

Prepared by the Office of the President.

This replaces Administrative Procedure A9.920 dated December 1990.

August 2002

EQUAL OPPORTUNITY, CIVIL RIGHTS, AND AFFIRMATIVE ACTION

A9.920 DISCRIMINATION COMPLAINT PROCEDURES FOR STUDENTS, EMPLOYEES,
AND APPLICANTS FOR ADMISSION OR EMPLOYMENT

1. Purpose

To comply with complaint procedure requirements under various federal and state nondiscrimination statutes, rules, and regulations and to carry out Executive Policy E1.202, University Statement of Nondiscrimination and Affirmative Action, and UH Board of Regents Bylaws and Policies, Section 1-5, Policy on Nondiscrimination and Affirmative Action, and Section 1-4, Rights and Responsibilities of the University of Hawai'i Community.

2. Objective

To provide an equitable, timely, and effective means of resolving discrimination complaints. By assuring internal due process in the investigation and resolution of complaints, it is hoped that a spirit of openness, fairness, and civility will govern relations among members of the University community.

3. Policy

The University, in accordance with E1.202, is committed to a policy of nondiscrimination on the bases of race, sex, age, religion, color, national origin, ancestry, disability, marital status, arrest and court record, sexual orientation, and veteran status in all of its programs, policies, procedures and practices. This nondiscrimination policy covers students, employees, and applicants for admission or employment. With regard to students and applicants for admission, it covers admission and access to, benefits of, participation and treatment in all University programs and activities. With regard to employees and applicants for employment, employment practices covered include, but are not limited to, recruitment, hiring, training, promotion, retention, compensation, benefits, transfers, and layoffs.

Complainants are not limited to this policy and have rights under both federal and state laws, which have deadlines for filing of complaints (see Section IX, External Agencies).

4. Definitions

- a. A "Discrimination Complaint" may be pursued through formal or informal channels. A formal complaint must be filed in writing with the campus Complaint Officer and/or designee stating that an individual and/or unit of the University has violated University policy and/or state or federal laws regarding nondiscrimination.
- b. "Student" is a person registered for credit or noncredit course work at the University at the time of the alleged incident of discrimination.
- c. "Employee" is a person employed full-time or part-time by the University of Hawai'i.
- d. "Complainant" is an individual who makes a report of discrimination.
- e. "Respondent" is a person or unit accused of having discriminated against the Complainant.
- f. "Complaint Officer" receives all complaints of discrimination and forwards formal complaints to the Investigating Officer, and coordinates training for the respective campuses. The actual title of the Complaint Officer may vary depending on the campus, e.g., EEO/AA Officer, Dean of Students, etc. In some cases the Complaint Officer and the Investigating Officer may be the same person.
- g. "Investigating Officer" investigates all formal reports of discrimination, documents the results of the investigation in a fact-finding report, and submits the report to the Decision Maker. In some cases the Investigating Officer and the Complaint Officer may be the same person.
- h. "Decision Maker" is a Chancellor, Vice Chancellor, Provost, Vice President, or other designee.
- i. "Fact Finding Report" is a summary of the allegations of both the Complainant and Respondent, a statement of relevant facts, and the Investigating Officer's analysis.

- j. "No Cause Finding" is a conclusion by the Decision Maker that there is insufficient evidence to support a finding of a violation of the nondiscrimination policy (i.e., that the preponderance of the evidence does not support the Complainant's allegations of discrimination).
- k. "Cause Finding" is a conclusion by the Decision Maker upholding the formal complaint of discrimination, i.e., finding that the preponderance of the evidence supports the allegations of discrimination.
- l. "Retaliation" is any adverse or hostile action, expressed or implied, including but not limited to, intimidation, threats, coercion, or discrimination against any individual because he or she has made a complaint, or otherwise sought assistance, served as a witness, or participated in any manner in a complaint resolution process under this administrative procedure.

5. Applicability

All University of Hawai'i students, employees, and applicants for admission or employment may use these procedures for the purpose of filing discrimination complaints. Sexual harassment complaints should be filed under campus procedures for sexual harassment if separate procedures have been established.

Administrative, Professional and Technical (APT) and Civil Service employees who have complaints pertaining to equity in pay and classification should file under the applicable state or UH classification and compensation administrative procedure.

Employees covered by collective bargaining grievance procedures may file discrimination complaints through the union grievance process and/or this administrative procedure.

Students should note that while complaints involving a range of discrimination issues may be filed under this procedure, grade changes can be made only via the campus academic grievance/complaint procedure.

6. Responsibility for Implementation

Overall responsibility for implementation of this complaint procedure rests with the President. The Chancellors are responsible for implementing and disseminating this procedure on

their respective campuses. They will identify a Complaint Officer for each of their campuses and publicize the individual's name, office phone number, and office location.

On each campus and within each major division on the campus, the appropriate Chancellor, Vice President, Provost, Dean, or Director is responsible for carrying out the University's nondiscrimination policies within their respective units. These administrators will take measures to prevent discrimination by reviewing the efforts on the part of departments within their units and subdivisions and will institute corrective measures where deficiencies have been identified.

7. Confidentiality/Disclosure

Because of the private nature of most discrimination incidents and the emotional and moral complexities surrounding such matters, every effort will be made to resolve complaints as confidentially and expeditiously as possible.

To safeguard individual privacy, dissemination of information relating to complaints of discrimination should be limited to those individuals actually involved in the informal or formal proceedings. However, complete confidentiality cannot be maintained in the process of handling informal and formal complaints. Certain information may be disclosed to appropriate administrators, the Respondent, and witnesses, among others, in order to conduct fact finding, institute remedial action, or informally resolve a complaint. Also, certain information may be disclosed if required by law, rule, regulation, or order of a court of competent jurisdiction.

8. Anonymous Complaints

While an anonymous complaint may not trigger an investigation, a pattern of anonymous complaints against an individual or unit may indicate a potential problem, and the University may take remedial action such as training, if appropriate. When a party is unwilling to be identified as a Complainant, counseling and education are available options. The Complaint Officer or designee should provide information, discussion, resources, and/or workshops for members of the university community who may be affected by the situation. Every effort will be made to ensure confidentiality and anonymity when members of the university community use counseling and educational services. However, absolute confidentiality and anonymity cannot be guaranteed.

9. Procedures for Resolution and Investigation

Any student, employee, or applicant for admission or employment who believes they have been discriminated against is encouraged to contact the campus Complaint Officer for information on their civil rights. The Complaint Officer will explain the avenues of recourse that are available.

a. Resolution Options

1) Informal Complaints

- a) Complainants are encouraged, but not required, to seek a resolution by discussing their concerns with the other party involved. Alternatively, Complainants may discuss their concerns with their advisor, supervisor, dean, department head, or other appropriate campus officer, in order to seek a resolution.
- b) If the circumstances of the complaint prevent the student or employee from discussing the matter with the other party or at the department level, the Complainant may contact the Complaint Officer for assistance. The Complaint Officer will attempt to resolve the matter informally.
- c) Alternative Dispute Resolution (ADR) is an avenue for resolution of informal complaints. Each campus is encouraged to identify or develop ADR resources. If appropriate, ADR may be suggested as an option for resolution. ADR is a choice that can only proceed if both the Complainant and Respondent agree to it.

2) Formal Complaints

- a) Formal complaints must be in writing and should contain the Respondent's name, a clear and concise statement of allegations, and the alleged basis of discrimination (i.e. race, age, sex, etc.). Enough detail, such as dates, locations, names of witnesses and any relevant documentation, should be provided to enable the Investigating Officer to conduct an investigation. If the complaint needs

clarification, it may be returned to the Complainant for additional information. Attachment A is a suggested complaint form.

- b) Formal complaints are to be filed with the Complaint Officer within 180 calendar days of the most recent incident of alleged discrimination, unless the Complainant can show good cause for a later filing.
- c) The Complaint Officer will advise the Complainant of informal options for resolving complaints and other avenues of recourse with state and federal enforcement agencies. Complainants are advised to seek information as soon as possible to meet filing deadlines of external agencies.
- d) An Investigating Officer will be assigned to conduct fact finding. S/he will notify the Respondent in writing and provide a summary or statement of the allegations within ten (10) working days of receiving a complete complaint. The notice to the Respondent should include a copy of the complaint, a copy of the complaint procedure, confidentiality statement, nonretaliation policy, and response deadline. If the Respondent is an employee in a collective bargaining unit, the Respondent will be notified of union representation rights. Attachment B is a recommended notification form. The Respondent shall have ten (10) working days from receipt of the notification to respond to the complaint. The Respondent may make a written request to the Investigating Officer for an extension of not more than twenty (20) working days for extenuating circumstances.
- e) The Investigating Officer may determine, either before or after an investigation, that the allegations raised in the complaint do not support a claim of discrimination. In such cases, the Investigating Officer shall close the case by informing all relevant parties of this decision in writing. Either party may appeal the "case closed" decision by writing to the Decision Maker within ten (10) working days of receiving the notice. The

Decision Maker shall issue a written decision on this issue, which shall be final, within ten (10) working days.

- f) The Investigating Officer will interview the parties, review any documentary evidence, and interview witnesses deemed by the Investigating Officer to have relevant and material information pertaining to the complaint.
- g) The formal investigation will be completed by the Investigating Officer within sixty (60) working days of the date that the complaint was filed and deemed to be complete. Should an extension of time be required for any reason, the Complainant shall be notified in writing. The extension shall not exceed twenty (20) working days. Any additional extensions must be approved by the Decision Maker. The Complainant will be informed of any extraordinary extensions.
- h) Upon completion of the investigation, the Investigating Officer will submit his/her findings to the campus Decision Maker or designee who has authority over the issue. The Decision Maker shall render a decision within twenty (20) working days and notify the Complainant and the Respondent of the decision via certified mail.
- i) If a "cause finding" is issued, the Decision Maker shall determine the appropriate remedies and/or corrective actions to be taken. Remedies will be reasonably devised to correct the harmful effects caused by the discrimination. Corrective actions will be undertaken to both stop the discrimination and prevent its recurrence and shall be imposed to ensure a workplace and educational environment free from discrimination.

For students and excluded employees who have violated E1.202, the University will impose disciplinary actions that are reasonably calculated to:

- i) be commensurate with the seriousness of the offense;

ii) stop the discrimination; and
iii) ensure the discrimination will not recur.
For included employees, the responsible administrator will follow the collective bargaining agreement provisions related to disciplinary actions.

To maintain consistency, Chancellors and Vice Presidents will consult with the systemwide Office of Human Resources prior to imposing employee disciplinary actions. Disciplinary actions against students should be consistent with each institution's student conduct code.

Disclosure of disciplinary actions is subject to Chapter 92F HRS, as amended, and the Family Educational Rights and Privacy Act (FERPA).

b. Appeal

- 1) The Complainant or Respondent may appeal the decision to the Chancellor or designee within twenty (20) working days of receipt of the decision. The appeal must be in writing and must specify why the decision is unsatisfactory.
- 2) The Chancellor or designee will review the case and render a final decision in writing and sent via certified mail within twenty (20) working days after receipt of the appeal. Should an extension of time be required for any reason, the Complainant shall be notified in writing, and a decision shall be made within fifteen (15) working days of the extension.
- 3) The standard of review for an appeal of a cause or no cause finding is whether the finding is against the clear weight of the evidence in the record of the case.

10. Nonretaliation

Retaliation against any person using this complaint procedure or any witness involved in the investigation is strictly prohibited. Absolutely no undue influence, coercion, manipulation, harassment, or intimidation shall be tolerated at any time. Complaints of retaliation constitute separate charges and will be handled in the same manner as discrimination complaints.

11. External agency

Nothing in these procedures shall affect the right of the Complainant to pursue the matter with an appropriate law enforcement agency. Discrimination complaints may be filed concurrently with an external agency to meet state and federal agency deadlines without jeopardizing an individual's right to a university investigation.

SAMPLE COMPLAINT FORM

Attachment A

UNIVERSITY OF HAWAI'I
Discrimination Complaint Form **Case No.**

Complainant's Name: _____

Mailing Address: _____ **Phone:** _____

Work Address: _____ **Phone:** _____

Complainant's Status: Student Applicant for Admission
 Employee Job Applicant

Type of Complaint: Informal Formal

Basis of the Complaint:

- Age _____ Ancestry _____ Arrest & Court Record
- Color _____ Disability _____ Marital Status
- Veteran Status _____ National Origin _____ Gender _____
- Religion _____ Sexual Harassment Sexual Orientation
- Race Retaliation (for discrimination cases only)

Name of the Alleged Respondent: _____

Department or Address: _____ **Phone:** _____

Date, time, and place of the first incident: _____

Date, time, and place of the last incident: _____

Witnesses

Did anyone witness the incidents of discrimination? If so, list their names and include phone numbers and addresses, if known. Briefly state what information each witness will be able to provide.

Previous Assistance

Have you have sought assistance in resolving your complaint from another source? If yes, please describe:

Complainant's Authorization

I understand that complete confidentiality cannot be maintained in the process of handling informal and formal complaints. I agree that this statement of allegations may be used during the investigation of the case. I further consent that this statement and certain information in the complaint file may be disclosed to the Respondent and appropriate administrators, among others in order to informally resolve my complaint, conduct fact finding, or implement remedial action. Information may also be disclosed if required by law, rule, regulation, or court order.

I affirm that this complaint statement is true, accurate, and complete to the best of my knowledge.

Signature of Complainant

Signature of Complaint Officer

Date

Date

Nonretaliation Policy

University policy as well as state and federal law prohibit retaliation against any person because s/he has filed a discrimination complaint or served as a witness in the complaint investigation. The nonretaliation policy is contained in the relevant complaint procedure, for example, UH Systemwide Administrative Procedure A9.920 or your campus sexual harassment complaint procedure. Complaints of retaliation constitute separate charges and will be handled in the same manner as discrimination complaints.

If you believe you have experienced retaliation, notify the appropriate investigating office as soon as possible.

SAMPLE COMPLAINT NOTICE

Attachment B

Dear [Respondent]

This letter is to notify you of a formal complaint filed by [Complainant], undergraduate student in the College of _____. [Complainant] alleges that she was discriminated against in violation of UH Executive Policy E1.202, Nondiscrimination Policy (enclosed).

The complainant alleges that on January 15, 2002, she applied and was qualified for a student assistant position in the Department of _____. She claims that, during her scheduled interview on January 20th, she was asked several inappropriate questions about her national origin, accent, and native language. On January 25th the department secretary called to inform her that she was not selected for the student assistant position. The complainant believes her nonselection was due to discrimination on the basis of national origin. A copy of her complaint is attached. (Certain information may be redacted, such as witness names, confidential medical or student record information, or information that the investigator determines is not relevant to the discrimination allegations.)

[Complainant's] complaint has been filed under UH Administrative Procedure A9.920, Discrimination Complaint Procedure (enclosed). Under this procedure, my office is responsible for investigating the allegations. I will be calling you to set up a meeting to hear your side of the issue. You have the right to have a representative present at the meeting and throughout the complaint process. You also have the opportunity to submit a written response, documentary evidence, and the names of witnesses who might corroborate your statements. Please send this information to my office by [date].

The role of the investigator is to gather the facts and prepare a summary report for the decision-making officer. Both the complainant and respondent will receive a written notice of the decision. The decision may be appealed according to the procedure outlined in A9.920.

Confidentiality. The complainant's identity should not be publicly disclosed, in accordance with Chapter 92F HRS, Uniform Information Practices Act. Materials collected during the course of the complaint investigation are confidential; however, they may be disclosed to appropriate administrators involved in the complaint process. Materials in the investigation file may also be disclosed if required by law, rule, regulation, or court order.

Nonretaliation Policy. Please be advised that University policy and state and federal law prohibit retaliation. Retaliation is defined as adverse treatment, intimidation, threats, coercion, or discrimination against an individual for the purpose of interfering with any nondiscrimination rights s/he may have under University EEO/AA policies or because s/he has made an informal or formal complaint, served as a witness, or participated in any manner in a complaint resolution process or investigation.

If you have any questions about the investigation process, please give me a call at _____.

Sincerely,

Dean of Students

Enclosures

c: Complainant

Attachment C

UNIVERSITY OF HAWAI'I
WITHDRAWAL OF COMPLAINT

Complainant Name: _____

Charge: _____

Date(s) of Alleged Violation: _____

Date of Complaint: _____

After careful consideration, I have decided to withdraw the complaint described above. I fully understand that without my testimony the charges may be dismissed by the University of Hawai'i.

I have been advised that it is unlawful for any person covered by state and federal civil rights laws to threaten, intimidate, harass, or retaliate against me because I have filed a discrimination complaint. I have not been coerced into submitting this withdrawal.

Signature of Complainant

Date