



## **University of Hawai'i - West O'ahu Student Code of Conduct**

### **PREAMBLE**

University of Hawai'i - West O'ahu ("UH West O'ahu") exists so that the people it serves have access to learning and enrichment opportunities to improve their quality of life and their standard of living. UH West O'ahu supports a positive educational environment that will benefit student success. In order to ensure this vision, UH West O'ahu has established guidelines for the redress of grievances by individuals accused of prohibited conduct in such proceedings. In addition, UH West O'ahu has established a Student Code of Conduct ("Student Conduct" or "Student Code") to ensure the protection of student rights and the health and safety of the UH West O'ahu community, as well as to support the efficient operation of UH West O'ahu programs.

In cases where a UH West O'ahu student is found responsible for a violation of the UH West O'ahu Student Code of Conduct, UH West O'ahu will impose discipline that is consistent with the impact of the offense to the UH West O'ahu community (See Article IV(B) "Sanctions" below). UH West O'ahu reserves the right to pursue criminal and/or civil action where warranted. The Student Code of Conduct shall apply from the time of admission to UH West O'ahu and continue as long as the student remains enrolled at UH West O'ahu or declares UH West O'ahu as their home campus. The Student Code of Conduct shall also be applicable to a student's conduct even if the student withdraws from UH West O'ahu after a report has been submitted for review of an alleged violation of the Student Code of Conduct.

If an individual has violated the Student Code of Conduct on UH West O'ahu property while not enrolled as a student at UH West O'ahu, but then later seeks to enroll, he or she must first contact the Vice Chancellor of Student Affairs (VCSA) (or his or her designee). The same Due Process procedures listed in Article IV below will be followed to determine an admission decision.

## ARTICLE I: DEFINITIONS

- A.** “Academic negligence” means unknowingly or unintentionally claiming credit for the work or effort of another person, or unknowingly or unintentionally gaining (or causing another to gain) an unfair academic advantage.
- B.** “Assault” means intentionally, knowingly, or recklessly causing bodily injury to another person. In this context, “bodily injury” means physical pain, illness, or any impairment of physical condition.<sup>1</sup>
- C.** “Bullying” means any written, verbal, graphic, or physical act that a student or group of students exhibit towards a student or other particular student(s) and the behavior causes mental or physical harm to the other student(s); and is sufficiently severe, persistent, or pervasive such that it creates an intimidating, threatening, or abusive educational environment for the other student(s). This also includes intentional harm or controlling another person physically or emotionally, and is not protected by freedom of expression.<sup>2</sup>
- D.** “Cheating” is an act of academic dishonesty and includes, but is not limited to:
1. use of any unauthorized assistance in taking quizzes, tests, or examinations;
  2. use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments;
  3. the acquisition, without permission, of tests or other academic material belonging to a member of the UH West O'ahu faculty, staff or student; and
  4. engaging in any academic behavior specifically prohibited by a faculty member in the course syllabus or class discussion.<sup>3</sup>

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<sup>1</sup> This definition combines language from Hawaii Revised Statutes (HRS) 707-700 and 707-710.

<sup>2</sup> This definition combines language from Hawaii Department of Education’s Policy 8-19-2 and University of Hawaii Executive Policy EP 7.208, IV.B.3.c (Dated 4/1/19).

<sup>3</sup> University of Hawaii Executive Policy EP 7.208, IV.B.1 (Dated 4/1/19).

- E.** “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.<sup>4</sup>
- F.** “Consent” means knowing, and 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<sup>5</sup> for sexual activity, 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.<sup>6</sup>

- G.** “Cyberbullying” means electronically transmitted acts, i.e., internet, cell phone, personal digital assistant (PDA), or wireless hand-held device, that a student has exhibited towards another student or employee of the department, either on or off-campus, that hurts, harms, or humiliates the student or employee physically or emotionally, and is sufficiently severe, persistent, or pervasive, or created an intimidating, threatening, or abusive educational environment for the other student(s). This also includes intentional harm or controlling another person physically or emotionally, and is not protected by freedom of expression.<sup>7</sup>

Electronic transmissions include but are not limited to the use of data, computer software that is accessed through a computer, computer network devices that display email, text messaging, blogs, photos, drawings, video clips, on-line community websites, social media, or faxes, or a combination of the aforementioned.<sup>8</sup>

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<sup>4</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.C (Dated 8/1/24).

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

<sup>6</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.G (Dated 8/1/24).

<sup>7</sup> This definition combines language from Hawaii Department of Education's Policy 8-19-2 and University of Hawaii Executive Policy EP 7.208, IV.B.3.c (Dated 4/1/19).

<sup>8</sup> Hawaii Department of Education's Policy 8-19-2.

- H.** “Dating violence” is violence committed by a person:
1. Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
  2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship;
    - b. The type of relationship; and
    - c. The frequency of interaction between the persons involved in the relationship.<sup>9</sup>
- I.** “Discrimination” is any distinction, preference, or adverse treatment of an individual when based on a person’s protected category that is sufficiently serious to unreasonably interfere with or limit:
- a. A student’s or admission applicant’s ability to participate in, access, or benefit from educational programs, services, or activities (e.g. admission, academic standing, grades, assignment, campus housing);
  - b. An employee’s or applicant’s access to employment, consideration of, or conditions and benefits of employment (e.g., hiring, advancement, assignment);
  - c. An authorized volunteer’s ability to participate in a volunteer activity; or,
  - d. A guest’s or visitor’s ability to participate in, access, or benefit from the University’s programs.<sup>10</sup>

Examples of Discrimination based on a Protected Category:<sup>11</sup>

- Refusal to consider an accommodation request or to implement a reasonable accommodation for individuals with disabilities or a person’s sincerely held religious beliefs or practices.
- Disparate or unequal treatment, including preferential treatment on the basis of a protected category.

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<sup>9</sup> University of Hawai’i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1.c.3.b.i-ii (Dated 8/1/24).

<sup>10</sup> University of Hawai’i Executive Policy Nondiscrimination, Equal Opportunity, and Affirmative Action EP 1.202, III.C.1.a-d (Dated 2/1/23).

<sup>11</sup> This list is meant to be illustrative and not exhaustive, and the conduct must be sufficiently serious to unreasonably interfere with or limit a person’s ability to participate in an education activity to meet the definition of Discrimination.

- Denial of a person's equal opportunity to participate in a University program, activity, or service on the basis of a protected category.

J. "Discriminatory Harassment" is unwelcome conduct based on a protected category when:

- a. Submission to or rejection of the conduct is either an explicit or implicit term or condition of an individual's employment, education, or participation in a University program, activity, or service;
- b. Submission to or rejection of the conduct by an individual is used as a basis in decisions affecting that individual's employment, education, or participation in a University program, activity, or service; and/or,
- c. When such conduct is unwelcome to the person to whom it is directed or to others directly aware of it and when such conduct is:
  1. Severe, persistent, or pervasive; and
  2. Has the purpose or effect of either:
    - a. Unreasonably interfering with the student's academic performance or the employee's work performance, or
    - b. Creating an intimidating, hostile, or offensive work or educational environment.<sup>12</sup>

The conduct must be both objectively and subjectively offensive. That is, the Complainant must view the conduct as offensive, and a reasonable person must also view the conduct as offensive. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant (e.g., age, race, religion). Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of discriminatory harassment.

Examples of Discriminatory Harassment Based on a Protected Category if unwelcome and persistent, pervasive, or severe.<sup>13</sup>

- Racial slurs, racial epithets, or name-calling.
- Insults, put-downs, or mockery of a person's disability.
- Unwelcome or inappropriate physical contact.

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<sup>12</sup> University of Hawai'i Executive Policy Nondiscrimination, Equal Opportunity, and Affirmative Action EP 1.202, III.C.2.a-c (Dated 2/1/23).

<sup>13</sup> This list is meant to be illustrative, and not exhaustive, and the conduct must rise to the level of unwelcome and persistent, pervasive, or severe to meet the definition of Discriminatory Harassment.

- Offensive remarks about a person's race, color, age, disability, pregnancy, breastfeeding, national origin, religion or other protected category.
- Intimidation, threats of harm, or actual assaults against a person based on their race, national origin, or other protected category.
- Displays of offensive objects or pictures, including electronic transmission of derogatory, demeaning, or hostile materials based on race, age, or other protected category.

**K.** “Domestic violence” means felony or misdemeanor crimes committed by a person who:

1. Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the state of Hawai‘i, or a person similarly situated to a spouse of the Complainant;
2. Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
3. Shares a child in common with the Complainant; or
4. Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.<sup>14</sup>

**L.** “Faculty member” means any person hired by UH West O'ahu to conduct classroom or teaching activities or who is otherwise considered by UH West O'ahu to be a member of its faculty.<sup>15</sup>

**M.** “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 nonConsent.<sup>16</sup>

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<sup>14</sup> This definition combines language from the University of Hawai‘i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1.c.3.c.i-iv (Dated 8/1/24), and the Crime Control & Law Enforcement 34 U.S.C. 12291(a)(8).

<sup>15</sup> This definition is modified from the University of Hawaii Executive Policy EP 7.208, II.I (Dated 4/1/19).

<sup>16</sup> University of Hawai‘i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.L (Dated 8/1/24). This definition is modified from the University of Hawaii Executive Policy EP 7.208, II.I (Dated 4/1/19).

- N. “Harassment” means conduct that is so severe, pervasive, and objectively offensive that it unreasonably interferes with a person’s UH West O'ahu employment, academic performance or participation in UH West O'ahu programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. The conduct does not have to be threatening and may include deliberate and persistent communication that unreasonably disturbs the recipient.<sup>17</sup>
- O. “Hazing” means an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing is not a neutral act; both are violations of this rule.<sup>18</sup>
- P. “Hostile Environment” is when unwelcome harassment is sufficiently severe, pervasive (or persistent) and objectively offensive such that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the UH West O'ahu educational programs or activities.<sup>19</sup>
- Q. “Incapacitation” (or “incapacitated”) 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.<sup>20</sup>
- R. “Intimidation” is implied threats or acts that cause a reasonable fear of harm in another.<sup>21</sup>
- S. “Member of the UH West O'ahu Community ” means any person who is a UH West O'ahu student, UH West O'ahu faculty member, UH West O'ahu official or any other person employed by (or directly connected to) UH West O'ahu. A person’s status in a particular situation shall be determined by the VCSA (or his or her designee).

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<sup>17</sup> This definition was developed from *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 651 (1999).

<sup>18</sup> University of Hawaii Executive Policy EP 7.208, IV.B.9 (Dated 4/1/19).

<sup>19</sup> University of Hawaii Executive Policy EP 7.208, IV.B.3.h (Dated 4/1/19).

<sup>20</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.N (Dated 8/1/24).

<sup>21</sup> University of Hawaii Executive Policy EP 7.208, IV.B.3.b (Dated 4/1/19) .

- T. "Physical abuse" means the nonaccidental infliction of physical or bodily injury, pain, or impairment, including but not limited to hitting, slapping, causing burns or bruises, poisoning, or improper physical restraint; or causing physical injuries that are not justifiably explained or where the history given for an injury is at variance with the degree or type of injury.<sup>22</sup>
- U. "Plagiarism" is an act of academic dishonesty and includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgement. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.<sup>23</sup>
- V. "Policy" means the written regulations of UH West O'ahu as found in, but not limited to, its Policies and Bylaws of the Board of Regents, its Administrative Procedures, the Student Code of Conduct, the UH West O'ahu web page and computer use policy, and school catalogs.
- W. "Registered Independent Organization" (RIO) refers to a student organization, association, or club that has been formed to meet special interests of certain groups of students on campus.<sup>24</sup> The Relationships of an RIO to the University are:
1. An RIO, like a Campus-Wide Student Association Organized (CSO), is not an agency of the university. RIO, unlike the CSO, is not involved in the governance process and does not represent or serve the entire student body on their campus.
  2. The university assumes no responsibility for the activities of an RIO. An RIO must fully inform its members and the public of its relationship to the university by including the following disclaimer in its publications and communication with third parties: "Although the registered organization has members who are university students, the registered organization is independent of the university and does not represent the views of the university. The registered organization is responsible for its own contracts, acts, or omissions."
  3. An RIO's leaders shall assume full responsibility for the organization's activities and conduct of its members. As benefits for university registration, staff resource liaisons may be provided by its campus to answer further questions regarding the relationships of the RIO to the

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<sup>22</sup> Hawaii Revised Statutes 346-222. This definition comes from the statute governing the Department of Human Services, Adult Protective Services.

<sup>23</sup> This definition is modified from the University of Hawaii Executive Policy EP 7.208, IV.B.1.a (Dated 4/1/19).

<sup>24</sup> University of Hawaii Executive Policy EP 7.208, II.A (Dated 4/1/19).



university campus and to offer educational assistance services that support the effective functioning of the RIO.<sup>25</sup>

- X. "Reporting Party" or "Complainant" means any person who submits a charge alleging that a student violated this Student Code of Conduct. When a student believes that s/he has been a victim of another student's misconduct, the student who believes s/he has been a victim will have the same rights under this Student Code of Conduct as are provided to the Reporting Party or Complainant, even if another member of the UH West O'ahu community submitted the report.

For the purposes of the University of Hawai'i Executive Policy Interim Policy on Title IX on Sex Discrimination EP 1.204, III.D (Dated 8/1/2024), a "Complainant" is:

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.<sup>26</sup>

- Y. "Respondent," or "Responding Party" means a UH West O'ahu student who is currently taking courses at UH West O'ahu, either full or part-time, pursuing undergraduate or graduate studies, against whom a report has been filed alleging a violation of the Student Code of Conduct. A Respondent or Responding Party, who withdraws from UH West O'ahu (after a report or report is filed alleging he or she committed any form of sexual misconduct), but who has a reasonable or continuing relationship with UH West O'ahu, or has been notified of their acceptance for admission, will be considered a Respondent or Responding Party, even if they are not currently enrolled or have not yet begun attending classes, for the purposes of this process.

For the purpose of the University of Hawai'i Executive Policy Interim Policy on Title IX on Sex Discrimination EP 1.204, III.T (Dated 8/1/2024), "Respondent" means a person who is alleged to have violated the University's prohibition on Sex Discrimination or engaged in Retaliation, as defined in Interim EP 1.204.<sup>27</sup>

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<sup>25</sup> University of Hawaii Board of Regents Policy RP 7.203, III(B)(1-3).

<sup>26</sup> University of Hawaii Executive Policy EP 7.208, II.B (Dated 4/1/19). As used in this Policy, "Reporting Party" includes "Complainant" as that term is used in the University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.D (Dated 8/1/24).

<sup>27</sup> This definition is modified from University of Hawaii Executive Policy EP 7.208, II.C (Dated 4/1/19) As used in this Policy and the University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.T (Dated 8/1/24), "Respondent" includes "Responding Party" as that term is used in University of Hawaii Executive Policy EP 1.708, II.C (Dated 4/1/19).

**Z.** “Retaliation” is adverse actions taken against a person because of his/her good faith participation in the following types of protected activities:

1. Seeking advice or assistance about conduct prohibited under this policy, a Student Conduct Code, or systemwide sanction concern;
2. Opposing or filing an informal or formal complaint against conduct reasonably believed to be prohibited under this policy;
3. Testifying, assisting, or participating in an investigation or other proceeding related to a complaint of conduct prohibited under this policy.<sup>28</sup>

The University prohibits and will not tolerate retaliation. Retaliation includes but is not limited to, intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a Report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy and its accompanying procedures, Interim Administrative Complaint Procedures Regarding Sex Discrimination AP 1.204. Acts of alleged Retaliation should be reported immediately for appropriate action.<sup>29</sup>

**AA.** “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.<sup>30</sup>

**BB.** “Sex-Based Harassment” means sexual harassment and other harassment on the basis of Sex – including a person’s actual or perceived gender assigned at birth, gender identity, and sexual orientation as well as Sex stereotypes, Sex characteristics, and Pregnancy or Related Conditions – that is:

1. **Quid Pro Quo Harassment:** An Employee, agent, or other person authorized by the University to provide an aid, benefit, or service under the University’s Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
2. **Hostile Environment Harassment:** Unwelcome Sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the University’s Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

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<sup>28</sup> University of Hawaii Executive Policy EP 7.208, IV.B.24, (Dated 4/1/19).

<sup>29</sup> University of Hawai’i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.2 (Dated 8/1/24).

<sup>30</sup> University of Hawai’i Executive Policy Interim Policy on Sex Discrimination EP 1.204, III.U (Dated 8/1/24).

- a. The degree to which the conduct affected the Complainant's ability to access the University's Education Program or Activity;
- b. The type, frequency, and duration of the conduct;
- c. The Parties' ages, roles within the University's Education Program or Activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
- d. The location of the conduct and the context in which the conduct occurred; and
- e. Other Sex-Based Harassment in the University's Education Program or Activity.

### 3. Specific Offenses

- a. Sexual Assault
- b. Dating Violence
- c. Domestic Violence
- d. Sex-Based Stalking<sup>31</sup>

**CC.** "Sex-Based Stalking" engaging in a course of conduct on the basis of Sex that is directed at a specific person that would cause a reasonable person to:

- i. Fear for the person's safety, or the safety of others; or
- ii. Suffer substantial emotional distress.
- iii. For the purposes of this definition:
  - a. Course of conduct means two or more acts, including, but not limited to, acts in which one person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. Reasonable person means a reasonable person under similar circumstances to the Complainant.
  - c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.<sup>32</sup>

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<sup>31</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1-3.a-d (Dated 8/1/24).

<sup>32</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1.c.-3.d.i-iii.a-c (Dated 8/1/24).

**DD.** “Sex Discrimination” means unfair or unequal treatment with respect to an individual’s participation in an Education Program or Activity based upon the individual’s Sex.

Sex Discrimination often takes the form of Disparate Treatment or Disparate Impact discrimination. However, Sex Discrimination also includes Sex-Based Harassment and Sexual Exploitation, as further outlined below.

- a. Disparate Treatment Discrimination occurs where similarly situated persons are intentionally treated differently because of their Sex. Disparate Treatment, however, is permissible under Title IX in certain circumstances, such as admission to single-sex social fraternities and sororities, and in others where the Disparate Treatment does not subject persons to more than de minimis (i.e., immaterial) harm.
- b. Disparate Impact Discrimination Disparate Impact discrimination occurs where a Sex-neutral policy or practice, applied even-handedly, affects persons differently based on their Sex without a substantial and legitimate justification.
- c. Sex-Based Harassment
- d. Sexual Exploitation.<sup>33</sup>

**EE.** “Sexual Assault” Any sexual act directed against another person, without Consent of the Complainant, including instances where the Complainant is incapable of giving Consent; also unlawful sexual intercourse. Sexual Assault includes the following:

1. Rape (except Statutory Rape): The carnal knowledge (i.e., sexual intercourse) of a person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
2. Sodomy: Oral or anal sexual intercourse with another person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
3. Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the Complainant,

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<sup>33</sup> University of Hawai‘i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1.a-d (Dated 8/1/24).

including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

4. Fondling: The touching of the private body parts, such as genitalia, groin, breast and/or buttocks, of another person for the purpose of sexual gratification, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
5. Incest: Nonforcible sexual intercourse, between persons who are related to each other within the degrees wherein marriage is prohibited by Hawai'i law.
6. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent.<sup>34 35</sup>

**FF. "Sexual Exploitation"** is a form of Sex Discrimination and means violating the sexual privacy of another, or taking unjust or abusive sexual advantage of another, without Consent, and when such behavior does not otherwise constitute Sex-Based Harassment.

Sexual Exploitation includes but is not limited to:

1. Photographing or taping someone involved in sexual activity, sexual intercourse/penetration, or in a state of undress, without their knowledge or Consent.
2. Sharing photographs or video/audio of someone involved in sexual activity, intercourse/penetration, or in a state of undress, without their knowledge or Consent.
3. Watching someone currently involved in sexual activity without their knowledge or Consent.
4. Allowing others to watch sexual activity without knowledge or Consent from all parties involved.
5. Exposing one's private body parts, such as genitalia, groin, breast and/or buttocks to someone without their Consent.
6. Engaging in sexual activity in public and being witnessed by a nonconsenting person; or

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<sup>34</sup> In Hawaii, the age of consent is sixteen (16) generally, or the age of consent is between fourteen (14) and fifteen (15) when either the other person is less than (5) years older or when the other person is legally married to the person between the ages of fourteen (14) and fifteen (15). See Haw. Rev. Stat. § 707-732.

<sup>35</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204., IV.A.1.c.3.a.i-vi (Dated 8/1/24).

7. Tampering with a drink, intending to impair a person's ability to withhold Consent or knowingly Consent to sexual activity, regardless of whether sexual activity actually takes place.<sup>36</sup>

GG. **“Sexual Intercourse”** means penetration (anal, oral, or vaginal by a penis, tongue, finger, or inanimate object).

HH. **“Stalking”** is prohibited. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's safety or the safety of others; or
2. Suffer substantial emotional distress.
3. For the purposes of this definition:
  - a. Course of conduct means two or more acts, including, but not limited to, acts in which one person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. Reasonable person means a reasonable person under similar circumstances to the Complainant.
  - c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.<sup>37</sup>

II. **“Student”** refers to a person who is currently either:

1. Registered (i.e., taking courses at UH West O'ahu, either full or part time, pursuing undergraduate or graduate studies, or who has declared UH West O'ahu as their home campus), or
2. Unregistered (i.e., not currently enrolled in any courses, but maintains a “reasonable relationship” with UH West O'ahu (e.g., admitted, but not enrolled; taking a semester break, medical leave, leave of absence; returning student; students who have been suspended or dismissed, students who withdraw after allegedly violating the Student Code of Conduct and may return to UH West O'ahu, etc.), regardless of where an alleged violation of the Student Code of Conduct may have occurred (e.g. on another UH campus, externship site, online, etc.).

JJ. **“Student Conduct”** or **“Student Code”** means UH West O'ahu's Student Code of Conduct.

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<sup>36</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1.d.1-7 (Dated 8/1/24).

<sup>37</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.3.a.1-3.a-c (Dated 8/1/24).

- KK.** “Student Conduct Officer (SCO)” or “Student Conduct Administrator” means a UH West O'ahu official authorized by the Vice Chancellor of Student Affairs (or his or her designee) to consider whether “more likely than not” a student has violated the Student Code of Conduct and to determine sanction(s) when appropriate, or to determine if the case should be disposed of administratively.
- LL.** “UH West O'ahu” means University of Hawai'i West O'ahu.
- MM.** “UH West O'ahu Official” means any person employed by UH West O'ahu, performing their assigned administrative or professional responsibilities.<sup>38</sup>
- NN.** “UH West O'ahu Premises” means all land, buildings, facilities, and other property in the possession of, owned, used, or controlled by UH West O'ahu (including adjacent streets and sidewalks).<sup>39</sup> UH West O'ahu vehicles are covered by this policy at all times regardless of whether they are on UH West O'ahu premises or not.
- OO.** “Under the Influence” means that a person has ingested an intoxicant which has impaired the person's normal mental functioning or ability to care for the person and guard against casualty.<sup>40</sup> Examples of individuals “under the influence” include, but are not limited to: slurred speech, lack of coordination, and the smell of alcohol or marijuana on the student that is coupled with unusual behavior of the student in general.
- PP.** “Verbal abuse” is shouting or yelling in a threatening or hostile manner and/or use of abusive or belligerent language.<sup>41</sup>
- QQ.** “Vice Chancellor of Student Affairs (VCSA)” or “Senior Student Affairs Officer” means the campus administrator who is in charge of the division of student affairs, and generally charged by the campus Chancellor to be responsible for the administration of the Student Code of Conduct.<sup>42</sup>
- RR.** “Weapon” includes, but is not limited to: a pistol or other firearm, dagger, dirk, razor, stiletto, or knife (regardless of length or size), or any other dangerous or deadly weapon or instrument.<sup>43</sup>
- SS.** The term “shall” is used in the imperative sense.<sup>44</sup>

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<sup>38</sup> University of Hawaii Executive Policy EP 7.208, II.J (Dated 4/1/19).

<sup>39</sup> University of Hawaii Executive Policy EP 7.208, II.K (Dated 4/1/19).

<sup>40</sup> This definition is based on Hawaii Revised Statutes, 291E-61(1).

<sup>41</sup> University of Hawaii Executive Policy EP 7.208, IV.B.3.f (Dated 4/1/19).

<sup>42</sup> This definition is modified from the University of Hawaii Executive Policy EP 7.208, II.D (Dated 4/1/19).

<sup>43</sup> HRS §134-9; University of Hawaii Executive Policy EP 9.210, III.F (10/31/14).

<sup>44</sup> University of Hawaii Executive Policy EP 7.208, II.L (Dated 4/1/19).

TT. The term “may” is used in the permissive sense.<sup>45</sup>

## ARTICLE II: STUDENT CODE AUTHORITY

- A. The Vice Chancellor of Student Affairs (VCSA) has the ultimate oversight and authority over the Student Code of Conduct process.
- B. For the purposes of this UH West O'ahu Student Code of Conduct process, the VCSA has designated the Student Conduct Officer (SCO) as the official designee who shall be authorized to render decisions and sanctions, assign cases to other trained SCOs, and/or make determinations as to whether or not a case may be administratively resolved in accordance with this process.
- C. The SCO shall develop processes and procedural rules for the consistent administration of the UH West O'ahu Student Code of Conduct.
- D. Decisions made by the SCO shall be final, pending the appropriate appeal process.

## ARTICLE III: PROSCRIBED CONDUCT

### A. Jurisdiction

The UH West O'ahu Student Code of Conduct shall apply to conduct that occurs on UH West O'ahu's premises, at UH West O'ahu sponsored activities, and to off-campus conduct that adversely affects the UH West O'ahu community and/or the pursuit of its objectives. Each student shall be responsible for his/her conduct and the conduct of his/her guests, from the time of application for admission through the actual awarding of a degree, even though the conduct may occur before classes begin or after classes end. Additionally, students are responsible for conduct that occurs during the academic year as well as during periods between terms of actual enrollment (even if their conduct is not discovered until after a degree is awarded).

The Student Code of Conduct shall apply to a student's conduct even if the student withdraws from classes at UH West O'ahu after a report was submitted or while a disciplinary matter is pending. The SCO shall decide whether the Student Code of Conduct shall be applied to conduct occurring off-campus (including but not limited to the use of social media and other electronic forums) on a case by case basis, in his or her sole discretion.

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<sup>45</sup> University of Hawaii Executive Policy EP 7.208, II.M (Dated 4/1/19).



The Student Code of Conduct applies at all UH West O'ahu locations, and may also apply to any other ancillary educational locations, including, but not limited to: practicum, lab, or internship sites, when applicable and/or related to UH West O'ahu coursework. This Student Code of Conduct also applies to all current UH West O'ahu students regardless of the geographical location of their courses, for example, online or other University of Hawai'i campuses (if UH West O'ahu is designated as their home campus).

## B. Prohibited Conduct

Any student found to have committed (or to have attempted to commit) any of the following misconduct is subject to the disciplinary sanctions outlined in Article IV:

1. Acts of dishonesty, including but not limited to the following:
  - a. Cheating (as defined in [Article I\(D\)](#)), plagiarism (as defined in [Article I\(U\)](#)), academic negligence (as defined in [Article I\(A\)](#)), and any other forms of academic dishonesty.
  - b. Misrepresentation of facts or furnishing false information to any UH West O'ahu official, faculty member, staff, or office. This provision can include but is not limited to grades, documents, records, or instruments of identification.
  - c. Forgery, alteration, or misuse of any UH West O'ahu document, record, or instrument of identification.
  - d. Financial Aid fraud or corresponding behaviors that would allow a student to receive a monetary benefit for which they are not eligible.
2. Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other UH West O'ahu activities, including its public service functions on or off-campus, or of other authorized non-UH West O'ahu activities when the conduct occurs on UH West O'ahu premises. This includes creating noise or other disturbances on campus or in student life areas sufficient to disrupt the normal functioning of campus activities including classroom instructions.
3. Abuse that is physical or psychological in nature. This includes actual physical abuse (as defined in [Article I\(T\)](#)) or assaults (as defined in [Article I\(B\)](#)), threats of physical harm or threatening behavior that would cause fear in a reasonable person, intimidation (as defined in [Article I\(R\)](#)), harassment (as defined in [Article I\(N\)](#)), coercion (as defined in [Article I\(E\)](#)), bullying/cyberbullying (as defined in [Article I\(C\)](#) and [I\(G\)](#)), hazing (as defined in [Article I\(O\)](#)) and/or any other conduct which threatens or endangers the health or safety of any person (including, but not limited to, messages sent via text messages, emails, on social media networks, or any electronic format including phone, etc.).

Retaliation (as defined in [Article I\(Z\)](#)) against any person submitting a report of any alleged violation of this Student Code of Conduct or against any person cooperating in the fact-finding (including participating with the investigation as a witness, etc.) of any alleged violation of this Student Code of Conduct. For these purposes, "retaliation" includes, but is not limited to, physical abuse, intimidation, threats, coercion, harassment, or other adverse action threatened or taken against any such Complainant or third party that dissuades a reasonable person from making or supporting a complaint under this policy. The University of Hawai'i prohibits and will not tolerate retaliation as defined in the *UH System Executive Policy EP 7.205 III(H)*.

A retaliation complaint, allegation, or report will be reviewed as a separate offense under this policy; that is, a student can be found responsible for retaliation even if not found to be responsible for the underlying reported Student Code of Conduct violation.

4. Any [Sex Discrimination](#)<sup>46</sup> which includes but not limited to the following:
  - a. Sex Discrimination (as defined in [Article I\(DD\)](#)).
  - b. Sex-Based Harassment (as defined in [Article I\(BB\)](#)).
  - c. Sexual Assault (as defined in [Article I\(EE\)](#)).
  - d. Dating Violence (as defined in [Article I\(H\)](#)).
  - e. Domestic Violence (as defined in [Article I\(K\)](#)).
  - f. Sex-Based Stalking (as defined in [Article I\(CC\)](#)).
  - g. Sexual Exploitation (as defined in [Article I\(FF\)](#))
  - h. Stalking (as defined in [Article I\(HH\)](#)).
  - i. [Retaliation](#) is prohibited by UH West O'ahu and the institution will not tolerate retaliation. Retaliation includes but is not limited to, intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a Report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding under this policy and its accompanying procedures. Interim Administrative Complaint Procedures Regarding Sex Discrimination [AP](#)

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<sup>46</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.1-3 (Dated 8/1/24).

[1.204](#). Acts of alleged Retaliation should be reported immediately for appropriate action.<sup>47</sup>

- *For charges based on Article III(B)(4)(a-i), UH West O'ahu will follow the current University of Hawai'i Executive Policy Interim Policy on Sex Discrimination [EP 1.204](#).*
5. Any discrimination which includes but is not limited to: unlawful discrimination or related harassment on the basis of race, sex, age, religion, color, national origin, ancestry, handicap, marital status, arrest and court record, sexual orientation, veteran's status (as defined in the UH System Policy [EP 1.202](#)), discrimination (as defined in [Article I \(I\)](#)), and/or discriminatory harassment (as defined in [Article I \(J\)](#)) will follow the current UH System Executive Policy, [EP 1.202](#). and/or [A 9.920](#).<sup>48</sup>
  6. Creation of health and/or safety hazards, e.g., dangerous pranks, hanging out of or climbing from/on/in windows, balconies, roofs, etc..
  7. Theft of and/or damage to property of UH West O'ahu or property of a member of the UH West O'ahu community or other personal or public property, on or off-campus, and/or knowingly maintaining possession of the stolen property.
  8. Failure to comply with the directions of UH West O'ahu officials or campus security officers acting in the performance of their duties and/or failure to identify oneself to these persons when requested to do so. This provision also includes a failure to complete required sanctions upon a finding of responsibility by an SCO, Appellate Officer, or Decision Maker in any student disciplinary related process by UH West O'ahu.
  9. Unauthorized possession, duplication, or use of keys or security mechanism to any UH West O'ahu premises, or unauthorized entry to or use of UH West O'ahu premises, including trespassing, propping, or unauthorized use of doors for entry into or exit from a UH West O'ahu building.
  10. Violation of any UH West O'ahu policy, rule, contract, or regulation published in hard copy, included in a course syllabus or available electronically on the UH West O'ahu website.
  11. Use, possession, manufacturing, distribution/sale, or being under the influence of marijuana, methamphetamine, opioids, heroin, narcotics, or other controlled substances (except as expressly permitted by state and federal law) while on any UH West O'ahu premises or at any UH West O'ahu sponsored event or ancillary

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<sup>47</sup> University of Hawai'i Executive Policy Interim Policy on Sex Discrimination EP 1.204, IV.A.2 (Dated 8/1/24).

<sup>48</sup> University of Hawai'i Executive Policy EP 1.202, III.C.1-2 (Dated 2/1/23).

site. Possession of drug paraphernalia is also prohibited on UH West O'ahu premises.

12. Use, possession, manufacturing, distribution/sale, or being under the influence of alcoholic beverages (except as expressly permitted by UH System Policies, state or federal law), or public intoxication while on any UH West O'ahu premises or at any UH West O'ahu sponsored event or ancillary site. Alcoholic beverages may not, in any circumstances, be used, possessed, or distributed to any person under twenty-one (21) years of age.
13. Possession of firearms (except as permitted by law), tasers, stun guns, explosives, weapons (see [Article I\(RR\)](#)), or dangerous chemicals on UH West O'ahu premises, and/or use of any such item in a manner that harms, threatens or causes fear to others within the UH West O'ahu community.
14. Participating in an on-campus or off-campus demonstration, riot or activity that disrupts the normal operations of UH West O'ahu and/or infringes on the rights of other members of the UH West O'ahu community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.
15. Obstruction of the free flow of pedestrian or vehicular traffic on UH West O'ahu premises or at UH West O'ahu-sponsored or supervised functions.
16. Conduct that is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on UH West O'ahu or at functions sponsored by, or participated in by UH West O'ahu or members of the academic community. Disorderly Conduct includes but is not limited to: the use of any device to capture audio, video or digital record or photograph of any person while on UH West O'ahu premises or UH West O'ahu events where there is a reasonable expectation of privacy (i.e. restrooms, locker rooms, gym, etc.) without their prior knowledge, or without their consent when such a recording is likely to cause injury or distress.
17. Violation of local, state, federal or campus fire policies including, but not limited to:
  - a. Intentionally or recklessly causing or attempting to cause a fire which damages or is intended to damage UH West O'ahu property or personal property of a member of the UH West O'ahu community or which causes or is intended to cause injury.
  - b. Failure to evacuate a UH West O'ahu- controlled building during a fire alarm.

- c. Improper or reckless use of UH West O'ahu fire safety equipment. Tampering with or improperly engaging a fire alarm or fire detection/control equipment while on UH West O'ahu property.
18. Theft or other abuse of computer facilities and resources, including but not limited to:
- a. Unauthorized entry into a file, to use, read, change the contents of, or for any other purpose.
  - b. Unauthorized transfer of a file.
  - c. Use of another individual's identification and/or password.
  - d. Use of any computing facility or resources to interfere with the work of another student, faculty member, or UH West O'ahu Official.
  - e. Use of any computing facility or resources to send obscene or abusive messages.
  - f. Online harassment of members of the UH West O'ahu community.
  - g. Use of any computing facility or resources to interfere with normal operation of the UH West O'ahu computing system.
  - h. Use of any computing facility or resources in violation of copyright laws.
  - i. Any violation of the UH System's Use and Management of Information Technology Resources Policy ([EP 2.210](#)).<sup>49</sup>
19. Abuse of the Student Code of Conduct process, including but not limited to:
- a. Falsification, distortion, or misrepresentation of information under review by an SCO.
  - b. Disruption or interference with the orderly conduct of an SCO meeting.
  - c. Attempting to discourage an individual's proper participation in, or use of, the Student Code of Conduct process.
  - d. Attempting to influence the impartiality of an SCO prior to, and/or during the course of, the SCO meeting.

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<sup>49</sup> University of Hawaii Executive Policy EP 2.210.

- e. Harassment (verbal or physical) and/or intimidation of an SCO prior to, during, and/or after an SCO meeting.
  - f. Influencing or attempting to influence another person to commit an abuse of the Student Code of Conduct process.
20. Smoking or use of tobacco on campus property. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. "Smoking" also includes the use of an electronic smoking device. "Use of tobacco" means the personal use of any tobacco product, including the use of smokeless tobacco, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means.<sup>50</sup>
21. Failure to engage in responsible social conduct that reflects credit upon the UH West O'ahu community and failing to model good citizenship.

### C. Violation of Law and UH West O'ahu Discipline

1. UH West O'ahu disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this Student Code of Conduct (that is if both possible violations result from the same factual situation) without regard to the status of any civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Student Code of Conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus at the discretion of the VCSA (or his or her designee). Determinations made or sanctions imposed under this Student Code of Conduct shall not be subject to change because criminal charges arising from the same factual circumstances as the alleged UH West O'ahu code violation were dismissed, reduced, or resolved in favor of or against the Respondent/Defendant.
2. When a student is charged by federal, state, or local authorities with a violation of the law, UH West O'ahu will not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the Student Code of Conduct, UH West O'ahu may advise off-campus authorities of the existence of the Student Code of Conduct and of how such matters are typically handled within the UH West O'ahu community. UH West O'ahu will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided

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<sup>50</sup> Hawaii Public Act 160 of 2018. Note: *As of November 15, 2018, no guidance has been provided to campuses on the suggested implementation and enforcement of the law on campus properties. Therefore, students who are caught smoking tobacco or using an electronic smoking device on any UH West O'ahu property will only be given a verbal warning only; reports will not be formally recorded by the SCO.*

that the conditions do not conflict with campus rules or sanctions). UH West O'ahu will comply with the Family Educational Rights and Privacy Act (FERPA). Individual students and other members of the UH West O'ahu community acting in their personal capacities remain free to interact with governmental representatives as they deem appropriate.

#### D. Amnesty

1. It is the policy of the University of Hawai'i System to provide amnesty for students under certain conditions as outlined below.
2. Amnesty for Good Faith Reporting of Misconduct UH West O'ahu recognizes that a student who has been drinking and/or using drugs and is then either a victim of violence, including but not limited to domestic violence, dating violence, stalking, and sexual assault, or observes a violation of UH West O'ahu Student Code of Conduct, may be hesitant to report the incident due to fear of being punished for their own conduct. UH West O'ahu strongly encourages students to report all incidents of misconduct. A student, including a student bystander, acting in good faith to report any incident of misconduct to UH West O'ahu officials or to police will not be subject to the Student Code of Conduct for their own violations occurring at or near the time of the incident being reported.
3. Medical Amnesty: Students who seek emergency medical attention for themselves, or for someone else, related to consumption of drugs or alcohol will not be charged with violations of the Student Code of Conduct related to that consumption, provided that the student subsequently completes an evaluation and any recommended treatment, as determined by the relevant Student Code of Conduct authority. Failure to complete this evaluation and any recommended treatment may result in charges being filed under the Student Code of Conduct.
4. Exceptions to Amnesty:
  - a. Amnesty does not apply to students who are in violation of UH West O'ahu's alcohol and drug policies, and who come into contact with law enforcement, faculty, administrative staff, residence hall staff, or other UH West O'ahu employees when such contact is initiated by law enforcement, faculty, administrative staff, residence hall staff, or other UH West O'ahu employees.
  - b. Amnesty is not intended to shield or protect students that repeatedly violate the Student Code of Conduct or that endanger the health and safety of others. In cases where egregious or repeated violations of the Student Code of Conduct occur, UH West O'ahu reserves the right to take judicial action on a case-by-case basis regardless of the manner in which the incident was reported.

## ARTICLE IV: STUDENT CONDUCT PROCESS (DUE PROCESS)

### A. Charges and Student Conduct Officer Meetings

1. Anyone may file a report against a student for (an) alleged violation(s) of the Student Code of Conduct. All students accused of violating this Student Code of Conduct are entitled to due process, which includes written notification of the alleged violation, and a reasonable opportunity to respond and provide evidence and/or witnesses to be considered prior to any final decision.
2. An allegation of a Student Code of Conduct violation must be directed to the SCO using the [online reporting form](#). Any report of a violation of the Student Code of Conduct should be submitted as soon as possible after the event takes place. However, all reports will be reviewed in accordance with this process, regardless of when the report is filed.
3. The SCO will be responsible for training and assigning Student Code of Conduct cases to appropriate SCOs when necessary.
4. The SCO will conduct an impartial and reliable preliminary fact-finding investigation of all allegations to determine if the allegation(s) have merit or not, and/or if they can be resolved administratively. Such disposition shall be final and there shall be no subsequent proceedings.
5. If it is determined that the allegation(s) has/have no merit, the report will be considered closed and dismissed. The SCO may request a non mandatory meeting with the Respondent to discuss the information stated in the report. The meeting will be scheduled at the discretion of the SCO.
6. If it is determined that the allegation(s) has/have merit, the Respondent will receive an official notification via email that (an) alleged violation(s) has/have been reported. All official correspondence regarding the Student Code of Conduct process will be communicated to the Respondent through their official UH West O'ahu email account.
7. In the official written notification, the Respondent shall be provided the following:
  - a. How the alleged violation(s) came to the attention of UH West O'ahu;
  - b. A detailed written summary of the allegation(s) so that the Respondent may properly prepare for his or her meeting or response to the allegation(s);



- c. The Respondent will be directed to make an appointment with the SCO to review the facts concerning the alleged violation(s) in order to determine if the Respondent will be formally charged with (a) violation(s) of the Student Code of Conduct;
  - d. A reasonable opportunity to provide his or her statement for consideration, as well as the names of any relevant witnesses for consideration by the SCO.
8. If the Respondent schedules an appointment, the SCO reviews the facts concerning the alleged violation(s) in order to determine if the Respondent will be formally charged with (a) violation(s) of the Student Code of Conduct;
9. The SCO meeting will be scheduled at the convenience of the SCO, however, all efforts will be made to schedule the meeting as soon as possible (considering the student's on-campus schedule).
10. If the Respondent is unable to or does not wish to meet with the SCO in person, the Respondent may submit a statement in writing for consideration (via their UH West O'ahu email account or in-person) responding to the allegation(s) and provide any witness(es), if any. The Respondent must provide a picture ID to confirm the proper identity of the Respondent (if unknown by the SCO) within the required response period.

Other arrangements may be made to facilitate the meeting, such as video or phone conference, when a face to face meeting may be difficult for the Respondent and at the sole discretion of the SCO. In situations where a meeting other than a face to face meeting will be held, the student must provide a copy of their identification to the SCO before the meeting can occur. A face to face meeting is always the preferred option.

If the Respondent fails to provide a copy of their identification prior to the start of the meeting, the meeting may be rescheduled at the discretion of the SCO.

11. In the event that the Respondent fails to contact the SCO, fails to schedule an appointment, or fails to submit a written statement within five (5) working days of the date listed on the written notification (excluding Saturday, Sunday, and Holidays), a hold will be placed on the Respondent's record until the Respondent responds to the notification, which may result in the Respondent's inability to register.
12. If, after receiving notice, a Respondent elects not to appear or provide a written statement (in lieu of an appearance) to an SCO prior to the SCO meeting, the SCO shall render a determination using information that has been provided. In addition, the Respondent shall be considered to have "waived" his or her right to appeal based on bias only (see [Article IV\(D\)\(4\)\(a-c\)](#) for details), and the decision of the SCO will be considered final.

13. If either party requests an alternate form of resolution and the other party agrees, the parties will engage in an informal resolution to informally resolve the issue. If the informal resolution results in a mutual satisfaction of both parties, then the case will be considered resolved. If the case is not resolved, then the case may be moved to a formal resolution by the SCO.

Informal resolution is available for cases involving both Sex Discrimination [[Article III\(B\)\(4\)\(a-i\)](#)] and Discrimination [[Article III\(B\)\(5\)](#)] only if a formal complaint has been filed and both parties agree to informally resolve the complaint.<sup>51</sup> <sup>52</sup> In addition, Sex Discrimination requires the approval of the Title IX Coordinator.<sup>53</sup>

14. During the scheduled meeting, the Respondent will meet one on one with the SCO and must provide a picture ID to confirm the proper identity of the Respondent (if unknown by the SCO). Representatives, parents or authorized campus personnel will only be allowed in this meeting at the discretion of the SCO when deemed appropriate. In addition, a FERPA release must be signed by the Respondent.
15. There shall be a single verbatim record of all SCO meetings. The digital recording<sup>54</sup> shall be the property of UH West O'ahu. For the purposes of FERPA, the recording is considered an educational record and cannot be reviewed unless a release is signed by all students with identifiable information contained in the recording. A student involved in the recording may request an opportunity to review the recording (in the presence of an authorized employee) only if the meeting involved one student without discussion of any witnesses (on the recording), and the student on the recording is the individual requesting the review.
16. SCO meetings shall be conducted using the following guidelines except as provided by [Article IV\(A\)\(25\)](#) below:
  - a. All SCO meetings shall be conducted in private. In cases involving sex discrimination and any discrimination [as defined under [Article III\(B\)\(4\)\(a-i\)](#) and [Article III\(B\)\(5\)](#)], UH West O'ahu recognizes the importance of confidentiality and will make every effort to preserve the privacy of all parties to the extent possible or as required by law. [Please refer to the University of Hawai'i [Executive Policy Interim Policy on Sex](#)

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<sup>51</sup> University of Hawai'i Interim Administrative Complaint Procedures Regarding Sex Discrimination AP 1.204, IV.C.1-6 (Dated 8/1/24).

<sup>52</sup> University of Hawai'i Discrimination Complaint Procedure for Students, Employees, and Applicants for Admission or Employment AP 1.202, III.C.3.a-f (Dated 2/1/2023).

<sup>53</sup> University of Hawai'i Interim Administrative Complaint Procedures Regarding Sex Discrimination AP 1.204, IV.C.1-6 (Dated 8/1/24).

<sup>54</sup> Per HRS 803-42(b)(4), HI allows a recording of a communication as long as one of the parties in the meeting consents to the recording.

[Discrimination EP 1.204](#) and [E 1.202](#)]. However, for safety reasons, the SCO may request the presence of Campus Security during any student conduct meetings.

- b. In cases involving more than one Respondent, the SCO will conduct the meetings separately to determine the responsibility of each student.
- c. Formal rules of procedure, and/or technical rules of evidence, such as those that are applied in criminal or civil court, are not used (and do not apply) in this Student Code of Conduct process.
- d. The tone of the meeting will be educational and not adversarial.
- e. If a disruption occurs during the meeting, the SCO, in his or her sole discretion, may have the disruptive party removed from the meeting, and the SCO shall be authorized to make a determination on the information already provided. If the individual causing the disruption is a student, he or she may be charged with a violation of the Student Code of Conduct, specifically, Article III(B)(19)(b): “Abuse of the Student Code of Conduct process, including but not limited to: b. Disruption or interference with the orderly conduct of an SCO meeting.”
- f. The parties may provide the SCO with a list of potential witnesses and a summary of information and/or copies of documents or relevant information they believe will assist the SCO in understanding their version of events. Pertinent information received from witnesses and the parties, records, exhibits, and written statements may be accepted as information for consideration by a SCO at the sole discretion of the SCO.
- g. The SCO in his or her sole discretion will determine which information is relevant given the report and or the facts and circumstances.
- h. During the meeting, the SCO shall determine whether the Respondent has violated each section of the Student Code of Conduct which the Respondent is alleged to have violated. However, the SCO may also consider a different charge if he or she believes the facts support (a) charge(s) different from the charge(s) with which the Respondent was originally charged. If the charge(s) is/are different from the charge(s) listed in the original notification, then the SCO will discuss or notice the Respondent so that he/she may respond appropriately to the new charge(s).
- i. Requests for a continuance shall be at the discretion of the SCO.

- j. The SCO's determination shall be made on the basis of whether "more likely than not" ("preponderance of the evidence" standard of proof) the Respondent violated the Student Code of Conduct.
17. After reviewing the available facts with the Respondent, and/or after reviewing the Respondent's statement, a decision will be made whether to formally charge the Respondent with (a) violation(s) of the Student Code of Conduct, administratively resolve the case (case closed), or further the fact-finding based on information provided by the Respondent.
18. Based on all the facts and circumstances presented, the charge(s) may be amended or changed, and the Respondent will be made aware of the change(s) immediately or as soon as possible verbally or in writing.
19. If the decision is made to further the fact-finding process, the Respondent will be notified and/or asked for follow-up information when necessary via email once the fact-finding is completed.
20. If the decision is made not to formally charge the Respondent, the Respondent shall be notified verbally during the meeting with a follow-up letter or shall be sent a letter after the meeting via email as soon as possible.
21. If the SCO has decided as to whether "more likely than not" the Respondent has not violated any provision of the Student Code of Conduct, the Respondent will not be formally charged. The case is administratively dismissed and considered closed.
22. If the decision is made to formally charge the Respondent, the Respondent shall be notified verbally during the meeting with a follow-up letter or shall be sent a letter after the meeting via the student's UH West O'ahu email as soon as possible.
23. If the SCO has made a decision as to whether "more likely than not" the Respondent has violated at least one provision of the Student Code of Conduct, the SCO will consider and assign (an) appropriate sanction(s).
24. UH West O'ahu uses progressive discipline as a means for preserving its educational and working environment. Once a Respondent has been found responsible for violating the Student Code of Conduct, the SCO will use all information available, including but not limited to: prior violations of the Student Code of Conduct (if any), community service involvement, and/or employment to determine (an) appropriate sanction(s).

25. The SCO may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the SCO, Complainant, Respondent, and/or other witnesses while the case is being resolved. These concerns may be addressed in a variety of ways including, but not limited to, UH West O'ahu Mutual No-contact Orders, campus security presence at meetings, removal from class, campus, or area for a short period or reasonable schedule adjustments. Removal for a period longer than a day requires an Interim Suspension ([see Article IV\(C\)](#)).
26. All Complainants will receive information regarding the notification of the alleged violations sent to the Respondents, as well as the outcome and final decision of the case. In cases involving sexual harassment (offenses listed under Article III(B)(4)(a-i)), the Complainants and the Respondent will receive the same notification of allegation(s) as well as, the determination of responsibility and sanctions (or as required under [Executive Policy Interim Policy on Sex Discrimination EP 1.204](#)).
27. Both parties will be given information regarding the status of the case when it has been resolved by an SCO via email. Information regarding the appeal process shall be made available to both parties.

## B. Sanctions

1. In cases where a student has been found “more likely than not” to have engaged in prohibited conduct (as listed under Article III(B)(1-3) & (6-21) above), UH West O'ahu will impose discipline that is consistent with the impact of the offense on the UH West O'ahu community. Progressive discipline principles will be followed in that the student's prior disciplinary history at UH West O'ahu (and any other institution of higher education, if applicable) will be taken into account, along with any other relevant information while determining sanctions. Disciplinary action taken against a student may include, but is not limited to, one or more of the following:
  - a. **Written Warning**—A notice in writing to the student that the student is violating or has violated institutional regulations and a copy of the warning letter is placed in the student’s disciplinary file.
  - b. **Probation**—Probation is for a designated period of time (which may include the remainder of their enrollment at UH West O'ahu) and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period. This sanction may require the student to meet with the VCSA (or his or her designee) upon request.

- c. **Loss of Privileges**—Denial of specified privileges for a designated period of time.
  - d. **Restitution**—Compensation for loss, damage, and/or injury. This may take the form of appropriate service and/or monetary or material replacement.
  - e. **Discretionary Sanctions**—Work assignments, essays, service to UH West O'ahu, Community Service, or other related discretionary or educational related assignments.
  - f. **UH West O'ahu Mutual No-contact Orders**- No unnecessary contact between the Respondent and the Complainant, witnesses, or other individuals (when appropriate).
  - g. **Suspension**—Separation of the student from UH West O'ahu for a definite period of time (usually 1 year or less) after which the student is eligible to return. Conditions for readmission may be specified. Suspensions may be effective immediately or deferred.
  - h. **Dismissal**—Separation of the student from UH West O'ahu for more than 1 year. The student may be eligible for return. Conditions for readmission, if any, will be specified. Dismissals will be effective immediately unless otherwise stated.
  - i. **Expulsion**—Separation of the student from UH West O'ahu permanently. Expulsions will be effective immediately, unless otherwise stated.
  - j. **Revocation of Admission and/or Degree**—Admission to or a degree awarded from UH West O'ahu may be revoked for fraud, misrepresentation, or other violation of UH West O'ahu standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
2. Recommend system-wide sanctions.<sup>55</sup>
  3. Withholding Degree or Certificate—UH West O'ahu may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Code of Conduct, including the completion of all sanctions imposed, if any.
  4. More than one of the sanctions listed above may be imposed for any single violation.

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<sup>55</sup> University of Hawaii Executive Policy EP 7.205.

5. The following sanctions may be imposed upon recognized UH West O'ahu student groups or organizations:
  - a. Those sanctions listed above in Article IV(B)(1)(a-j).
  - b. Loss of selected rights and privileges for a specified period of time.
  - c. Deactivation. (Loss of all privileges may be issued, including UH West O'ahu recognition, for a specified period of time.)
6. Once the SCO has determined that a student, group, and/or organization has violated the Student Code of Conduct, the SCO shall make a final determination of the sanctions to be imposed, taking into consideration all information presented at the meeting and other information available to the SCO, if applicable.
7. The SCO shall advise the Respondent, group, and/or organization in writing via email of the decision and the sanction(s) imposed, if any.

### **C. Interim Suspension**

In certain circumstances, the VCSA or SCO, may impose an interim suspension prior to a SCO meeting.

1. Interim suspension may only be imposed in the following circumstances:
  - a. To ensure the safety and well-being of members of the UH West O'ahu community or preservation of UH West O'ahu property;
  - b. To ensure the Respondent's own physical or emotional safety and well-being; or
  - c. If the Respondent poses an ongoing threat of disruption of, or interference with, the normal operations of UH West O'ahu.
2. Interim suspension will take effect immediately upon the direction of the VCSA or SCO and last for no more than ten (10) working days (Saturdays, Sundays, and Holidays are not included). The 10-day period may be extended for good cause by the SCO or by agreement with the Respondent.
3. During the interim suspension, the Respondent shall be denied access to the campus (including face-to-face and online classes when appropriate) and/or all other UH West O'ahu activities or privileges for which the Respondent might otherwise be eligible, as the SCO may determine to be appropriate.

4. The interim suspension does not replace the regular process, which shall proceed on the normal schedule, up to and including the completion of the SCO meeting, submission of sanctions (if any), and if required, may include appeal processes (if any).

#### D. Appeals

1. **A decision reached by the SCO** may be appealed by either the Respondent(s) or the Complainant(s) within five (5) working days, excluding Saturday, Sunday, and Holidays, of the decision. Such appeals shall be in writing, using the appropriate appeal form, and must be delivered to the Office of the Vice Chancellor of Student Affairs C Building- C 237 or submitted using the [online appeal form here](#).
2. The VCSA (or his or her designee) shall serve as the Appellate Officer in the case, or shall assign an appropriate trained Appellate Officer to the case. The Appellate Officer shall have the sole authority to determine whether or not an appeal warrants further review.
3. When an appeal has been submitted by one party, a copy of the appeal will be sent to the non-appealing party and the assigned SCO to allow them to respond, if they choose. The non-appealing party and the assigned SCO will be given five (5) working days, excluding Saturday, Sunday, and Holidays to submit a response to the appeal. If no response by the non-appealing party and the assigned SCO is submitted, the Appellate Officer shall make a final determination on the information provided by the appealing party.
4. An appeal that has been accepted for review shall be limited to a review of the verbatim recording of the SCO meeting and all supporting documents for one (or more) of the following reasons only:
  - a. There was a material deviation from the written procedures that substantially jeopardized the fairness of the process; or
  - b. There was new information that was unknown or unavailable at the time of the SCO's meeting that would have resulted in a substantially different outcome; or
  - c. There was a demonstrable bias by the SCO (this option is **only** available in cases where there is a digital recording of the SCO's meeting and it is available to review); or
  - d. The sanction was substantially disproportionate to the severity of the violation, given the facts and relevant information.



5. **If an appeal is granted**, then the designated Appellate Officer shall consider the basis for the appeal and make a determination on the issue presented that fairly addresses the alleged appeal issue **ONLY**. Decisions of the Appellate Officer when an appeal is granted are as follows:
  - a. Assign to another SCO and re-notice the student in accordance with the procedures (start the whole grievance process over).
  - b. Consider the new information presented and make the final determination of responsibility.
  - c. Issue appropriate sanctions that are consistent and proportionate to the severity of the violation.

The Appellate Officer may request written clarification from the parties or involved faculty or staff (investigators, previous decision maker) that the Appellate Officer deems appropriate to make a determination regarding the appeal request.

The decision of the Appellate Officer (or the assigned SCO, when the case is assigned by an Appellate Officer for an appellate purpose) when made in any circumstances listed above, shall be final and binding upon all involved parties.

6. **If an appeal is denied by the Appellate Officer**, the matter shall be considered **final and binding** upon all parties involved.

#### ARTICLE V: INTERPRETATION AND REVISION

A. Any question of interpretation or application of the Student Code of Conduct shall be referred to the SCO (for Student Conduct cases) or the VCSA (or his or her designee) in appellate cases for a final determination.

B. The Student Code of Conduct shall be reviewed and updated every year, beginning in September and completed by December 31st of every year, by the SCO. Changes, when made, shall be effective immediately.

C. A copy of UH West O'ahu's most current Student Code of Conduct will be made available [online](#).

*Last modified: September 5, 2024 TA (version 2 2024)*