

Act 222 Affirmative Consent  
Task Force

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December 28, 2016

# DEPT. COMM. NO. 221

VIA EMAIL

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& HAND DELIVERY

The Hon. Ronald D. Kouchi, President  
& Members of the Senate  
Twenty-Ninth State Legislature  
Hawaii State Capitol, Room 409  
Honolulu, Hawai'i 96813

VIA EMAIL

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& HAND DELIVERY

The Hon. Joseph Souki, Speaker  
& Members of the House of Representatives  
Twenty-Ninth State Legislature  
Hawaii State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

The Act 222 Affirmative Consent Task Force respectfully submits the enclosed report required by Act 222, SLH 2015. A copy of this report has also been transmitted to the Hon. David T. Ige, Governor of the State of Hawaii.

If you or a member of your staff wishes to access the Task Force's report electronically, it will be uploaded and may be viewed at:

<http://www.hawaii.edu/titleix/act222>

<http://www.hawaii.edu/offices/government-relations/2017-legislative-reports/>

Should you have any questions regarding the Task Force's report, please feel free to contact me at 956-9803 or via email at [jennifer.rose@hawaii.edu](mailto:jennifer.rose@hawaii.edu).

Sincerely,



Jennifer Solidum Rose  
Chair, Act 222 Affirmative Consent  
Task Force

Enclosure: Act 222 Affirmative Consent Task Force Report To The 2017  
Hawaii State Legislature (including Appendices)

# **Report of Act 222 Affirmative Consent Task Force**

**Submitted to:**

**Hawaii State Legislature  
2017 Regular Session**

## **Foreword & Acknowledgements**

The Affirmative Consent Task Force created by Act 222, which was signed into law on July 9, 2015, is pleased to submit its second Report to the Hawaii State Legislature for the 2017 Session.

We would like to thank each of the members of the Task Force and the members of the public for their participation in the Task Force as well as acknowledge their important contributions to this Report.

We also wish to express our gratitude to the staff of the University of Hawaii's Office of Institutional Equity who prepared the minutes of every meeting of the Task Force, assisted the Task Force's Permitted Interaction Groups in notetaking and compilation of their individual preliminary findings and recommendations, and assisted the Task Force with the production of this Report.

Jennifer Solidum Rose, J.D., Chair

Catherine Betts, J.D., Vice Chair

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## **I. Establishment of the Act 222 Affirmative Consent Task Force**

Title IX, a historic, comprehensive federal law to address gender equity on college campuses (now known as the Patsy Takemoto Mink Equal Opportunity in Education Act), was enacted in 1972. The law's principal objective is to prohibit sex discrimination in federally-funded education programs and provide individual citizens effective protection against such discriminatory practices. Title IX states that:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]*<sup>1</sup>

Sexual violence is a form of sex discrimination prevalent on college campuses across our nation. It is committed against both women and men and impacts the educational opportunities of its victims, including those who may never come forward to report their experiences. This prevalence is unacceptable.

Recognizing that ending sexual violence on campuses is consistent with the University of Hawaii's ("University") commitment to maintaining safe, respectful campus environments free from discrimination, harassment, and sexual violence and will entail effective response and intervention and education to change attitudes and behaviors, the 2015 Hawaii State Legislature passed SB 387 Relating to Affirmative Consent. The Bill was signed into law by Governor David Ige as Act 222, Session Laws of Hawaii 2015, on July 10, 2015 ("Act 222").<sup>2</sup>

The purpose of Act 222 is to review the University's executive policy concerning sexual harassment, sexual assault, domestic violence, dating violence, and stalking adopted by the UH Board of Regents in February 2015 ("February 2015 policy"). The February 2015 policy requires the UH campuses to implement comprehensive education and prevention programs, information and assistance for individuals reporting sexual harassment and sexual violence, prompt and equitable complaint procedures, and corrective action to prevent and end incidents of harassment and sexual violence are addressed by the policy and the University. To meet its purpose, Act 222 also created the Affirmative Consent Task Force ("Task Force") to conduct the above review. The Task Force was required to submit the first report of its findings and recommendations no later than 20 days before the convening of the Regular Session of 2016. Its second report is due 20 days before the convening of the Regular Session of 2017.

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<sup>1</sup> See 20 USC § 1681(a). The U.S. Department of Education Office of Civil Rights ("OCR"), referred to in this report, enforces Title IX to ensure that institutions that receive federal financial assistance comply with the law. OCR evaluates, investigates, and resolves complaints alleging sex discrimination, conducts proactive investigations (known as "compliance reviews") to examine potential systemic violations based on sources of information other than complaints, and provides technical assistance, information, and guidance to schools, universities, and other agencies to assist them in voluntarily complying with the law. The University of Hawaii at Manoa was one of the campuses nationwide selected for a compliance review by OCR. The multi-year review culminated in a site visit in 2014. UH Manoa is awaiting the results of this review.

<sup>2</sup> See Appendix A

## **II. Historical Overview of UH Executive Policy 1.204**

At the initial convening of the Task Force on August 11, 2015, Jan S. Gouveia, University of Hawaii Vice President for Administration, provided a historical overview of the University's February 2015 policy. This policy left each of the ten campuses to develop its own procedures and practices, an approach that yielded inconsistent responses to complaints, including those involving parties or incidents on multiple campuses.<sup>3</sup> With the support of President David Lassner and the Council of Chancellors and guided by the work of President Lassner's Title IX Advisory Group, the University began the process of developing a new, system-wide executive policy that would provide basic resources and programs as well as establish minimum standards to ensure consistency and excellence in the University's response to sex and gender-based discrimination and violence on its campuses.

Balancing the importance of having a system-wide policy at the commencement of the school year with the University's commitment to continue consulting with various stakeholders, including the exclusive collective bargaining representatives of UH's faculty and staff, student representatives and members of the community, President Lassner effectuated Interim EP 1.204<sup>4</sup> ("EP 1.204"), an updated policy on sex and gender-based discrimination and violence, on September 1, 2015. EP 1.204 establishes system-wide standards and procedures that seek to ensure a consistent institutional response across the ten UH campuses, clarify the types of conduct prohibited by the University, and identify how and from whom students, faculty, and staff can seek confidential support or report incidents of sex or gender-based discrimination or violence.

To assist with the implementation and review of EP 1.204, the University also established the Office of Institutional Equity, which became operative on September 1, 2015. OIE continues to oversee revisions to EP 1.204 as stakeholders deliberate and submit their feedback on the latest version.

## **III. Formation & Structure of the Task Force**

The Task Force consists of 15 members who serve without compensation<sup>5</sup>. Since its creation, the Task Force has met on August 11, 2015, October 21, 2015, November 17, 2015, and December 9, 2015, January 27, 2016, March 2, 2016, May 10, 2016, June 21, 2016, July 27, 2016, September 14, 2016, October 19, 2016, and November 10, 2016.<sup>6</sup> Its review is guided by the concepts enumerated in Act 222. As such, the Task Force formed four Permitted Interaction Groups ("PI.G.").<sup>7</sup>

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<sup>3</sup> The University of Hawaii System consists of three four-year campuses (Manoa, Hilo and West Oahu) and seven community colleges (Honolulu, Leeward, Windward, Kapiolani, Hawaii, Maui College, and Kauai). Consequently, students may enroll in classes on multiple campuses over time in order to complete their education at the University. It is also not unusual for faculty to teach or work on more than one campus.

<sup>4</sup> See Appendix C

<sup>5</sup> Members of the Task Force are listed in Appendix D

<sup>6</sup> Minutes are available upon request.

<sup>7</sup> See Appendix E for list of the participants for each of these four Permitted Interaction Group participants.

In its second year, the Task Force broadened its review to include the new mandates of Act 208, Session Laws of Hawaii 2016 (“Act 208”)<sup>8</sup>, which incorporated many of the Task Force’s preliminary recommendations from its first Report.

The Task Force undertook a deliberate process to incorporate the diverse range of perspectives, knowledge, and experience of its members and the robust and nuanced discussion that occurred at every meeting. Information gathered by the various P.I.G.s was compiled and presented in a draft report, then discussed during the Task Force’s November 10, 2016 meeting. Unless otherwise noted, the findings and recommendations in this report reflect the combined views of the Task Force members.

#### **IV. Format of This Report**

The Task Force organized its Findings (Section V) and Recommendations (Section VI) within four areas:

- **EP 1.204**, which addresses how the policy is being drafted and how its content is and will be implemented, operationalized, and evaluated for effectiveness;
- **Education and prevention programs, notification, and resources**, which addresses raising awareness of and preventing sexual assault and other forms of gender-based violence, how students and others are made aware of their rights and responsibilities under Title IX, and the resources that are available and how they can be accessed;
- **Training of University employees**, which addresses who should be trained, how training should be done, development and selection of training curricula, and coordination and centralization of campus and system-wide training; and
- **Community collaborations**, which addresses processes to navigate the University system and increase access to community resources, as well as strengthening relationships between the University and community programs to ensure a coordinated response to incidents of sexual assault and other forms of gender based violence. This area also addresses the creation and implementation of MOUs as required by Act 208 between the University and Law Enforcement agencies state-wide.

#### **V. Findings**

##### **A. EP 1.204**

- 1. Comparative analysis of EP 1.204’s definition of “responsible employees” with that provided by the U.S. Department of Education**

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<sup>8</sup> See Appendix B



### Office of Civil Rights and adopted by other universities/colleges.

- a. Interim EP 1.204 currently defines "responsible employees" as all "executive and managerial employees, and those individuals/departments designated as Reporting Options." With respect to all other employees, except for those designated as confidential resources, Interim EP 1.204 states that such employees "**should** immediately report alleged prohibited behaviors to the Title IX Coordinator" (emphasis added).
- b. UH Hilo's policy on sexual harassment defines a "responsible employee" as any University employee who "has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or *who a student could reasonably believe has this authority or duty*" (emphasis added). The UH Hilo policy goes on to name Executive and Managerial positions that would fit this category. Faculty members, however, are excluded as "responsible employees" by both the UH Hilo policy and Interim EP 1.204.
- c. The U.S. Department of Education Office for Civil Rights (OCR) defines "responsible employee" as any employee "who has the authority to take action to redress sexual violence; who has been given the duty to report incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or *whom a student could reasonably believe has this authority or duty*"<sup>9</sup> (emphasis added).
- d. A review of the definitions of "responsible employee" in the policies of other institutions shows definitions that are more closely aligned with OCR's.<sup>10</sup>
- e. The Association of Title IX Administrators (ATIXA) is considered the leading advocate in Title IX compliance and is affiliated with the National Center for Higher Education Risk Management Group, LLC (NCHERM) with whom the UH System has a contractual relationship. ATIXA's guidance regarding "responsible employees" provides that "all employees should, by policy, be mandated reporters of what they know, within 24 hours of coming to know it." While only some employees have to share *all* that they know, ATIXA recommends that all employees are responsible employees under Title IX and should be trained accordingly. Employees can initially satisfy their duty to report by withholding

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<sup>9</sup> See Questions and Answers on Title IX and Sexual Violence, US Department of Education, Office of Civil Rights, at p. 15 (available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)

<sup>10</sup> See Appendix F

certain personally identifiable information, so that reporting can be accomplished while respecting the wishes of the alleged victim to the extent practicable.

- f. OCR guidance leaves open the question of whether a faculty member would always qualify as an employee whom a student could reasonably believe has the authority or duty to report allegations of sexual misconduct. ATIXA does not take a firm stance on whether faculty members should be responsible employees. ATIXA instead proposes that all employees “should” share all they know with the Title IX Coordinator.
- g. Interim EP 1.204 has not adopted the definition of “responsible employee” recommended by OCR guidance.
- h. With the signing of Act 208, University faculty are now designated as “responsible employees.” Interim EP1.204 is expected to be amended accordingly.

**2. Definitions of “consent” adopted by other universities/colleges, endorsed by ATIXA, and addressed in various statutory schemes.**

- a. Interim EP 1.204 currently defines “consent” as the "affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual conduct." The policy also includes various examples of lack of consent, such as when the person is under the age of consent, incapacity, or lack of protest. This is very similar to other schools that have adopted affirmative consent definitions in their Title IX policies.<sup>11</sup>
- b. ATIXA recommends the following definition of consent from their model policy, "consent is clear, and knowing, and voluntary (or affirmative, conscious and voluntary) words or actions, that give permission for specific sexual activity." Other universities’ definitions endorsed by ATIXA vary slightly. However, most definitions are very broad and contain examples of what constitutes consent.
- c. ATIXA also suggests that universities include a link or reference to a statutory definition of consent under state law. While HRS § 702-235 describes ineffective consent, Hawaii statutes do not define consent, particularly in the context of sexual activity.
- d. The current definition of consent in Interim EP 1.204 is similar to definitions found in the ATIXA model policies and those of other

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<sup>11</sup> See Appendix G for a review of other definitions of "consent" in University policies.

universities who have adopted the affirmative consent standard.

e. The following table provides examples of consent definitions:

Source	Definition of Consent
ATIXA	Clear, and knowing, and voluntary (or affirmative, conscious and voluntary), words or actions that give permission for specific sexual activity.
University of Hawaii	Affirmative, conscious, and voluntary agreement to engage in agreed upon forms of sexual conduct.
University of California	Affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of both persons an affirmative, conscious, and voluntary agreement to engage in sexual activity.
State University of New York	Knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
University of Michigan (new policy effective 07-01-16)	Clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions, to engage in a particular activity. Consent must be voluntarily given and cannot be obtained through coercion or force. For purposes of this Policy, in evaluating whether consent was freely sought and given, the issue is whether the Respondent knew, or reasonably should have known, that the activity in question was not consensual, or that the Claimant was unable to consent due to incapacitation.
University of Illinois	Informed, freely and actively given, mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. A person can withdraw consent at any time.

**3. Review regarding who “Decision Makers” should be, how they should be selected to ensure competency and lack of bias, and the training they should be required to complete.**

- a. Interim EP 1.204 provides that the Chancellor will designate "a Decision Maker for the purposes of implementing Findings and Sanctions."
- b. Interim EP 1.204 further provides that the Decision Maker will determine whether a violation of the policy occurred as well as the appropriate sanctions.
- c. Interim EP 1.204 currently does not address the qualifications to be a Decision Maker.

d. Interim EP 1.204 also does not address how a Decision Maker will be designated where there is a potential or actual conflict of interest.

**4. Review of Interim EP 1.204's ability to provide a clear avenue for students to report alleged violations or non-enforcement of the policy by Title IX Coordinators, Investigators, Decision-Makers, and Appeals Officers.**

a. Interim EP 1.204 lays out avenues for reporting. Some ambiguity remains, making it potentially unclear to someone seeking help. For example, the policy does not define the acronym for the Equal Employment Opportunity and Affirmative Action Office (EEO/AA) and does not state whether the EEO/AA Office will accept student complaints. Accordingly, students may interpret the policy as if the EEO/AA Office is an alternative to the Title IX Coordinator.

b. Interim EP 1.204, Section VI(B)(1) is also potentially confusing. This section states that "all complaints, allegations, and reports of prohibited behavior under this Policy... should be made to a campus Title IX Coordinator." However, Section IV(D) lists two other resources that can be reported to. Section VI(B)(3) of the policy also creates ambiguity by stating that "reports made to the University regarding prohibited behavior will not necessarily trigger a report to law enforcement." As written, the policy could be interpreted to mean that reporting a complaint to the police automatically triggers a report to the University. As a result, some individuals may go to the police and assume that the University will be notified of their complaints, when that is not the case.

c. Interim EP 1.204 does not set forth any procedures for reporting the University's non-compliance or non-enforcement of its own policy. Interim EP 1.204 discusses the right to an appeal but fails to clearly state whether a student should appeal if he or she believes that University officials did not properly enforce Interim EP 1.204.

d. Interim EP 1.204 does not address whether there is any recourse if the Appeals Officer does not properly enforce Interim EP 1.204.

e. A University student or employee may also report institutional violations of Title IX to OCR, which is responsible for ensuring that schools comply with all federal civil rights laws like Title IX.

**5. Examine the data available from each campus regarding the outcomes of complaints to identify any possible needs for additional institutional support.**

- a. The P.I.G. received information from a former UH student who was a victim of a sexual assault. She related that when she tried to seek help and resources, it was difficult to find and often hard to understand.
- b. A Title IX Coordinator noted that in her initial meetings with victims, she reviews Interim EP 1.204 with the victim, circles important sections, and goes over any questions the student might have.
- c. Members of the P.I.G. reviewed aggregate data for the period September 1, 2015 to December 31, 2015. Prior to September 1, 2015 and the opening of OIE, the University had not been collecting Title IX case data in any systematic way.
- d. On December 17, 2015, each of the campus Title IX Coordinators were asked to provide aggregate data to OIE. The aggregate data requested included:
  - i. Total number of Interim EP 1.204 cases on each campus;
  - ii. Type of alleged violation under Interim E.P. 1.204 (e.g., sex discrimination, sexual harassment, gender-based harassment, sexual exploitation, sexual assault, domestic violence, dating violence, stalking, retaliation, and failure to comply with interim measures);
  - iii. Source of referral/report to Coordinator (e.g., direct report by victim, faculty member, friend, another campus Coordinator, etc.);
  - iv. Outcome (e.g., informal resolution, voluntary agreement, dismissal, or full investigation and outcome);
  - v. Type/scope of interim measure provided (e.g., no contact order, rescheduling classes, work arrangements, housing arrangements, interim suspension, campus security escort, etc.);
  - vi. Type/scope of sanction & other remedy (e.g., warning, disciplinary probation, suspension, withholding of degree,

expulsion, censure, etc.); and

- vii. Referrals for victims (e.g. off vs. on campus counseling, advocacy, legal services agency, police, etc.)
- e. With the exception of Kauai Community College and the Equal Employment Opportunity/Affirmative Action Office (UH System Title IX Coordinator for employees), campuses submitted their data for the September 1-December 31, 2015 time period to OIE.<sup>12</sup>
- f. Four campuses submitted aggregate data for all three quarters (i.e. January – March 2016; April – June 2016; July – September 2016) in the January 1 – September 30, 2016 time period.<sup>13</sup>
- g. The types of reported misconduct vary from campus to campus, but collective data available for the September 1, 2015 – September 30, 2016 time period indicates that sexual harassment, gender-based harassment, stalking, sex assault, and domestic/dating violence are the most prevalent. The number of incidents of misconduct covered by Interim EP 1.204 on each campus appear to be relatively proportional to the student population of that campus.

**6. Research different models of the “one policy / one process” including appeals on all campuses and the model endorsed by ATIXA. Conduct additional research and identify ways in which the “one policy / one process” could be strengthened to further ensure timely, fair, and consistent outcomes (including sanctions) on all campuses and for all groups affected (employees and students).**

- a. Prior to the adoption of Interim EP 1.204, each campus developed its own misconduct policy and disciplinary procedures. This approach created disparate treatment of and outcomes for victims and perpetrators across campuses, impacting the overall effectiveness of the University’s Title IX program.
- b. In 2015, the Western Interstate Commission for Higher Education (WICHE) conducted an in-depth study to review the structure of

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<sup>12</sup> See Appendix H for a summary of the data for the time period September 1 – December 31, 2015. The Appendix also includes a collated data summary for UH campuses that provided data for the time period January 1 2016 – September 2016.

<sup>13</sup> Data for all three quarters for the January 1, 2016 – September 30, 2016 time period has not been received from University of Hawaii at Hilo, Hawaii Community College, Honolulu Community College, Kapiolani Community College, Leeward Community College, Maui College and the System Offices.

the UH system.<sup>14</sup> WICHE noted that “there was little appreciation for the value of standard procedures in staff recruitment, evaluation and termination processes, or in the high level of expertise required in compliance with regard to sponsored programs or labor relations.” The authors of the WICHE report observed that “considerable confusion and angst exists about who is responsible for what.” Thus, the report recommended that the roles and responsibilities of the system staff and the campus staff needed to be clarified and understood by all.

- c. Other statewide university systems similar in structure to UH have implemented a single policy for all their campuses while also allowing individual campuses to retain certain degrees of autonomy to enforce and implement the policy.<sup>15</sup>
- d. UH adopted a system-wide policy to define prohibited conduct and outline procedures for informal and formal resolutions, in Interim EP 1.204.
- e. Currently, OIE is responsible for monitoring and enforcing system-wide Interim EP 1.204, with individual campuses retaining autonomy to implement Interim EP 1.204 and handle complaints on their campuses consistent with the policy.
- f. Current practice for multiple violations is to conduct separate investigations of each alleged policy violation, e.g., a violation of the Student Conduct Code and a concurrent violation of Interim EP 1.204, and give the reports to a single Decision Maker. If an employee is involved, the Decision Maker is usually a human resources specialist because the investigation and/or sanctions may trigger provisions of a collective bargaining agreement. The additional layer of collective bargaining agreements creates a unique situation where one party may have additional levels of appeal. For example, if an employee violates Interim EP 1.204 against a student, and the employee is sanctioned, the employee can appeal the sanction through three levels of review. The student victim is only entitled to a single level of appeal under Interim EP 1.204. This potentially creates a power imbalance between the employee respondent and the student complainant resulting in potentially disparate treatment for students.

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<sup>14</sup> See 2015 Report to the Board of Regents of the University of Hawaii System, WICHE (available at [http://www.hawaii.edu/uhmfs/documents/2015\\_16/20160316\\_supportingdoc\\_2.Item\\_V.Presentation\\_on\\_Report\\_on\\_Current\\_Structure\\_of\\_the\\_University\\_System\\_by\\_David\\_A.Longanecker\\_President\\_of\\_WICHE.pdf](http://www.hawaii.edu/uhmfs/documents/2015_16/20160316_supportingdoc_2.Item_V.Presentation_on_Report_on_Current_Structure_of_the_University_System_by_David_A.Longanecker_President_of_WICHE.pdf))

<sup>15</sup> See Appendix I for an explanation of one policy / one process system practices in State University of New York system and the University of California system.

- g. Interim EP 1.204 does not address which investigation or disciplinary procedure should be followed if multiple policies are violated.
- h. Interim EP 1.204 does not address whether prior violations of other university or campus policies can be taken into consideration in the consequences or sanctions for a responding party.

**7. Research the viability of dedicated Title IX Coordinators on every campus.**

- a. The UH system consists of UH Manoa, UH Hilo, UH West Oahu, and seven UH Community Colleges.
- b. UH Manoa and UH Hilo have dedicated Title IX Coordinators.
- c. Although UH West Oahu does not have a dedicated Title IX Coordinator, the Title IX Coordinator essentially functions as a Title IX Coordinator given the very small number of students enrolled at that campus.
- d. Research regarding the viability of a dedicated Title IX Coordinator focused primarily on the UH Community Colleges (CCs). The UH CCs consist of Hawaii CC, Honolulu CC, Kapiolani CC, Kauai CC, Leeward CC, Maui College, and Windward CC.
- e. In December 2015, the UH CC System hired Christine Chun, J.D. as the Director of Compliance and Title IX Office. One of Ms. Chun's main duties is to ensure, in collaboration with OIE, that all seven community colleges are in compliance with Title IX.
- f. Title IX Coordinators at the Community Colleges are currently Vice Chancellors for either students or administration. Deputy Title IX Coordinators are student affairs officers or human resource professionals.

**8. Conduct a review of information on each campus website. Research how students search for information on websites and identify search engines and key terms to ensure relevant websites/information can be readily accessed.**

- a. The Policy P.I.G. conducted a review of every UH campus and website<sup>16</sup>.

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<sup>16</sup> See Appendix J for a review of campus websites.



- b. Research suggests that victims of crime are more likely to seek help through informal networks (such as family and friends), rather than formal networks (such as law enforcement and physicians).
- c. Students who have experienced gender-based violence may be hesitant to seek help through formal university processes.
- d. Information on how students search for information, such as through university website searches, is scant. However, analytics provided by the University show that the average amount of time spent on the University of Hawaii system website, hawaii.edu (hereafter referred to as “the system website”), is one minute and thirty seconds.
- e. Below are findings about the current accessibility of University policies on sex and gender-based discrimination and violence. Accessibility is measured by searching key terms associated with sex discrimination and/or gender-based violence, via the website search engine for the University of Hawaii system, the University of Hawaii Manoa, the University of Hawaii Hilo, and the University of Hawaii at West Oahu, and examining whether those terms trigger a search result containing or linking to EP 1.204 and/or a related campus policy on the first page of search results. Search terms included “rape,” “harassment,” “gay,” “lesbian,” “transgender,” “bisexual,” “LGBT” “queer,” “discrimination,” “sex,” “domestic violence,” “gender,” “stalked,” “stalking,” “stalker,” “violence,” “assault,” and “attacked.”
  - i. The system website search function pulls search results from the system website and the websites of all ten campuses, casting a wider net for search results triggered by search terms related to sex and gender-based discrimination and violence.
    - (1) Using the system website’s search function, the following terms triggered results including Interim EP 1.204, a page that links to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “rape,” “harassment,” “LGBT,” “sexual assault,” “discrimination,” “sex,” “gender,” “domestic violence,” “stalking,” “stalker,” “violence,” and “assault.”
    - (2) Using the system website’s search function, the following terms did not trigger results including

Interim EP 1.204, a page that links to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “gay,” “lesbian,” “transgender,” “bisexual,” “queer,” “stalked,” and “attacked.”

- ii. Individual campus website search function results vary from campus to campus, and students may find it difficult to locate Interim EP 1.204 or their campus’s Title IX resources through their campus website’s search function. Search results were recorded for the University of Hawaii Manoa, University of Hawaii Hilo, and University of Hawaii West Oahu campus websites.
  - (1) Using the University of Hawaii at Manoa’s website (<http://manoa.hawaii.edu>) search function, the following terms triggered results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “rape,” “harassment,” “LGBT,” “sexual assault,” “discrimination,” “sex,” “domestic violence,” “gender,” “stalking,” “stalker,” “violence,” and “assault.”
  - (2) Using the University of Hawaii at Manoa’s website search function, the following terms did not trigger results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “gay,” “lesbian,” “transgender,” “bisexual,” “queer,” “stalked”, and “attacked.”
  - (3) Using the University of Hawaii Hilo’s website (<https://hilo.hawaii.edu>) search function, the following terms triggered results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “harassment,” “sexual assault,” “discrimination,” “sex,” “domestic violence,” “stalking,” “stalker,” and “assault.”

- (4) Using the University of Hawaii Hilo’s website search function, the following terms did not trigger results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “rape,” “gay,” “lesbian,” “transgender,” “bisexual,” “LGBT,” “queer,” “gender,” “stalked,” “violence,” and “attacked.”
  - (5) Using the University of Hawaii West Oahu’s website (<http://www.uhwo.hawaii.edu>) search function, the following terms triggered results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “rape,” “harassment,” “sexual assault,” “discrimination,” “sex,” “domestic violence,” “gender,” “stalking,” “stalker,” “violence,” and “assault.”
  - (6) Using the University of Hawaii West Oahu’s website search function, the following terms did not trigger results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results: “gay,” “lesbian,” “transgender,” “bisexual,” “LGBT,” “queer,” “stalked,” and “attacked.”
- iii. In addition to the aforementioned search terms, several gender-based slurs were entered into the system website, University of Hawaii Manoa website, University of Hawaii Hilo website, and University of Hawaii West Oahu website. No gender-based slurs triggered results including Interim EP 1.204, a page linking to Interim EP 1.204, and/or a campus policy related to sex discrimination or gender-based violence within the first page of search results.

**9. Review of related UH policies and procedures for consistency and to make a final recommendation.**

- a. Copies of the policies from UH Mānoa, UH Hilo, UH West Oahu, and the UH CCs referenced in this report are available on each

campus' website or from OIE upon request.<sup>17</sup>

- b. The Policy P.I.G. discussed the current process to amend the Student Conduct Code as a “case study” for how other policies could be addressed. The current Student Conduct Code policy, EP 7.208, “University of Hawai`i System-wide Student Conduct Code”, was vetted and approved in July 2009.<sup>18</sup> All ten UH Campuses follow this policy; however, each campus has their own stand-alone campus student conduct procedure. The System Associate Vice President for Student Affairs has been meeting with the seven (7) Community Colleges to update EP 7.208 and establish a student conduct procedure that is very similar to UH Mānoa's student conduct procedure<sup>19</sup> in content. OIE is providing consultation on this draft student conduct code regarding Title IX issues. West Oahu established its own student conduct policy and procedure<sup>20</sup>, and UH Hilo utilizes EP 7.208 and established its own student conduct procedure.<sup>21</sup>
- c. To ensure that the student conduct code aligns with EP 1.204, University stakeholders met and recommended that the student conduct code eventually be consistent across all ten (10) campuses. All ten (10) campuses will benefit from following a single student conduct policy and procedure. This group is also reviewing the current student disciplinary sanction procedure, EP 7.205, “System-wide Student Disciplinary Sanctions,” effective October 2014<sup>22</sup>, which is a sanctioning process that enables the Associate Vice President for Students Affairs to suspend or dismiss a student from the UH system. This policy is also being reviewed by the Council of Senior Student Affairs Officers.
- d. The anticipated procedure for review of the new student conduct code is that after the working group proposes a draft policy, the draft will be circulated to the Student Caucus (undergraduate students), Graduate Student Organization (graduate students), Council of Chairs (faculty), and Council of Chancellors (administration) for review and comment. After making final revisions, the draft policy will be given to the President for approval and signature.

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<sup>17</sup> Act 208, effective July 1, 2016, requires the University to revise all Executive Policies regarding student conduct, nondiscrimination, complaint procedures, campus security, alcohol consumption, housing and workplace violence that conflict with Interim EP 1.204.

<sup>18</sup> System-wide Student Conduct Code: <https://www.hawaii.edu/policy/archives/ep/e7/e7208.pdf>.

<sup>19</sup> [http://studentaffairs.manoa.hawaii.edu/policies/conduct\\_code/sanctions.php](http://studentaffairs.manoa.hawaii.edu/policies/conduct_code/sanctions.php)

<sup>20</sup> [http://www.uhwo.hawaii.edu/default/assets/File/UHWOSTudentCode\\_021916.pdf](http://www.uhwo.hawaii.edu/default/assets/File/UHWOSTudentCode_021916.pdf)

<sup>21</sup> [https://hilo.hawaii.edu/studentaffairs/conduct/student\\_conduct.php](https://hilo.hawaii.edu/studentaffairs/conduct/student_conduct.php)

<sup>22</sup> <http://hawaii.edu/policy/?action=viewPolicy&policySection=ep&policyChapter=7&policyNumber=205>

**B. Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources**

**1. Gathering Information from Various Education, Awareness, and Prevention Offices which Directly Interface with Students on the University's Campuses**

a. Research and Fact-finding Methodology: Data Request and Interviews

The Education P.I.G. began its inquiry by developing a method to streamline data collection from campus Title IX teams and identified offices that provide education and training programs. The group created templates<sup>23</sup> to collect data on the following variables related to education and prevention programs: program description, content (e.g., Title IX and/or VAWA) and curriculum, audience demographic, attendance, trainer, coordinator, frequency of event/training/program, duration, designation as mandatory or optional, training medium, budget, and attendance tracking. As the data may include personally-identifiable information on education personnel and education program participants, the P.I.G. honored providers' requests that the data be summarized in aggregate form to inform findings but not be included in the Appendix as submitted.

In gathering information from the offices directly, the Task Force narrowed its efforts to well-known education program providers at the University of Hawai'i at Manoa and campus Title IX teams. In contacting these offices, the Task Force gathered materials, solicited aggregate data, and conducted interviews with the personnel from the various offices.

b. Participants in the Data Request

i. The following UH Manoa service providers submitted data:

- (1) UH Manoa education and prevention program providers: Housing Coordinator, LGBTQ+ Center, PAU Violence, Bridge to Hope, and Office of Gender Equity

ii. The following Title IX teams submitted data:

- (1) UH System Office of Equal Employment Opportunity and Affirmative Action (EEO/AA), UH Manoa (UHM), UH Hilo, UH West Oahu, UH

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<sup>23</sup> See Appendix L for data templates.

Maui College, Windward Community College,  
Leeward Community College, Honolulu  
Community College, and Kauai Community  
College

iii. The following Title IX teams did not submit data:

(1) Kapiolani Community College, and Hawai'i  
Community College

c. Findings from the Data Request

i. Although data templates were provided, the type of data submitted was inconsistent across the campuses and service providers. Not all campuses provided a comprehensive response to the various data fields requested. Others did not submit a response altogether.

ii. Additionally, the data collected shows that there is a greater number of cross-campus collaborations on education, awareness, and prevention efforts concerning sex and gender-based discrimination and violence than previously understood. For example, the PAU Violence program at UHM was identified as a sponsor or host of events at Community College campuses on neighbor islands.

iii. On-campus groups that perform education, awareness, and prevention activities sometimes have direct working relationships with off-campus resources (e.g., local domestic violence service providers and sexual assault centers) to provide programming developed in the community, such as the Sex Abuse Treatment Center's Respect campaign. Such services also sometimes receive direct funding from outside sources. For example, the Hawai'i State Department of Health Domestic Violence and Sexual Assault Special Fund (DVSASF) has funded several UH PAU Violence initiatives.

d. Findings from Interviews with Education Providers

i. Education P.I.G. members also conducted interviews with education service providers, such as personnel under the PAU Violence program. A summary of factual outcomes from these discussions is enclosed in this report as Appendix N.

- ii. These interviews show that many education service providers across the system are affiliated with the PAU Violence Program, which is housed under the Women’s Center at UHM. These service providers deliver a wide array of services and programming to the UHM campus, as well as significant prevention education, training, and technical assistance/advisory support to other campuses within the UH System.
- iii. Additionally, unique to the UHM campus is a new service for students, who are responding parties under Interim EP1.204.<sup>24</sup> The UHM Respondent Support personnel provides the Responding Party with assistance and guidance regarding the Title IX System and participates in providing prevention education and outreach for all campus groups, with special projects focused on engaging men (i.e. athletes, male peer group). The role of the Respondent Support Coordinator is continually being modified as best practices are being developed. The description of services being provided do appear to be more rooted in advocacy services that go beyond providing information concerning Title IX system rights and responsibilities.
- iv. Campus infrastructure for delivery of prevention education, crisis de-escalation, and other services on non-UH Manoa campuses are varied and inconsistent across the system. These programs aim to be tailored to meet the unique needs of each campus and are based on the resources available to each respective campus.

**2. Gathering Information from Housing and Other Larger Portals/Points of Entry and Any Relevant Information Technology and Web Services Staff Regarding Building the University’s Capacity to Distribute Information.**

- a. Housing
  - i. Through its data collection, the Education P.I.G. identified UHM as the only campus that provides housing to a significant population of students and University-affiliated program participants, although UH Hilo campus does have some dormitory housing available for students. Most education and training on Title IX and VAWA-related content was provided to Housing staff (i.e. Resident

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<sup>24</sup> Per EP1.204, a Responding Party is a person against whom an allegation of prohibited behavior under EP1.204 is directed.

Assistants, Resident Directors, and other Student Housing services personnel) by the UH System Office of Institutional Equity Director and the UHM Assistant Director for Conduct and Community Standards, who is also the Deputy Title IX Coordinator at UHM. Housing personnel were advised on how to identify and handle incidents relating to Title IX and VAWA, as they are often seen as a point of entry for assistance from UHM students who live in dorm-housing.

- ii. For the past two years, The PAU Violence program has also partnered with UHM Housing Staff to make training available to new incoming residents, who may have missed the institution's New Student Orientation. This training opportunity is coordinated by Housing staff and includes different campus resources. The PAU Violence Program partners with the UHM Office of Title IX to create a 45-minute presentation on definitions, policies, procedures, student rights, and resources.

b. Websites

- i. See Section V.A.8. above.

c. Online Education/Training Curriculum

- i. Although a comprehensive resource mapping related to training was conducted under the Training P.I.G., the Education group recognizes that training also serves to educate employees and students on their rights and resources and fulfills the University's legal requirements to provide educational programs and resources. To comply with Act 208<sup>25</sup>, the University provided all employees with access to LawRoom, a new online training and educational curriculum that was evaluated by various University stakeholders. In addition to training employees on their responsibilities under the law, the program provides employees with the following:

- (1) Educational resources on their rights under federal and state laws

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<sup>25</sup> Pursuant to Act 208, Session Laws of Hawaii 2016, the University is required to provide all employees and students with training on Title IX, VAWA, and University policies relating to sex discrimination and gender-based violence.



- (2) A review of University policies related to sex and gender-based discrimination and violence
  - (3) Education on important topics that are considered instrumental to cultural-change (e.g., consent and bystander and trauma-informed response)
  - (4) A quick tab to additional educational and support resources available to them on campus and in the community
- ii. The University reported that an online educational module, also provided by LawRoom, would be launched to all students across the system in the near future. The student programs are designed to provide centralized education and awareness with expertly tailored, interactive scenarios. For students, there are different modules that the University can adapt based on specialized learner groups (e.g. 4-year college student, community college student, and graduate student). To facilitate ease of completion-tracking, the online training programs have been integrated with the University of Hawaii Identity Management System, which collects and consolidates information concerning people associated with the University, so that the University may better establish and manage a single, permanent identity for each person.
  - iii. Although Act 208 requires employee and student training on sex and gender-based discrimination and violence, there was robust discussion and dissent among members of the Education P.I.G. regarding whether sanctions should be implemented if training was not completed. While there was general consensus that sanctions against employees should be considered as their training is tied to their professional obligations under State and Federal law<sup>26</sup> (i.e., as a “responsible employee”), members disagreed on whether sanctions should be implemented against students who do not complete education and training.

However, studies<sup>27</sup> show that implementing student Title IX and VAWA training is most successful when sanctions,

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<sup>26</sup> Act 208, Session Laws of Hawaii 2016 mandates that all faculty are designated as a “Responsible Employee,” which requires them to report any case that could be related to Title IX to their campus Title IX Coordinator. Furthermore, the U.S. Department of Education 2011 guidance “Dear Colleague Letter” recommends that all employees be designated as “Responsible Employees.”

<sup>27</sup> See Appendix O for a summary of the studies reviewed by the Education group.

particularly registration holds, are effected against students who do not complete training. In comparison, incentives for student-oriented education programs and training related to Title IX and VAWA resulted in a low rate of participation.

d. UH Information Technology Services

- i. With regards to the University's capacity to distribute and collect information, the Office of Institutional Equity has been collaborating with Information Technology Services to improve system wide use of technology that stores that data associated with students, faculty, and staff. The University of Hawaii Identity Management System (UHIMS) collects information associated with the University so that the University may manage the demographics of each person. The UHIMS also provides the University the ability to automatically enable and disable access to online resources, such as email, Lulima, eCafe, and lab computers, and administrative and student online resources, such as MyUH.

**3. Information Gathered from the Campuses Vice Chancellors of Student Affairs Regarding Implementation of and Access to Basic Preliminary Education Around Student Codes of Conduct and to Further Discuss How to Best Support the Education Efforts of the Taskforce**

- a. Education P.I.G. members met with the UH System Council of Senior Student Affairs Officers, which includes Student Affairs Executives from each campus. The purpose of this meeting was to discuss the possibility of linking mandatory online student education regarding the University's policies and procedures on sex and gender-based discrimination and violence to course registration. A discussion occurred regarding the strengths and challenges when mandating an informational webinar that could negatively impact the registration process if not completed.
- b. The group further discussed the pros and cons of an incentivizing process as an alternative to a consequential method of removing the ability for students to register for courses. Alternatives were discussed and explored, and future conversations will likely be needed to revisit options for incentivizing this training process. The group also discussed a potential timeline for implementation and stated that a minimum of one year would be required. UH Council of Senior Student Affairs Officers concluded that the

content of such a webinar/training is instrumental to campus safety and warrants a mandated training.

**4. Identifying Interested Community Resources for Possible Opportunities to Conduct Cross-Training or Develop Resources for Different Services and Programs to Conduct Peer Review**

- a. Members of the Education P.I.G. recognized the need for close working relationships with community service providers and resources to build an institutional infrastructure that supports Title IX and VAWA mandates. To that end, members identified where the University had existing relationships with community resources and additionally compiled listings of additional community resources. The scope of services provided are diverse and broad.
  - i. From its data collection, the group identified that partnerships between campuses and community organizations to provide education and/or information on services related to gender-based violence is common (e.g., SATC Respect Campaign). Additionally, most campus Title IX teams and education service providers include community resource contact information on their websites. However, the list of resources is not consistent across sites, and some sites do not provide context on what services the community organizations provide.
  - ii. Additionally, the group identified various community resources<sup>28</sup> that may provide education on services related to Title IX and VAWA violations. A comprehensive scope of the Task Force's work regarding community partnerships are included in the section on Community Collaborations and MOU.
- b. Cross-training community service providers on how Title IX and VAWA and the University policies related to sex-discrimination and gender-based violence is an uncommon but emerging practice.
  - i. One reported example of Community-University cross-training includes the community advocacy panel on August 30, 2016, where representatives from community organizations participated in a panel discussion to inform Title IX Coordinators, Investigators, and other University personnel about the resources available in the community that address domestic violence, sexual violence, legal

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<sup>28</sup> See Appendix P for a full list of community resources.

advocacy, immigration concerns, and state-wide partnerships in advocacy efforts to end gender-based violence. These community service providers were also invited to attend the previously held Title IX training sessions to better understand their audience of Title IX personnel and what services they would be most likely to request or inquire on. Another example is the training that community partners such as the Domestic Violence Action Center and Sex Abuse Treatment Center provide in partnership with the PAU Violence Program. This training is conducted at the PAU Violence Program led Task Force meetings for its system members, funding permitted.

**5. Effective Training, Education and Prevention Programs, Including Culturally Relevant Media Campaigns.**

- a. Pursuant to Title IX and VAWA Sect. 304, universities are required to provide campus-based educational programming on sex-discrimination and gender-based violence. However, there are no universally agreed upon standard curricula or programs. Thus, institutions are required to identify curricula that meet the federal mandates and guidance or develop their own to implement on their campus.

Through the data collection process, the group identified that many of the educational programs that are implemented across the ten campuses are a hybrid of established national curriculum and homegrown by a University office or program (e.g., Love Pono) or a curriculum/program provided by a local community organization (e.g., SATC with RESPECT Campaign). Additionally, there are education and training programs provided by U.S. mainland consultants and national organizations, who specialize in the field of Title IX and VAWA (i.e. NCHERM and NACUA).

In addition to resource mapping of existing educational programs and curricula, the group identified independent research<sup>29</sup> relating to awareness and prevention evaluation strategies and the following national curriculum and guidance materials to assist with the development and implementation of the University's educational programming:

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<sup>29</sup> See Appendix Q.

<b>Organization &amp; Resource Provider</b>	<b>Document or Curriculum Name</b>
U.S. Department of Justice, Office on Violence Against Women's Campus Program	Campus Technical Assistance and Resource Project
U.S. Department of Education	The Handbook for Campus Safety and Security Reporting 2016 Edition
Center for Disease Control	Technical Package
LawRoom	CampusClarity – student online training curriculum
Casa de Esperanza	Blog on best practices Various templates and curriculum on culturally-competent services and awareness

- b. Additionally, the University is currently working on conducting a system-wide Student Climate Survey that will assess a wide-range of issues related to sexual harassment and gender-based violence. The plan is to deploy the survey in spring 2017. The results of this survey may provide insight on effectiveness of current education resources and programs with respect to students.
- c. The Education P.I.G. identified several populations within the University system that may encounter additional barriers to services or help on issues relating to Title IX and VAWA Sec. 304. For example, LGBTQ+ students, staff or faculty may not feel comfortable seeking help or may not know about resources that are responsive to their needs. The Education P.I.G. requested input from Lexer Chou, Student Life Coordinator at Leeward Community College (LCC) and Co-Chair for the UH Commission on LGBTQ+ Equality, to learn about what outreach and training are currently implemented for LGBTQ+ individuals. Ms. Chou shared a "resource bookmark" that lists both UH and community resources as well as information on how to contact a Title IX coordinator. At LCC, these bookmarks are part of a larger bulletin board in every bathroom that has resources on Title IX and other issues. The bookmarks are also available for distribution through LGBTQ+ student clubs.<sup>30</sup>

Training on LGBTQ+ "Safe Zones" is also made available as a part of LCC student government training. A "safe zone" is an indication that a person (or office) has received training on

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<sup>30</sup> See Appendix R for the LGBTQ+ resource bookmark, documentation of the Title IX bulletin board, and other related University resources distributed to campus constituents that include information for vulnerable populations.

LGBTQ+ issues and can be a resource for help and information. The LCC Student Life office currently requires safe zones training for all student leaders.

- d. Title IX teams who provided data and PAU Violence also assisted this group in identifying vulnerable populations and provided the following anecdotes:
- Kapiolani Community College (KCC) focuses much of their education efforts on their international student population, as they have a significant international student presence on campus.
  - This year, UH Maui College is focusing its education efforts on providing resources and support for the LGBTQ community and requested additional technical assistance in this subject area.
  - Leeward Community College (LCC) provided their sizeable veteran and military student population with educational resources through events, such as film screenings, to bring attention to this group's unique needs.
  - UH Manoa worked specifically with Filipino and Hawaiian student cohorts to provide culturally-sensitive and relevant educational resources for these groups.
  - Honolulu Community College and Windward Community College identified a need to provide further resources, including education and support services that address student mental health concerns.

## **C. Training of Employees and Best Practices**

### **1. Research regarding the possibility of OIE and other relevant UH System offices having strengthened centralized oversight of training programs for new employees.**

Many of the areas that require strengthened centralized oversight are related to the implementation, enforcement, and evaluation of training programs. They are detailed in the findings included in this section.

- a. Office of Institutional Equity

OIE's formation and training efforts for 2015 were detailed in the 2015 Task Force Report.

As a 2016 update, OIE has engaged in several in-person training initiatives, including a collaboration with the National Center for Higher Education Risk Management (NCHERM):

- i. In collaboration with the NCHERM, a two-day Title IX Level III Investigator Training was conducted on May 31, 2016 through June 1, 2016 for all University employees system-wide serving as Title IX Investigators.
  - ii. In collaboration with NCHERM, a Title IX Decision Maker & Appeal Officer Training was conducted on August 1, 2016 for University decision makers and appeals officers.
  - iii. A standardized in-person, two-hour session training on Title IX and University policy, Interim Executive Policy 1.204 was created.
- b. University of Hawaii Community Colleges Office of Compliance and Title IX

In December 2015, the University of Hawaii created the University of Hawaii Community Colleges Office of Compliance and Title IX ("CC System Office"). The CC System Office has been assisting OIE with training initiatives and providing additional guidance to the seven Community Colleges via training implementation and evaluation.

**2. Discussion on potential recommendations regarding ways the University can enhance its implementation and monitoring efforts for both in-person and online training.**

a. New Online Training Programs

In 2016, the University of Hawaii has chosen to provide new online training programs. There are both employee and student programs. For students, there are different modules that the University can adopt based on specialized learner groups (e.g. 4-year college student, community college student, and graduate student).

To facilitate ease of completion-tracking, the online training programs have been integrated with the University of Hawaii Identity Management System, which collects and consolidates information concerning people associated with the University, so that the University may better establish and manage a single, permanent identity for each person.

b. Enforcement Mechanisms

The University does not currently have any enforcement mechanisms for employees and/or students who do not participate in training. Most university employees are members of and are governed by collective bargaining agreements. These members would be subject to the terms and conditions set forth in a relevant collective bargaining agreement. Issues such as disciplinary sanctions are a term and condition of employment that would require the University to negotiate with the respective union if the issue differs from what is set forth in the collective bargaining agreement. This presents challenges to the University in implementing mandatory training and sanctions for employees.

c. Implementation of Training

- i. The University faces challenges with respect to implementation of training given the mandated Title IX initiatives set forth by Act 208 that also have firm deadlines including continuing climate surveys. There is a risk of “over-education” fatigue where students and employees are required to do online training with respect to Title IX and at the same time are requested to participate in surveys and education on Title IX.
- ii. Different groups/individuals on the 10 individual campuses currently provide training on various areas mandated by VAWA (e.g., stalking, sex assault, bystander intervention, consent, and domestic violence) or suggested or required by Title IX guidance (e.g. bystander awareness, substance abuse and risk factors, rights and responsibilities under Title IX, and University policies and procedures related to discrimination). However, there has not been any systematic review of the training content for the numerous trainings conducted on each campus.
- iii. Each of the ten University campuses have on-campus groups that engage in education, awareness, and prevention activities that *may* address gender discrimination, sexual misconduct, and gender-based violence. The different campus groups that may be engaging in training efforts include, but are not limited to, campus Behavior Intervention Teams (“BIT”), PAU Violence groups, and LGBTQ+ commissioners.



iv. There has been no centralized messaging provided throughout the ten campuses with respect to the training subjects because of a lack of a coordinated effort between groups who conduct training or engage in prevention programs.

d. Evaluation of Training

i. There has been no systematic evaluation of all University VAWA and Title IX trainings currently being conducted by the various groups across the ten campuses to determine whether curricula meet legal mandates, OCR guidance, or best practices (e.g., cultural competency, trauma-informed, gender-responsive, quality assurance).

ii. There is no centralized office designated with the authority to review and evaluate the University's training programs or trainers.

iii. The University has not yet examined any extended Title IX training modules which encompass the other mandates under Title IX, e.g., parenting and pregnant students and students in STEM fields.

iv. There are currently no standardized curricula for the various different entities engaged in any kind of "training." Hence, there is no method of knowing that trainings actually comply with federal or state law.

v. Tracking training is unmanageable without a centralized method of tracking. There is currently no centralized tracking of the Title IX/VAWA trainings being conducted by all of the different groups and offices system-wide or even on each campus. Many of the trainings that have been conducted have been logged by the individual offices/groups in hard-copy lists and not maintained in any centralized manner.

vi. The University has not determined if all trainers have experience working with individuals who have experienced trauma.

**3. Gather additional information from the OIE and other relevant offices regarding mandatory and other training for employees, including graduate assistants.**

a. On Campus Training Providers/Implementers

The Training P.I.G. gathered data<sup>31</sup> and information on various entities cross campus which engage in training or any type of education. This data is organized by various factors and any identifying information has been removed. Due to the difficulty in obtaining standard information on trainings and curricula across the University system, it likewise is difficult to ascertain the level of quality and content of various trainings.

vii. Community College Title IX Coordinators

The Community College Title IX Coordinators often also serve as Vice Chancellors for Administration or Vice Chancellors of Student Affairs. Due to their multiple roles, Title IX Coordinator responsibilities are not their primary function. The Coordinators' feedback revealed that it is difficult to complete the training requirements to meet the recommended standards of the position. Individuals who perform multiple roles within the University may have conflicts serving as Title IX Coordinator.<sup>32</sup>

viii. Student Affairs

Student Affairs plays a critical role in implementing student initiatives and programs across the ten campuses. Their role should be further developed and standardized so that student perspectives are thoroughly considered in the vetting and development of Title IX and VAWA related training initiatives.

ix. EEO/AA Offices

Each of the ten University of Hawaii campuses has an Equal Employment Opportunity ("EEO") Officer. Moreover, the University of Hawaii System has two different Equal Employment Opportunity/Affirmative Action ("EEO/AA") Offices – one that services the system and Manoa campus, and one that services the seven Community Colleges system. Training efforts are indicated as follows:

- (1) The system offices provide periodic training on the issues of harassment and discrimination, including sex and gender discrimination.

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<sup>31</sup> See Appendix M for the training data templates that were used to gather information regarding education and training initiatives on University of Hawaii campuses.

<sup>32</sup> See Questions and Answers on Title IX and Sexual Violence, US Department of Education, Office of Civil Rights, at p. 11 (available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)

- (2) The campus EEO officer may also provide training.
- (3) The training is sometimes offered via webinars and third-party trainers.
- (4) There is no set schedule for the training.

b. Minimum Training Requirements

- i. Individuals providing training do not always have the minimum training which would qualify them for the statutory privileges available to sexual assault and domestic violence counselors in Hawaii.
- ii. Training provided to Title IX Coordinators, Investigators, Decision Makers, and Appeal Officers is not uniform or consistent. Additionally, the training received is not reviewed or approved.
- iii. VAWA, Sect. 304, Title IX, and related Federal Guidance:
  - (1) Section 304 of VAWA, mandates certain campus sexual violence, domestic violence, dating violence, and stalking education and prevention programs.

Other training suggested or required by Title IX guidance and contemplated in various Voluntary Resolution Agreements between OCR and higher educational institutions include: bystander awareness (how to help a friend), substance abuse and risk factors, rights and responsibilities under Title IX and under institutional policy, advanced domestic violence training, and tailored training modules regarding consent/affirmative consent.

ATIXA created a comprehensive checklist<sup>33</sup> of all the optional and mandatory Title IX and VAWA Section 304 training, as well as a list of students and employees who should be trained. UH Title IX Coordinators also have a core set of professional standards, competencies, and proficiencies per the ATIXA Statement of Ethics, Professional Standards, Core Duties and Competencies for Title IX Coordinators.<sup>34</sup>

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<sup>33</sup> See Appendix S.

<sup>34</sup> See Appendix T.

iv. Act 208, Session Laws 2016 – Mandate for Student and Employee Training

Act 208, Session Laws 2016 requires that the University train all of its students and employees on Title IX, VAWA, and the University's policies on sexual misconduct, domestic and dating violence, and stalking. Act 208<sup>35</sup>, which is attached to this report, states in relevant part:

*The University of Hawaii shall:*

- (1) *Train all University of Hawaii students and employees, including security personnel, Title IX coordinators, and residential advisors, on:*
  - (A) *Public Law 92-318, Title IX of the federal Education Amendments of 1972, as amended;*
  - (B) *The Violence Against Women Act of 1994, as amended; and*
  - (C) *University of Hawaii executive policies on sexual harassment, sexual assault, domestic violence, dating violence and stalking;*
- (2) *Provide all existing University of Hawaii employees with the training described in paragraph (1) by July 1, 2017, and every two years thereafter;*
- (3) *Provide all new University of Hawaii employees with the training described in paragraph (1) no later than thirty days after the date of first employment;*
- (4) *Provide all students with the training described in paragraph (1) annually*

Act 208 prescribes a State imposed baseline of training for all employees and students at the University.

- v. HRS § 505.5 protects as privileged the communications of clients and certain individuals attaining the requisite training from a domestic violence or sexual assault program or center.<sup>36</sup>

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<sup>35</sup> See Attachment B.

<sup>36</sup> See Appendix U.

**4. Gather additional information around the need to further strengthen the working relationship between the University and the State of Hawaii Department of Education to ensure Title IX processes and procedures for students experiencing gender-based violence are known to UH employees, State of Hawaii Department of Education employees, and students enrolled in early high school and/or running start classes.**

a. The Task Force identified minor students participating in University of Hawaii affiliated programs (i.e. P20, study abroad programs, working on vessels, other special programs where students may be more susceptible to gender-based violence) as part of a vulnerable population.

**D. Direct Services, Resources and Support, MOUs & Community Collaboration**

**1. Additional information from off campus, community resources to discuss their work/services and how the Task Force can promote their efforts. In addition, discuss how to best connect resources at the University with resources in the community.**

a. Formalizing Relationships

i. The Community Collaborations and Memoranda of Understanding P.I.G. previously determined that establishment of Memoranda of Understanding or other formal documents that establish the relationships between University agencies and resources and off-campus/community agencies and resources are a best practice. An important goal while developing and implementing memoranda of understanding and other formal written arrangements across the University System with off campus agencies and organizations is to provide some consistency in access to and delivery of off campus services to University affiliates, while taking into account the needs of individual campuses. For example, universities should establish Memoranda of Understanding with Law Enforcement (non-campus) that guide interactions between the police and the school with respect to the parallel and overlapping response to incidents of sexual violence.

ii. Likewise, universities may establish Memoranda of Understanding with community organizations (e.g. providers of direct services) to guide ongoing interactions between campus resources and those external entities and, where appropriate, establish contracts for services.

b. County Police Departments

i. MOU with County Police Departments

- (1) Act 208 (2016) set a due date for the establishment of Memoranda of Understanding (MOUs) between the University of Hawaii System and each of the County Police Departments at the end of the calendar year 2016.
- (2) OIE met with a number of assistant chiefs of the Honolulu Police Department (“HPD”) and received good responses to the possibility of engaging in a campus MOU with respect to UH Manoa and other system campuses that are within HPD’s geographic jurisdiction. A model MOU involving non-sworn campus security programs was shared with the HPD representative on the Act 222 (2015) Task Force (Major Larry Lawson). It was noted that an MOU may include sanitized reporting features (not a public record, modeled or using existing SATC procedure).
- (3) It was initially considered whether a single system MOU may be executed with all police departments. However, it was eventually decided that a system MOU would not be the preferred model, as each county police department would need to separately approve and have a potential MOU reviewed by its appropriate counsel (corporate counsel or other). A MOU is currently being developed by University Counsel’s office, with best practice guidance provided by OIE and HPD.

ii. History of HPD and University of Hawai‘i Campus Security

- (1) In the past, campus security’s interactions with HPD were varied, and MOUs have historically not been established. For example, campus security at UH Manoa declined previous attempts to establish MOUs with HPD. However, with the involvement of UH counsel and OIE, various campuses are having an improved reaction and are more open to

the forthcoming MOU to outline interaction between campus security resources and the police.

- (2) The role of campus security in the Title IX system was discussed. Campus security officers are not confidential resources but serve as responsible employees who are required to report incidents of gender based violence to the Title IX system.
- (3) Information gathered by campus security, even if not reported to the police for the initiation of a criminal investigation, could be informative for the purpose of tracking patterns of crime or identifying perpetrators who offend both on campus and in the community.

c. Gender-based violence Service Providers

- i. In the past various campus programs, offices and organizations across the University would engage with gender-based violence service providers in the community on prevention education, training, and service delivery. For example, at one time, the Sex Abuse Treatment Center on Oahu delivered crisis and prevention education services at UH through a 30 hour per week on-campus resource (UH Student Services), but this was discontinued when funding ended.
- ii. OIE and the Community Colleges Office of Compliance and Title IX are conducting a campus-by-campus review of what services are needed on each campus and will advise regarding training and direct service needs that may be a basis for an MOU.
- iii. Consistent with the requirements of Act 208 (2016), the University of Hawaii System via OIE is also conducting a campus climate survey concerning gender-based violence in February 2017. The contractor selected to implement the survey (OmniTrak) may work with service provider organizations in the community to conduct exit interviews and focus groups related to the survey. The survey will inform the University's plans to address gender-based violence and specifically may guide collaborations with off-campus resources.

- iv. Act 208 (2016) specifically required that the University establish confidential resources on all campus. Different campuses may address the requirement to have confidential resources differently and may develop their model of confidential resource and advocacy services based on their needs. For example, some colleges are interested in having confidential resources and advocates that are based on their campus (i.e, employees of the school), whereas others may contract for appropriate confidential resource and advocacy coverage with gender-based violence service providers in the community. Others may also collaborate with each other to hire staff that will serve different campuses in the UH System (i.e., confidential resources and advocates who will ‘float’ in order to provide coverage).
- v. In some cases, support to survivors of gender-based violence may have been delivered through behavioral intervention teams, public health nurses, and counseling staff, who do not necessarily have subject-matter specific expertise and experience, and often have other responsibilities.
- vi. In addition, there are substantial training and education needs that community organizations may assist the UH System to meet. Under Title IX, new employees must be trained within 30 days of hire.

d. Sexual Assault Centers

- i. Sexual assault services are delivered in Hawaii through sexual assault centers in each County: The Sex Abuse Treatment Center (Kapiolani Medical Center for Women & Children) in the City and County of Honolulu, the Maui Sexual Assault Center (Child & Family Service) in Maui County, the Sexual Assault Treatment Program (YWCA of Kauai) in Kauai County, and Sexual Assault Support Services (YWCA of Hawaii Island) in Hawaii County. These programs receive federal, state, and county funding and deliver crisis services, systems advocacy, mental and behavioral health treatment, medical forensic services, prevention education, and community outreach services and operate under a contract from the Hawaii Department of the Attorney General (SATC on Oahu serves as master contractor and contracts with other sexual assault centers).



- ii. OIE met with SATC and shared information about the University of Hawaii’s protocol and procedures for responding to gender-based violence and discussed what services may be obtained for University affiliated persons (i.e. students, faculty and staff) from the Sexual Assault Centers, either by request of the University System or independently by those persons.
  - iii. Due to the time frame provided for compliance with specific items of Act 208 (2016), specific MOUs with community organizations and agencies providing services to survivors of gender-based violence do not have a specific due date. However, the University System and SATC will work to establish a MOU or other formalized non-binding framework with respect to collaborative service delivery for sexual violence survivors at UH campuses on Oahu. SATC will also assist the University System to link with the sexual assault centers in the other counties, on an as-needed basis, understanding that there are existing relationships between campuses and the corresponding sexual assault centers. The possibility of contracts and binding agreements for specific service delivery was also discussed as a possibility.
- e. Domestic Violence Service Providers
- i. The University established a MOU with the Hawaii State Coalition Against Domestic Violence. The Coalition serves as an umbrella agency to more than twenty domestic violence organizations that deliver direct services to victims, including education and training, counseling, legal and criminal justice systems advocacy, safety planning assistance, career and job assistance, and shelter and housing.
  - ii. The Domestic Violence Action Center (“DVAC”) secured a two year grant through the Hawaii State Attorney General office to fund a pilot program at four University campuses: UH West Oahu, Honolulu Community College, Leeward Community College, and Windward Community College.<sup>37</sup> DVAC will provide confidential resource services at these campuses relating to dating and intimate partner and domestic violence, consistent with the requirements of Act 208 (2016).

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<sup>37</sup> See Star Advertiser article “UH Works with Hui Against Dating Violence” available at: <http://www.staradvertiser.com/2016/10/31/hawaii-news/uh-works-with-hui-against-dating-violence/>.

## VI. Recommendations

### A. EP 1.204

1. **Perform a comparative analysis of the Policy’s definition of “responsible employees” with that endorsed by U.S. Department of Education Office of Civil Rights and adopted by other universities/colleges.**
  - a. The University should revise Interim EP 1.204 to integrate OCR’s definition of “responsible employee.”<sup>38</sup>
  - b. Campus-specific policies should also be revised to reflect the same language.
2. **Research definitions of “consent” adopted by other universities/colleges, endorsed by ATIXA, and addressed in various statutory schemes.**
  - a. The University should improve Interim EP 1.204 in three areas:
    - i. The definition should include the standard for determining if the respondent knew there was consent. For example, the definition of consent in the University of Michigan policy effective July 1, 2016 states, "in evaluating whether consent was freely sought and given, the issue is whether the Respondent knew, or reasonably should have known, that the activity in question was not consensual, or that the Claimant was unable to consent due to incapacitation."
    - ii. The definition of consent to sexual activity should include additional examples of what constitutes consent. Providing relevant examples in the policy may address misconceptions about what affirmative consent entails for both parties. Providing concrete scenarios relating to consent will enhance students’ and administrators’ understanding of what constitutes consent.

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<sup>38</sup> OCR guidance defines a “responsible employee as someone "who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty." See Questions and Answers on Title IX and Sexual Violence, US Department of Education, Office of Civil Rights, at p. 15 (available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)

- iii. The University should consider adopting the ATIXA model language of "words or actions" instead of "agreement." This will clarify the current language and be consistent with the affirmative consent language used by ATIXA.

**3. Review who “Decision Makers” should be, how they should be selected to ensure competency and lack of bias, and the training they should be required to complete.**

- a. It is recommended that Decision Makers undergo appropriate training on Interim EP 1.204 and other relevant system and campus policies, the investigation, adjudication, and appeals processes, and related topics, such as how to communicate with complainants in a trauma-informed manner.
- b. Decision Makers should not participate in proceedings unless they complete the training described above.
- c. OIE should establish training standards and curriculum content requirements based on best practices and applicable laws.
- d. Interim EP 1.204 should clarify the qualifications to be a "Decision Maker" and address the issue of selecting Decision Makers where there is actual or potential conflicts of interest.

**4. Review the Policy’s ability to provide a clear avenue for students to report alleged violations or non-enforcement of the policy by Title IX Coordinators, Investigators, Decision-Makers, and Appeals Officers.**

- a. The University should make information available to students about (1) the right to file a complaint with OCR, (2) the procedure to file a complaint with OCR, and (3) how to find additional resources and help. This information does not need to be included in Interim EP 1.204 but could be posted on each campus Title IX website or made part of training on Title IX.
- b. The University should establish appropriate avenues to address non-compliance with Interim EP 1.204.
- c. The University should distinguish the roles and responsibilities between the EEO/AA Office and Title IX Office and include this information in Interim EP 1.204.
- d. OIE should serve as an internal auditor for non-compliance with the policy, including determining violations and non-enforcement of the policy. Additional recommendations regarding University

oversight of policy violations and non-compliance are also discussed in *Section VI. A. 6.*

**5. Examine the data available from each campus regarding the outcomes of complaints to identify any possible needs for additional institutional support.**

- a. The Task Force recommends that OIE and the UHCC System Office of Compliance and Title IX work together to develop a guide and training curricula on how to make information accessible and understandable for students, as well as incorporating a piece on Students' Title IX Rights & Responsibilities as developed by the Education/Prevention & Notification of Rights/Resources P.I.G. Attached as Appendix K is an "Options Flowchart for Students" taken from a University resource guide. This flowchart can also be used during a discussion with a student to explain the options and resources available.
- b. The following approach may be used when speaking about Interim EP 1.204 with students who have decided to report misconduct or are contacted by the University after the University has been placed on "Notice" of an incident. The discussion with students who wish to remain anonymous and seek confidential assistance would be different.

- **Provide a copy of Interim EP 1.204 to the student.** *While the Policy can be accessed at the University of Hawaii System's website at <http://www.hawaii.edu/titleix>, placing a hard copy in front of the student will possibly encourage questions and requests for more information or clarification.*
- **Review the following concepts/sections of the Policy:**
  - Types of prohibited conduct such as sex discrimination, sexual exploitation, sexual assault, domestic violence, dating violence, and stalking. [Interim EP 1.204, Section II.B]. *Reviewing these definitions may help the student focus on incidents or behaviors that need to be disclosed/discussed during an initial assessment, fashioning the Notice of Charge, or during a formal investigation*
  - Retaliation [Interim EP 1.204, Section III.A and III.B]. *Many students (and witnesses) fear retaliation after coming forward or cooperating with an investigation but do not realize that it is another type of prohibited conduct and that it has possible consequences. Freedom from retaliation should be considered one of the rights that students and anyone else involved in an investigation has under Title IX and the University's policy.*
  - Confidentiality [Interim EP 1.204, Section V.C]. *Although the student has decided to report/request a formal investigation or has agreed to cooperate after the University has been placed on "Notice" by someone other than the student, this should be reviewed/mentioned so that the student knows that*

*his/her privacy will be respected as much as possible throughout the University's review and resolution of the case.*

- Advocacy Offices [Interim EP 1.204, Section V.B]. *Regardless of whether the student has come forward, support of an advocate should be offered.*
- How Reports Are Handled By the University [Interim EP 1.204, Section VI.B]. *Each of the steps taken by the Title IX office after notification should be explained to the student: initial assessment, which includes identifying supportive/interim measures available to the student as well as determining whether the facts as reported indicate a possible violation of the Policy, informing the student of his/her right to report to law enforcement and offering assistance in this regard, option of informal resolution, etc.*
- Formal investigation [Interim EP 1.204, Section VI.E]. *Explain the Notice of Charge, role of investigators, what is involved in investigation (gathering of documentary evidence, witness interviews, etc.), investigators' preparation of fact finding report and its role, role of Decision Maker, standard of review (preponderance of evidence), outcome report, possible sanctions and remedies, and notification process.*
- Participation [Interim EP 1.204, VI.G]. *Ensure that student aware that process is voluntary, however, if the student chooses not to cooperate or only participates on a limited basis the University may still need to go forward with the investigation, and findings may be reached regardless.*
- Appeal Process [Interim EP 1.204, Section VI.E.10]. *Explain that all parties have equal rights to appeal and explain the process.*
- **Encourage questions/follow up.** *Students should be encouraged to contact you with any questions they may have. Stress that that they will be kept informed and treated with respect and fairness.*
- **Rights and Resources.** *Students should be encouraged to view the University's Title IX website for more detailed information, support and services.*

c. To evaluate Title IX program outcomes, the University should designate OIE to implement comprehensive data collection practices on each campus. Additionally, to determine what, if any, institutional resources are needed, it is recommended that more detailed and updated aggregate data be captured from each campus, including the utilization of advocacy, mental health, and other confidential services or resources as well as the status of the parties (*i.e.*, students, faculty, or staff) who actually utilizes resources and services. In addition, the data needs to be analyzed in conjunction with a mapping of the specified resources and services available to students, faculty, and staff on each campus.

d. Based on the data submitted to OIE and Task Force discussion, resource mapping of all campuses should be conducted and completed by the University. The mapping will inform the University's efforts to ensure that its Title IX infrastructure is fulfilling the Policy's stated purpose.

- e. The resource mapping should be multi-dimensional, *i.e.*, information should not only be obtained from resources themselves but from those who make the referrals as well as those who actually receive or attempt to receive services or support from those resources. The student campus climate survey being conducted by the University in early 2017 will be designed to capture information about student experiences accessing resources. Results of the survey are scheduled to be published in May 2017.

**6. Research different models of the “one policy / one process” including for appeals on all campuses, including the model endorsed by ATIXA. Once the policy is revised, the University will involve stakeholder groups such as students, unions, and faculty in the final review. Conduct additional research and identify ways in which the “one policy / one process” could be strengthened to further ensure timely, fair, and consistent outcomes (including sanctions) on all campuses and for all groups affected (employees and students).**

- a. A clear organizational structure for OIE and the Community College Office of Compliance and Title IX, and the campus Title IX offices will help ensure timely, fair, and consistent outcomes.
- b. Similar to the University of California, the University should formally designate a system-wide auditor to monitor and enforce compliance with all Title IX programs on every campus.
- c. OIE should fulfill the function of an internal auditor as well as coordinate complaints involving multiple campuses. To accomplish this, OIE should be given the authority to obtain all relevant information and data from and across campuses to ensure overall compliance with the Policy and overall quality assurance.
- d. OIE should establish documentation and data recording standards and systems to ensure each campus can provide sufficient information for an effective review.
- e. OIE should be delegated sufficient authority to enforce compliance with the policy and to implement needed changes to improve procedural quality.
- f. OIE should be designated as the system-wide auditor to monitor and enforce Title IX programs and training at the campus level.
- g. Further examination and discussion are needed regarding student or employee violations of multiple university policies, including

Interim EP 1.204, and/or a collective bargaining agreement.

- h. Interim EP 1.204 should be clear on whether progressive discipline for serial violations of university policy is permitted.

**7. Research regarding the viability of dedicated Title IX Coordinators on every campus.**

- a. A dedicated Title IX Coordinator for every community college may not be the most efficient and helpful approach at this time. Instead, employing an APT (Unit 8) professional to help manage Title IX work between the different offices, directly serve students and employees by performing the initial intake of information, maintaining the records, and helping to train the students and employees of the campus may be a better use of resources.<sup>39</sup>

**8. Review of information on each campus website. Research regarding how students search for information on websites and identify search engines and key terms to ensure relevant websites/information can be readily accessed.**

- a. Each campus website should contain the same information to ensure consistency across the system. A standardized layout with the same information will enable students to find information on policy, reporting, and resources quickly and easily.
- b. The following information should be included on each website:
  - i. Title IX Coordinator and Deputy Title IX Coordinator name and contact information;
  - ii. Links to system Interim EP 1.204 and related campus specific policies;
  - iii. Confidential resource contact information;
  - iv. Explanation of reporting options (confidential versus responsible employee, law enforcement, etc.);
  - v. Office for Civil Rights' contact information;
  - vi. Online reporting form, including an option to report anonymously; and

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<sup>39</sup> See Appendix L for information regarding Title IX Confidential Resources for the UH Community Colleges.

- vii. Explanation of Title IX/VAWA, what those laws cover, and to whom they apply.
- c. The University should ensure Interim EP 1.204 is as accessible as possible to increase the likelihood that students who have experienced sex discrimination or gender-based violence can find help through formal university policies and procedures.
- d. Given the brevity of most system website sessions the importance of student access to help networks when experiencing sex discrimination or gender-based violence, and research suggesting that crime victims may already be hesitant to seek help through formal channels, the University of Hawaii may wish to increase online convenience and accessibility of Interim EP 1.204. One way to increase accessibility may be to utilize search results produced by the system website search engine and that of individual campuses.
- e. The University of Hawaii may wish to include slurs in the list of search terms triggering Interim EP 1.204, since students may enter into the search engine derogatory words said to them in the course of their harassment or assault.
- f. The University should utilize its system and individual campus website search engines in a way that allows for greater accessibility of Interim EP 1.204. While a number of search terms related to sex discrimination and/or gender-based violence, such as “sexual assault,” triggered results that included Interim EP 1.204 on most, if not all, University websites, many other terms did not trigger the policy. The University should add these terms to the list of those triggering search results including Interim EP 1.204 or linking to a related policy and/or Title IX page. This may be especially important for individual campuses. The University of Hawaii Hilo’s website search engine, for example, did not produce search results that included Interim EP 1.204 or a similar policy when “rape” was entered as a search term. Suggested key terms to trigger Interim EP 1.204 through the system or individual campus search engines may include but should not be limited to “gay,” “lesbian,” “transgender,” “bisexual,” “LGBT,” “queer,” “stalked,” “attacked,” and gender-based slurs.

**9. Review of related University policies and procedures for consistency and to make a final recommendation.**

- a. A similar disciplinary procedure to the one available for EP 7.205 should be established in Interim EP 1.204 for students.



- b. The Policy P.I.G. determined that it did not have sufficient time or resources to identify and suggest specific revisions to all of the system and campus policies that need to be amended to be consistent with Interim EP 1.204, as mentioned in Act 208. Instead, the Policy P.I.G. focused on recommendations to the University on the types of collaborative processes to make these amendments, as follows:
- All University stakeholders, including students, faculty, staff, and administration, should be involved in amending the University policies.
  - OIE should be consulted on proposed changes that relate to the University's responsibilities under Title IX or Interim EP 1.204 to ensure that any proposed policy amendments will be consistent and accurate.
  - Consideration should be given to whether policies should be adopted system-wide or at individual campuses.

**B. Education and Prevention Programs & Notifications of Rights Regarding Title IX Proceedings and Resources**

**1. Gathering Information from Various Education, Awareness, and Prevention Offices Which Directly Interface with Students on the University's Campuses**

- a. The University should conduct annual data collection and resource mapping on education, awareness, and prevention efforts related to sex and gender-based discrimination and violence to fully identify and assess all resources available on its campuses. The data should be centrally collected and evaluated by the system compliance offices (i.e., OIE and CC System Office of Compliance and Title IX) to ensure quality assurance across the University system. The development and implementation of this effort should be in collaboration with offices and programs that provide these services.
- b. Additional staffing and funding should be provided to meet demand for prevention education, training, crisis, advocacy and case management services, as applicable to relevant groups on campuses.
- c. With respect to various educational and training programs related to sex and gender-based discrimination and violence (including

Title IX and VAWA) to be delivered across the University System, it may be desirable to have OIE provide guidance and quality assurance in curriculum selection in collaboration with those delivering education.

- d. The University should consider providing more training regarding Title IX system, adjudication process, and related topics (e.g. trauma-informed communications, subject matter education/training, etc.) to those providing support services for both victims and respondents. Further, it may be desirable to have OIE or the CC System Office of Compliance and Title IX provide quality assurance review and guidance with respect to services and education delivered to students.
- e. All schools under UH Manoa should include education about gender-based violence issues as an important part of new student orientation. Similar standards for the provision of education about gender-based violence issues should be developed and implemented at other critical access points for students who are being introduced to new systems within the University, including but not limited to athletic programs, housing, and summer programs.
- f. The University should consider whether Respondent Support services is best modeled as delivered by components of programs that also serve as confidential resources for victims across different campuses. The aforementioned differing infrastructure for confidential resource programs across campuses also suggests that standardized support for respondents with respect to Title IX rights processes may be delivered through the Title IX system itself (on at least some campuses) with referral to counseling resources as needed for emotional support. Regardless of what program these services are administratively attached to, decision makers might consider whether Respondent Support should be subject to OIE or the CC System Office of Compliance and Title IX for quality assurance review and guidance to ensure consistency between Respondent Support and the Title IX system standards and in training/education.
- g. As there is a broad demand across campuses for prevention education (i.e., education oriented toward past perpetrators of gender-based violence and other specialized audiences, including responding parties), funding of one or more dedicated educator positions should be considered.

**2. Gathering Information from Housing and Other Larger Portals/Points of Entry and Any Relevant Information Technology and Web Services Staff Regarding Building the University's Capacity to Distribute Information.**

- a. The University should further engage students who live in dorm housing to recognize housing personnel as educational resources to learn more about services accessible to them.
- b. All campus websites should be consistent in the types of content they provide (e.g., education resources, support services, policies, laws, etc.) and should cross-link to the central system website to provide additional educational resources. A central office of compliance should evaluate each campus website on a regular basis to ensure quality assurance and compliance with legal mandates. Title IX teams should regularly update their respective campus Title IX webpages to reflect the most recent federal and state guidance, including up-to-date educational materials, as recommended by the System compliance office. Additionally, campus websites should update search results by key search words related to Title IX and VAWA and related University policies, so that support and educational resources are easily accessible.
- c. As online training may not be accessible to employees and students with limited computer access, the University should consider implementing alternative methods of training, such as in-person training and video training. Education and training should also be available through various entry points, such as student orientation and rallies, new-hire training, tabling and outreach, online, and department meetings.
- d. Universal educational resources for system-wide use, such as a system-wide online program for students and employees, should have a coordinated roll out plan that includes proper consulting and buy-in with University stakeholders, including but not limited to: System Office on Student Affairs, Title IX teams, System compliance offices that oversee Title IX and VAWA initiatives, System Communications, and System administration (i.e. the President's Office). Other offices and groups who provide education services relating to Title IX and VAWA and individuals who are influential to students should also be considered in the vetting of these programs.
- e. The University should further consider and evaluate incentives and sanctions for student training/education programs. This could include more research on institutions that have implemented

registration holds tied to Title IX training and how they have effected it (e.g., use of a waiver, use of a soft roll-out, other alternatives, etc.). If sanctions are considered, proper University stakeholders should be consulted to consider implementation and any resulting consequences.

- f. Continued improvements made to the UHIMS may contribute to more effective data collection and streamline the access to electronic materials by students, faculty, and staff. The cost-benefit of developing these functions should be further researched and considered.

**3. Information Gathered from the Campuses Vice Chancellors of Student Affairs Regarding Implementation of and Access to Basic Preliminary Education Around Student Codes of Conduct and Further Discussion on How to Best Support the Education Efforts of the Taskforce**

- a. Students should participate in an engaging, trauma informed webinar that clearly identifies the University's policies and procedures to protect students from gender-based violence and the steps to take should a violation occur. More discussion is needed to determine the source of the training and prospective content and to further examine the process of implementation.
- b. Student Affairs plays a critical role in vetting, promoting, and implementing student initiatives and programs across the ten campuses. Their role should be further developed and standardized so that they are responsible for gathering student perspectives in Title IX- and VAWA-related education initiatives.

**4. Identifying Interested Community Resources for Possible Opportunities to Conduct Cross-Training or Develop Resources for Different Services and Programs to Conduct Peer Review**

- a. The University may want to consider efforts to establish formal relationships with community service providers and, in addition to securing direct services for campus communities, should also include a provision on cross-training and education.
- b. Community agencies partnering with the University should be informed of the University policy and procedures related to sex and gender-based discrimination and violence. The University should continue building relationships with community agencies to further improve campus survivor access to a comprehensive scope of services both on campus and in the community.

**5. Effective Training, Education, and Prevention Programs, including Culturally Relevant Media Campaigns.**

- a. Although the use of homegrown curricula that is designed to meet the specific and diverse needs of each campus is commendable, the group strongly recommends that programs be evaluated to promote accuracy and consistency in information across the University system. The University, through the System Title IX and VAWA Compliance Offices, should conduct a comprehensive review of individual campus offices that provide education and prevention programs and services. The review should include an evaluation of program curriculum and supplemental materials that are instrumental to the promotion and implementation of the program, including but not limited to any promotional hand-outs, website, media items, and books. As Federal and State compliance requirements and guidance are currently in flux, the System offices should determine a regular schedule (e.g., quarterly, annually) to conduct program compliance review and evaluation to ensure quality assurance. Additionally, the University through its Title IX Offices should collect annual aggregate data on education and related programs as part of its program evaluation.
- b. The University's System compliance office should train all Title IX teams and education and prevention program providers on new education and programmatic mandates as required by federal and state law to ensure this quality assurance. Training for personnel regarding education programs should include the requirements and recommendations on education as provided by the most recent version of the Clery Handbook for Campus Safety and Security Reporting (2016)<sup>40</sup>, which states in part that programs should be tailored to each institution and its constituents and be "culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, informed by research or assessed for value, effectiveness or outcome (i.e.: research conducted according to scientific standards and efficacy assessments performed by institutions and organizations), and must also consider environmental risk and protective factors as they occur in the individual, relationship, institutional, community, and societal levels."
- c. Students should be also consulted in the development and implementation of student-oriented education programs and services.

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<sup>40</sup> The 2016 Clery Handbook is available at: <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

- d. In addition to mandating Safe Zone training for student leaders, training and education specific to assisting vulnerable populations access their rights and resources could also be mandatory for all peer mentors, resident assistants in dorms, and personnel that have close contact with vulnerable student populations. The Education P.I.G. recommends further coordination between training such as "safe zone" and Title IX training as some of the subjects could overlap or be mutually reinforcing.
- e. The University should further identify evidence-based education and prevention programs available for the identified vulnerable student populations on campuses, including but not limited to minors, immigrants, international, survivor groups, those with cognitive and/or physical disabilities, and those with mental health concerns. The needs of marginalized student populations should also be evaluated more thoroughly so that programs are sensitive, competent, and truly effective.
- f. The University should also develop materials to promote and bring awareness to educational efforts in this field. These materials should be accessible in various mediums, e.g, online, physical materials, in different languages, etc.

## **C. Training of Employees and Best Practices**

### **1. Research regarding the possibility of OIE and other relevant UH System offices having strengthened centralized oversight of training programs for new employees.**

- a. Information received by the Training P.I.G. in response to the survey instruments should be analyzed in connection with the ATIXA chart that sets forth the various types and levels of training for different populations as dictated by Title IX, VAWA, and Clery to determine what training programs are still needed and for what populations (ATIXA Chart attached as Attachment 2). Training and educational programs that are not consistent with state and/or federal law or are not in compliance with best practices as set forth by ATIXA should be identified, and next steps should be taken to determine whether those components identified should be terminated or re-characterized as "public awareness" activities.
- b. Best practices and mechanisms to engage in centralized tracking for all trainings completed should be analyzed and reviewed to inform a more systematic and institutionalized approach to training.

- c. Research regarding University system and structure should be conducted to determine the best ways to integrate/implement and institutionalize tracking system(s) for training.
- d. Per the ATIXA Statement of Ethics and Professional Standards for Title IX Coordinators (Attachment 6), Title IX Coordinator roles should be stand alone. Rather than add ad hoc duties to already existing positions, there should be a dedicated Title IX Coordinator on each campus. This will minimize conflicts as well as ensure the Title IX Coordinators will have the core competencies for the positions.
- e. Any confidential advocates participating in developing, drafting, reviewing, or conducting trainings to employees or students should have the minimum training as that of sexual assault or domestic violence counselors in Hawaii.
- f. The University should use a standardized curriculum for all trainers system-wide to ensure uniformity and consistency across campuses and compliance with state and federal law.
- g. The University should collect information using a system wide standard data management system which will collect aggregate standardized data to ensure accountability and transparent communication. Additionally, the University should invest in a data collection system which would collect commonly defined data from all campuses and serve as a tracking system for trainings and education programs.

**2. Discussion on potential recommendations regarding ways the University can enhance its implementation and monitoring efforts, for both in-person and online training.**

- a. Continued resource mapping of the various on-campus groups that conduct any type of Title IX training should be effected. The Training P.I.G. initiated contact on July 7, 2016 with the Title IX Coordinators at each of the ten campuses and has requested information via various survey instruments<sup>41</sup> to obtain this information regarding the training being conducted on each campus.
- b. Research should be conducted regarding practices at other educational institutions as well as best practices to determine whether enforcement mechanisms are advisable for students who do not complete training. Research should also be conducted

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<sup>41</sup> See Appendix M for data survey templates.

regarding potential enforcement mechanisms and options for students who do not complete mandatory training. Research should be conducted regarding maximizing efficacy of a mandatory new student orientation to potentially include a training module for students. Any training (and potential enforcement thereof) for students should be vetted with various student groups.

- c. The University should identify ways to implement appropriate enforcement mechanisms for employees who do not complete the mandatory training (s). Additionally, more discretion should be provided to the institutional entity to develop internal deadlines for the various Title IX initiatives, such as the climate survey and training, since the University is best able to gauge readiness and participation rates of its employees and students.
- d. Student Affairs should be involved in the roll out of all training programs, including vetting and implementation.
- e. A training and education plan for specific populations (students, staff, and faculty) should be developed. This training should contain standardized information across the system, including: sexual violence prevention and intervention and dating and domestic violence. Different levels of training should be specific to differing job functions. All training should be mandated and should be assessed via specific metrics (i.e. actual training on a specified topic with clear and delineated objectives).
- f. All training must be evaluated for effectiveness.
- g. Review of training content should also extend to review of messaging distributed in relation to training, including advertisements, presentation materials, and supplemental data to ensure consistency and accuracy of information in connection with University policies addressing gender discrimination.
- h. In order for training to be effective and encouraging of behavioral change, the University should use a variety of training methods, including in-person, discussion panels, online, and video. Student orientation, in order to remain non-discriminatory, should be free of charge. Training methods should additionally be reviewed by students for effectiveness.
- i. Specialized training modules should be developed for specific vulnerable groups including minors, international students, immigrant students, and any other vulnerable group of students.



- j. All training components must be trauma-informed. As such, all individuals participating in leading a training should be trained on working with survivors of trauma.
- k. The group is recommending that further research be conducted on the issue of student online training and any mandated training, particularly regarding appropriate curricula and disincentives. Students and Student Affairs should be sought for a more active involvement, as they should play a critical role in implementing any student training. Additionally, as a recommendation, the President should have an advisory group of students who will act as his advisors on Title IX and VAWA training issues and serve as advisors on climate surveys and any other Title IX, VAWA, or gender-based violence initiatives.
- l. In connection with the results of the Student Climate Survey, to be deployed in spring 2017, effectiveness of current existing training as well as assess gaps with University's curriculum should be determined.
- m. Evidence-based prevention initiatives should be used to supplement or modify any existing training programs and curricula that are shown to be lacking.

**3. Gather additional information from OIE and other relevant offices regarding mandatory and other training for employees, including graduate assistants.**

- a. All training to be provided to Title IX Coordinators, Investigators, Decision Makers, and Appeal Officers should be reviewed and approved by OIE. OIE should retain the flexibility in determining who conducts the training (whether ATIXA or some other organization or company).
- b. It is recommended that there be further discussion regarding confidential resources and others providing victim counseling services to victims, specifically with regard to training and supervision. Future discussion should include training strategy, resources, and possible legislative action.
- c. All students, staff, and faculty should be required to participate in education and training modules concerning sexual violence, sexual assault, and dating violence/domestic violence. Students, staff, and faculty should have separate levels of training.

- d. The University should make assessments of its programs to determine whether curricula meets ATIXA and best practice standards for the types of training provided to both students and the different employee groups (Title IX teams, first responders, responsible employees, incoming students, all employees).
- e. Various resources should be assessed and explored with respect to developing capacity for delivering training, including utilizing campus expertise (e.g., counselors, BIT teams, advocates, civil rights offices, and student groups) as well as community resources.
- f. The University should begin researching and implementing training modules on the various other areas affected by Title IX, e.g., athletics, policies relating to pregnancy, pay equity, etc.

**4. Gather additional information around the need to further strengthen the working relationship between the University and the State of Hawaii Department of Education to ensure Title IX processes and procedures for students experiencing gender-based violence are known to University employees, State of Hawaii Department of Education employees, and students enrolled in early high school and/or running start classes.**

- a. It is recommended that the University conduct research to identify relevant programs and all University employees and DOE partners who work in programs that address or work with these vulnerable populations on a regular basis. Additionally, the University should provide those identified with a minimum amount of professional development training regarding Title IX, VAWA, University policies, and trauma-informed training related to sex discrimination. These same employees may also need to be trained on how to handle allegations under both University and DOE policy.

**D. Direct Services, Resources and Support, MOUs & Community Collaboration**

**1. Recommendations based on additional information from off campus, community resources to discuss their work/services and how the Task Force can promote their efforts. In addition, discussion on how to best connect resources at the University with resources in the community.**

- a. Formalizing Relationships
  - i. The University should determine a deadline by which initial MOUs will be established and implemented with respect to service organizations in the community. The

Task Force recommends that these MOUs be finalized by July 2017.

- ii. The University should continue to include community stakeholders in its ongoing discussion and review of on-campus and off-campus services. The University should consider informing community stakeholders when establishing MOUs and other agreements relating to community service organizations.

b. County Police Departments

- i. The University should ensure the role of campus security and law enforcement are made clear to students, faculty, and staff at the University. This includes thoroughly describing the role of campus security in addressing gender-based violence versus that of local law enforcement via education and training.
- ii. Campus security should not inadvertently miscommunicate that they possess law enforcement powers. Examples of items that would tend to mislead students, faculty, and staff include clothing or symbols (e.g. badges) that appear similar to police officers' uniforms, vehicles with paint, decals, and lighting that may be mistaken for law enforcement, and carrying weapons such as night sticks and guns.
- iii. If students, faculty, or staff contact law enforcement to address gender-based violence through the criminal justice system, the victim's choice to notice the University should be considered before campus security is alerted to the extent practicable. Alerting campus security would notice the University.
- iv. The Police Department MOU should contain written protocol for information sharing between University employees, including campus security, and the police.
- v. In its partnership with UH campuses, law enforcement should identify a key contact or contacts within each department for interactions with University System and campuses within their geographic jurisdiction concerning crimes involving gender-based violence. These key contacts should be of sufficient authority to effectively

assist in requests for appropriate police assistance and support for all campuses.

c. Gender-based violence Service Providers

- i. As a best practice, confidential support to survivors of gender-based violence should be provided by confidential resources and advocates with subject-matter specific expertise and experience. These personnel should not be overburdened by other responsibilities (an historical issue with counseling staff).
- ii. Community organizations could contribute to subject matter, curricula-based or -informed education and training, and with trainings on related topics such as trauma informed service delivery. Such training would be variable for various University affiliates (e.g. students, normal faculty, investigators, campus security, staff involved in Title IX appellate process, confidential resources and advocates).
- iii. The University System should provide off campus service providers with training related to University policies, processes (e.g. adjudication processes), and other relevant systems (e.g. housing, campus security). The training should include appropriate on-campus contacts for direct service providers.
- iv. The University should continue discussion with community organizations and agencies providing services to survivors of gender violence on the possibility of contracts and binding agreements for specific service delivery.
- v. The University should provide a deadline by which initial MOUs should be established and implemented with respect to service organizations in the community; initial recommendation of July 2017.
- vi. The University should continue discussion and review of on-campus and off-campus delivery of services, including establishment of appropriate MOUs and other agreements, as part of successor group to Act 222 (2015) Affirmative Consent Task Force subject matter.

**E. Additional Recommendations**

## **1. Role of OIE**

- a. The University requires oversight and coordination of its gender-based violence response infrastructure to ensure consistent and adequate implementation or delivery of all policies, processes, systems, training, education, and services related to gender-based violence subject matter.
- b. The agency or office that is assigned this work (OIE) must be delegated sufficient authority to perform the task, including clarifying lines of reporting. Authority would need to include the ability to collect and review appropriate information, provide recommendations, guidance and opinions, conduct quality assurance activities, take steps where necessary to ensure that required action is taken to comply with policy and law, and remedy identified problems.

## **2. Successor Organization to Act 222 (2015) Task Force**

The work of the Task Force should be continued to advise on issues related to UH's response to and handling of gender-based violence. A successor group could take any of the following forms:

- a. Advisory board
- b. Sex-discrimination and gender-based violence response team
- c. Extension of the existing Act 222 Task Force with reevaluation of membership to possibly include new community and University entities
- d. A University Commission

## **VII. Conclusion**

This final report reflects the comprehensive work undertaken by the Task Force to address the vast, complex, and nuanced challenges that many universities, including the University of Hawaii, face in order to ensure the safety of its constituents and honor the legacy of U.S. Representative Patsy T. Mink. The Task Force members and the University remain committed to any future plans that may be developed. The members will also continue their individual work towards ending sexual and other forms of gender based violence at the University in a comprehensive, transparent, and collaborative way.

## **VIII. Appendices**

**APPENDIX A**

**Act 222, Session Laws of Hawaii 2015**

Approved by the Governor  
on       JUL 9 2015      

THE SENATE  
TWENTY-EIGHTH LEGISLATURE, 2015  
STATE OF HAWAII

**ACT 222**

**S.B. NO.** 387  
S.D. 2  
H.D. 3  
C.D. 1

**A BILL FOR AN ACT**

RELATING TO AFFIRMATIVE CONSENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that while Congress has  
2 enacted several historic and significant federal laws to address  
3 sex-based discrimination and violence against women and girls,  
4 including Title IX of the Education Amendments of 1972, renamed  
5 the Patsy Takemoto Mink Equal Opportunity in Education Act in  
6 2002 in recognition of the late United States Representative  
7 Patsy Mink's tireless efforts regarding Title IX, and the more  
8 recent Violence Against Women Act, sexual violence is prevalent  
9 on college campuses. Nationally, one in five women is sexually  
10 assaulted while in college. Approximately one-third of these  
11 sexual assaults are perpetrated on women who are first-year  
12 students between the ages of seventeen and nineteen. Also,  
13 women aged sixteen to twenty-four are at the highest risk for  
14 experiencing abuse by an intimate partner.

15           The legislature concludes that violence against women is a  
16 continuing problem that must be addressed. Ending campus sexual  
17 violence is a combined endeavor of effective response and



1 intervention, awareness education to change attitudes and  
2 behaviors, and clear policies that do not tolerate such conduct.

3       The legislature acknowledges that the University of Hawaii  
4 is committed to maintaining and promoting safe, respectful  
5 campus environments that are free from discrimination,  
6 harassment, and sexual violence. The University of Hawaii board  
7 of regents recently adopted an executive policy concerning  
8 sexual harassment, sexual assault, domestic violence, dating  
9 violence, and stalking that requires the various campuses to  
10 implement comprehensive education and prevention programs,  
11 information and assistance for individuals who report alleged  
12 sexual harassment and sexual violence, prompt and equitable  
13 complaint procedures, information for respondents and  
14 complainants about their rights, and corrective action to  
15 prevent and end incidents of harassment and sexual violence.  
16 The policy also provides a comprehensive definition of  
17 affirmative consent.

18       The purpose of this Act is to provide for a review of the  
19 university's policy.

20       SECTION 2. (a) There is established the affirmative  
21 consent task force to review and make recommendations on the



1 University of Hawaii's executive policy on sexual harassment,  
2 sexual assault, domestic violence, dating violence, and  
3 stalking.

4 (b) The task force shall comprise:

- 5 (1) The president of the University of Hawaii, or the  
6 president's designee;
- 7 (2) The vice president for community colleges, or the vice  
8 president's designee;
- 9 (3) The chancellor of the University of Hawaii at Manoa,  
10 or the chancellor's designee;
- 11 (4) The chancellor of the University of Hawaii at Hilo, or  
12 the chancellor's designee;
- 13 (5) The chancellor of the University of Hawaii at West  
14 Oahu, or the chancellor's designee;
- 15 (6) The executive director of the Hawaii state commission  
16 on the status of women, or the executive director's  
17 designee;
- 18 (7) The chair of the University of Hawaii commission on  
19 the status of women, or the chair's designee;





- 1           (8) At least two students at the University of Hawaii to  
2           be chosen by the president of the University of  
3           Hawaii, or the president's designee;
- 4           (9) The executive director of the Sex Abuse Treatment  
5           Center, or the director's designee;
- 6           (10) A member of the American Civil Liberties Union;
- 7           (11) A member of the National Association of Social  
8           Workers;
- 9           (12) A representative of the Hawaii State Coalition Against  
10          Domestic Violence;
- 11          (13) A representative of the Honolulu police department;  
12          and
- 13          (14) A member of the women's legislative caucus of the  
14          legislature.
- 15          (c) The members of the task force shall elect a  
16 chairperson from among themselves.
- 17          (d) The task force shall consider the following concepts  
18 when reviewing and revising the University of Hawaii's current  
19 policy:
- 20          (1) Affirming the University of Hawaii's commitment to  
21          increasing resources and strengthening the



- 1 institutional infrastructure of all of its campuses to  
2 more effectively address the issue of affirmative  
3 consent;
- 4 (2) Considering best practices and current professional  
5 standards in reviewing and revising the current  
6 policy;
- 7 (3) Using contemporary corrective actions consistent with  
8 academic environments, standard business practices,  
9 and the laws of the State; and
- 10 (4) That the University of Hawaii's policy shall provide  
11 guidance to each campus within the University of  
12 Hawaii system on the following:
- 13 (A) Comprehensive education and prevention programs  
14 that inform the University of Hawaii community  
15 about the policies, resources, complaint options,  
16 remedies, and the risks and myths that contribute  
17 to sexual harassment, sexual assault, domestic  
18 violence, dating violence, and stalking;
- 19 (B) Information and assistance for individuals who  
20 report alleged sexual harassment and sexual  
21 violence, including informing individuals about



1 their right to file criminal charges as well as  
2 the availability of on- and off-campus resources  
3 (e.g., medical, counseling, advocacy, legal, and  
4 other support services, including confidential  
5 options) and alternative remedies, such as  
6 housing, academic, or workplace accommodations,  
7 if appropriate and reasonably available,  
8 regardless of whether the individual chooses to  
9 file a complaint with or report a crime to campus  
10 security or a local law enforcement agency;  
11 (C) Prompt and equitable complaint procedures for  
12 students and employees that are accessible and  
13 widely publicized on a regular basis;  
14 (D) Information for both respondents and complainants  
15 regarding their rights during a student  
16 disciplinary hearing or investigation, including  
17 the right to a fair and impartial process, to be  
18 accompanied by an advisor, to give their side of  
19 the story and present all relevant evidence, to  
20 receive simultaneous updates on the status of the  
21 investigation and written notice of the outcome,



1 including relevant sanctions imposed on student  
2 respondents, and to appeal;

3 (E) Provisions for corrective actions that the  
4 campuses will implement or instill, including  
5 remedies and disciplinary sanctions, to end  
6 incidents of harassment or sexual violence and to  
7 prevent their recurrence;

8 (F) Training on non-judgmental, victim-centered  
9 communication for university staff who receive  
10 and handle complaints of harassment or sexual  
11 violence; and

12 (G) Procedures for the university's coordination and  
13 cooperation with police and prosecutors if an  
14 individual decides to report an incident of  
15 harassment or sexual violence.

16 (e) The task force shall submit a report of its findings  
17 and recommendations, including any proposed legislation, to the  
18 legislature no later than twenty days prior to the convening of  
19 the regular sessions of 2016 and 2017.

20 (f) The task force shall cease to exist on June 30, 2017.

21 SECTION 3. This Act shall take effect on July 1, 2015.

S.B. NO. 387  
S.D. 2  
H.D. 3  
C.D. 1

APPROVED this 9 day of JUL, 2015



GOVERNOR OF THE STATE OF HAWAII

APPENDIX B.

Act 208, Session Laws of Hawaii 2016

Approved by the Governor  
on JUL 5 2016  
HOUSE OF REPRESENTATIVES  
TWENTY-EIGHTH LEGISLATURE, 2016  
STATE OF HAWAII

ORIGINAL

ACT 208  
H.B. NO.

2772  
H.D. 1  
S.D. 2  
C.D. 1

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A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the affirmative  
2 consent task force, established by Act 222, Session Laws of  
3 Hawaii 2015, reviewed and made preliminary recommendations on  
4 the University of Hawaii executive policy regarding sexual  
5 harassment, sexual assault, domestic violence, dating violence,  
6 and stalking.

7 The legislature finds that this issue is a matter of  
8 statewide concern that falls under its purview pursuant to  
9 article X, section 6, of the Hawaii State Constitution.

10 The purpose of this Act is to adopt the preliminary  
11 recommendations of the affirmative consent task force.

12 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is  
13 amended by adding a new section to subpart A of part I to be  
14 appropriately designated and to read as follows:

15 "§304A- Campus safety and accountability. (a) The  
16 University of Hawaii shall:



- 1        (1) Train all University of Hawaii students and employees,  
2        including security personnel, Title IX coordinators,  
3        and residential advisors, on:
- 4        (A) Public Law 92-318, Title IX of the federal  
5        Education Amendments of 1972, as amended;
- 6        (B) The Violence Against Women Act of 1994, as  
7        amended; and
- 8        (C) University of Hawaii executive policies on sexual  
9        harassment, sexual assault, domestic violence,  
10       dating violence, and stalking;
- 11       (2) Provide all existing University of Hawaii employees  
12       with the training described in paragraph (1) by July  
13       1, 2017, and every two years thereafter;
- 14       (3) Provide all new University of Hawaii employees with  
15       the training described in paragraph (1) no later than  
16       thirty days after the date of first employment;
- 17       (4) Provide all students with the training described in  
18       paragraph (1) annually;
- 19       (5) At each campus of the University of Hawaii system,  
20       designate a confidential advocate for students to  
21       confidentially discuss incidents of, and obtain



1 information on, sexual harassment, sexual assault,  
2 domestic violence, dating violence, stalking, and  
3 related issues; provided that confidential advocates  
4 and communications received by confidential advocates  
5 shall not be exempt from any otherwise applicable  
6 mandatory reporting requirements for child and  
7 vulnerable adult neglect and abuse as provided by  
8 chapters 346 and 350;

9 (6) Publicize the name, location, phone number, and email  
10 address of the confidential advocate on the website of  
11 each respective campus;

12 (7) Make available to students and employees written and  
13 electronic materials and training programs concerning  
14 Title IX of the Higher Education Amendments of 1972;  
15 the Violence Against Women Act of 1994; and University  
16 of Hawaii policies concerning sexual harassment,  
17 sexual assault, domestic violence, dating violence,  
18 and stalking; and

19 (8) Inform victims in writing of the right to file a  
20 police report with the appropriate county police





1           department for investigation and assist victims in  
2           submitting the police report.

3           (b) All University of Hawaii faculty members are  
4           designated as "responsible employees" under Public Law 92-318,  
5           Title IX of the federal Education Amendments of 1972, as  
6           amended, and shall report any violations of University of Hawaii  
7           executive policies regarding sexual harassment, sexual assault,  
8           domestic violence, dating violence, and stalking to the Title IX  
9           coordinator of the faculty member's campus; provided that any  
10          faculty member designated as a confidential advocate pursuant to  
11          subsection (a) (5) shall not be a "responsible employee";  
12          provided further that the confidential advocate shall annually  
13          provide general statistics to the Title IX coordinator about the  
14          number and type of incidents received by the confidential  
15          advocate.

16          (c) All University of Hawaii students and employees shall  
17          complete the training required under subsection (a) (1), (a) (2),  
18          (a) (3), and (a) (4) or may be subject to fines, sanctions, or  
19          other discipline, as deemed appropriated by the University of  
20          Hawaii.



1        (d) No later than March 31, 2017, and every two years  
2 thereafter, the University of Hawaii shall conduct a campus  
3 climate survey of all students. The University of Hawaii shall  
4 submit a report to the legislature no later than twenty days  
5 before the convening of each regular session that shall include:

6        (1) A summary of the most recent campus climate survey  
7        results;

8        (2) Information on the number of sexual assaults that  
9        occurred on a University of Hawaii system campus  
10       within the past five years; and

11       (3) Recommendations and efforts to improve campus safety  
12       and accountability.

13       (e) The University of Hawaii shall establish policies and  
14 procedures to effectuate this section."

15       SECTION 3. (a) No later than December 31, 2016, the  
16 University of Hawaii shall revise, as necessary, all University  
17 of Hawaii executive policies regarding:

18       (1) Student conduct;

19       (2) Nondiscrimination;

20       (3) Complaint procedures;

21       (4) Campus security;



1           (5) Alcohol consumption;  
2           (6) Housing; and  
3           (7) Workplace nonviolence,  
4 that conflict with any University of Hawai'i executive policy  
5 regarding sexual harassment, sexual assault, domestic violence,  
6 dating violence, and stalking, including University of Hawaii  
7 executive policy number 1.204.

8           (b) The University of Hawaii shall enter into memoranda of  
9 understanding with all county police departments by December 31,  
10 2016, to govern communications and procedures for addressing  
11 sexual assaults that occur on University of Hawaii system  
12 campuses.

13           SECTION 4. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$250,000 or so much  
15 thereof as may be necessary for fiscal year 2016-2017 for the  
16 University of Hawaii at Manoa to hire employees as follows:

- 17           (1) One full-time equivalent administrator (1.0 FTE) at  
18                 \$70,000; and  
19           (2) Two full-time equivalent investigators (2.0 FTE) at  
20                 \$90,000 each,



1 to ensure compliance with Title IX of the federal Education  
2 Amendments of 1972, as amended, and the Violence Against Women  
3 Act of 1994, as amended.

4 The sum appropriated shall be expended by the University of  
5 Hawaii at Manoa for the purposes of this Act.

6 SECTION 5. There is appropriated out of the general  
7 revenues of the State of Hawaii the sum of \$160,000 or so much  
8 thereof as may be necessary for fiscal year 2016-2017 for the  
9 University of Hawaii at Hilo:

10 (1) To hire employees as follows:

11 (A) One full-time equivalent administrative support  
12 staff person (1.0 FTE) at \$60,000; and

13 (B) One full-time equivalent educator, trainer, and  
14 investigator (1.0 FTE) at \$90,000; and

15 (2) \$10,000 for related travel expenses,

16 to ensure compliance with Title IX of the federal Education  
17 Amendments of 1972, as amended, and the Violence Against Women  
18 Act of 1994, as amended.

19 The sum appropriated shall be expended by the University of  
20 Hawaii at Hilo for the purposes of this Act.



1 SECTION 6. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$150,000 or so much  
3 thereof as may be necessary for fiscal year 2016-2017 for the  
4 University of Hawaii community colleges to ensure compliance  
5 with Title IX of the federal Education Amendments of 1972, as  
6 amended, and the Violence Against Women Act of 1994, as amended.

7 The sum appropriated shall be expended by the University of  
8 Hawaii community colleges for the purposes of this Act.

9 SECTION 7. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 8. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on July 1, 2016.

APPROVED this 5 day of JUL , 2016



GOVERNOR OF THE STATE OF HAWAII



## **APPENDIX C**

### **November 2015 Interim Policy EP 1.204**

The November 2015 Interim Policy EP 1.204 is accessible at the following link:

[www.hawaii.edu/titleix/policy/](http://www.hawaii.edu/titleix/policy/).

## **APPENDIX D**

### **Affirmative Consent Task Force Members**

Current (2016):

- The designee of the President of the University of Hawaii:  
**Jennifer Solidum Rose**, UH System Office of Institutional Equity Director,  
Chair of the Task Force
- The designee of the Vice President for Community Colleges:  
**Christine Chun**, UH Community Colleges Compliance and Title IX Office Director
- The designee of the Chancellor of the University of Hawaii at Manoa:  
**Dee Uwono**, UH Manoa Title IX Coordinator
- The designee of the Chancellor of the University of Hawaii at Hilo:  
**Libby Bailey**, UH Hilo Title IX Coordinator
- The designee of the Chancellor of the University of Hawaii at West Oahu:  
**Judy Oliveira**, UH West Oahu Vice Chancellor for Student Affairs
- **Catherine Betts**, Hawaii State Commission on the Status of Women Executive  
Director, Vice Chair of the Task Force
- **Iwalani Tasaka**, University of Hawaii Commission on the Status of Women Chair
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Naomi Iwabuchi**, William S. Richardson School of Law Student
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Jonathan Dial**, UH Manoa Graduate Student
- The designee of the Executive Director of the Sex Abuse Treatment Center:  
**Justin Murakami**, SATC Policy Research Associate
- Member of the American Civil Liberties Union:  
**Mandy Finlay**, ACLU of Hawaii Advocacy Coordinator
- Member of the National Association of Social Workers:  
**Sonja Bigalke-Bannan**, NASW Hawaii Region Executive Director
- Representative of the Hawaii State Coalition Against Domestic Violence:  
**Michelle Rocca**, HSCADV Training and Technical Assistance Director
- Representative of the Honolulu Police Department:

**Larry Lawson**, HPD Criminal Investigation Division Major

- Member of the Women's Legislative Caucus of the Hawaii State Legislature:  
**Linda Ichiyama**, Hawaii State Legislature House District 32 Representative Former:

#### **2015 Affirmative Consent Task Force Members**

- The designee of the President of the University of Hawaii:  
**Jennifer Solidum Rose**, UH System Office of Institutional Equity Director,  
Chair of the Task Force
- The designee of the Vice President for Community Colleges:  
**Christine Chun**, UH Community Colleges Compliance and Title IX Office Director
- The designee of the Chancellor of the University of Hawaii at Manoa:  
**Dee Uwono**, UH Manoa Title IX Coordinator
- The designee of the Chancellor of the University of Hawaii at Hilo:  
**Jennifer Stotter**, UH Hilo EEO/AA Director
- The designee of the Chancellor of the University of Hawaii at West Oahu:  
**Judy Oliveira**, UH West Oahu Vice Chancellor for Student Affairs
- **Catherine Betts**, Hawaii State Commission on the Status of Women Executive  
Director, Vice Chair of the Task Force
- **Farrah-Marie Gomes**, University of Hawaii Commission on the Status of Women  
Chair
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Naomi Iwabuchi**, William S. Richardson School of Law Student
- University of Hawaii student chosen by the President of the University of Hawaii:  
**Jonathan Dial**, UH Manoa Graduate Student
- The designee of the Executive Director of the Sex Abuse Treatment Center:  
**Justin Murakami**, SATC Policy Research Associate
- Member of the American Civil Liberties Union:  
**Mandy Finlay**, ACLU of Hawaii Advocacy Coordinator
- Member of the National Association of Social Workers:  
**Sonja Bigalke-Bannan**, NASW Hawaii Region Executive Director
- Representative of the Hawaii State Coalition Against Domestic Violence:



**Michelle Rocca**, HSCADV Training and Technical Assistance Director

- Representative of the Honolulu Police Department:

**Larry Lawson**, HPD Criminal Investigation Division Major

- Member of the Women's Legislative Caucus of the Hawaii State Legislature:

**Linda Ichiyama**, Hawaii State Legislature House District 32 Representative Former:

- The designee of the Vice President for Community Colleges:

**Mary Ferreira**, UH Community Colleges EEO/AA Director

- The designee of the Chancellor of the University of Hawaii at West Oahu:

**Beverly Baligad**, UH West Oahu Title IX Coordinator

## **APPENDIX E**

### **2016 Permitted Interaction Group Participants**

- **Policy Group. Participants:**
- Libby Bailey (replaced Jennifer Stotter)  
Mandy Finlay  
Linda Ichiyama  
Justin Murakami  
Jennifer Rose  
'Iwalani Tasaka (replaced Farrah-Marie Gomes)  
Dee Uwono  
Trisha Kimura (member of the public - UH System Office of General Council)
- **Education / Prevention Programs & Notification of Rights / Resources Group. Participants:**  
Michelle Rocca  
Jennifer Rose  
Jonathan Dial  
Mandy Finlay  
Justin Murakami  
Catherine Betts  
Linda Ichiyama (replaced Naomi Iwabuchi)  
Hannah Liebreich (member of the public – UH Manoa Graduate Student)  
Christopher Yanuaria (member of the public – UH Manoa, PAU Violence Program coordinator and Respondent Support)  
Jennifer Barnett (member of the public – UH Manoa, PAU Violence Program Coordinator)  
Cameron Miyamoto (member of the public - UH Manoa LGBTQ+ Center, Director and UH System - Liaison to the Commission on LGBTQ+ Equality)
- **Direct Services / Resources / Support / MOUs / Community Collaborations Group. Participants:**  
Libby Bailey (replaced Jennifer Stotter)  
Sonja Bigalke-Bannan  
Christine Chun  
Larry Lawson  
Justin Murakami  
Michelle Rocca  
Jennifer Rose
- **Training / Best Practices Group. Participants:**  
Catherine Betts  
Christine Chun (replaced Mary Perreira)  
Jonathan Dial (replaced Naomi Iwabuchi)  
Justin Murakami  
Jennifer Rose

‘Iwalani Tasaka (replaced Farrah-Marie Gomes)  
Dee Uwono  
Jennifer Barnett (member of the public – UH Manoa, PAU Violence Program Coordinator)  
Hannah Liebreich (member of the public – UH Manoa Graduate Student)  
Cameron Miyamoto (member of the public - UH Manoa LGBTQ+ Center, Director and UH System - Liaison to the Commission on LGBTQ+ Equality)  
Kara Teng (member of the public – William S. Richardson School of Law Student & President, Lawyers Against Sexual Violence).  
Christopher Yanuaria (member of the public – UH Manoa, PAU Violence Program Coordinator and Respondent Support)

## **2015 Permitted Interaction Group Participants**

- **Policy Group. Participants:**  
Mandy Finlay  
Farrah-Marie Gomes  
Linda Ichiyama  
Justin Murakami  
Jennifer Rose  
Jennifer Stotter  
Dee Uwono
- **Education / Prevention Programs & Notification of Rights / Resources Group. Participants:**  
Jonathan Dial  
Mandy Finlay  
Justin Murakami  
Michelle Rocca  
Jennifer Rose  
Jennifer Stotter  
Hannah Liebreich (member of the public – UH Manoa Graduate Student)
- **Direct Services / Resources / Support / MOUs / Community Collaborations Group. Participants:**  
Sonja Bigalke-Bannan  
Larry Lawson  
Justin Murakami  
Michelle Rocca  
Jennifer Rose  
Jennifer Stotter
- **Training / Best Practices Group. Participants:**  
Jonathan Dial  
Catherine Betts  
Farrah-Marie Gomes

Justin Murakami

Mary Perreira

Jennifer Rose

Dee Uwono

Hannah Liebreich (member of the public – UH Manoa Graduate Student).

Kara Teng (member of the public – William S. Richardson School of Law Student & President, Lawyers Against Sexual Violence).

## **APPENDIX F DEFINITIONS OF RESPONSIBLE EMPLOYEE**

**University of Virginia** – "any University employee who is not a Confidential Employee"

**North Carolina State University** – all "individuals who have authority to take action to redress the prohibited conduct; who have been given the duty of reporting incidents of sex discrimination, sexual harassment, and sexual violence to the Title IX Coordinator; or *whom a student could reasonably believe has this authority or duty.*" (emphasis added)

**Valparaiso University** - "any employee who has authority to take action to redress the sexual misconduct; who has been given the duty to report to appropriate officials of an institution about incidents of sexual misconduct; or *whom a student could reasonably believe has this authority or duty.*" (emphasis added)

**Spelman College** – includes all faculty, staff, and student organization advisors, stating that a "responsible employee or mandatory reporter is *someone a student could reasonably believe has authority and knew or should have known about sexual violence.* The Responsible Employee had the duty to report sexual violence to the Title IX Officer." (emphasis added)

**Carnegie Mellon University** - "who has the authority to take action to redress sexual violence; who has been given the duty to reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or *whom a student cannot reasonably believe has this authority or duty*" (emphasis added)

**University of Maryland System** – a Responsible Employee "(1) has the authority to take action regarding sexual misconduct; (2) is an employee who has been given the duty of reporting sexual misconduct; or (3) *is someone another individual could reasonably believe has that authority or duty*" (emphasis added)

**Howard University** – "every individual employed by Howard University" is considered a responsible employee.

## **APPENDIX G**

### **DEFINITIONS OF CONSENT**

#### **University of California (UC)**

The UC system defines consent for all of its college campuses. UC defines consent as "affirmative, conscious, voluntary, and revocable." California law requires all colleges, as a condition of state funding, to adopt an affirmative consent definition.

California enacted legislation in 2014 that tied colleges adopting an affirmative definition of consent with state funding for financial aid programs. Critics of the California law have concerns about "the ability of the accused to prove that legally sufficient consent was obtained." As the burden is on the accused to prove that consent was obtained, critics claim that it would be very difficult for the accused to present evidence that consent was obtained. This would be less of a concern in an administrative hearing involving Title IX, but could be a concern if the definition was used in a criminal trial.

The UC system also gives examples of the lack of consent. The policy states, [T]he Respondent's belief that the Complainant consented shall not provide a valid excuse where:

1. The Respondent's belief arose from Respondent's own intoxication or recklessness;

2. The Respondent did not take reasonable steps, in the circumstance known to the Respondent at the time, to ascertain whether the Complainant affirmatively consent; or

3. The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the complainant was:

- a. asleep or unconscious

- b. due to the influence of drugs, alcohol or medication, unable to understand the fact, nature, or extent of the sexual activity; or

- c. unable to communicate due to a mental or physical condition

## **State University of New York (SUNY)**

Similar to the UC system, SUNY policy contains a definition of affirmative consent. Consent is "a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent."

New York, like California, mandates that colleges who receive state funding define consent as a "knowing, voluntary, and mutual decision among all participants to engage in sexual activity."

## **University of Michigan**

The University of Michigan defines consent in its new policy going into effect on July 1, 2016 as:

[A] clear and unambiguous agreement, expressed outwardly through mutually understandable words or actions, to engage in a particular activity. Consent must be voluntarily given and cannot be obtained through coercion or force. For purposes of this Policy, in evaluating whether consent was freely sought and given, the issue is whether the Respondent knew, or reasonably reasonably should have known, that the activity in question was not consensual, or that the Claimant was unable to consent due to incapacitation.

Consent is not defined in the Michigan Revised Statutes.

## **University of Illinois**

The University of Illinois defines consent as "informed, freely and actively given, mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. A person can withdraw consent at any time."

The University of Illinois policy also includes an expansive section describing what consent looks like and when there is no consent, stating:

There is no consent when there is force, threats, intimidation, or duress. A person's lack of verbal or physical resistance does not constitute consent. Consent to past sexual activity with another

person does not constitute consent to future sexual activity with that person. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. A person cannot consent to sexual activity if such person is unable to understand the nature, fact, or extent of the activity or give knowing consent due to circumstances including without limitation the following:

1. the person is incapacitated due to the use or influence of alcohol or drugs;
2. the person is asleep or unconscious;
3. the person is under the legal age to provide consent; or the person has a disability that prevents such person from having the ability or capacity to give consent.

The state of Illinois defines consent as:

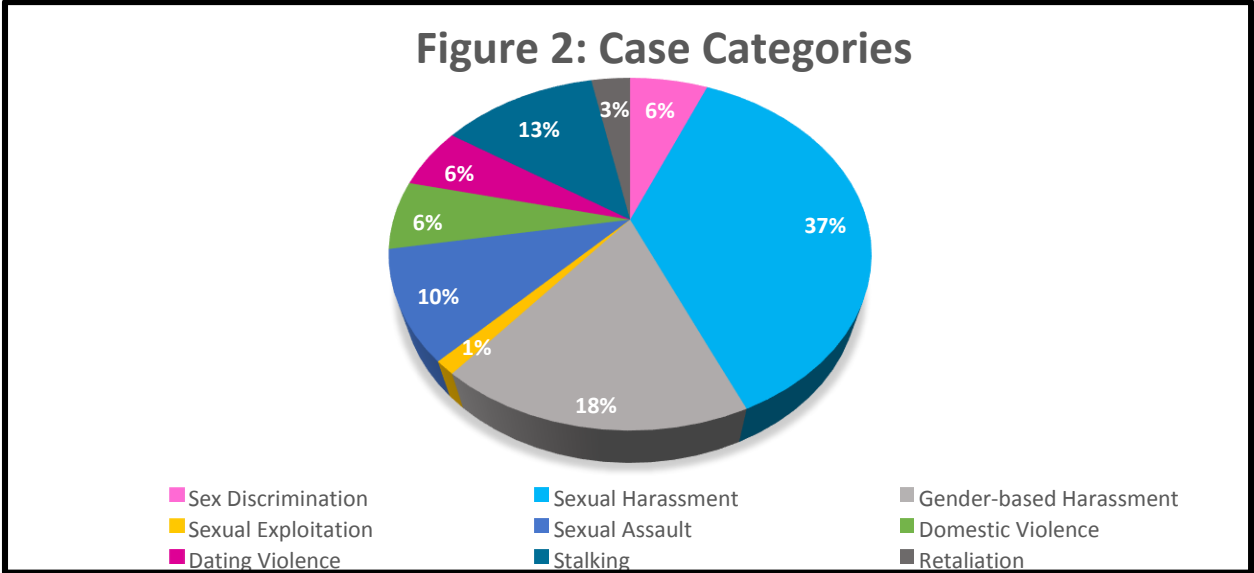
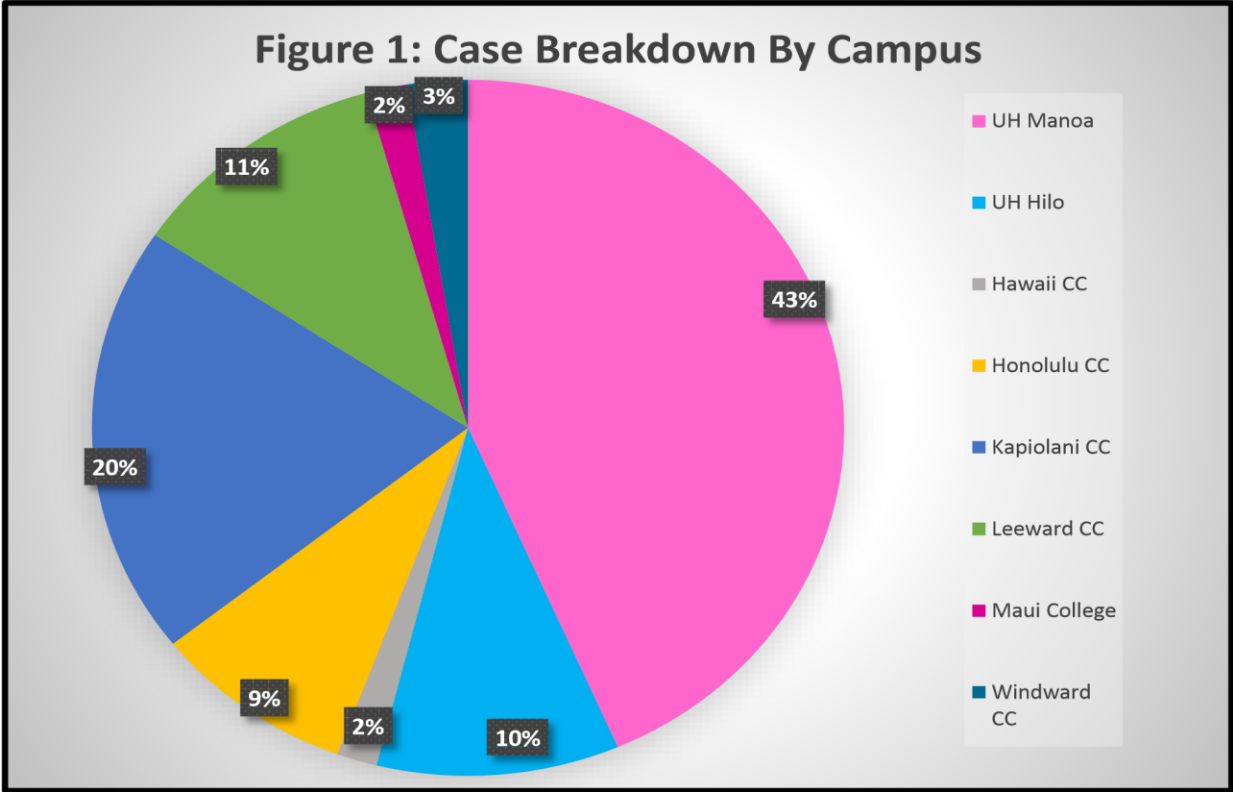
[A] freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent...

(c) A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.<sup>1</sup>

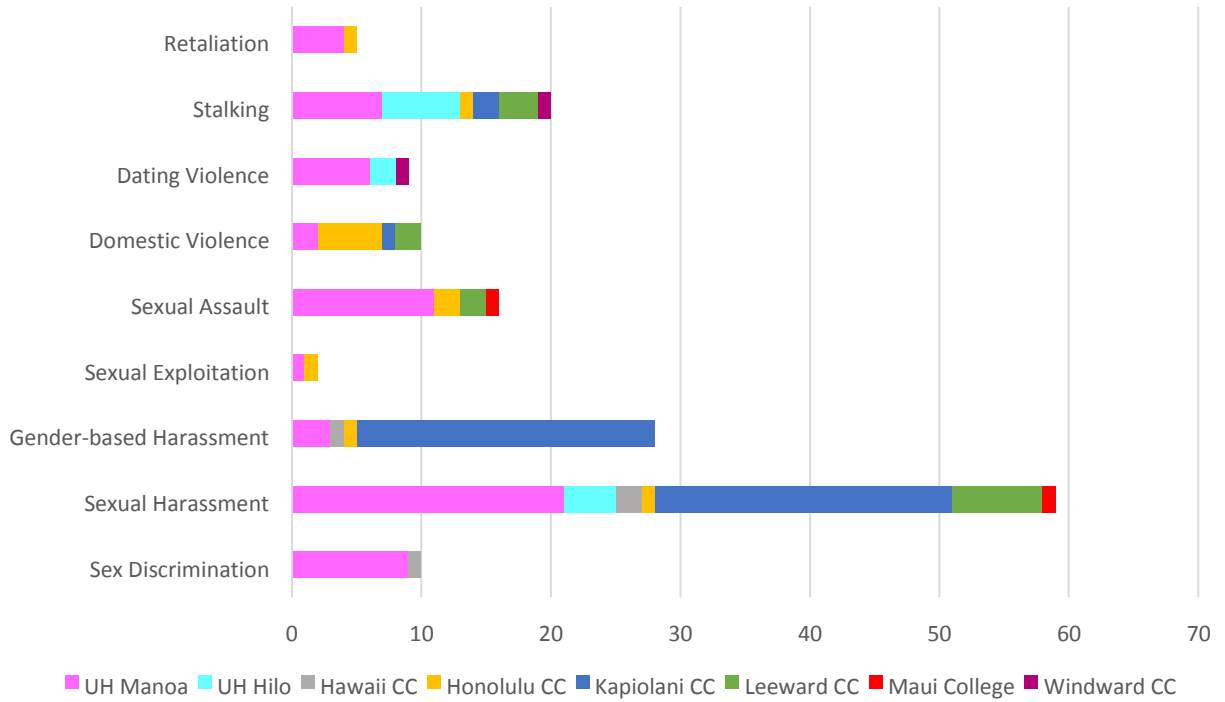


**APPENDIX H**  
**2015 & 2016 AGGREGATE CASE DATA**  
*UH Campus Data Graphs*

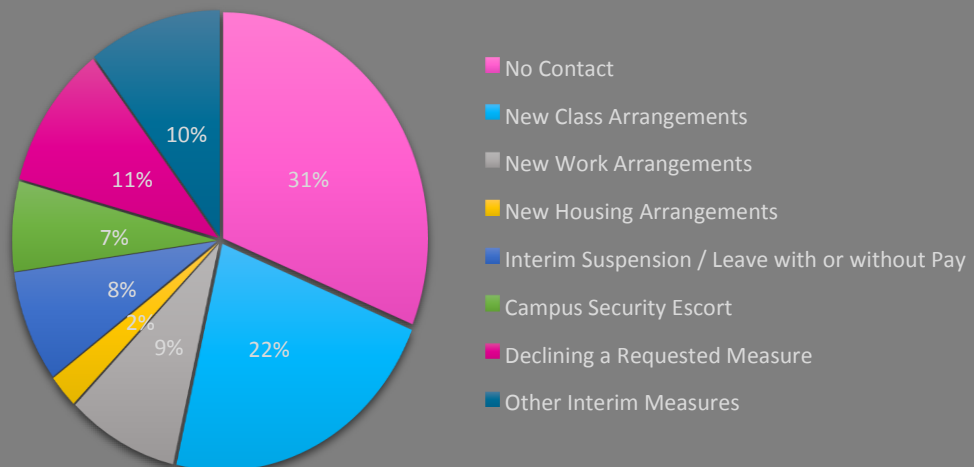
September 1 – December 31, 2015



**Figure 3: Case Category Breakdown By Campus**



**Figure 4: Interim Measures Breakdown**



**Collated Data Summary 2016**  
**Supplemental Graphs - Updated Quarterly Data for Policy Permitted Interaction Group Appendix**

**1<sup>st</sup> Quarter Data**  
**January – March 2016**

**2<sup>nd</sup> Quarter Data**  
**April – June 2016**

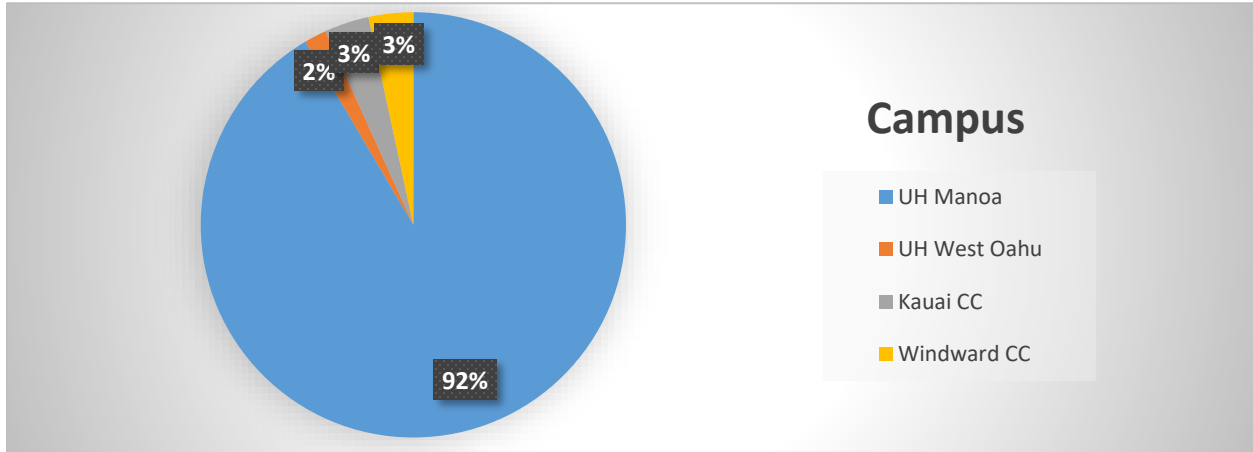
**3<sup>rd</sup> Quarter Data**  
**July – September 2016**

**Responses Summary**

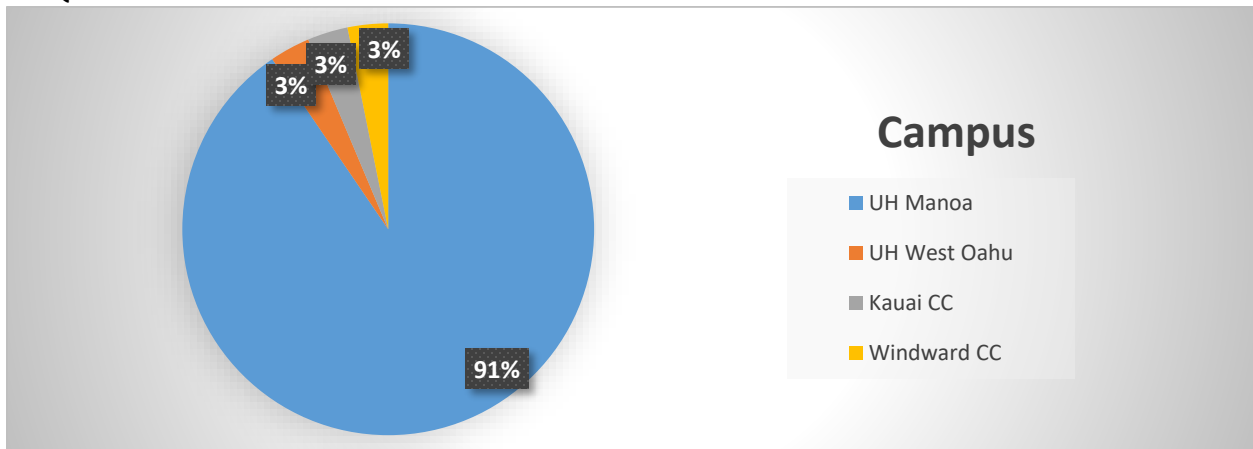
<p><b>Aggregate Included* Data:</b> UH Manoa UH West Oahu Kauai CC Windward CC</p> <p>*Note that criteria for inclusion is based on whether data was submitted for all three quarters.</p>	<p><b>Not Included:</b> UH Hilo Hawaii CC Honolulu CC Kapiolani CC Leeward CC Maui College System Offices</p>
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## Case Breakdown Percentage Using Included Data

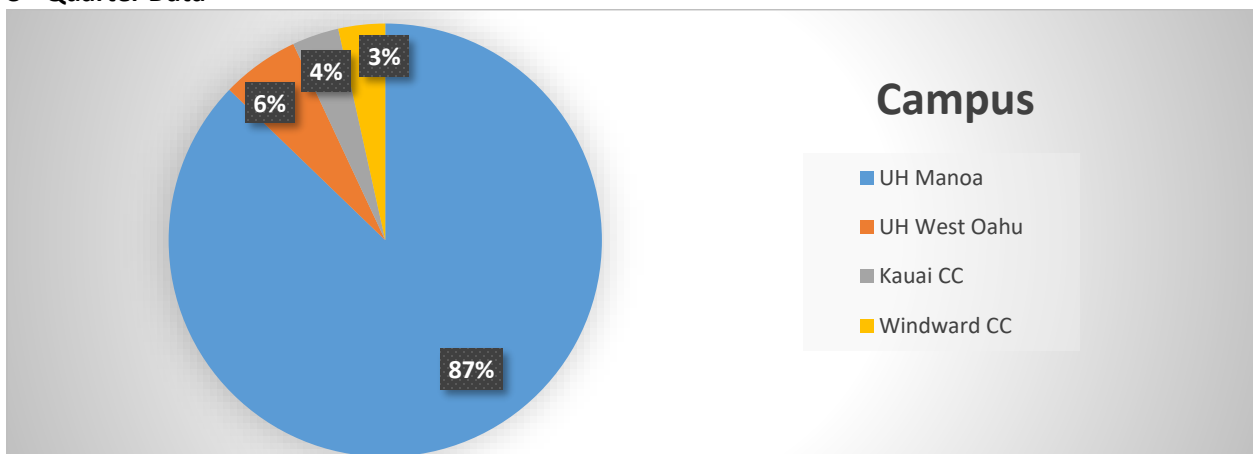
### 1<sup>st</sup> Quarter Data



### 2<sup>nd</sup> Quarter Data

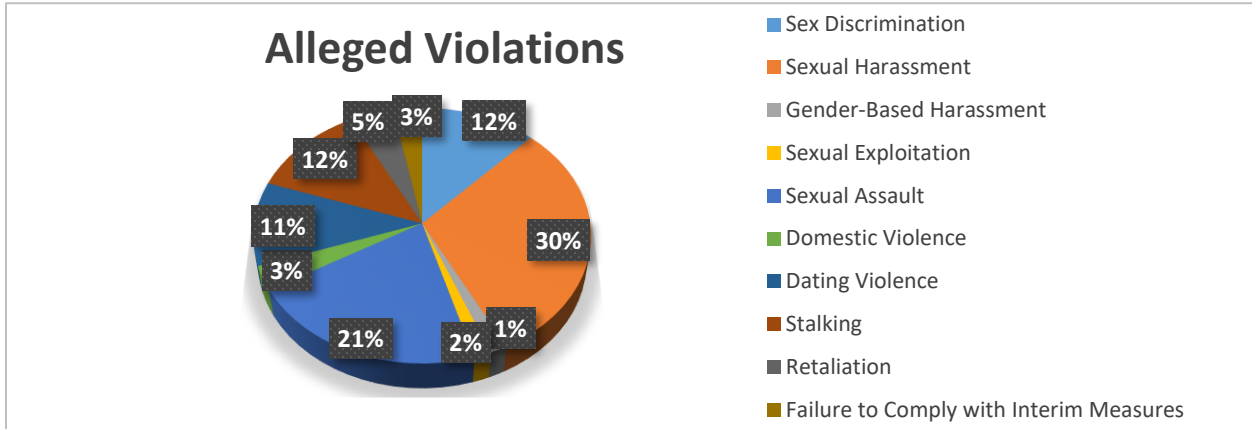


### 3<sup>rd</sup> Quarter Data

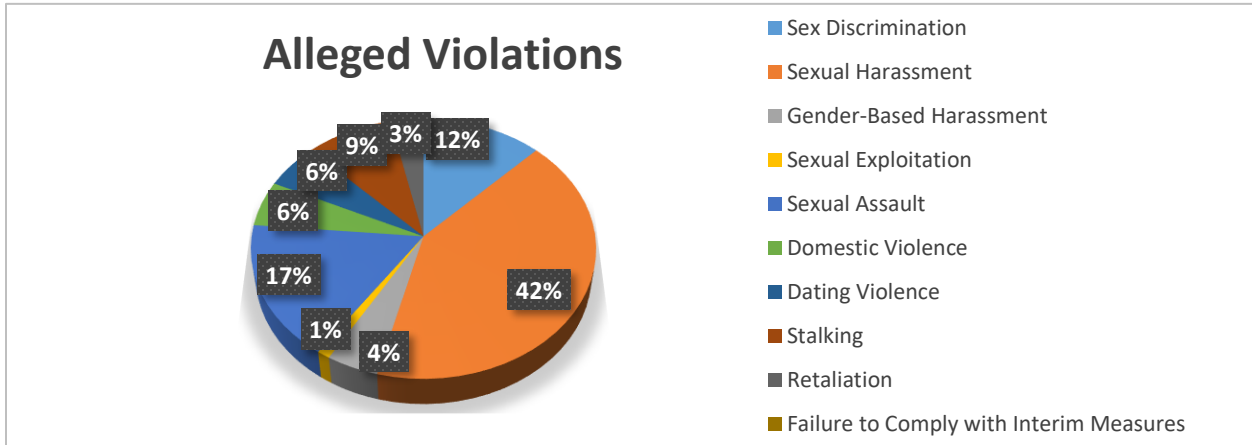


## Case Categories Breakdown Percentage Using Included Data

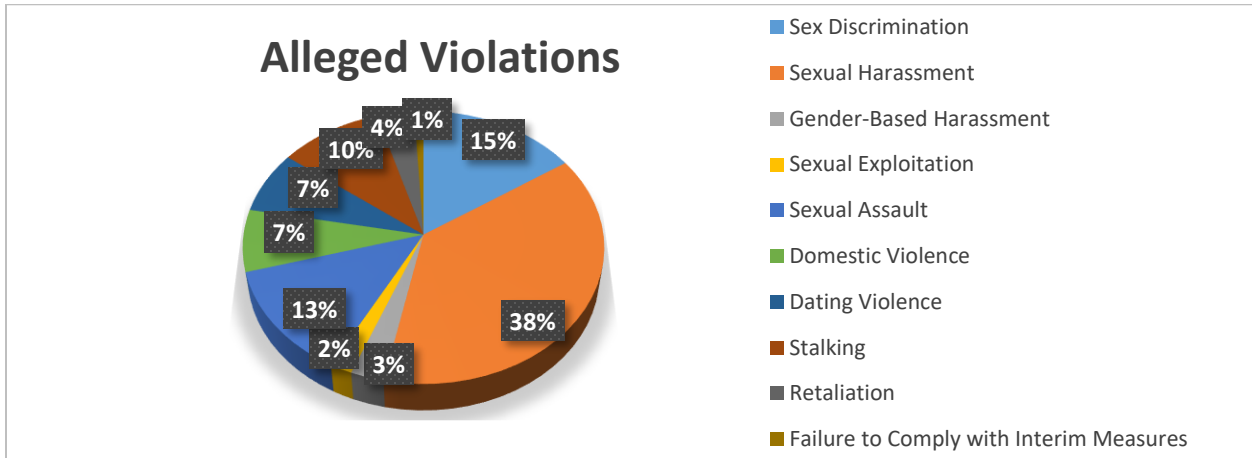
### 1<sup>st</sup> Quarter Data



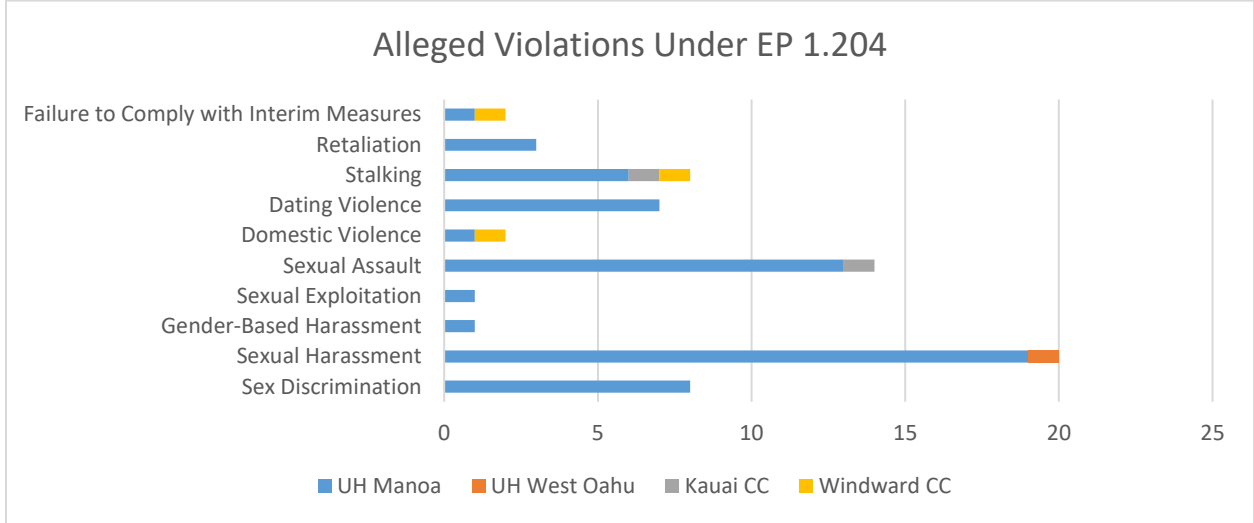
### 2<sup>nd</sup> Quarter Data



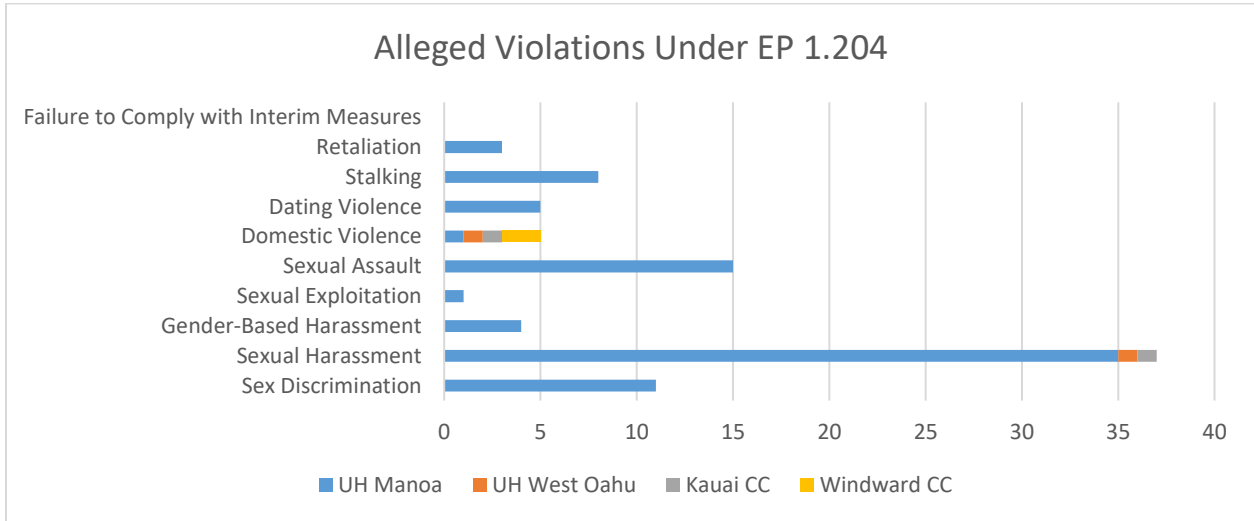
### 3<sup>rd</sup> Quarter Data



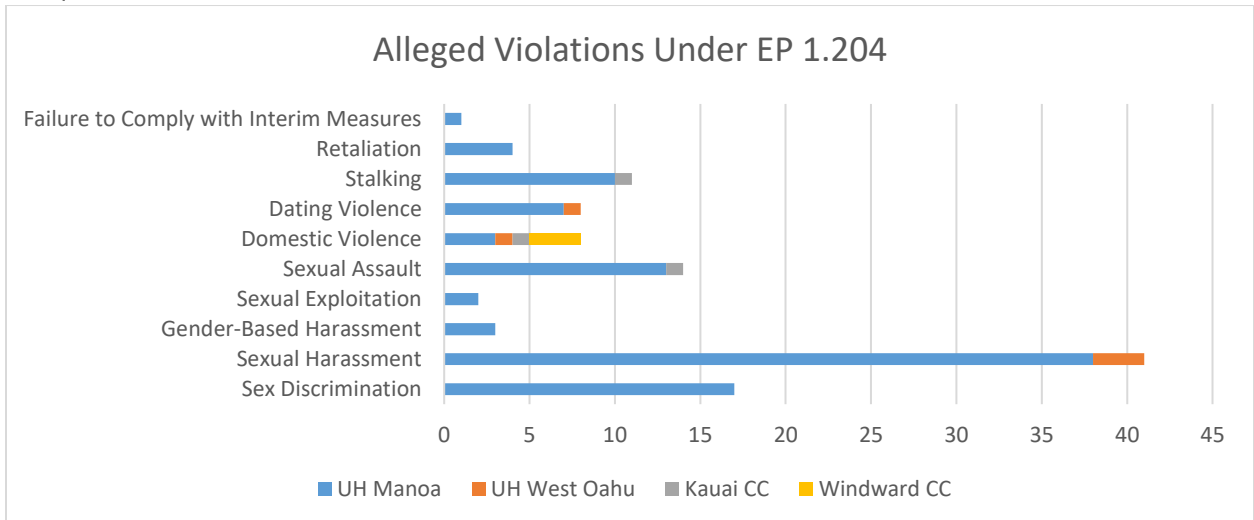
**Alleged Violations Under EP 1.204 – Total Number of Alleged Violations Using Included Data  
1<sup>st</sup> Quarter Data**



**2<sup>nd</sup> Quarter Data**

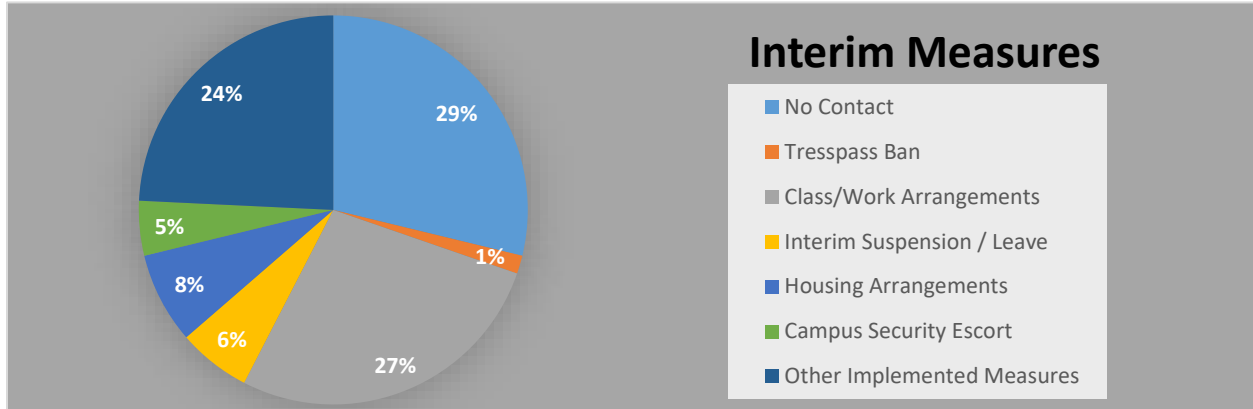


**3<sup>rd</sup> Quarter Data**

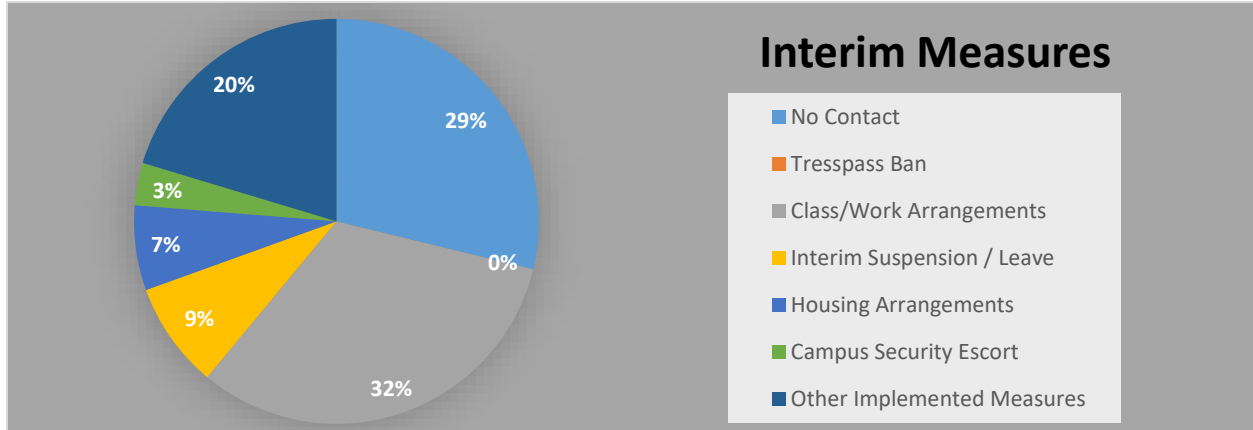


## Interim Measures Breakdown Percentage Using Included Data

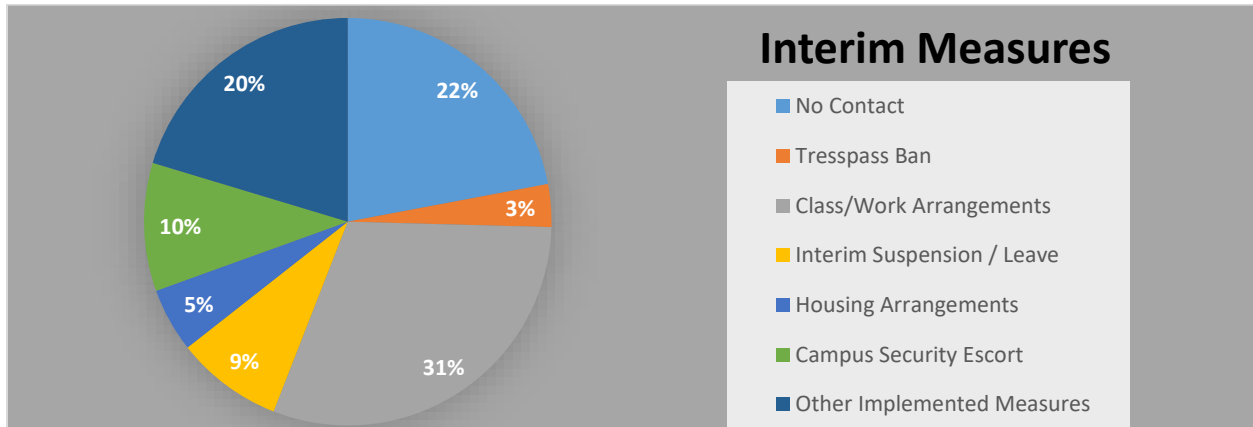
### 1<sup>st</sup> Quarter Data



### 2<sup>nd</sup> Quarter Data



### 3<sup>rd</sup> Quarter Data



## **APPENDIX I**

### **ONE POLICY / ONE PROCESS MODELS**

#### **University of California**

The University of California (UC) Office of the Chancellor issues policies for the entire UC system but each college campus (e.g. UC Irvine, UC Berkley, etc.) has its own Title IX office.<sup>1</sup> The policy states that each college "will designate the local management office that is responsible for monitoring, enforcing, and reporting Policy Compliance."<sup>2</sup> The policies released by the Office of the Chancellor contain information on how reporting should be done, who is a confidential resource on campus, definitions and reporting requirements. The Senior Vice President – Chief Compliance and Audit Officer, at the Office of the Chancellor, audits and monitors compliance with the policy at each college, so it appears this is the person a student would contact for complaints against the Title IX office.<sup>3</sup>

Similar to UH, each UC college has placed the Title IX office within a different department. For example, UC Irvine's Title IX office is located within the Office of Equal Opportunity and Diversity (OEOD). On the other hand UC Berkley, along with numerous other colleges within the system, has its Title IX office located within the Office for the Prevention of Harassment and Discrimination.<sup>4</sup>

#### **State University of New York**

The State University of New York (SUNY) is similar to UC and UH in that there are multiple college campuses located across the state. Also like UC, SUNY also requires each college to develop its own separate Title IX office that monitors, enforces, and reports policy compliance.<sup>5</sup> The policy does not state what would occur if the student had a complaint against a campus Title IX office. However, if the complaint is against an employee, the student has the option to report to the Title IX office or to Human Resources.<sup>6</sup> This means if a student had a complaint against a Title IX officer, they could submit a report to the Human Resources department on the SUNY campus.

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<sup>1</sup> OFFICE OF THE CHANCELLOR, SEXUAL VIOLENCE AND SEXUAL HARASSMENT, Jan. 1, 2016, available at <http://policy.ucop.edu/doc/4000385/SHSV>.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> State University of New York, Sexual Violence Prevention Workgroup, <http://system.suny.edu/sexual-violenceprevention-workgroup/>

<sup>6</sup> SEXUAL VIOLENCE RESPONSE POLICY, UNIVERSITY AT ALBANY, Oct. 5, 2015, available at [http://www.albany.edu/titleIX/assets/Sexual\\_Violence\\_Response\\_Policy\\_October\\_2015.pdf](http://www.albany.edu/titleIX/assets/Sexual_Violence_Response_Policy_October_2015.pdf)



## **APPENDIX J**

### **WEBSITE REVIEW**

#### **UH Hilo**

[www.hilo.hawaii.edu/titleIX](http://www.hilo.hawaii.edu/titleIX)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system and UHH-specific Title IX policies.  
Links to system Title IX website.  
Provides confidential resources & contact info.  
Contact information for counseling and student health services.  
Lists and describes reporting options.  
Provides online reporting form with an option to report anonymously.  
Provides OCR's contact info.

#### **UH West Oahu**

[www.uhwo.hawaii.edu/about-us/university-policies/title-ix/](http://www.uhwo.hawaii.edu/about-us/university-policies/title-ix/)

Identifies prohibited behavior and links to nondiscrimination/AA policy.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system Title IX policy.  
Provides confidential resources.  
Details how to report, including online reporting form.  
Provides OCR's contact info.  
Links to Haven/everfi training.

#### **UH Mānoa**

[www.manoa.hawaii.edu/titleix/](http://www.manoa.hawaii.edu/titleix/)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system and UHM-specific Title IX policies.  
Links to other relevant system policies.  
Links to system Title IX website.  
Provides confidential resources.  
Provides community & national resources.  
"Know your rights" page.  
Lists and describes reporting options.  
Provides OCR's contact info.  
Provides DOJ's contact info.  
Training: links to Haven and two online employee trainings.

#### **Hawai'i CC**

[www.hawaii.hawaii.edu/security/nine](http://www.hawaii.hawaii.edu/security/nine)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system and HawCC-specific Title IX policies.  
Links to other relevant system policies.

Links to national Title IX organizations.  
Pamphlets for students and employees; includes

### **Honolulu Community College**

[www.honolulu.hawaii.edu/title9](http://www.honolulu.hawaii.edu/title9)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system Title IX policy.  
Provides confidential resources.  
Contact information for counseling and student health services.  
Lists community resources.  
Contact information for campus security and HPD.  
Lists and describes reporting options.  
Link to training for students and employees.

### **Kapi'olani Community College**

[www.kapiolani.hawaii.edu/regulations-policies-and-data/sexual-respect-title-ix/](http://www.kapiolani.hawaii.edu/regulations-policies-and-data/sexual-respect-title-ix/)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Links to system and KCC-specific Title IX policies.  
Provides confidential resources.  
Lists community resources.  
Contact information for campus security and HPD.  
Lists and describes reporting options, including online reporting form.  
Policy FAQs.

### **Leeward Community College**

[www.leeward.hawaii.edu/titleix](http://www.leeward.hawaii.edu/titleix)

Notice of nondiscrimination.  
Links to system Title IX policy and LCC-specific policies.  
Links to other relevant system policies.  
Identifies the Title IX Coordinator and Deputies & lists contact info.  
Provides confidential resources.  
Title IX FAQs, including what Title IX covers, reporting options, resource contact info.  
Training – link to Haven and web-based course for students, faculty, and staff.

[www.windward.hawaii.edu/Title\\_IX/](http://www.windward.hawaii.edu/Title_IX/)

Explains what Title IX is and what is covered.  
Identifies Title IX Coordinator and Deputies & lists contact info.  
Provides OCR's and DOJ's contact info.  
Links to system Title IX page.  
Provides confidential resource contact information.  
Contact information for national resources.  
Contact information and list of services for community resources.  
Links to system Title IX policy and relevant system and WCC-specific policies.

**Maui College**

[www.maui.hawaii.edu/title-ix/](http://www.maui.hawaii.edu/title-ix/)

Explains what Title IX is and what is covered.

Links to the system Title IX policy.

Links to other relevant system and UHMC-specific policies.

Lists and describes how to file a complaint, including online complaint form.

Training – links to Haven.

Identifies Title IX Coordinators and Deputies & provides contact info.

Provides OCR's contact info.

Links to Title IX brochure.

**Kaua'i Community College**

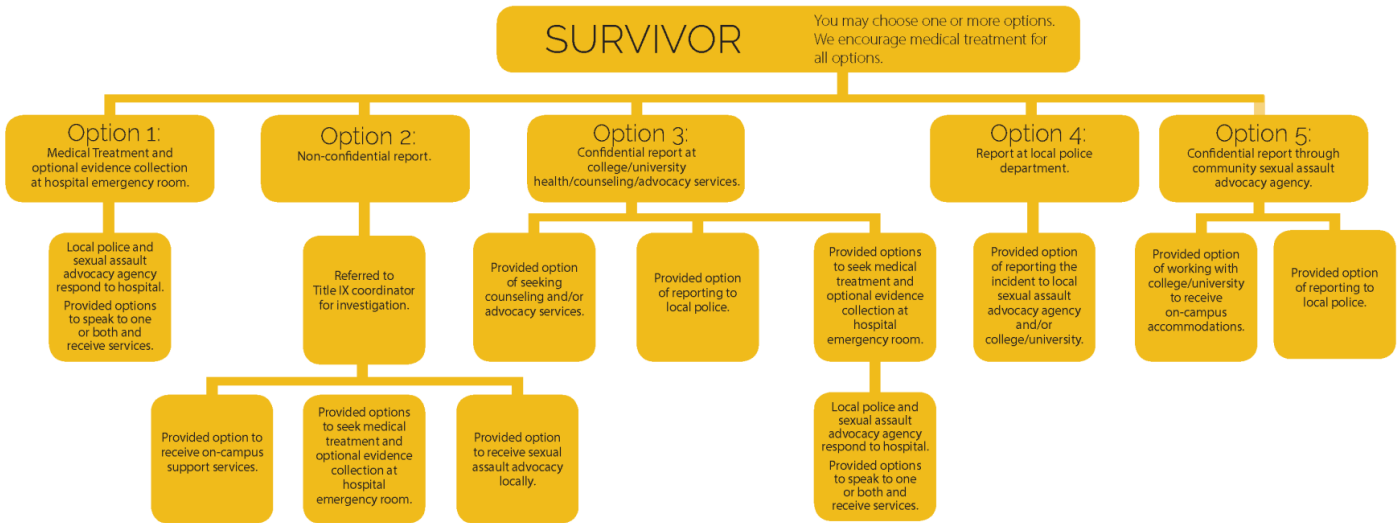
[www.sites.google.com/a/hawaii.edu/title-ix/](http://www.sites.google.com/a/hawaii.edu/title-ix/)

Explains what Title IX covers.

Identifies Title IX Coordinator and Deputy & provides contact info.

Provides confidential resources.

# APPENDIX K OPTIONS FLOWCHART FOR STUDENTS



**APPENDIX L  
COMMUNITY COLLEGE CONFIDENTIAL RESOURCES**

Community Colleges Confidential Resources

Campus	Current Resources		Resources Needed			Justification
	Mental Health Counselor	Advocacy Resource	Mental Health Counselor	Advocacy Resource	Staff	
Kapiolani	1 FTE (Lori Ferreira - Reports to the Title IX Coordinator)	1 FTE (Cathy Wehrman - has a Masters in Social Work - Reports to the Title IX Coordinator)	0	0	2	In the last 4 months, KCC has 23 Title IX cases. All were resolved prior to formal investigation with the exception of 2. Current resources heavily used and both Mental Health office and Advocacy Office need administrative support (estimated at 45k for each position). KCC is rolling out a "Care Plan" with prevention and post-vention counseling for student integration back into education after Title IX process which will increase the workload and use of the Mental Health and Advocacy Offices so this extra support is needed.
Windward	1 FTE (Karla Silva – just started in Sept 2015)	NONE	0	1	0	All of these positions would report to the Title IX Coordinator. The majority of Title IX cases reported to WCC involve students. Within the last 4 months Windward CC had 5 student cases (3 domestic/dating violence, 1 stalking/harassment matter, 1 sex assault/harassment). In all of these cases, the services of the Mental Health Counselor were used. Currently there is no coverage for the Mental Health Counselor and there is no alternative confidential resource. Additionally, no current remedy for any conflict of interest situation (where mental health counselor has a conflict in providing services to any student or employee). WCC needs an advocate (70 K) that could serve as an alternative confidential resource.

Campus	Current Resources		Resources Needed			Justification	Cost
	Mental Health Counselor	Advocacy Resource	Mental Health Counselor	Advocacy Resource	Staff		
Hawaii	NONE (Contract with Hilo to utilize their resources - contract expires June 30, 2016).	NONE	1	1	0	Currently looking to hire 1 FTE Mental Health Counselor (70k) since Hawaii CC has no confidential resources of their own and must rely on using UH Hilo's resources. Hawaii CC needs an infrastructure to provide services to students: 1 FTE mental health counselor (70k) and 1 FTE advocate so there are alternative confidential resources and services for students, coverage in the event one office is not available, and an option in the event there is a conflict and one of the resources is not able to provide services.	140k
Honolulu	1 FTE (Kimberly Gallant)	NONE	0	1	1	In the past 4 months Honolulu CC handled 10 Title IX cases with a large number involving violence (5 domestic violence cases, 2 sexual assault, 1 stalking, 1 sexual exploitation, 1 sexual harassment and 1 gender-based harassment). All cases were resolved through informal resolution. The Mental Health counselor is the sole confidential resource and has no support to assist with the increasing flow of cases. In addition, other mental health issues are increasing on this campus (veteran disability issues). The Mental Health Office needs 1 support staff to assist in intake and management of workload (45k). There is also a need for an alternative confidential resource - 1 FTE advocate (70k) to serve as an alternate resource and to assist in conflict situations and for coverage.	115k

Campus	Current Resources		Resources Needed			Justification	Cost
	Mental Health Counselor	Advocacy Resource	Mental Health Counselor	Advocacy Resource	Staff		
Hawaii	NONE (Contract with Hilo to utilize their resources - contract expires June 30, 2016).	NONE	1	1	0	Currently looking to hire 1 FTE Mental Health Counselor (70k) since Hawaii CC has no confidential resources of their own and must rely on using UH Hilo's resources. Hawaii CC needs an infrastructure to provide services to students: 1 FTE mental health counselor (70k) and 1 FTE advocate so there are alternative confidential resources and services for students, coverage in the event one office is not available, and an option in the event there is a conflict and one of the resources is not able to provide services.	140k
Honolulu	1 FTE (Kimberly Gallant)	NONE	0	1	1	In the past 4 months Honolulu CC handled 10 Title IX cases with a large number involving violence (5 domestic violence cases, 2 sexual assault, 1 stalking, 1 sexual exploitation, 1 sexual harassment and 1 gender-based harassment). All cases were resolved through informal resolution. The Mental Health counselor is the sole confidential resource and has no support to assist with the increasing flow of cases. In addition, other mental health issues are increasing on this campus (veteran disability issues). The Mental Health Office needs 1 support staff to assist in intake and management of workload (45k). There is also a need for an alternative confidential resource - 1 FTE advocate (70k) to serve as an alternate resource and to assist in conflict situations and for coverage.	115k

Campus	Current Resources		Resources Needed			Justification	Cost
	Mental Health Counselor	Advocacy Resource	Mental Health Counselor	Advocacy Resource	Staff		
Leeward	<p>NONE of their own</p> <p>Contracted services through Manoa: 1 FTE psychologist for mental health services (Amy Humphrey). Only this semester was the contract for full-time services. Services both main campus and Waianae satellite campus (1 day a week at Waianae).</p> <p>1 FTE clinical psychologist (veteran's affairs) via contract paid with veteran's funds. Solely treats veteran students so very limited.</p>	NONE	1	1	0	<p>LCC is the second largest community college (behind KCC) with 6,627 students enrolled in the spring 2016 semester. 2 campuses (main campus and Waianae satellite campus). There has been an increase in mental health issues, domestic violence, dating violence complaints and veteran's issues – all of which the mental health counselor handles. Since all resources are contracted, LCC is dependent on Manoa's counseling center to have those resources available to them and LCC needs to continually negotiate amount of services and renewal of contract. LCC needs to have their own confidential resources that they are able to have more control, direction and oversight over – (1 FTE mental health counselor (70k)). LCC also needs to have an alternate resource, for coverage in the event the mental health counselor is not available, and to help assist in handling workload – 1 advocate (70k)</p>	140k
Kauai	<p>1FTE ½ Mental Health Counselor, ½ disability counselor (Marilyn Hashisaka – rehab background)</p>	NONE	0	1	0	<p>Currently Kauai CC has no support if Mental Health Counselor is out and not available. Kauai CC needs to have an alternate resource for coverage and to also handle any cases in the event there is a conflict of interest preventing the 1 counselor in providing services (70k)</p>	70k



Campus	Current Resources		Resources Needed			Justification	Cost
	Mental Health Counselor	Advocacy Resource	Mental Health Counselor	Advocacy Resource	Staff		
Maui	1 FTE (Aris Banaag)	NONE	0	1	0	Would like a clinical psychologist. Maui College has a need in various cases for an immediate assessment of a student or employee and would like someone who could work with Aris to offer support services. As an alternative – another possible resource instead of the psychologist is an advocate (70k) who could also provide support and coverage for the 1 mental health counselor if unavailable, offer an alternative resource for students, and who could be available in the event a conflict excludes the mental health counselor from providing services.	70k
Total:							695k

## APPENDIX M

### Title IX and VAWA Data Collection Templates

**Title IX and VAWA  
General Data Collection Checklist  
Deadline: CBD Thursday, July 14, 2016.**

- A brief description of your program and the services it provides
- If your program provides direct services:**
  - \*Case Data Log (**Template Attached – complete one log per calendar year**)
    - Calendar year 2016 (partial log up to end of June 2016)
    - Calendar year 2015
    - Calendar Year 2014
    - Optional:** Prior calendar years
  - Narrative of direct services provided
  - Optional:** Related information to supplement data
- If your program does not provide direct services**
  - Clearly state that your program does not provide direct services
- If your program provides training, presentations or events:**
  - Training, Presentation & Event Data Log (**Template Attached – complete one log per calendar year**)
    - Calendar year 2016 (partial log up to end of June 2016)
    - Calendar year 2015
    - Calendar Year 2014
  - Training Survey: For each training covering Title IX and/or VAWA Section 304, please fill out a copy of the training survey per training curricula (**Survey Attached**)
  - Optional:** Related information regarding initiatives
- For each training | presentation | event, please include the following:
  - Copies of advertisements used for the training | presentation | event
  - Description and copies of materials distributed during the training | presentation | event
  - Optional:** Related information to supplement data
- Optional:** Any additional Information

\*Aggregate, non-personally identifiable data

<b>Aggregate Case Data Log</b>		
Department / Program Name: _____		
Calendar Year: _____		
	<b>Total (#)</b>	<b>Notes</b>
<b>General Information</b>		
Total # of Cases		
Intake Date: January		
Intake Date: February		
Intake Date: March		
Intake Date: April		
Intake Date: May		
Intake Date: June		
Intake Date: July		
Intake Date: August		
Intake Date: September		
Intake Date: October		
Intake Date: November		
Intake Date: December		
Ongoing from a Previous Year		
<b>Alleged Violations Under EP 1.204</b>		
Sex Discrimination		
Sexual Harassment		
Gender-Based Harassment		
Sexual Exploitation		
Sexual Assault		
Domestic Violence		
Dating Violence		
Stalking		
Retaliation		
Failure to Comply with Interim Measures		
<b>Alleged Victim Information</b>		
Executive / Managerial		
Faculty		
Staff		
UH Student		
Anonymous		
No Affiliation with UH / Other (Explain in Notes)		
<b>Alleged Perpetrator Information</b>		
Executive / Managerial		
Faculty		
Staff		
UH Student		
Not Disclosed		
No Affiliation with UH / Other (Explain in Notes)		
<b>Referrals to University Resources</b>		
Title IX Coordinator		
Mental Health		
Health Services		
Advocacy		
Campus Security		
Other (Explain in Notes)		
<p><b>Partnerships or Referrals to Community Resources</b></p> <p><u>Instructions:</u> In the <b>Notes</b> section, please list any community resources involved in the delivery of direct services and the scope of their involvement.</p> <p>(e.g., DVAC referral &amp; partnership - referred individual to DVAC and follow-up partnership with [UH office name] in providing confidential advocacy services)</p>		
Mental Health		
Medical Services		
Advocacy		
Legal Services Agency		
Local Law Enforcement		
Other (Explain in Notes)		



Title IX and VAWA (Section 304)  
Training Survey

**INSTRUCTIONS:** Please complete this survey **for each training** implemented by your office/ department during the period of January 1, 2014-June 2016 that includes materials related to Title IX and VAWA (Section 304).

<b>Name of Department/Office:</b>	
<b>Trainer Name:</b>	
<b>Trainer Position Title:</b>	
<b>Title/Name of Training:</b>	
<b>Source of Curriculum</b> , if applicable (e.g. ATIXA, Pau Violence, SafeZone, Campus Clarity or indicate if developed by your office)	

**INSTRUCTIONS:** Mark (X) for all attributes included in this training, for each audience - Faculty & Staff and Students.

	Faculty & Staff (X)	Students (X)
<b>Overview of Title IX and Clery Act (VAWA Sec.304): Law and Regulations</b>		
Institution's Title IX responsibilities to address sex and gender based harassment		
Institution's Clery Act (VAWA Sec. 304) responsibilities to address Sexual Assault, Domestic Violence, Dating Violence, and Stalking		
Role of federal government (especially OCR) in enforcing Title IX and DOJ's role with Title IX		
Overview of the rights Title IX and Title IV confer on students and employees		
What is sexual harassment, sex discrimination, sexual assault, and sexual violence, and what are the differences between them		
Differences between criminal and Title IX investigations		
Title IX and Clery Act prohibitions on and protections against retaliation		
<b>Institutional Policy Overview (EP 1.204)</b>		
Institution's policies and prohibitions regarding Title IX-based harassment, including but not exclusive to Sexual Assault, Domestic Violence, Dating Violence and Stalking		
When Institution exercises off-campus jurisdiction over Title IX complaints		

Title IX and VAWA (Section 304)  
Training Survey

Institutions policies prohibiting retaliation		
<b>Institutional Procedure Overview (EP 1.204)</b>		
Institutional disciplinary procedures used to address Title IX based complaints and how victims can invoke them		
Preponderance of Evidence standard used to address all Title IX-based complaints		
How institution analyzes whether conduct was unwelcome and/or creates a hostile environment		
Appeals procedures for Title IX		
<b>Reporting</b>		
The identity, role, function of and how to contact the campus Title IX Coordinator		
When (upon notice), how, what, and to whom to report sex- and gender-based harassment		
How to contact OCR		
Procedures victims should follow if a Title IX violation of Sexual Assault, Domestic violence, Dating Violence, or Stalking has occurred, including: 1) The importance of preserving evidence; 2) How and to whom to report such alleged offenses; and 3) Victims' options to notify law enforcement and campus authorities (if victim so chooses)		
Victimology/ psychology of the victim/ neurobiological effects of trauma		
<b>Faculty Only:</b> Role of "Responsible Employee," including: Recognizing, responding to, appropriately addressing and reporting allegations and complaints, appropriate interaction with victims, consequences for failing to report sex-gender-based harassment		
<b>Confidentiality</b>		
Confidential reporting options on and off campus		
Information about how the institution protects the confidentiality of victims and other parties when: 1) Providing accommodations and protective measures; and 2) Working with publicly available documents		
Confidentiality/privacy of reports and other investigative information		

Title IX and VAWA (Section 304)  
Training Survey

<b>Faculty Only:</b> Responding to victim/reporting party request for confidentiality		
<b>Victim Resources &amp; Remedies</b>		
<b>Information on Resources</b> available to victims of sex-or gender-based discrimination, including but not limited to: on and off campus counseling, mental health services, advocacy, legal assistance		
<b>Information on Remedies</b> available to victims of sex-or gender-based discrimination, including but not limited to: options to request interim measures if reasonably available (such measures are available whether or not victim/campus pursues formal investigation/reports to police)		
<b>Rights of victims and institution's responsibilities</b> for orders of protection, "no contact" orders, restraining orders, or similar institutional/legal orders		
<b>Amnesty:</b> How to encourage victims, reporting parties and witnesses to cooperate with investigations when they are concerned about conduct/disciplinary implications of alcohol or drug use (e.g., amnesty policies)		
<b>Consent in Sexual Interactions</b>		
Consent module - including definitions and examples of force, consent, capacity, incapacity, and effective consent.		
<b>Rights of Parties in a Complaint, Investigation, Hearing and Appeal</b>		
<b>Both parties have the same rights to/opportunities for:</b> <ul style="list-style-type: none"> <li>▪ Have others present</li> <li>▪ Have an advisor of their choice present for all proceedings</li> <li>▪ Present evidence during proceeding</li> <li>▪ Participate in hearings and/or appeals</li> <li>▪ Be simultaneously informed in writing of the outcome of any disciplinary proceeding that arises from an allegation of Sexual Assault, Domestic Violence, Dating Violence, or Stalking</li> <li>▪ An appeal</li> <li>▪ Notification of changes in results (before and after results are finalized)</li> </ul>		
<b>Sanctions/Repercussions</b>		
Existing sanctions under EP 1.204		
<b>Prevention, Awareness and Community Education</b>		

Title IX and VAWA (Section 304)  
Training Survey

Definitions of Consent, Sexual Assault, Domestic Violence, Dating Violence, and Stalking the applicable jurisdiction		
Risk reduction measures - to increase victim empowerment, promote safety, and help community address conditions facilitating violence		
Strategies and skills for bystanders to intervene to prevent sexual violence; attitudes of bystanders that may allow behavior to continue		
Safe and positive options for Bystander Intervention pertaining to Sexual Assault, Domestic Violence, Dating Violence and Stalking		
How to prevent and identify sexual violence		
Prevention mechanisms and strategies targeted to stop harassment or discrimination, remedy its effects, and prevent its recurrence		
Awareness programming to prevent violence, promote safety and reduce Sexual Assault, Domestic Violence, Dating Violence an Stalking		
Potential for revictiminzation by responders and its effects on students		
<b>Assessment of Training</b>		
Assessments that demonstrate the efficacy of training		



## APPENDIX N

### INTERVIEW SUMMARY: UH Women's Center PAU Violence and Respondent Support Programs

Education Permitted Interaction Group member organization representatives Michelle Rocca (Hawai'i State Coalition Against Domestic Violence) and Justin Murakami (The Sex Abuse Treatment Center, Kapi'olani Medical Center for Women & Children) met with representatives of the UH Women's Center, Jennifer Barnett and Leslie Cabingabang (PAU Violence Program) and Christopher Yanuarua (Respondent support) on May 17, 2016.

The five participants engaged in a discussion to improve the Act 222 (2015) Affirmative Consent Taskforce's understanding of the services offered by the Women's Center with respect to issues of gender violence at campuses within the University of Hawai'i System.

The wide-ranging discussion included information about the PAU Violence Center's history and the history of gender violence services across the UH System, funding sources, education and training services, infrastructure for service delivery on various campuses, staffing, direct services for victims of gender violence and respondents in the Title IX system, internal (UH System and campus) and external (community organization) stakeholder partnerships and collaborations.

Factual outcomes from this discussion are included below.

#### **UH Women's Center PAU Violence and Respondent Support Meeting:**

*Factual Outcomes (Description of Programs and Services)*

- I. History of Women's Center PAU Violence Program
  - A. Initially started as a UH Manoa-specific program in 2002 with seed funding from the Office on Violence Against Women (OVW, US Department of Justice)
    1. Grant funds were to be used for mandatory trainings (i.e. for campus law enforcement, coordinators and administrators) and educate incoming new students
    2. Initial grant was renewed through 2011, after which it ended
  - B. Transition to State Department of Health funding through the Maternal and Child Health Branch's administration of the Domestic Violence and Sexual Assault Special Fund
    1. Created a multicampus Sexual Violence Prevention Project (beginning in 2007)
    2. Developed infrastructure on all ten (10) campus for prevention education, materials distribution (library of training/education materials maintained at UH Manoa Women's Center) and training for students, faculty and staff
    3. Campus groups and task forces were formed
  - C. Additional funds were requested from the 2015 Legislature, but were declined
- II. Prevention Education and Training
  - A. PAU Violence provides support for all 10 campuses and some satellite campuses with funding for 2 campuses per year.
    1. In past, each campus developed own education and training programs, but has been more standardized
    2. As of 2014, PAU provides prevention education service delivery on a formalized basis (e.g. 2 education programs and a staff/faculty training but not limited to this), with technical assistance to the campus, with materials and programs modified and specialized based on the campus's particular needs and site visits
    3. Training programs include mentors in prevention of violence (bystander intervention training), engaging students to discuss leadership, Sexual Assault 101, Dating Violence 101, Stalking 101, men and masculinity training (male focus), Title IX training (generalized training concerning process, PAU Violence Program's role, and impact on students)
  - B. Manoa Education/Training

1. Participate in New Student Orientation, but only provided a very limited amount of access/time (e.g. 20 minutes with students); on other campuses even less time for delivery of education programming during NSO has been reported (e.g. just provide materials or show slides). Some campuses have integrated programming into their campuses.
  2. Also provide prevention education and training services to new student athletes, through on campus housing, and with the summer bridge program. Trainings have been extended to programs such as the College Opportunities Program, East West Center, and College of Education.
- C. Outreach
1. By ad hoc request basis, and via periodic/annual programs (e.g. October focus on dating violence, January focus on stalking, April focus on sexual assault, One Billion Rising)
  2. In addition to staff participation in outreach, outreach also used to be performed by social work students as a practicum activity, but this proved challenging due to oversight burden
- D. Technical Assistance is also provided on an ongoing basis to all campuses
1. Technical Assistance includes PAU Violence representation at awareness and education events, assistance hosting events and education/training/awareness programs, oversight and review of messaging for events and programs, and training of educators/trainers
  2. Support for campuses based on each task force on prevention and education programs.
  3. Partnership with on campus groups, such as Leeward Community College's Love Pono
  4. Materials for sharing include pamphlets, books, flyers, movies
- E. Coordination with external community organizations and agencies, including [respect] campaign activities with The Sex Abuse Treatment Center in September and April, and with the Domestic Violence Action Center (DVAC, contact is Cindy Spencer) in February. Coordination and collaboration is not limited to specific months and occurs throughout the year
- III. Personal and academic support, crisis support and Assistance for Victims of Gender Violence
- A. Jennifer and Leslie are personal and academic support and provide crisis de-escalation and emotional support/assistance
- B. PAU Violence staff also provides case consults for service providers on other campuses
- C. Other campuses have crisis de-escalation and support/assistance resources, although not dedicated counseling programs (embedded in departments or other programs).
1. Example, KCC has a single parent coordinator who leads a group of counselors and student and faculty representatives
  2. Example, Kaua'i utilizes community-based crisis services
- IV. Other PAU Violence Program Direct Services and Advocacy at Manoa
- A. Women's Center PAU Violence Program serves as a confidential resource, provides referrals to other campus and community services/resources, and interacts with the Title IX System to assist survivors to navigate/understand; assists students with safety planning and interim measures in response to gender violence (e.g. interaction with housing, athletics, student affairs/classes)
- B. PAU Violence Advisory Group -
- C. PAU Violence Program is also networked and provides guidance/advisory support to UH Housing and Athletics programs, Department of Public Safety, ROTC programs, Title IX system, and student representative groups (student government), Gender Equity Office (non-active for a period of time during leadership transition, with a focus on student/faculty interactions e.g. sexual harassment), and Student Affairs
- D. Directly partners and provides assistance/consultation for development of gender violence related policies for Departments
- E. Leslie Cabingabang coordinates the UH Manoa Sexual Assault Taskforce (UHM SATF)
1. UHM SATF is a multidisciplinary advisory group that meets monthly concerning gender violence issues involving policies, protocols and guidance for UHM, as well as individual cases of gender violence
  2. UHM SATF is an internal organization with UHM stakeholders, including representatives from the office of the Vice Chancellor for Student Affairs, housing, department of public safety, counseling offices, the Women's Center, the Gender Equity Office, and Health promotions; it does not include students because of confidentiality issues related to case reviews

- F. Interaction with Title IX System
  1. Assist complainants to understand the timeline for Title IX proceedings and can help to obtain case status updates
  2. Provide personal and academic support during Title IX proceedings. PAU directly connects with CSDC for emotional support.
  3. PAU Violence staff helps survivors to connect with and to implement interim measures like writing letters, moving residences, and obtaining academic assistance/deferrals by working with other on campus entities, such as student housing and the Department of Public Safety (e.g. Dawn to Dusk accompaniment service)
  
- V. Respondent support
  - A. Christopher Yanuaria was brought onboard with the Women's Center in January 2016 for position requested by Vice Chancellor's for Students Office; prior to that, the Women's Center provided advocacy and services to victims of gender violence, but would occasionally have a respondent appearing and requesting services. Primarily to assist with prevention education and program coordination.
  - B. Initially identified as a PAU Violence Program staff member, but required separation based on different role and need to distance respondents and victims/complainants (his office was created in a separate office one floor above Women's Center at UHM Student Center); intake is performed by referral from the Title IX system (not accessed via walk-ins)
  - C. Students are informed that the Respondent support coordinator is not a confidential resource (in contrast to PAU Violence Program staff)
  - D. Assistance/Guidance for Title IX System Respondent – the goal of providing a coordinator specialized in Respondent support was to ensure that respondents were adequately advised about their processes and rights
    1. Example, the Respondent support coordinator may assist the Respondent to navigate the UH Title IX System, interact with Title IX Coordinators and staff, and clarify University's policies and procedures
    2. Example, the Respondent support coordinator may support the respondent by reviewing documents and materials from the Title IX office and from investigators (e.g. letter initiating proceedings)
    3. Provide safe listening space to respondents' concerns, and refer to UH counseling center if needed for emotional support
    4. Respondent Support does not provide legal advice, and advises that legal advice may be obtained through an attorney
  - E. Prevention Education
    1. Presentations to UH athletics (during which he received some disclosures of gender violence events)
    2. Coordinates men's peer group to dialogue about prevention, respect and healthy relationships, and the application of social norms
    3. Outreach campus groups, such as the Filipino Student Group, to access male audiences
    4. Outreach via classroom presentations
    5. Programming on campus (i.e. speakers, film screenings, etc)

## APPENDIX O

### BEST PRACTICES FOR IMPLEMENTING STUDENT TITLE IX AND/OR VAWA TRAINING

Overall summary of studies relating to implementation of student Title IX and VAWA training:

Based on the review of literature, it appears that implementing student Title IX and VAWA training is most successful when de-centrized via registration holds. Ideally in addition to registration holds, universities could offer face-to-face trainings for vulnerable populations so that their student status isn't jeopardized due to mandated training, but they still receive culturally appropriate Title IX training. More research should be done regarding which schools have implemented registration holds tied to Title IX training, and how they've done this (J).

Martin, C. (2015). Sexual Violence Training is Not a One-Size-Fits-All Approach: Culturally Sensitive Prevention Programming for International Students. *Journal of Campus Title IX Compliance and Best Practices*, 4.

The findings from this article are specific to the needs of international students, but they're similar to other marginalized groups. The authors pose the following questions:

- When we review these programs, do we look at them through the scope of what we think of as a common student, or do we look at it through the lens of a survivor, an international student, a transfer student, or a mid-level professional student?
- Do we only choose a pre-programmed training option to satisfy the needs of a system-wide mandate or a federal requirement without giving thought to the different subsets of students we have on our campuses, or do we get to the core of the onion to think of providing alternative trainings targeted to the various student subsets?
- Even though it is convenient for us to choose a one-size-fits-all model for prevention education, the spirit of the cause is lost if the preventative training cannot be understood or comprehended, especially by our international students, who may not feel comfortable with this type of training, who may not understand the language well enough, or who may have questions about how our laws and legal system differs than theirs. (P. 7)

While the authors acknowledge that mandating Title IX training through registration is problematic, their findings are a bit ambiguous in terms of whether this type of de-centrization is appropriate. Essentially, the authors suggest that online training is a pragmatic approach that can benefit most students (perhaps with registration holds), but that this type of mandated, online student training should be supplemented with face-to-face training for marginalized, more vulnerable students (such as international students). Of note, this article is a good read for best practices regarding student training more broadly.

- 2) McCarthy, K., Rankin, S. (2015). Education and Prevention Task Force: Sexual Misconduct, Intimate Partner Violence, and Stalking ("Gender-Based Violence") Final Report. Cambridge: MIT, Education and Prevention Task Force.

This report is useful because it provides step-by-step guides for how to follow and adapt the Social-Ecological model for implementing student training regarding prevention and education (10-16). In terms of mandating training, it appears that MIT does mandate freshmen training so the article focus mostly on how to incentivize on-going training for non-freshmen as well as faculty and staff. Similar to what was discussed at the Training PIG, the authors suggest tying on-going training to dorm room selection (i.e. their version of tying it to parking passes or registration timeframe) as well as UROP or other programs that have a high rate of undergraduate student participation.

Although the authors did not recommend registration holds for undergraduate student training, they did make this suggestion for graduate students. Essentially, their rationale is that graduate students are a less cohesive group making it difficult to do one-stop-shop training that catches all students. The issues that plague MIT graduate students are similar to those that concern all UH students given that the majority of UH students commute. For this reason, this study supports a proposal for mandatory Title IX student training tied to registration holds.

- 3) Solovay, S. (2016). Best Practices in Training and Compliance Around Title IX, VAWA, and the Clery Act. The Higher Education Workplace.

The authors emphasize the importance of being culturally sensitive and adapting training to meet the needs of the students on a particular campus. They further suggest creating inclusive training (they even suggest offering training for parents), and encouraging faculty to embed Title IX and VAWA information into their syllabi (in addition to regular trainings). Essentially, the authors believe it is more important to craft campus-specific training models that work to improve the campus climate surrounding gender violence as opposed to “checking the box” that all training mandates have been implemented. Although the article is ambiguous in terms of how to ensure all students are trained, the authors mention the implementation of online training, which is typically associated with some sort of registration hold.

## **Appendix P**

### **Community Organizations**

#### **O`ahu Partners**

Domestic Violence Action Center  
Sex Abuse Treatment Center  
Catholic Charities  
Hawaii Immigrant Justice Center  
Legal Aid Society of Hawaii  
PACT Family Peace Center  
PACT Family Visitation Center  
PACT Ohia Homeless Shelter  
Volunteer Legal Services Hawaii  
Child Welfare Services  
Child and Family Services  
Crime Victims Compensation Commission  
Hawaii State Coalition Against Domestic Violence  
Ho`ola Na Pua (Trafficking victims)

#### **Maui**

Women Helping Women  
Child and Family Services  
Maui Family Peace Center

#### **Kauai**

YWCA (Sex Assault and DV Services/24 hour SA and DV hotline)  
Child and Family Services

#### **Hawaii Island**

YWCA (Sex Assault Services)  
Child and Family Services Shelters (East Hawaii and West Hawaii)

## APPENDIX Q

### REFERENCES RELATING TO AWARENESS AND PREVENTION EVALUATION STRATEGIES

#### A. TECHNICAL RESOURCE RE EVALUATING PROGRAMS

1. DELTA FOCUS (Domestic Violence Prevention Enhancements and Leadership Through Alliances, Focusing on Outcomes for Communities United with States) is a five-year cooperative agreement funding 10 state domestic violence coalition grantees to engage in primary prevention of intimate partner violence (IPV). Primary prevention means stopping IPV before it occurs
2. Cox PJ, Keener D, Woodard T, Wandersman A. Evaluation for Improvement: A Seven Step Empowerment Evaluation Approach for Violence Prevention Organizations. Atlanta (GA): Centers for Disease Control and Prevention; 2009. See [http://www.cdc.gov/violenceprevention/pdf/evaluation\\_improvement-a.pdf](http://www.cdc.gov/violenceprevention/pdf/evaluation_improvement-a.pdf)

#### B. EVIDENCE-BASED/EVALUATED PREVENTION OF SEXUAL VIOLENCE PROGRAMS

1. Basile, K.C., DeGue, S., Jones, K., Freire, K., Dills, J., Smith, S.G., Raiford, J.L. (2016). STOP SV: A Technical Package to Prevent Sexual Violence. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention. See <http://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf>

**Excerpts from publication (programs highlighted in blue have found to be effective):**

a. **Evidence (Re SV Perpetration):**

There is some evidence suggesting that bystander approaches and approaches that mobilize men and boys as allies can prevent SV perpetration.

- Bystander Approaches. Experimental evaluations show that programs such as [Bringing in the Bystander](#) and [Green Dot](#) can empower young people to intervene in their peer groups by speaking up against sexist language or behaviors that promote violence, reinforcing positive social norms, and offering help or support in situations where violence may occur or has occurred. Evidence suggests that these programs can increase positive bystander intervention behaviors (e.g., stepping in to help or speaking up) and increase participants' confidence in their own ability to intervene to prevent violence. Evaluations of [Bringing in the Bystander](#) show increases in self-efficacy and intentions to engage in by standing among college students and bystander behaviors that involve helping friends.

An evaluation of [Green Dot](#) implemented with college students found the intervention campus had an 11% lower rate of sexual harassment and stalking victimization and a 19% lower rate of sexual harassment and stalking perpetration when compared to two non-intervention campuses. Another evaluation found that [Green Dot](#) substantially

decreased SV, including sexual harassment, dating violence, and stalking in high schools, including a decrease in SV perpetration.

- **Mobilizing Men and Boys as Allies.** Several programs have been developed and implemented across the country and internationally that focus on engaging men and boys as allies, modeling positive masculinity, and changing social and peer-group norms related to relationships, violence, and sexuality, but few have yet been evaluated and more evidence is needed to understand the effectiveness of these approaches. Coaching Boys into Men is an example of a program with rigorous evaluation evidence that engages boys through high school athletics by providing coaches with training tools to model and promote respectful, non-violent, healthy relationships with their male athletes. Coaching Boys into Men has been shown to decrease negative bystander behavior (e.g., laughing at sexist jokes) and decrease dating violence perpetration, including physical, sexual, and emotional abuse, among male high school athletes.

**b. Evidence (RE SV perpetration and victimization or their risk factors):**

The current evidence suggests several approaches to teach skills that can lead to reductions in SV perpetration and victimization or their risk factors.

- Teaching healthy, safe dating and intimate relationship skills to adolescents. These approaches, often delivered in school settings, build the skills needed to support healthy, safe relationships. One example is the **Safe Dates** program, which focuses on teaching healthy relationship skills to adolescents, including positive communication, anger management, and conflict resolution. Safe Dates includes a 10-session curriculum focused on attitudes and behaviors associated with dating abuse and violence, as well as a play to set the stage for the program, a poster contest to reinforce concepts learned in the curriculum, and parenting materials. Results of a rigorous evaluation found that Safe Dates reduces physical and sexual violence perpetration and victimization within the dating context among 8th and 9th graders.

Youth exposed to Safe Dates reported from 56% to 92% less dating violence victimization and perpetration compared to controls at follow-up. The effects of the Safe Dates program were sustained for four years after implementation. Additional research found that Safe Dates also reduced peer victimization and weapon carrying behavior among youth receiving the intervention one year after the intervention. The program has also been found to have similar effects for males and females and for racial minority and non-minority adolescents.

- Promoting healthy sexuality. Comprehensive sex education programs have been shown to reduce high risk sexual behavior, a clear risk factor for SV victimization and perpetration. Another example is the **Safer Choices** program which is a multi-component educational program focused on HIV, other STDs, and pregnancy prevention and designed to reduce sexual risk behaviors and increase protective behaviors among high school students. Safer Choices includes student, school staff and parental components. A rigorous evaluation of Safer Choices involving 3,869



ninth-grade students revealed that students in schools that received Safer Choices (compared to students in comparison group schools that received a standard HIV knowledge based curriculum) showed reductions at 31 month follow up in several high-risk sexual behaviors (e.g., frequency of intercourse without a condom, number of sexual partners with whom students had intercourse without a condom).

- Empowerment-based training for women to reduce risk for victimization. The [Enhanced Assess, Acknowledge, Act](#) program is a 12-hour victimization prevention program for college-aged women that provides education and skills training with the goal of being able to assess risk from acquaintances, overcome emotional barriers in acknowledging danger, and use verbal and physical strategies to reduce risk for violence. In a rigorous study of Canadian college women, participants were 50.4% less likely to have experienced a rape and/or attempted rape at one-year follow-up than a control group. Risk of sexual coercion and other non-consensual sexual contact was also significantly lower in the intervention group.
- c. [Evidence \(Re reducing risk for SV\):](#)
- [Improving safety and monitoring in schools](#). Research has found that modifying the physical environment of schools to increase monitoring in areas perceived as unsafe can have a beneficial impact on rates of sexual harassment, other SV, and dating violence among students. Shifting Boundaries building-level intervention is an example of a school-based intervention that involve (a) revising school protocols for identifying and responding to dating violence and sexual harassment, (b) the use of temporary building-based restraining orders to reinforce respectful boundaries between victims and perpetrators, (c) a poster campaign, and (d) increasing staff monitoring based on “hotspot” mapping that students complete. Shifting Boundaries building-level intervention was found to reduce peer SV perpetration by 40% and sexual harassment perpetration by 34% among middle school students in New York City in a rigorous evaluation. Reductions were also found for peer SV victimization and SV victimization by a dating partner.
  - [Establishing and consistently applying workplace policies](#). Proactive Sexual Harassment Prevention Policies and Procedures that include commitment from top management, zero tolerance, notification to applicants and new hires of harassment-free environments, regular organizational assessments, and consistent, specific training can reduce workplace SV behaviors. A national study of Canadian women found that proactive versus information-only policies were associated with fewer incidents of sexual harassment in the past 12 months. Women in workplaces with proactive sexual harassment policies were less likely to be physically threatened or to be the targets of unwanted sexual behavior or comments. Women also responded more assertively to unwanted sexual behavior when the workplace implemented policy, complaint procedures, and training to prevent sexual harassment. A more recent review of previously published workplace ethnographies found that having formal, written grievance procedures protected women from predatory harassment—the most threatening and well-defined form of sexual harassment.

- [Addressing community-level risks through environmental approaches](#). Research suggests that changes to alcohol-related policies can reduce risk for SV at the community level. Excessive alcohol use interacts with other individual and community-level risk factors to increase the risk for SV perpetration. Also, the location and concentration of alcohol outlets in a community can have a negative impact on characteristics of the community, including perceived safety and social connections between individuals, which can in turn influence rates of violence.
- [Alcohol policy approaches](#) with the strongest evidence related to SV are those which work to reduce excessive alcohol use by increasing prices or reducing the density of outlets in a community. Research has found that higher alcohol prices are associated with lower rates of SV victimization in communities, while greater outlet density is linked to higher rates of SV.

C. **Evidence Re Support Services For Victims** (see pages 29-30 of above publication for discussion of effective services for victims)

D. **Evidence-Based & Practice-Informed Prevention Approaches to Adolescent Dating Abuse, Sexual Assault, and Stalking**, Ohio Domestic Violence Network’s Teen dating violence awareness and prevention curriculum comparison (2010).

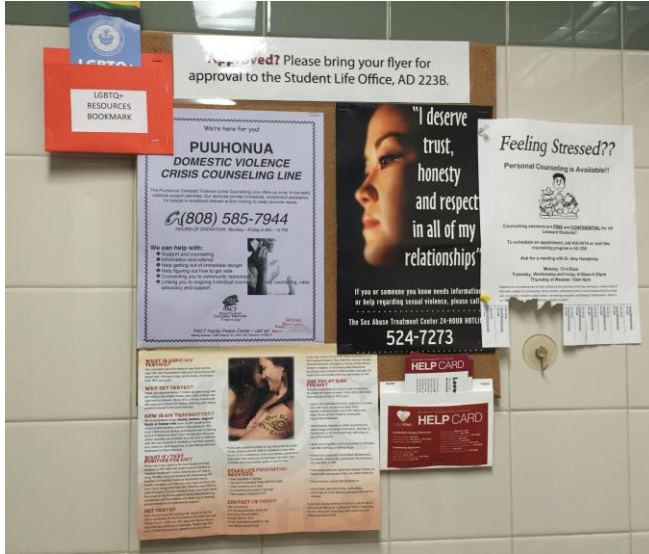
An exhaustive review of the literature, the Center for Healthy Teen Relationships, a project of the Idaho Coalition Against Sexual & Domestic Violence, an Office of Violence Against Women Technical Assistance provider, created this resource to aid in the selection of a school or community-based approach to prevent, intervene, and respond to issues involving adolescent dating abuse, sexual assault, and stalking. The materials in this tool are categorized into integrated approaches, curricula, and service-based strategies. Every category includes information about each approach such as overviews, evidence of effectiveness, outcomes, implementation requirements and cost. In addition, materials selected for this tool had to include information solely focused on the prevention of dating abuse, sexual assault and stalking amongst adolescent populations. This particular tool only includes materials that are either currently, or have gone through a rigorous evaluation within the past six years (i.e., since 2006), and/or have been identified as an evidence-based program. (Note: although most programs are geared toward middle or high school, some are cited as appropriately targeting college students).

See <http://idvsa.org/wp-content/uploads/2013/01/Curriculum-Review-of-Evidence-Based-and-Practiced-Informed-Prevention-Approaches-to-Adolescent-Dating-Abuse-Sexual-Assault-and-Stalking.pdf> (Note: this article must be purchased; abstract indicates it is comprehensive review of literature, has been updated in February 2011 and cited in numerous studies).

## APPENDIX R

### UH RESOURCES ON SEX-DISCRIMINATION AND GENDER-VIOLENCE

#### 1. Bathroom Bulletin Board at Leeward Community College with helpful resources



#### 2. LGBTQ+ Resource Bookmark - System-wide distribution

**LGBTQ+**  
RESOURCES BOOKMARK

**Hawai'i Community:**  
KCC Hawaii: [www.kccuhawaii.org](http://www.kccuhawaii.org)  
C.R.E.A.T.E. One Ohana: [www.createofhawaii.org](http://www.createofhawaii.org)  
Equality Hawaii: [www.equalityhawaii.org](http://www.equalityhawaii.org)  
Expressed Magazine: [www.expressedmag.com](http://www.expressedmag.com)  
GLSEN: [www.glsen.org/Chapter/Hawaii](http://www.glsen.org/Chapter/Hawaii)  
GLS: [www.gls.org/](http://www.gls.org/)  
Gay Straight Alliance Hawaii: [www.gaystraightalliancehawaii.org](http://www.gaystraightalliancehawaii.org)  
Hawaii LGBT Equity Foundation: [www.hawaiilgbtequityfoundation.org](http://www.hawaiilgbtequityfoundation.org)  
The Imperial Court of Hawai'i: [www.theimperialcourtofahawaii.org](http://www.theimperialcourtofahawaii.org)  
LIFE Foundation: [www.lifeofhawaii.org/page.asp](http://www.lifeofhawaii.org/page.asp)  
The LGBT Center Waikiki: (808) 349-2000  
Hawaii Family Alliance of Hawai'i: [www.hawaiifamilyalliance.org](http://www.hawaiifamilyalliance.org)  
Rainbow Family 808: [www.rainbowfamily808.com](http://www.rainbowfamily808.com)

**National Resources:**  
Crisis/Suicide Helpline: [www.crisisline.org](http://www.crisisline.org)  
The Trevor Project 24hr Hotline: 1 (866) 488-7386  
ACCESS National Hotline: 1 (800) 273-7648 (8235)

**Resources and Advocacy:**  
Campus Pride: [www.campuspride.org](http://www.campuspride.org)  
Gay and Lesbian Alliance Against Defamation: [www.glaad.org](http://www.glaad.org)  
Gay, Lesbian, & Straight Education Network: [www.glsen.org](http://www.glsen.org)  
Human Rights Campaign: [www.hrc.org](http://www.hrc.org)  
International Gay and Lesbian Human Rights Commission: [www.iglhrc.org](http://www.iglhrc.org)  
It Gets Better Project: [www.itgetsbetter.org](http://www.itgetsbetter.org)  
LGBTQ+ Improving Transgender Lives: [www.lgbtqiimproving.org](http://www.lgbtqiimproving.org)  
Lambda Legal: [www.lambdalegal.org](http://www.lambdalegal.org)  
National Center for Transgender Equality: [www.nctae.org](http://www.nctae.org)  
National LGBTQ Task Force: [www.thetaskforce.org](http://www.thetaskforce.org)  
National Center for Transgender Justice: [www.transgenderjustice.org](http://www.transgenderjustice.org)  
Out Service Members Legal Defense Fund: [www.oslfd.org](http://www.oslfd.org)  
Safe Schools Campaign: [www.safeschoolscampaign.org](http://www.safeschoolscampaign.org)  
Transgender Law Center: [www.transgenderlawcenter.org](http://www.transgenderlawcenter.org)

As a student of the university of Hawai'i, you have rights and responsibilities, including protections based on sexual orientation, gender identity and gender expression.

**HELP! I feel that I have been harassed or discriminated against based on my gender expression, sexual orientation, or gender identity.**

**FOR Confidential resources and support or advocacy, students may contact:**  
UH Name LGBT Student Services: (808) 956-6200

Additional resources by campus include: [www.hawaii.edu/titleix/confidential](http://www.hawaii.edu/titleix/confidential)

If you are a faculty or staff member, please contact: The UH Equal Opportunity Office/Affirmative Action: (808) 956-7077 ([aa@hawaii.edu](mailto:aa@hawaii.edu)) [www.hawaii.edu/offices/eeo/index.html](http://www.hawaii.edu/offices/eeo/index.html)

**Title IX protects gender-based harassment, including harassment based on actual or perceived sex, gender, sexual orientation, gender identity, or gender expression.**

**Title IX Coordinators for your campus are listed here: [www.hawaii.edu/titleix/coordinators/](http://www.hawaii.edu/titleix/coordinators/)**

**University of Hawai'i System:**  
UH Commission on LGBTQ+ Equality: 956-9250  
[www.hawaii.edu/offices/op/igbt/index.html](http://www.hawaii.edu/offices/op/igbt/index.html)

The University of Hawai'i Commission on Lesbian, Gay, Bisexual, Transgender, and Queer+ (LGBTQ+) Equality is committed to fostering a shared responsibility for inclusiveness, equality, respect, and social justice throughout the UH system.


**The mission of the UH Commission on LGBTQ+ Equality is to promote a safe and inclusive environment by creating a culture of equality, acceptance, and respect throughout the University of Hawai'i System.**

#### 3. A Resource Guide for Students on Sexual Misconduct: Campus Policies, Procedures and Victim Services

Available on the OIE website: <http://uhcc.hawaii.edu/titleIX/docs/TitleIXBrochure.pdf>

# APPENDIX S

## ATIXA TITLE IX & VAWA SECT. 304 TRAINING CHECKLIST

<div style="display: flex; align-items: center;"> <div style="flex: 1;"> <p style="text-align: center;"><b>ATIXA Title IX and VAWA Sec. 304 Training Checklist</b></p> </div> <div style="flex: 1; text-align: center;">  </div> <div style="flex: 1; border: 1px solid black; padding: 5px;"> <p><b>Checklist Key:</b>                      ✓ Title IX required                      ♦ Clery Act (VAWA Sec. 304) required                      + ATIXA added recommendation                      ⊕ Primary Prevention Recommended</p> </div> </div>		Level A	Level B	Level C*	Level D
		Title IX Compliance Officers	First Responders	All Faculty & Staff; ATIXA Mandatory Reporters	All Students
<b>* ATIXA recommends making all Faculty and Staff "Mandatory Reporters" for both Title IX and Clery-based incidents. Accordingly, this checklist reflects that approach. Those wishing to differentiate between Title IX and Clery Act reporting responsibilities can parse the two out based on the Title IX and Clery Act (VAWA Sec. 304) symbols.</b>					
<b>Overview of Title IX and Clery Act (VAWA Sec. 304): Law and Regulations</b>					
1	Institution's Title IX responsibilities to address sex- and gender-based harassment	✓	✓	✓	✓
2	Institution's Clery Act (VAWA Sec. 304) responsibilities to address Sexual Assault, Domestic Violence, Dating Violence, and Stalking	♦	♦	♦	♦
3	Role of federal government (especially OCR) in enforcing Title IX and DOJ's role with Title IX	✓	✓	✓	✓
4	Overview of the rights Title IX and Title IV confer on students and employees	✓	✓	✓	✓
5	What is sexual harassment, sex discrimination, sexual assault, and sexual violence, and what are the differences between them	✓	✓	✓	✓
6	Differences between criminal and Title IX investigations	✓	+	✓	✓
7	Title IX and Clery Act prohibitions on and protections against retaliation	✓♦	✓♦	✓♦	✓♦
<b>Institutional Policy Overview</b>					
8	Institution's policies and prohibitions regarding Title IX-based harassment	✓	✓	✓	✓
9	Institution's policies and prohibitions regarding Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+	+	♦	♦
10	When institution exercises off-campus jurisdiction over Title IX complaints	✓	✓	✓	✓
11	Institution's policies prohibiting retaliation	✓♦	✓♦	✓♦	✓♦
<b>Institutional Procedure Overview</b>					
12	Institution's disciplinary procedures to address Title IX-based complaints and how victims can invoke them	✓	✓	✓	✓
13	Preponderance of Evidence standard used to address all Title IX-based complaints and evidentiary standards used to address all Sexual Assault, Domestic Violence, Dating Violence, and Stalking complaints	✓	✓	✓♦	✓♦
14	How institution analyzes whether conduct was unwelcome	+	+	✓	✓
15	How institution analyzes whether conduct creates a hostile environment	+	+	✓	✓
16	Institutional disciplinary procedures used to address Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+	+	♦	♦
17	How to evaluate and weigh evidence in an impartial manner	✓	✓	✓	✓
18	Appeals procedures for Title IX	✓	✓	✓	✓
<b>Reporting</b>					
19	The identity, role, function of, and how to contact the Title IX Coordinator	✓	✓	✓	✓
20	When (upon notice), how, what, and to whom to report sex- and gender-based harassment	✓	✓	✓	✓
21	Consequences for mandatory reporters failing to report sex- and gender-based harassment	+		✓	
22	How to contact OCR	✓	✓	✓	✓
23	Recognizing, responding to, appropriately addressing, and reporting allegations and complaints	✓	✓	✓	
24	Procedures victims should follow if a Title IX violation or Sexual Assault, Domestic Violence, Dating Violence, or Stalking has occurred, including: 1) The importance of preserving evidence; 2) How and to whom to report such alleged offenses; and 3) Victims' options to notify law enforcement and campus authorities (if victim so chooses)	+	+	✓♦	✓♦
25	Appropriate interaction with victims	✓	✓	✓	
26	Providing fair and objective communication and resources that do not discourage reporting	✓	✓		
27	Victimology/psychology of the victim/neurobiological effects of trauma	✓	✓	✓	✓
28	Cultural competence in working with victims, reporting parties, witnesses, and responding parties	✓	✓		
<b>Confidentiality</b>					
29	Confidential reporting options on- and off-campus	✓	+	✓	✓
30	Responding to victim/reporting party request for confidentiality	✓	✓	✓	
31	Information about how the institution protects the confidentiality of victims and other parties when: 1) providing accommodations and protective measures; and 2) working with publicly available documents	+	+	♦	♦
32	Confidentiality/privacy of reports and other investigative information	✓	✓	✓	✓

**Checklist Key:**

- ✓ Title IX required
- ◆ Clery Act (VAWA Sec. 304) required
- + ATIXA added recommendation
- Ⓟ Primary Prevention Recommended

## ATIXA Title IX and VAWA Sec. 304 Training Checklist (Cont.)

	Level A Title IX Compliance Officers	Level B First Responders	Level C* All Faculty & Staff; ATIXA Mandatory Reporters	Level D All Students
<b>Victim Resources &amp; Remedies</b>				
33	Resources available to victims of sex- or gender-based discrimination	✓	✓	✓
34	Rights of victims and institution's responsibilities for orders of protection, "no contact" orders, restraining orders, or similar institutional/legal orders	+	+	◆
35	Information about on- and off-campus counseling, mental health services, victim advocacy, legal assistance, student financial aid, etc.	+	+	◆
36	Victims' options to request/get changes to academic, living, transportation, and working situations (if reasonably available); such changes are available whether or not a crime is reported to police or whether or not victim pursues formal campus action	+	+	◆
<b>Investigative Complaints</b>				
37	Conducting/documenting adequate, reliable, and impartial investigations	✓◆	+	
38	How to conduct an investigation and hearing process that protects the safety of victims/reporting parties and promotes accountability	✓◆	+	
39	Coordinating and cooperating with law enforcement (campus and local) during parallel criminal and Title IX proceedings	✓	+	
40	How to encourage victims, reporting parties and witnesses to cooperate with investigations when they are concerned about conduct/disciplinary implications of alcohol or drug use (e.g., amnesty/immunity policies)	✓	✓	✓
41	Determine credibility and impartial evaluation/weighting of evidence	✓		
42	Address link between alcohol/drugs in sex-based harassment allegations	✓	✓	
<b>Consent in Sexual Interactions</b>				
43	Force and consent (including examples)	✓	✓	✓
44	Capacity/incapacity, including the role and correlation of alcohol and other drugs (including examples)	✓	✓	✓
45	Effective Consent – "Yes" through clear word or action (including examples)	✓	✓	✓
<b>Rights of Parties in a Complaint, Investigation, Hearing and Appeal</b>				
46	Both parties have same rights to have others present and to present evidence during proceeding and participate in hearings and/or appeals	✓	✓	✓
47	Both parties are entitled to have an advisor of their choice present for all investigative and disciplinary proceedings (note that participation level of advisor may be constrained by the institution)	◆	◆	◆
48	Both parties will be simultaneously informed in writing of the outcome of any disciplinary proceeding that arises from an allegation of Sexual Assault, Domestic Violence, Dating Violence, or Stalking	◆	◆	◆
49	Both parties are entitled to the same options and opportunities for appeal	✓	✓	✓
50	Both parties will be notified of changes in results that occur prior to when results become final, and will be notified when final	◆	◆	◆
<b>Sanctions/Repercussions</b>				
51	Importance of accountability for those found responsible of sexual violence	✓	+	+
52	Criminal, academic, housing, athletic, and student record-related consequences of a Title IX violation	✓	✓	✓
53	Possible sanctions and protective measures an institution may impose following an institution's disciplinary procedure involving Sexual Assault, Domestic Violence, Dating Violence, or Stalking	+	+	◆
54	Consequences of lying during an investigation	✓	✓	✓
<b>Prevention, Awareness and Community Education</b>				
55	Definitions of Consent, Sexual Assault, Domestic Violence, Dating Violence, and Stalking in the applicable jurisdiction	+	+	◆
56	Risk reduction measures - to increase victim empowerment, promote safety, and help community address conditions facilitating violence	+	+Ⓟ	◆Ⓟ
57	Strategies and skills for bystanders to intervene to prevent sexual violence; attitudes of bystanders that may allow behavior to continue	+Ⓟ	+Ⓟ	✓Ⓟ
58	Safe and positive options for Bystander Intervention pertaining to Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+Ⓟ	+Ⓟ	◆Ⓟ
59	How to prevent and identify sexual violence	✓Ⓟ	✓Ⓟ	✓Ⓟ
60	Prevention mechanisms and strategies targeted to stop harassment or discrimination, remedy its effects, and prevent its recurrence	✓Ⓟ	✓Ⓟ	✓Ⓟ
61	Awareness programming to prevent violence, promote safety and reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking	+Ⓟ	+Ⓟ	◆Ⓟ
62	Potential for revictimization by responders and its effects on students	✓	✓	✓
<b>Assessment of Training</b>				
63	Annual Climate Survey			+
64	Assessments that demonstrate the efficacy of training	✓	✓	✓



**JUNE 2012**

- **ATIXA Statement of Ethics and Professional Standards for Title IX Coordinators**
- **ATIXA Statement of Title IX Coordinator and Administrator Core Duties and Competencies**

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## **Section I. PREAMBLE**

ATIXA, the Association of Title IX Administrators, provides a professional association for school and college Title IX Coordinators and administrators who are interested in serving their districts and campuses more effectively. ATIXA was formed to promote professional development, to identify and advance best practices for Title IX compliance, and to foster collaboration among Title IX professionals.

Since the enactment of Title IX of the Education Amendments on June 23<sup>rd</sup>, 1972, American educational institutions have made significant progress toward gender equality in student recruitment, admissions, educational programs, and athletics. The Title IX legislation broadly prohibits discrimination on the basis of sex in educational institutions receiving federal financial assistance, and serves an important role in ensuring equitable facilities and programs, prevention and appropriate response to hostile environments, and remediation of sexual violence and other forms of sex and gender-based discrimination in educational settings. Although there has been significant progress toward equality in education since 1972, there is still much to accomplish.

The Department of Education and the courts of the United States enforce Title IX. The Department of Education's Title IX regulations have always included the mandate to identify a campus or district administrator to coordinate compliance with Title IX, but neither the position nor its job responsibilities were clearly defined. However, with the issuance of its April 4<sup>th</sup>, 2011, Dear Colleague Letter (hereinafter, DCL), the Department of Education's Office for Civil Rights has given greater clarification, meaning and content to the position, making it more formalized. Nonetheless, the job description for this role still remains somewhat amorphous, leaving each school and campus to shape its own Title IX compliance methods and corresponding training requirements for the Title IX Coordinator and, as appropriate, any deputy coordinators.

## **Section II. USE OF THIS STATEMENT**

The purpose of this statement is to set forth, clarify, and reinforce the ethical and professional standards for Title IX Coordinators; provide guidelines on core job responsibilities and competencies required of a Title IX Coordinator; and offer a resolution encouraging the legal and ethical commitment by schools and colleges to provide the support, resources, recognition, and authority needed by Title IX Coordinators to ensure compliance with the spirit and the letter of the law.

*This document is designed to provide information for the professional development of the ATIXA membership as a public service. Users of this document should verify pertinent information if concerned or unclear or uncertain about a topic. Information contained within this document is intended for general use only and not for legal purposes. It does not contain legal advice and its contents should not be interpreted as giving any legal opinion or advice. ATIXA assumes no liability for any errors or omissions and provides no warranty or guarantees, expressed or implied regarding the contents.*



### **Section III. STATEMENT OF ETHICS AND PROFESSIONAL STANDARDS**

ATIXA does not discriminate on the basis of race, color, religion or religious belief, citizenship status, sex, marital status, disability, pregnancy, sexual orientation, gender identity or expression, national origin, military service or affiliation, genetic information, age, and/or other characteristics protected by any law, school district or campus policy. The acceptance of membership in ATIXA signifies that the individual member agrees to adhere to the principles and standards of this statement in regulating their own behavior and monitoring their employer and the field in accordance with the spirit and provisions of this statement and in pursuit of equal opportunity in education. As ATIXA members, Title IX administrators will:

- Conduct themselves in accordance with the highest levels of integrity and competence in pursuit of equity -- as an expression of social justice -- in the academic, residential, social, and athletic programs of schools and colleges, and in the prevention of hostile environments on the basis of sex, the prohibition of sexual harassment and sexual violence, the prohibition of other forms of discrimination and harassment on the basis of protected class membership, the protection from retaliation, and in remedying the effects of discrimination and harassment for the benefit of the schools, colleges and universities they serve.
- Consistently carry out their professional responsibilities ethically, honestly, and with integrity by exercising sound judgment and advancing equity, the best interests of their institution and professional community. This means upholding principles of fairness, good faith and respect that govern their conduct with others both on and off their institution's premises, identifying misconduct, and being committed to holding accountable those whose actions are discriminatory within their campus communities and school districts.
- Conscientiously strive for personal and professional effectiveness by continually participating in professional development and educational activities to renew foundational understandings, improve skills and acquire new knowledge.
- Not condone or participate in any unethical or illegal acts and hold themselves accountable for individual actions and decisions not to act. No unlawful or unethical practice or any practice at odds with these standards can be justified on the basis of customary practice, expediency or achieving a "higher" purpose or on the basis of following the orders of a supervisor if doing so would deprive a member of the community of civil rights which a reasonable administrator would have known were owed.
- As the custodian of many types of sensitive information, including that which may be confidential and/or private, be responsible stewards of that information, be familiar with and comply with applicable laws, institutional policies, directives and agreements pertaining to access, use, protection and disclosure of such information including the electronic transmission of records and adherence to privacy laws.





- Actively engage in supporting the development of this profession and enhance the role of ATIXA and its members (e.g., improving professional practices; supporting and clarifying federal and state laws, regulations, and legal trends; participating in research and data collection; developing model policies and intellectual property; creating field-building initiatives; and recruiting members to the profession).
- Monitor personal and professional effectiveness, represent professional credentials, competencies, and limitations accurately, correct any misinterpretations of these qualifications by others, avoid improper conflicts of interest and seek assistance from appropriate professionals and qualified legal counsel as needed.



## **Section IV: TITLE IX COORDINATOR CORE DUTIES AND COMPETENCIES**

Pursuant to Title IX of the Educational Amendments of 1972, the following statement reflects the broad compliance responsibilities that fall on administrators charged with Title IX compliance by outlining the most commonly agreed-upon duties, responsibilities and essential competencies related to Title IX coordination. Job descriptions are intended to present a descriptive list of the range of duties typically performed by employees in the position, and are not intended to reflect all duties performed within the job or in a particular educational setting. Guidelines as to who should (and should not) be named to this position due to inherent conflicts of interest are also incorporated into this statement.

### **Core Job Duties and Responsibilities**

- Coordinate Title IX efforts including the development, implementation, and monitoring of appropriate disclosures, policies, procedures and practices designed to comply with federal and state legislation, regulation, and case law requiring the prompt and equitable resolution of all complaints pursuant to Title IX;
- Provide leadership, direction and supervision for all activities and personnel of the Title IX program including consulting with relevant policy-making bodies and senior personnel for the purpose of advising, clarifying and identifying necessary action to eliminate sex and/or gender-based discrimination in all educational programs and activities, to ensure that access to facilities, opportunities, and resources is gender equitable throughout the district or campus;
- Provide ongoing training, consultation, and technical assistance on Title IX for all students and employees, with specialized training content for hearing officers/boards, investigators, campus law enforcement and appeals officers;
- Develop, implement and coordinate campus and/or school-based strategic efforts aimed at the prevention of sexual violence and other forms of sex and/or gender-based discrimination;
- Develop and disseminate educational materials, including brochures, posters, and web-based materials that inform members of the school or campus community (students, faculty, administrators, staff, and parents) of Title IX rights, responsibilities and resources both within and external to school/campus premises;
- Oversee prompt, effective, and equitable intake, investigation, processing, issuing of findings of fact, and timely resolution of all instances of sex/gender discrimination made known to responsible employees and/or reported or filed by students, faculty, employees, third parties, or by members of the broader community;
- Oversee Title IX compliance efforts of other campus/school delegates, departments and offices (e.g., deputy Title IX administrators, investigators, student conduct/discipline, victim services,



public safety, nurse/health services, counseling services, student affairs, human resources, faculty/academic affairs, athletics, etc.);

- Provide appropriate notice of an investigation; determine the extent of an investigation; appoint, train, and supervise Title IX investigators and any deputy coordinators; oversee investigation efforts; ensure provision of initial remedial actions; assure compliance with timelines; deliver appropriate notice of charge, notice of hearing, notice of outcome, duty to warn, and remedies, and provide a repository for and source of institutional record-keeping (may also be delegated);
- Provide guidance and assistance to alleged victims of sexual violence and sex/gender discrimination including referral to support resources, notice of right to file internal grievances, notice of the right to grieve to the US Department of Education Office for Civil Rights, and notice of the right to report incidents to law enforcement;
- Monitor institutional compliance with and provide ongoing consultation on Section 504 of the Rehabilitation Act of 1973 and related federal and state laws prohibiting discrimination and harassment against all protected classes (OCR enforces both Section 504 and Title IX, but joint responsibility may not fall to Title IX Coordinator for all campuses or districts);
- Organize and maintain grievance files, disposition reports, and other records regarding Title IX compliance, including annual reports of the number and nature of filed complaints and the disposition of said complaints, data collection, climate assessment, pattern monitoring; and
- Serve as principal contact for government inquiries pursuant to Title IX.

### **Title IX Coordinator Core Competencies**

The Department of Education does not specify any training, education or degree requirements, but the following knowledge, skills and abilities are implied.

- Ability to recommend and/or effect changes to policies, to revise practices and to implement equitable procedures across many departments, including human resources, athletics, academic affairs, and student affairs/student conduct/discipline;
- Knowledge of current state and federal law and regulations, institution-specific policies, practices and procedures, identified best practices and trends in the field of education related to harassment and other discriminatory practices that violate Title IX;
- Ability to manage a caseload of civil rights grievances to a prompt, effective and equitable remedy;
- Maintain professional qualification through ongoing training and professional development;
- Ability to design and deliver training programs to all constituencies of the campus or district, demonstrate accountability with respect to attendance and assess the effectiveness of these trainings; and



- Ability to build relationships and balance the multiple, varying and even conflicting interests of diverse stakeholders around a politically charged subject matter.

**Rule 505.5 Victim-counselor privilege.** (a) Definitions. As used in this rule:

(1) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.

(2) "Domestic violence victims' program" means any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal, or support counseling.

(3) "Sexual assault crisis center" means any office, institution, or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical, legal, or support counseling.

(4) "Social worker" means a person who has received a master's degree in social work from a school of social work accredited by the Council on Social Work Education.

(5) A "victim" is a person who consults a victim counselor for assistance in overcoming any adverse emotional or psychological effect of sexual assault, domestic violence, or child abuse.

(6) A "victim counseling program" is any activity of a domestic violence victims' program or a sexual assault crisis center that has, as its primary function, the counseling and treatment of sexual assault, domestic violence, or child abuse victims and their families, and that operates independently of any law enforcement agency, prosecutor's office, or the department of human services.

(7) A "victim counselor" is either a sexual assault counselor or a domestic violence victims' counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault. A domestic violence victims' counselor is a person who is employed by or is a volunteer in a domestic violence victims' program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims' program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse.

(b) General rule of privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.

(c) Who may claim the privilege. The privilege may be claimed by the victim, the victim's guardian or conservator, or the personal representative of a deceased victim. The person who was the victim counselor at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the victim.

(d) Exceptions. There is no privilege under this rule:

(1) Perjured testimony by victim. If the victim counselor reasonably believes that the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed.

(2) Physical appearance and condition of victim. In matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime.

(3) Breach of duty by victim counselor or victim counseling program. As to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim.

(4) Mandatory reporting. To relieve victim counselors of any duty to refuse to report child abuse or neglect under chapter 350, domestic abuse under chapter 586, or abuse of a vulnerable adult under part X of chapter 346, and to refuse to provide evidence in child abuse proceedings under chapter 587A.

(5) Proceedings for hospitalization. For communications relevant to an issue in proceedings to hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse.

(6) Examination by order of court. If the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise.

(7) Condition an element of claim or defense. As to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim's claim or defense or, after the victim's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

(8) Proceedings against the victim counselor. In any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as necessary to protect the confidentiality of the victim. [L 1992, c 217, §5; am L 1993, c 193, §2; am L 2008, c 154, §27; am L 2010, c 135, §7]

#### **RULE 505.5 COMMENTARY**

This rule, which resembles victim-counselor privilege provisions now in existence in some twenty states, e.g., Cal. Evid. Code §§1035 through 1037.7 (1992), encourages and protects the counseling of emotionally distressed victims of violent crimes by according privilege status to confidential communications made in the course of the counseling process. In adopting a similar law, N.J. Stat. Ann. §2A:84A-22.13 and 22.15 (1991), the New Jersey Legislature declared that the "counseling of victims is most successful when the victims are assured [that] their thoughts and feelings will remain confidential and will not be disclosed without their permission." The present provision proceeds upon just such a policy basis.

#### **RULE 505.5 SUPPLEMENTAL COMMENTARY**

The Act 154, Session Laws 2008 amendment replaced the term "dependent adult" with the term "vulnerable adult" in subsection (d) (4), with reference to chapter 346, part X. Act 154 amended chapter 346, part X, by, among other things, expanding the category of adults eligible for adult protective services by replacing the term "dependent adult" with the less restrictive term "vulnerable adult".

#### **Law Journals and Reviews**

Empowering Battered Women: Changes in Domestic Violence Laws in Hawai`i. 17 UH L. Rev. 575 (1995).

### Case Notes

When a statutory privilege interferes with a defendant's constitutional right to cross-examine, then, upon a sufficient showing by the defendant, the witness' statutory privilege must, in the interest of the truth-seeking process, bow to the defendant's constitutional rights. 101 H. 172, 65 P.3d 119 (2003).

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