



## **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 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 in such proceedings. In addition, UH West O'ahu has established a Student Code of Conduct ("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 an 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 on the UH West O'ahu community (See Article IV (B) 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 his or her 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 toward other particular student(s) and the behavior causes mental or physical harm to the other student(s); and is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student(s).<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>
- E. "Coercion" means intentionally compelling or inducing another person to engage in conduct from which another has a legal right to abstain, or to abstain from conduct in which another has a legal right to engage, by threatening by words or conduct to take some negative action that may impact the other person. In this context, some examples of "negative action" include, but are not limited to: causing bodily injury (defined above), causing property damage, physical confinement or restraint, or revealing information that is sought to be concealed.<sup>4</sup>
- F. "Consent" is an affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual contact. A person cannot give Consent if the person

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

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

<sup>3</sup> University of Hawaii Executive Policy EP 7.208, II.C.

<sup>4</sup> This definition comes from HRS 707-764, crime of extortion (formerly criminal coercion) because of its similarities. However, the definition as written in this Code is not identical to that in the HRS. It has been modified specifically for this administrative procedure.

- is under the age of consent<sup>5</sup> for sexual contact, the person is developmentally or intellectually disabled, or the person is mentally incapacitated or physically helpless. Lack of protest or resistance cannot be interpreted as Consent. Silence cannot be interpreted as Consent. Consent must be ongoing throughout any sexual contact and can be revoked at any time. The existence of a dating relationship, domestic partnership or marriage between the persons involved, or the existence of past sexual relations between the persons involved, is never by itself an indicator of Consent.<sup>6</sup>
- G. "Dating violence" is physical, sexual, emotional, financial, or psychological abuse or threats of abuse against another person who is or has been in a social relationship of a romantic or intimate nature with the alleged abuser; and where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.<sup>7</sup>
- H. "Domestic violence" is physical, sexual, emotional, financial, or psychological abuse or threats of abuse against another person who is a family or household member. For purposes of this definition, the term "household member" means a cohabitant who is or was a spouse or intimate partner.<sup>8</sup>
- I. "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>9</sup>
- J. "Force" means physical contact, violence, threat, intimidation, or coercion.
- K. "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>10</sup>

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<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 Hawaii Interim Executive Policy EP 1.204, II.C.2.

<sup>7</sup> University of Hawaii Interim Executive Policy EP 1.204, II.B.7.

<sup>8</sup> University of Hawaii Interim Executive Policy EP 1.204, II.B.6.

<sup>9</sup> University of Hawaii Executive Policy EP 7.208, II.E.

<sup>10</sup> This definition was developed from *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629, 651 (1999).

- L. “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 the 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>11</sup>
- M. “Incapacitation” (or “incapacitated”) is a mental or physical state in which a person lacks the ability to understand the consequences of their actions and, therefore, cannot make a rational, reasonable decision.

An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact.

Alcohol or drug use is one of the prime causes of incapacitation. Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated (and is therefore unable to give consent in cases involving sex or gender based discrimination) requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

1. Making decisions about the potential consequences of sexual contact;
2. Apprising the nature of one’s own conduct;
3. Communicating Consent to sexual contact; or
4. Communicating unwillingness to engage in sexual contact.

An individual’s intoxication is never an excuse for or a defense to committing sexual or gender-based harassment, sexual assault, sexual exploitation, or sexual violence.<sup>12</sup>

- N. “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).<sup>13</sup>

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<sup>11</sup> University of Hawaii Executive Policy EP 7.208, II.F.

<sup>12</sup> University of Hawaii Interim Executive Policy EP 1.204, II.C.3.

<sup>13</sup> University of Hawaii Executive Policy EP 7.208, II.O.

- O. “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>14</sup>
- P. “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>15</sup>
- Q. “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.<sup>16</sup>
- R. “Reporter” 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 Reporter, even if another member of the UH West O'ahu community submitted the report.<sup>17</sup>
- S. “Respondent” 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 complaint has been filed alleging a violation of the Student Code. A Respondent who withdraws from UH West O'ahu (after a complaint 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, even if they are not currently enrolled or have not yet begun attending classes, for the purposes of this process.<sup>18</sup>

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<sup>14</sup> Hawaii Revised Statutes 346-222. This definition comes from the statute governing the Department of Human Services, Adult Protective Services.

<sup>15</sup> University of Hawaii Executive Policy EP 7.208, (G).

<sup>16</sup> University of Hawaii Executive Policy EP 7.208, (H).

<sup>17</sup> University of Hawaii Executive Policy EP 7.208, II.D. This is the same definition EP 7.208,II.D uses for “Complainant.” As used in this Policy, “Reporter” includes both a “Complainant” as that term is used in EP 7.208 and a “Reporting Party” as that term is used in EP 1.204. Furthermore, for the purposes of EP 1.204, a “reporter” may also be considered a “victim” in sexual misconduct cases.

<sup>18</sup> University of Hawaii Executive Policy EP 7.208, II.A.

- T. "Sexual Assault" is the act of committing unwanted physical contact of a sexual nature, whether by an acquaintance or by a stranger. Such contact is unwanted when it occurs:
1. Without the Consent of at least one of the individuals; or
  2. When at least one of the individuals is incapacitated or otherwise incapable of giving Consent.<sup>19</sup>

For purposes of this section, "Sexual Contact" is defined as intentional touching or penetration of another person's clothed or unclothed body, including, but not limited to, the mouth, neck, buttocks, anus, genitalia, or breast, by another with any part of the body or any object in a sexual manner. Sexual contact also includes causing another person to touch their own or another body in the manner described above.<sup>20</sup>

- U. "Sexual Exploitation" is violating the sexual privacy of another, or taking unjust or abusive sexual advantage of another, without Consent (as defined above), and when such behavior does not otherwise constitute Sexual Assault.<sup>21</sup>
- V. "Sexual Harassment" means unwelcome conduct (either directly or indirectly when others are aware of it) that is severe or pervasive, and has either the purpose or effect of:
1. unreasonably interfering with an employee's work performance or a student(s) academic performance or environment, or
  2. creating an intimidating, hostile, or offensive work or educational environment.<sup>22</sup>
- W. "Sexual Intercourse" means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.

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

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<sup>19</sup> University of Hawaii Interim Executive Policy EP 1.204, II.B.5.

<sup>20</sup> University of Hawaii Interim Executive Policy EP 1.204, II.C.1.

<sup>21</sup> University of Hawaii Interim Executive Policy EP 1.204, II.B.4.

<sup>22</sup> This definition is a condensed version from University of Hawaii Interim Executive Policy EP 1.204, II.G.

- circumstances. Stalking may include (but is not limited to) situations occurring in person or through mail, electronic mail, text messaging, instant messaging, telephone, facsimile, social media websites (Facebook, Twitter, Tumblr, Instagram, Snapchat etc.), or other internet communications; for several days or for many years.<sup>23</sup>
- Y. “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; returning student, 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.).<sup>24</sup>
- Z. “Student Code” means UH West O'ahu’s Student Code of Conduct.
- AA. “Student Conduct Officer” means a person 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 and to determine sanctions when appropriate, or to determine if the case should be disposed of administratively.<sup>25</sup>
- BB. “UH West O'ahu” means University of Hawai'i - West O'ahu.
- CC. “UH West O'ahu official” means any person employed by UH West O'ahu, performing their assigned administrative or professional responsibilities.<sup>26</sup>
- DD. “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>27</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.
- EE. “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>28</sup> Examples of individuals “under the influence” include, but are not limited to: slurred speech, lack of coordination, and the smell

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<sup>23</sup> University of Hawaii Interim Executive Policy EP 1.204, II.B.8.

<sup>24</sup> This definition is modified from University of Hawaii Executive Policy EP 7.208, II.K.

<sup>25</sup> This definition is a synthesis of University of Hawaii Executive Policy EP 7.208, (B) and (M).

<sup>26</sup> University of Hawaii Executive Policy EP 7.208, II.P.

<sup>27</sup> University of Hawaii Executive Policy EP 7.208, II.Q.

<sup>28</sup> This definition is based on Hawaii Revised Statutes, 291E-61(1).

of alcohol or marijuana on the student that is coupled with unusual behavior of the student in general.

- FF. “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>29</sup>.

## ARTICLE II: STUDENT CODE AUTHORITY

- A. The 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 Director of Compliance (DoC) as the official designee who shall be authorized to render decisions and sanctions, assign cases to other trained student conduct officers and/or make determinations as to whether or not a case may be administratively resolved in accordance with this process.
- C. The DoC 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 DoC (or an assigned Student Conduct Officer) shall be final, pending the appropriate appeal process.

## ARTICLE III: PROSCRIBED CONDUCT

### A. Jurisdiction

The UH West O'ahu Student Code 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 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 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

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<sup>29</sup> HRS §134-9; University of Hawaii Executive Policy EP 9.210, III.F.



pending. The DoC shall decide whether the Student Code shall be applied to conduct occurring off campus, on a case by case basis, in his or her sole discretion.

The Student Code 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 code also applies to all current UH West O'ahu students regardless of the geographical location of their courses, for example, online.

## 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(P)), 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.
  - 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.
3. Abuse that is physical or psychological in nature. This includes actual physical abuse (as defined in Article I(O)) or assaults, threats of physical harm or threatening behavior that would cause fear in a reasonable person, intimidation, harassment (as defined in Article I(K)), coercion, bullying (as defined in Article I(C)), hazing 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.).

This provision also 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 and veteran's status.<sup>30</sup>

Retaliation against any person submitting a complaint of any alleged violation of this Code or against any person cooperating in the fact-finding (including testifying as a witness) of any alleged violation of this Code. For these purposes, "retaliation" includes, but is not limited to, physical abuse, intimidation, threats, harassment, and other adverse action threatened or taken against any such Reporter or third party.

4. Any sexual misconduct, which includes the following:

- a) Sexual Exploitation (as defined in Article I (T))
- b) Sexual Harassment (as defined in Article I (U))
- c) Sexual Assault (as defined in Article I (S))
- d) Retaliation against any person filing a complaint or report alleging sexual misconduct or against any person cooperating in the fact-finding of (including providing information as a witness) any allegation of sexual misconduct. For these purposes, "retaliation" includes, but is not limited to, intimidation, threats, harassment, and other adverse action threatened or taken against any such Reporter or third party.

- *For charges based on Article III(B)(4)(a-d), UH West O'ahu will follow the current UH Interim Executive Policy, [EP 1.204](#)*

5. 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.

6. Failure to comply with the directions of UH West O'ahu officials or campus security officers acting in 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 a Student Conduct Officer, Appellate Officer or Decision Maker in any student disciplinary related process by UH West O'ahu.

7. Unauthorized possession, duplication, or the use of keys to any UH West O'ahu premises or unauthorized entry to or use of UH West O'ahu premises.

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<sup>30</sup> University of Hawai'i Executive Policy EP 1.202, III.

8. Violation of any UH West O'ahu policy, rule, or regulation published in hard copy, included in a course syllabus or available electronically on the UH West O'ahu website.
9. Use, possession, manufacturing, distribution, or being under the influence of marijuana, 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 site. Possession of drug paraphernalia is also prohibited on UH West O'ahu premises.
10. Use, possession, manufacturing, distribution, 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 circumstance, be used, possessed, or distributed to any person under twenty-one (21) years of age.
11. Possession of firearms (except as permitted by law), tasers, stun guns, explosives, weapons (see Article I(EE)), 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.
12. 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.
13. 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.
14. Conduct that is disorderly; 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, etc.).
15. 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. Use of any computing facility or resources to interfere with normal operation of the UH West O'ahu computing system.
- g. Use of any computing facility or resources in violation of copyright laws.
- h. Any violation of the UH System's Use and Management of Information Technology Resources Policy.<sup>31</sup>

16. Abuse of the Student Code process, including but not limited to:

- a. Falsification, distortion, or misrepresentation of information under review by a Student Conduct Officer.
- b. Disruption or interference with the orderly conduct of a Student Conduct Officer meeting.
- c. Attempting to discourage an individual's proper participation in, or use of, the Student Code process.
- d. Attempting to influence the impartiality of a Student Conduct Officer prior to, and/or during the course of, the Student Conduct Officer meeting.
- e. Harassment (verbal or physical) and/or intimidation of a Student Conduct Officer prior to, during, and/or after a Student Conduct Officer meeting.
- f. Influencing or attempting to influence another person to commit an abuse of the Student Code process.

17. Students are required to engage in responsible social conduct that reflects

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<sup>31</sup> University of Hawaii Executive Policy 2.210

credit upon the UH West O'ahu community and 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 (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Student Code 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 Oahu code violation were dismissed, reduced, or resolved in favor of or against the Student/Defendant.

2. When a student is charged by federal, state, or local authorities with a violation of law, the 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, UH West O'ahu may advise off-campus authorities of the existence of the Student Code 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 that the conditions do not conflict with campus rules or sanctions). 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.

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

### A. Charges and Student Conduct Officer Meetings

1. Any member of the UH West O'ahu community may file a report against a student for (an) alleged violation(s) of the Student Code. All students accused of violating this Code 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 violation must be directed to the VCSA (or his or her designee) using the online report found here:  
[https://cm.maxient.com/reportingform.php?UHWestOahu&layout\\_id=0](https://cm.maxient.com/reportingform.php?UHWestOahu&layout_id=0). Any

report of a violation of the Student Code 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 DoC will be responsible for training and assigning Student Code cases to appropriate Student Conduct Officers when necessary.
4. The DoC (or assigned Student Conduct Officer) will conduct an impartial and reliable preliminary fact-finding investigation of all allegations to determine if the allegation(s) have merit 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 merit, the Respondent will receive written notification that (an) alleged violation(s) has/have been reported.
6. All official correspondence regarding the Student Code process will be communicated to the Respondent through their official UH West O'ahu email account, unless otherwise requested in writing by the Respondent.
7. In the notification, the student will be directed to make an appointment with the DoC (or the assigned Student Conduct Officer) 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.
8. During the scheduled meeting, the Respondent will meet one on one with the Student Conduct Officer, and must provide a picture ID to confirm the proper identity of the Respondent (if unknown by the Student Conduct Officer). Representatives, parents or authorized campus personnel will only be allowed in this meeting at the discretion of the DoC (or the assigned Student Conduct Officer) when deemed appropriate. In addition, a FERPA release must be signed by the Respondent.
9. If the Respondent is unable to, or does not wish to meet with the DoC (or the assigned Student Conduct Officer) in person, the Respondent may submit a statement in writing (via their UH West O'ahu email account or in person) responding to the allegation(s), 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 DoC (or the assigned Student Conduct Officer). 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 Student Conduct Officer before the meeting occurs. 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.

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, administratively resolve the complaint, or further the fact-finding based on information provided by the Respondent.

10. If the decision is made to further the fact-finding, the Respondent will be notified via email once the fact-finding has been completed and/or for follow-up information when necessary.
11. 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.
12. In the event that the Respondent fails to contact the Student Conduct Officer within five (5) working days of the date listed on the written notification (excluding Saturday and Sunday), a hold will be placed on the Respondent's record until the Respondent responds to the notification, which may result in the Respondent's enrollment or records being delayed or withheld.
13. If a decision is made to formally charge the Respondent, the Respondent shall be communicated verbally during the meeting with a follow up in writing via email as soon as possible, or via the student's UH West O'ahu email.
14. If the Reporter requests an alternate form of resolution, and the Respondent agrees, then the parties will engage in informal resolution. If the informal resolution results in mutual satisfaction of both parties, then the case will be considered resolved. If the case is not resolved, then it may be forwarded to the Student Conduct Officer for resolution.

Informal resolution is not available for cases involving discrimination and/or sex/gender based discrimination [Article III(B)(3) and III(B)(4)(a-e)] unless the Reporter or Victim requests it, and the Respondent agrees to participate.

15. Prior to a Student Conduct Officer meeting, the Respondent shall be provided the following:
  - a. Written notification regarding how the alleged violation 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. A reasonable opportunity to provide his or her statement for consideration, as well the names of any relevant witnesses for consideration by the Student Conduct Officer before a final decision is made.
16. Student Conduct Officer meetings shall be conducted using the following guidelines except as provided by Article IV(A)(21) below:
- a. The Student Conduct Officer meeting will be scheduled at the convenience of the Student Conduct Officer, however, all efforts will be made to schedule the meeting as soon as possible (considering the student's on campus schedule).
  - b. The parties may provide the Student Conduct Officer with a list of potential witnesses and a summary of information and/or copies of documents or relevant information they believe will assist the Student Conduct Officer in understanding their version of events.
  - c. The Student Conduct Officer, in his or her sole discretion, will determine which information is relevant given the report and or the facts and circumstances.
  - d. All Student Conduct Officer meetings shall be conducted in private. In cases involving sex and gender-based discrimination [as defined under Article III(B)(4)(a-d)], UH West O'ahu will keep the complaint and fact-finding private to the extent possible or as required by law. [Please refer to the UH System's [Executive Policy EP 1.204: Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence](#)] However, for safety reasons, the Student Conduct Officer may request the presence of Campus Security during any conduct meeting.
  - e. In cases involving more than one Respondent, the Student Conduct Officer, will conduct the meetings separately, to determine the responsibility of each student.
  - f. The tone of the meeting will be educational and not adversarial.
  - g. Pertinent information received from witnesses and the parties, records, exhibits, and written statements may be accepted as information for consideration by a Student Conduct Officer at the sole discretion of the Student Conduct Officer.



- h. Requests for a continuance shall be at the discretion of the Student Conduct Officer.
  - i. During the meeting, the Student Conduct Officer shall determine whether the Respondent has violated each section of the Student Code in which the Respondent is alleged with violating. However, the Student Conduct Officer may also consider a different charge if he or she believes the facts support (a) charge(s) different than the charge(s) the Respondent was originally charged with. If the charge(s) is/are different from the charge(s) listed in the original notification, then the Student Conduct Officer will discuss or notice the Respondent so that he/she may respond appropriately to the new charge(s).
  - j. The Student Conduct Officer'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.
  - k. 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 process.
  - l. If a disruption occurs during the meeting, the Student Conduct Officer, in his or her sole discretion may have the disruptive party removed from the meeting, and the Student Conduct Officer 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, "disruption of administration."
17. There shall be a single verbatim record of all Student Conduct Officer meetings. The digital recording<sup>32</sup> shall be the property of UH West O'ahu. This recording will be maintained only until the appeal process has concluded (if applicable) or as deemed necessary by UH West O'ahu. For the purposes of FERPA the recording is considered an educational record and cannot be released 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) if the meeting only involved one student without discussion of any witnesses (on the recording), and the student on the recording is the individual requesting the review.

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<sup>32</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. For the purposes of the recording in this process, the Student Conduct Officer is the consenting party.

18. If after receiving notice, a Respondent elects not to appear or provide a written statement (in lieu of an appearance) to a Student Conduct Officer prior to a meeting, the Student Conduct Officer 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 an appeal, and the decision of the Student Conduct Officer will be considered final.
19. If the Student Conduct Officer 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 Student Conduct Officer will consider (an) appropriate sanction(s).
20. 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, the Student Conduct Officer will use all information available, including but not limited to: prior violations of the Student Code (if any), community service involvement, and/or employment to determine (an) appropriate sanction(s).
21. All Reporters will receive information regarding the notification of the alleged violations to the Respondents, as well as, the outcome and final decision of the case. Sexual misconduct Reporters or Victims (offenses listed under Article III(B)(4)(a-d)) will receive a copy of the actual notification and sanction letter sent to the Respondent, with appropriate redactions (or as required under Interim Executive Policy EP 1.204).
22. The Student Conduct Officer may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Student Conduct Officer, Reporter, Respondent, and/or other witness 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 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)).
23. Both parties will be given information regarding the status of the case when it has been resolved by a Student Conduct Officer 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) & (5-17)

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, 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 No Contact Orders**- No unnecessary contact between the Respondent and the Reporter, 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. 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.
3. More than one of the sanctions listed above may be imposed for any single violation.
4. 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.)
5. Once the Student Conduct Officer has determined that a student and/or group or organization has violated the Student Code, the Student Conduct Officer shall make a final determination of the sanction to be imposed, taking into consideration all information presented at the meeting.
6. The Student Conduct Officer shall advise the Respondent, group and/or organization in writing of the decision and of the sanction(s) imposed, if any.

### C. Interim Suspension

In certain circumstances, the Student Conduct Officer, may impose an interim suspension prior to a Student Conduct Officer 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; or
  - b. To ensure the student's own physical or emotional safety and well-being; or
  - c. If the student 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 Student Conduct Officer and last for no more than ten (10) working days (Saturdays and Sundays are not included). The 10-day period may be extended for good cause by the DoC 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 student might otherwise be eligible, as the DoC 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 Student Conduct Officer hearing, submission of sanctions (if any), and if required, may include appeal processes (if any).

#### D. Appeals

1. **A decision reached by the DoC or Student Conduct Officer** may be appealed by either the Respondent(s) or the Reporter(s) within five (5) working days, excluding Saturday and Sunday, 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-247 or submitted using the online appeal form here:

[https://cm.maxient.com/reportingform.php?UHWestOahu&layout\\_id=3](https://cm.maxient.com/reportingform.php?UHWestOahu&layout_id=3).

2. The VCSA (or his or her designee, not the DoC) 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 other party to allow the non-appealing party to respond, if they chose. The non-appealing party will be given (3) working days, excluding Saturday and Sunday, to submit a response to the appeal. If no response by the non-appealing party 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 Student Conduct Officer meeting and all supporting documents for one (or more) of the following reasons only:

- a. There was a material deviation from written procedures that jeopardized the fairness of the process; or
- b. There was new information that was unavailable at the time of the meeting, would have resulted in a different outcome; or
- c. There was a demonstrable bias by the Student Conduct Officer (this option is only available in cases where there is a digital recording of the Student Conduct Officer'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 another Student Conduct Officer and re-notice the student in accordance with the procedures.
- b. Consider the new information presented and make the final determination and sanctions.
- c. Assign another Student Conduct Officer to review the information and make a decision regarding responsibility.
- d. Issue appropriate sanctions that are proportionate to the severity of the violation.

The Appellate Officer may request written clarification from the parties that the Appellate Officer deems appropriate to make a determination regarding the appeal request.

The decision of the Appellate Officer (or a Student Conduct Officer, 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.

**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 shall be referred to the DoC (for Student Code cases) or the VCSA (or his or her designee) in appellate cases for a final determination.

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

C. A copy of UH West O'ahu's most current Student Code will be made available online.

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