties; and
6. What information the University will maintain and whether and how the University could disclose such information for use in administrative complaint procedures if such procedures are initiated or resumed.

The terms of an Informal Resolution may include Supportive Measures, as well as other arrangements agreed to by the Parties. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered to be resolved and the terms are implemented.

D. Written Notice of Allegations

Upon initiation of these administrative complaint procedures under this Section V., the University will notify the Parties in writing of the following with sufficient time for the Parties to prepare a response before any initial interview:

1. The University's administrative complaint procedures and Informal Resolution process;
2. Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment, and the date(s) and location(s) of the alleged incident(s);
3. Retaliation is prohibited;
4. The Respondent is presumed not responsible for the alleged Sex-Based Harassment until the conclusion of the administrative complaint procedures. Prior to the conclusion, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decision Maker;
5. The Parties may have an Advisor of their choice who may be, but is not required to be, an attorney. If a Party selects an Advisor who is not an Employee of the University, the Party does so at their own expense;
6. The Parties are entitled to an equal opportunity to access the draft Fact-Finding Report that accurately summarizes the relevant and not otherwise impermissible evidence. The Parties are entitled to an equal opportunity to access the relevant and not impermissible evidence upon the request of any Party; and
7. The Interim Policy on Sex Discrimination and Section IV.B.1.b. of EP 7.208 Systemwide Student Conduct Code prohibits knowingly making false statements or knowingly submitting false information

during the administrative complaint procedures.

If, in the course of an investigation, the University decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated Complaint, the University will provide written notice of the additional allegations to the Parties.

E. Administrative Complaint Procedure Requirements

The administrative complaint procedures under this Section V. incorporate the following general requirements:

1. The University will treat Complainants and Respondents equitably.
2. The University requires that any Title IX Coordinator, Investigator, or Decision Maker not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.
3. The University presumes that the Respondent is not responsible for the alleged Sex-Based Harassment until a Decision is made at the conclusion of its administrative complaint procedures.
4. The University will not impose discipline on a Respondent for prohibited Sex-Based Harassment unless there is a Decision at the conclusion of the administrative complaint procedures that the Respondent engaged in prohibited Sex-Based Harassment.
5. The University will not discipline a Party, witness, or others participating in the administrative complaint procedures for making a false statement or for engaging in consensual sexual conduct based solely on the Decision whether Sex-Based Harassment occurred.
6. The University has established the following timeframes for the major stages of the administrative complaint procedures:
 - a. Evaluation: 15 business days from University's receipt of the Complaint.
 - b. Investigation: 60 business days from the date the Investigator is assigned and receives the Complaint file.
 - c. Hearing: 20 business days from the conclusion of the investigation process.
 - d. Decision: 20 business days from the conclusion of the hearing.
 - e. Appeal and Final Determination, if any: 20 business days from the Appeal Officer's receipt of the final written

statement or expiration of the deadline to do so.

The above timeframes are good-faith approximations and also may be extended for good cause.

7. The University has also established the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice of any extension to the Parties that includes the reason for the delay:
 - a. The Title IX Coordinator may reasonably extend timeframes for good cause. Good cause includes the availability of the Parties and witnesses; the timing of breaks; efforts to utilize Informal Resolution; compliance with a request by external law enforcement; accounting for complexities of a case such as the number of witnesses and volume of information provided by the Parties; or addressing other legitimate reasons.
 - b. The Parties or Investigator(s) may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator. Extensions granted to one Party will be granted to the other Party. Requests for an extension for the purpose to simply prolong the process will not be permitted. Deadlines will be enforced, and a failure to meet deadlines may result in forfeiture of a Party's ability to participate in that aspect of the investigation.
8. The University will take reasonable steps to protect the privacy of the Parties and witnesses during its administrative complaint procedures. These steps will not restrict the ability of the Parties to obtain and present evidence; speak with witnesses; consult with family members, confidential resources, or Advisors; or otherwise prepare for or participate in the administrative complaint procedures.
9. The University will objectively evaluate all evidence that is relevant and not otherwise impermissible – including both inculpatory and exculpatory evidence. Credibility assessments will not be based on a person's status as a Complainant, Respondent, or witness.
10. The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
 - a. Evidence that is protected under a privilege recognized by federal or state law or evidence provided to a Confidential

Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

- b. A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the University obtains that Party's or witness's voluntary, written consent for use in its administrative complaint procedures; and
 - c. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude a Decision that Sex-Based Harassment occurred.
11. Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in these proceedings.

F. Investigation

The Title IX Coordinator will designate an Investigator(s) to conduct a prompt, thorough, and impartial investigation of the Reported Sex-Based Harassment and create a Fact-Finding Report.

The Title IX Coordinator will also designate a Decision Maker. The Parties will be provided notice of the name of the Decision Maker, and Parties may request a substitution if Decision Maker poses a conflict of interest or has bias. The request will be considered by the Title IX Coordinator.

During the Investigation:

1. The University will provide for adequate, reliable, and impartial investigation of Complaints.
2. The burden is on the University – not on the Parties – to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred.
3. The Investigator(s) will interview the Parties, review any documentary evidence, and interview witnesses deemed by the

Investigator(s) to have relevant and material information pertaining to the Complaint.

4. The University will provide to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate. Such notice also will include any applicable rules of order and decorum.
5. The University will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of the Advisor for the Complainant or Respondent in any meeting or proceeding.⁴ However, the University will not unreasonably extend the timelines established in these procedures to accommodate the schedule of a Party's Advisor.
6. The University may establish restrictions regarding the extent to which the Advisor may participate in these administrative complaint procedures, as long as the restrictions apply equally to the Parties. In particular, the role of a Party's Advisor shall be limited to support and consultation. The Title IX Coordinator and Investigator must be advised in writing that an Advisor will be present at least 24 hours before any scheduled meeting or proceeding.⁵ The University reserves the right to have its own legal counsel present. If any Advisor's conduct is not consistent with the University's guidelines or any other applicable rules of order and decorum, they may be excluded from the process.
7. The University will provide the Parties with the same opportunities, if any, to have people other than the Advisor of the Parties' choice present during any meeting or proceeding.
8. The University may include another Employee in the interviews to act as a notetaker or witness.
9. When a Party or witness meets with the Investigator, the Investigator will ask the Party or witness questions related to the allegations, and may ask if the witness has any information to submit (e.g. documents, texts, emails, images, etc.) for the Investigator to review and consider. In some cases, the Investigator may ask to interview a witness more than once if

⁴ The University may require Advisors to agree to a non-disclosure agreement.

⁵ This notification should include the full name and title of the Advisor of choice, as well as contact information (phone, email and address.)

additional information becomes available since the previous interview with the witness and/or to follow up with a witness to clarify information or previous statements.

10. The University will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible. The University does not permit the Parties to present expert witnesses.
11. The University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.
12. The University will provide each Party and the Party's Advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of Sex-Based Harassment and not otherwise impermissible, in the following manner:
 - a. The University will provide an equal opportunity to access the draft Fact-Finding Report that accurately summarizes the relevant and not otherwise impermissible evidence. The University will also provide the Parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any Party;
 - b. The University will provide a reasonable opportunity to review and respond to the evidence and/or the draft Fact-Finding Report in advance of the live hearing; and
 - c. The University will take reasonable steps to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the administrative complaint procedures. Disclosures of such information and evidence for purposes of external administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized.

G. Hearings

1. Selection of Decision Maker

At least ten (10) business days before the live hearing, the Parties will be provided notice of the name(s) of any Decision Maker. The Parties may request a substitution if the Decision Maker poses a conflict of interest or has bias. The request will be considered by the Title IX Coordinator.

The Decision Maker will conduct a hearing on the matter as described more fully below. Neither the Title IX Coordinator nor the Investigator may

serve as the Decision Maker.⁶

2. Initial Notice of Hearing

At least seven (7) business days before the hearing, the Decision Maker will provide an initial, written notice to the Parties that includes the following:

- a. Date, time, and location of the hearing;
- b. Allegations to be reviewed by the Decision Maker;
- c. Provisions of policy alleged to have been violated;
- d. Sanctions that may be imposed; and
- e. Specific rules and procedures for the hearing, including any rules of order or decorum.

3. Pre-Hearing Review of Documents

In advance of the hearing, both the Complainant and Respondent will have the opportunity to review the final Fact-Finding Report, including any responses provided during the Investigation. Each Party may also review the relevant and not otherwise impermissible evidence, if requested by any Party.

The Decision Maker will be provided with the final Fact-Finding Report, including any responses provided during the Investigation, and the relevant and not otherwise impermissible evidence. A copy of this information shall also be provided to the Title IX Coordinator.

4. Witnesses

The Decision Maker will identify any witnesses that they wish to hear from at the hearing based on a review of the final Fact-Finding Report and relevant and not otherwise impermissible evidence. The Complainant and Respondent also each have the right to request the presence of any additional relevant witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation.

The Decision Maker may permit the participation of a witness who was not interviewed during the investigation only if the Decision Maker determines that the new witness' participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Decision Maker may refer the matter to the Investigator for additional investigation, which may delay the timing of the hearing. The University cannot compel the

⁶ Any individual designated as a Decision Maker will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

attendance of any witness.

5. Hearing Setting and Standards

The University's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of Parties and witnesses, including questions challenging credibility, will allow the Decision Maker to ask such questions, and allow each Party to propose such questions that the Party wants asked of any Party or witness and have those questions asked by the Decision Maker, subject to the procedures for evaluating and limiting questions discussed below.

6. Advisors During the Hearing

The Complainant and the Respondent both have the right to be accompanied and advised by an Advisor of their choice at any hearing and any related meetings. Proceedings will be closed to non-participants and to the public, including friends and University personnel without an official interest in the case. The University reserves the right to have its own legal counsel present during any hearing.

The role of a Party's Advisor shall be limited to support and consultation. An Advisor must comport themselves in a manner that is not disruptive during a hearing and act with appropriate decorum.⁷

7. Review of Evidence

All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility assessments will not be based on a person's status as a Complainant, Respondent, or witness.

8. Procedures for a Live Hearing

A live hearing will be conducted with the Parties physically present in the same geographic location or, at the University's discretion or upon the request of either Party, will be conducted with the Parties physically present in separate locations with technology enabling the Decision Maker and Parties to simultaneously see and hear the Party or witness while that person is speaking.

9. Format

During a live hearing, the following format will be applied. The Decision Maker has the discretion to supplement or revise this format with additional procedures. Any such procedures will be consistent with the required format and applied equally to all Parties.

- a. The Decision Maker will explain the hearing process,

⁷ Whether an Advisor is acting in a manner that is disruptive or acting with inappropriate decorum in the hearing or meetings is determined in the sole discretion of the Decision Maker.

provide an opportunity to all Parties to ask questions about the procedures, and read the charges.

- b. The Decision Maker will inquire whether the Complainant wishes to present their position.
- c. The Decision Maker may then pose any additional questions to the Complainant. After the Decision Maker has concluded asking questions, the Respondent may then submit written questions to the Decision Maker to be asked of the Complainant.
- d. The Decision Maker will inquire whether the Respondent wishes to present their position.
- e. The Decision Maker may then pose any additional questions to the Respondent. After the Decision Maker has concluded asking questions, the Complainant may submit written questions to the Decision Maker to be asked of the Respondent.
- f. The Decision Maker will hear from witnesses that the Decision Maker determined to have information that is relevant to the matter, first on behalf of the Complainant and then on behalf of the Respondent. Invited witnesses may provide statements. When each witness is called, the Decision Maker may pose questions. After the Decision Maker has concluded asking questions, the Complainant may submit written questions to the Decision Maker to be asked of the witness. The Respondent may then submit written questions to the Decision Maker to be asked of the witness.
- g. The Decision Maker will ask the Complainant if they wish to provide any additional information. If the Complainant provides additional information, the Decision Maker may then ask follow-up questions to the Complainant. After the Decision Maker has concluded asking questions, the Respondent may submit written questions to the Decision Maker to be asked of the Complainant.
- h. The Decision Maker will ask the Respondent if they wish to provide any additional information. If the Respondent provides additional information, the Decision Maker may then ask follow-up questions to the Respondent. After the Decision Maker has concluded asking questions, the Complainant may submit written questions to the Decision Maker to be asked of the Respondent.
- i. The Decision Maker will determine whether a proposed

question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or witness being questioned will not be permitted. The Decision Maker will give a Party an opportunity to clarify or revise a question that the Decision Maker determines is unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked. At no time will either Party be permitted directly to ask the other Party or witnesses questions.

- j. The University will make available for inspection and review the audio or audiovisual recording of any live hearing, if requested by either Party.

H. Decision on Whether Sex-Based Harassment Occurred

1. Following the hearing, the Decision Maker:
 - a. Will use the preponderance of the evidence standard of proof to determine whether the alleged conduct occurred, whether the conduct met the definition of Sex-Based Harassment, and whether a violation of EP 1.204 occurred by issuing a Cause Finding or No Cause Finding. The preponderance of the evidence standard means that it is more likely than not that a policy violation occurred and requires the evaluation of relevant and not otherwise impermissible evidence for its persuasiveness. If the Decision Maker is not persuaded under the preponderance of the evidence standard that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the Decision Maker will not determine that Sex-Based Harassment amounting to a policy violation occurred.
 - b. May choose to place less or no weight upon all statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decision Maker will not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions. However, the potential impact on the weight to be given to a Party's statements may have a significant effect on the preponderance of the evidence and, consequently, the Decision Maker's ultimate Decision.
 - c. Will notify the Parties simultaneously in writing of the Decision whether Sex-Based Harassment occurred under EP 1.204 including:

- (1) A description of the alleged Sex-Based Harassment;
 - (2) Information about the policies and procedures that the University used to evaluate the allegations;
 - (3) The Decision Maker's evaluation of the relevant and not otherwise impermissible evidence and rationale for the Decision whether Sex-Based Harassment occurred;
 - (4) To the extent appropriate, when the Decision Maker finds that Sex-Based Harassment occurred, any disciplinary sanctions that the University is permitted to share pursuant to state or federal law that the University will impose on the Respondent, whether Remedies other than the imposition of disciplinary sanctions will be provided by the University to the Complainant, and other Students identified by the University to be experiencing the effects of the Sex-Based Harassment; and
 - (5) The University's procedures and permissible bases for the Complainant and Respondent to appeal.
- d. Will comply with the Title IX administrative complaint procedures before the imposition of any disciplinary sanctions against a Respondent; and
 - e. Will not discipline a Party, witness, or others participating in the Title IX administrative complaint procedures for making a false statement or for engaging in consensual sexual conduct based solely on the Decision whether Sex-Based Harassment occurred.
2. If there is a Decision that Sex-Based Harassment occurred, the Title IX Coordinator, as appropriate, will:
- a. Coordinate the provision and implementation of Remedies to the Complainant and other people the University identifies as having had equal access to the University's Education Program or Activity limited or denied by Sex-Based Harassment;
 - b. Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions that the University is permitted to share pursuant to state or federal law; and
 - c. Take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within the University's Education Program or Activity.

I. Appeals

1. The University will offer an appeal from a dismissal or Decision on the following bases:
 - a. Procedural irregularity that would change the outcome;
 - b. New evidence that would change the outcome and that was not reasonably available when the Decision or dismissal was made; and
 - c. The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that would change the outcome.
2. If a Party appeals a dismissal or Decision, the University will:
 - a. Notify the Parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
 - b. Implement appeal procedures equally for the Parties;
 - c. Ensure that the Appeal Officer did not take part in an investigation of the allegations, dismissal of the Complaint, or serve as the Decision Maker; and
 - d. Ensure that the Appeal Officer has been trained consistent with the Title IX regulations.
3. An appeal by either Party must be made in writing to the Title IX Coordinator within seven (7) business days after such Party has received notice of the dismissal or Decision. An appeal must state the ground on which the appeal is made.
4. Upon receipt of an appeal, the Title IX Coordinator shall consider the stated basis for the appeal. If the appeal does not set forth a permissible basis, the Title IX Coordinator will make reasonable efforts to clarify the basis for the appeal with the appealing Party. The Party may have an additional seven (7) business days to clarify the basis for the appeal.
5. The Title IX Coordinator shall forward the appeal to the other Party. The non-appealing Party will have five (5) business days to submit a written statement in support of or against the appeal to the Title IX Coordinator. The Title IX Coordinator shall appoint an Appeal Officer and forward the appeal and any additional written statement, if applicable, to the Appeal Officer within five (5) business days of receipt.
6. The Appeal Officer will examine the information presented and

issue a written conclusion or Final Determination, as applicable, regarding the appeal and the rationale for the appeal decision within twenty (20) business days from when the Title IX Coordinator forwarded the appeal documents. This written conclusion or Final Determination will be provided to both Parties simultaneously and cannot be further appealed under these procedures or related policy, EP 1.204.

7. For all included Respondent Employees covered by collective bargaining, appeals of disciplinary actions shall be filed in accordance with the applicable collective bargaining agreement. For all excluded Respondent Employees, appeals of disciplinary actions shall be filed in accordance with AP 9.110.

J. Disciplinary Sanctions and Remedies

1. Following a Decision without a subsequent Appeal or Final Determination that Sex-Based Harassment occurred, the University may impose disciplinary sanctions upon the Respondent, in accordance with the appropriate collective bargaining agreements, which may include but are not limited to:
 - a. For a Student Respondent: disciplinary warning; disciplinary probation; residential probation; residential suspension; suspension; expulsion; fines; behavioral agreements; no-contact orders; letter of apology; reflection/research papers; community restitution; mandatory training and education; mandatory meeting(s) with the Title IX Coordinator or designee; mandatory counseling; withholding or delaying the conferral of degree.

To maintain consistency, the Decision Maker should consult with the Senior Student Affairs Officer prior to imposing Student disciplinary actions.
 - b. For an Employee Respondent: written warning; final written warning; suspension; involuntary termination.

To maintain consistency, the Decision Maker should consult with Human Resources prior to imposing Employee disciplinary actions.
2. The University may provide Remedies designed to restore or preserve equal access to the University's Education Program or Activity, which may include, but are not limited to: a campus directive of no contact; limiting and/or scheduling access of individual buildings; making an escort available to assist a Complainant or Respondent to move safely between classes and campus activities; adjusting class or work schedules or methods of participating in activities to minimize campus contact between a

Complainant and a Respondent; moving a Complainant or Respondent to a different residence hall and/or dining hall; counseling services; medical services; academic support, such as extensions of deadlines or other course-related adjustments; changes in work locations; leaves of absence; increased security and monitoring of certain areas of campus; or adjusting reporting lines. For Employee Respondents, the University may also issue no-contact orders, mandated counseling and/or training, verbal warnings/reprimands, and/or conference summaries as Remedies.

K. Disclosure of Outcome

The University will not share information obtained during the course of a proceeding with individuals or entities external to the University unless required by federal or state law or compelled to do so, such as by receipt of a lawfully issued subpoena or court order. The University may also share information about the proceeding and outcome consistent with FERPA.

L. Special Procedure Concerning Complaints against a Title IX Coordinator

If a Report or Complaint alleges Sex-Based Harassment by the Title IX Coordinator, the President or Chancellor of the campus, or their designee, will designate the Investigator and Decision Maker and oversee the Supportive Measures, investigation, adjudication, and resolution process under this policy.

VI. Delegation of Authority

Overall responsibility for the implementation of this complaint procedure rests with the President. The campus Title IX Coordinator maintains ultimate oversight over ensuring the University's consistent compliance with its responsibilities under Title IX. The Vice Presidents and the Provost/Chancellors are responsible for implementing and disseminating this procedure on their respective campuses. Title IX Coordinators for each campus have been publicized with the individual's name, office phone number, and office location.

VII. 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.

VIII. Related Policies

- A. EP 1.204 – Policy on Sex Discrimination
- B. EP 1.202 – Nondiscrimination and Affirmative Action
- C. EP 7.205 – Systemwide Student Disciplinary Sanctions
- D. EP 7.208 – Systemwide Student Conduct Code
- E. EP 9.210 – Workplace Non-Violence