C. Coercion

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

D. Complainant

Complainant means an individual who is alleged to be the victim of conduct that could constitute Prohibited Behavior under this policy.

E. Complaints

Complaints are allegations of Prohibited Behavior under this policy.

F. Confidential Resource

Confidential Resource means an employee appointed by the University and who is not a Responsible Employee on notice of Prohibited Behavior. Confidential Resources can provide assistance related to issues of sex discrimination and gender-

activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

J. Formal Title IX Sexual Harassment Complaint

Formal Title IX Sexual Harassment Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a Title IX Sexual Harassment policy violation as defined under Section III.A.1 by a Respondent and requesting that the University investigate the allegation(s). At the time of filing a formal complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the University. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

K. Formal Title IX Sexual Harassment Grievance Process

Formal Title IX Sexual Harassment Grievance Process means a method of formal resolution outlined in Administrative Procedure 1.204 to address conduct that falls within Title IX Sexual Harassment, and which complies with the requirements of 34 CFR Part 106.45.

L. Incapacitation

Incapacitation occurs when someone cannot make rational, reasonable decisions

Official with Authority means an employee of the University explicitly vested with the responsibility to implement corrective actions for Prohibited Behavior under this policy on behalf of the University.

O. Parties or Party

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

Party refers to either the Complainant or Respondent, individually.

P. Prohibited Behavior

Prohibited Behavior means any behavior prohibited under Section III.A below.

Q. Respondent

Respondent means an individual who has been reported to be the alleged perpetrator of conduct that could constitute Prohibited Behavior under this policy.

R. Responsible Employee

Responsible Employee means an employee of the University who is obligated by state law or University policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. All faculty members, except those who are designated as confidential advocates, are Responsible Employees under Hawai‘i Revised Statutes §304A-

It is the policy of the University of Hawai‘i to provide equity of opportunity in higher education, both in the educational mission and as an employer. The University is committed to complying with all State and Federal statutes, rules, and regulations which prohibit discrimination.

The University is committed to (1) providing an educational and working environment that is free from all forms of Prohibited Behavior under this policy; (2) eliminating, preventing, and addressing the effects of Prohibited Behavior; (3) fostering an environment where all individuals in our University community are well informed and supported when reporting alleged Prohibited Behavior to the University; and (4) providing a fair, equitable, and impartial process for all Parties.

A. Prohibited Behavior

The University prohibits the following conduct:

1. Title IX Sexual Harassment

Formal Title IX Sexual Harassment Complaints alleging Title IX Sexual Harassment are subject to the Formal Title IX Sexual Harassment Grievance Process outlined in Administrative Procedure (AP) 1.204 based on the Scope and Jurisdiction set forth under Section III.B.

Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

a. Quid Pro Quo

Title IX Quid Pro Quo is when an employee of the University of Hawai‘i conditions the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct.

b. Unwelcome Conduct

Forcible Rape: Penetration, no matter how slight, of the

Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16.[1]

d. Dating Violence

Dating Violence is violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on

action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

ii. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.

iii. *Substantial emotional distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

2. Sex Discrimination

Sex Discrimination is any distinction, preference, or adverse treatment of an individual when based on a person's sex or gender (including actual or perceived sex, gender, sexual orientation, gender identity, or gender expression) 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.

3. Sexual Harassment

Sexual Harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct that is sexual in nature whena4ci(l o)-3(r p)-

b. *Reasonable person* means a reasonable person under similar circumstances and with similar identities 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.

7. Retaliation

The University prohibits and will not tolerate retaliation. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by law or 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, AP 1.202 & AP 1.204. Acts of alleged retaliation should be reported immediately for appropriate action.

A retaliation complaint, allegation, or report may be reviewed as a separate offense; that is, a person can be found responsible for retaliation

All Respondents are expected to comply with the assigned sanctions, remedies, and/or corrective actions within the timeframe specified by the final Decision Maker(s), including the Appeal Officer.

Failure to abide by the corrective action(s) or sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may be reviewed as a separate offense and/or result in additional sanction(s), including suspension, expulsion, and/or termination from the University, and may be noted on a student's official transcript.

10. False Allegations and Evidence

Deliberately false and/or malicious accusations, providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation may subject a person to discipline.

B. Scope and Jurisdiction

This policy applies to all University students, employees, and third parties.

1. AP 1.204 for Title IX Sexual Harassment

The use of AP 1.204 as the applicable procedure shall occur when all of the following conditions are met:

a. The allegations include Title IX Sexual Harassment;

b.

2. Responsible Employees

All employees of the University who are considered Responsible Employees under State law (faculty members), University Managerial and Executive employees, the University of Hawai‘i Office of Equity Assurance, the University of Hawai‘i Community College System Office of Compliance & Title IX, campus security/ public safety departments, and Human Resources Offices are responsible employees and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment, within three (3) calendar days of receiving the report.[2]

Responsible Employees must promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-

2. Reporting Prohibited Behavior

Allegations of Prohibited Behavior may be reported to the campus Title IX Coordinator. Reports can be made in person, or by mail, telephone, or electronic mail, at any time, using the contact information listed for the Title IX Coordinator or by any other means that result in the Title IX Coordinator receiving the person's verbal or written report.

Upon receiving a report of Prohibited Behavior, the campus Title IX Coordinator shall assess the information and take the following actions:

a. The Title IX Coordinator will determine any appropriate applicable supportive measures to provide to the parties.

b. If the Title IX Coordinator or designee determines that the allegations, even if substantiated, would not rise to the level of a violation under this policy or are outside the scope or jurisdiction afforded under this policy, the Title IX Coordinator or designee will document the reason(s) that the matter will not be pursued under this policy including whether the matter will be referred to another office and/or pursued under another policy, and advise the Complainant accordingly.

c. The Title IX Coordinator will explain the options available to the complainant including supportive measures, filing a Formal Title IX Sexual Harassment Complaint, as well as the option for informal resolution once the Formal Title IX Sexual Harassment Complaint has been filed.

d. If a complaint warrants investigation, the Title IX Coordinator will ensure that the complaint is processed using the appropriate procedure.

F. Multiple Campuses

When a report may impact multiple University campuses, the Title IX Coordinator who receives the report will inform all other Title IX Coordinators whose campuses may be impacted and the Office of Equity Assurance. The Title IX Coordinators of the impacted campuses will work cooperatively to ensure that appropriate supportive measures are provided to the parties. The Title IX Coordinator from the home campus of the Respondent will be designated as the lead Title IX Coordinator to manage the grievance process if a Complaint is filed; however, based upon the circumstances, a different lead Title IX Coordinator may be assigned and charged with managing the grievance process.

G. Confidentiality Limitations

While the University recognizes the importance of confidentiality in these matters, only Confidential Resources can maintain confidentiality. The University will make every effort to preserve the privacy of all parties to the extent practicable, however, once the University has notice of alleged Prohibited Behavior, the

be modified. A Respondent may be accompanied by an Advisor of their choice to the meeting.

K. Recordkeeping

The University will maintain for a period of at least seven (7) years records of:

1. Each Title IX Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation, any disciplinary sanctions imposed on the Respondent, any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity, and any appeal and the result therefrom;
2. Any Informal Resolution and the result therefrom;
3. All materials used to train Title IX Coordinators, Investigators, Decision-

VI. References

A. Relevant Federal and State Laws and Regulations

It is the policy of the University of Hawai‘i to comply with the applicable federal and state statutes, rules, regulations,, and provisions in the collective bargaining agreements which prohibit discrimination in University programs, activities, and employment practices.

These equal opportunity laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, Clery Act of 1990 as amended by the Violence Against Women Act (reauthorized in 2013), Equal Pay Act of 1963, Chapter 378 of the Hawai‘i Revised Statutes, and Executive Order 11246.

B. AP 1.204 Interim Title IX Sexual Harassment Grievance Process

C. EP 1.202 Nondiscrimination, Equal Opportunity, and Affirmative Action

D. EP 7.205 Systemwide Student Disciplinary Sanctions

E. EP 7.208 Systemwide Student Conduct Code

F. EP 9.210 Workplace Non-Violence

G. AP 9.920 Discrimination Complaint Procedures for Employees, Students, and Applicants for Employment or Admission