SEXUAL MISCONDUCT AND TITLE IX: A GUIDE FOR EMPLOYEES AND FIRST RESPONDERS

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SEXUAL MISCONDUCT: NATIONAL CONTEXT

NATIONAL CONTEXT AND KEY ADVOCACY MOMENTS
- Paradigm Shift
- Clery Act advocacy
- Violence Against Women Act (VAWA)
- U.S. DOE, OCR “Dear Colleague” Letter
- Yale resolution
- AVON/Futures Without Violence Guiding Policy Document

PREVALENCE OF SEXUAL VIOLENCE
National crime and health statistics reveal that women between the ages of 18 and 24 are at the highest risk of sexual assault, domestic violence, dating violence, and stalking.

RELEVANT UNIVERSITY POLICIES
- NON-DISCRIMINATION and AFFIRMATIVE ACTION POLICY (E1.202)
- SEXUAL HARASSMENT POLICY (E1.203)
- SEXUAL ASSAULT POLICY (E1.204)
- USE AND MANAGEMENT OF INFORMATION TECHNOLOGY RESOURCES POLICY (E2.210)
- WORKPLACE NON-VIOLENCE POLICY (E9.210)
- STUDENT CONDUCT CODE

SEXUAL HARASSMENT AND SEXUAL MISCONDUCT IN HIGHER EDUCATION
Workplace setting and sexual harassment under Title VII
Campus setting and sexual misconduct under Title IX
SEXUAL HARASSMENT: WORKING DEFINITION

Unwelcome conduct that is
- Severe or pervasive
- Based on sex or gender
- Creates an offensive work environment

EXAMPLES:
- Sexually explicit or gender-based storytelling or jokes
- Sexually explicit profanity, name-calling, slurs,
- Sexually explicit or suggestive pictures- text or email
- Unwelcome and persistent requests for dates or sexual advances
- Touching, patting, squeezing, pinching

SEXUAL MISCONDUCT INCLUDES:

- Rape
- Sexual Assault
- Sexual Coercion
- Sexual Harassment
- Sexual Exploitation
- Stalking
- Unwelcome touching, kissing, hugging, and/or massaging

SEXUAL MISCONDUCT DOES NOT NECESSITATE NONCONSENSUAL SEXUAL CONTACT.

EXAMPLES:
- Threatening and harassing speech.
- Pressuring someone for a date, sex, romantic relationship.
- Allowing friends to watch a sexual activity without the explicit knowledge and consent of all persons engaging in the sexual acts.
- Recording/ documenting (i.e.: video, photographs, or any other auditory/ visual records) of any sexual acts without the knowledge and explicit consent of all parties involved, even if the documented activities are consensual.
- Sharing, distributing or forwarding such recordings without the explicit consent of all involved person/ persons.

UNIVERSITY OF HAWAI’I STATEMENT ON CONSENSUAL RELATIONSHIPS

“Sexual violence...refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol.”

Title IX

“Sexual violence...refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol.”

“‘Romantic and/or sexual relationships... are inappropriate when they occur between teachers or other employees of the University and the individuals they teach, evaluate, or supervise.’”

- University of Hawaii

Sexual Harassment Policy (O.A.2)

UH System (E1.204)

SEXUAL MISCONDUCT (continued)

Nonconsensual intercourse or any acts of sexual intercourse where such an act is accomplished against a person’s consent by means of force or threat of harm to the complaining party.

Acts of sexual fondling or other sexual assault where the person is prevented from resisting or giving consent as a result of intoxication or is unconscious at the time of the act, and this fact is known or reasonably should be known to the person committing the act.

Institutional Responsibility

TITLE IX
Title IX of the 1972 Education Amendment prohibits discrimination on the basis of sex in federally financed educational programs.

Scope of coverage:
- Academics
- Extracurricular Activities
- Athletics
- Financial Aid
- Counseling
- Any other programs of the institution

U.S. Department of Education, Office of Civil Rights (OCR) is the administrative body that enforces Title IX.

Title IX is about the institution’s liability:
- Title IX grievance process and university disciplinary processes differ:
  - Grievance process is focused on addressing and remedying the complaints of the alleged victim of discrimination.
  - Disciplinary process is focused on determining guilt or innocence of accused and implementing appropriate sanction.
  - DELIBERATE INDIFFERENCE

DEAR COLLEAGUE LETTER ISSUED BY OCR
- Issued April 4, 2011
- Provides guidance to educational institutions
  - Includes guidelines and mandates for schools, colleges and universities – any educational institution receiving federal financial assistance.
  - Reaffirms and expands upon guidance issued in the 2001 Revised Sexual Harassment Guidance.
THE DEAR COLLEAGUE LETTER...

CLARIFIES THAT:
- Sexual violence is considered sexual harassment, which is a form of sex discrimination prohibited by Title IX.
  - This includes student on student incidents, regardless of where the misconduct occurred.
- Third parties are also protected.

REAFFIRMS THAT:
- Law enforcement involvement does not relieve the academic institution of its obligation to investigate.
- Major focus is student on student sexual misconduct

DEAR COLLEAGUE LETTER: INSTITUTIONAL DUTY

"If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires that the school take immediate action to eliminate the harassment, prevent its recurrence, and address its effects."

HOSTILE ENVIRONMENT

"When a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the program"
- 2001 Guidance, DCL April 2011
- "Consider effects of the off-campus conduct when evaluating whether there is a hostile environment" - DCL April 2011

TEMPORARY/IMMEDIATE RELIEF TO VICTIMS

- The educational institution has a responsibility to bring the discrimination to an end
- It must take reasonable steps calculated to prevent future occurrence of the discrimination
- The goal is to restore the victim to pre-deprivation status
- TEMPORARY, IMMEDIATE, and PERMANENT relief must be available to the victim (REGARDLESS OF WHETHER OR NOT THEY DECIDE TO FILE A COMPLAINT)
  - This includes: no contact orders, academic adjustments, changes in housing and dining arrangements, extracurricular activities

INSTITUTIONAL BARRIERS FOR SURVIVORS

- Confusion about roles of “off the record” and offices of notice offices; confusion about what other first responders can and can not do
- Judicial process- lack of training by fact finders and decision makers regarding sexual predation, survivor perspectives, cultural competency issues
- Complicated procedures with respect to informal and formal resolutions
- These procedures often mirror criminal justice response

ADDRESSING ALLEGATIONS OF SEXUAL MISCONDUCT

What do survivors need? What is required by law?
AS A FIRST RESPONDER...

- Take the report seriously
- Listen, sympathize, and don’t judge
- Don’t delay and tell the complainant prompt action will be taken
- Respond to concerns and provide assurance of confidentiality and non-retaliation
- Make appropriate referrals
- Document
- Follow-up on the complaint
- Do not let the person who brought the complaint walk away frustrated

COMMON CHALLENGES FOR FIRST RESPONDERS

“But what if…”

You are staff or faculty and:

- “The employee/student who told me about the incident did so in confidence and asked me not to say anything to anyone about it.”
- “The employee/student who is complaining complains about everything. I don’t think the complaint is legitimate.”
- “I’m just hearing rumors but no one directly involved has come forward with a complaint.”

CONTACT INFORMATION

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University of Hawai‘i Mānoa Title IX Coordinator

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RESOURCES

campus

- UH Mānoa Campus Security
  956-6911
- UH Mānoa Women’s Center
  956-8059
- QLCSS: Room 211
- UH Mānoa Counseling and Student Development Center
  956-7927
- QLCSS 312
- UH Mānoa Health Services
  956-8965
- 1710 East-West Road
- Gender Equity Specialist
  956-9977
- QLCSS 210

community

- Sex Abuse Treatment Center
  (808) 524-7273
- Domestic Violence Action Center Help Line
  (808) 531-3771
- Family Peace Center, Parents and Children Together (PACT)
  (808) 832-0855
- Legal Aid Society of Hawai‘i
  (800) 499-4302
- Volunteer Legal Services Hawai‘i
  (808) 528-7046
- Hawai‘i Civil Rights Commission
  (808) 586-8636

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