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Equal Employment Opportunity and
Affirmative Action Office

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UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

October 9, 2009

TO: The Hawai'i Government Employees Association
The United Public Workers
The University of Hawai'i Professional Assembly

FROM: Mie Watanabe *MW*
Director, EEO/AA Office

SUBJECT: Proposed Updates to UH Systemwide Administrative Procedure A9.900,
Policy and Complaint Procedure for Members of the Public

Attached for your information is a draft update of UH Systemwide Administrative Procedure A9.900 – Policy and Complaint Procedure for Members of the Public Who Have Discrimination Complaints Regarding Public Accommodations or ADA Complaints Regarding Disability Access to University Services, Programs, and Activities. The revisions have been reviewed and approved by the Equal Opportunity Directors for UH Hilo, UH Community Colleges, UH Mānoa, and UH West O'ahu. I plan to finalize the draft by October 22 and forward it to the President for approval.

The purpose of A9.900 is to ensure the University of Hawai'i complies with State and Federal nondiscrimination laws covering public accommodations and members of the general public. The current revisions are prompted by amendments to Chapter 489 HRS.

A9.900 has been updated by adding "sexual orientation" and "gender identity and expression" as protected categories. We have also added a section on definitions and changed the titles of campus administrators who would be handling complaints. New language is underlined and deleted language is in brackets.

Please call me at in 956-6423 or email mie@hawaii.edu if you have any questions about A9.900.

Attachment

c: M.R.C. Greenwood
Darolyn Lendio
EEO/AA Directors for UH Hilo, UH Community Colleges, UH West Oahu

Prepared by the Office of Equal Employment Opportunity and Affirmative Action [the President]

This replaces Administrative Procedure A9.900 dated June [30, 1998] 2004.

October 2009 [June 2004]

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION

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A9.900 POLICY AND COMPLAINT PROCEDURE FOR MEMBERS OF THE PUBLIC WHO HAVE DISCRIMINATION COMPLAINTS REGARDING PUBLIC ACCOMMODATIONS OR ADA COMPLAINTS REGARDING DISABILITY ACCESS TO UNIVERSITY SERVICES, PROGRAMS, AND ACTIVITIES

1. Purpose

To prohibit unfair discriminatory practices with regard to the access and use of public accommodations at the University of Hawai'i, under Chapter 489, Hawai'i Revised Statutes, and to implement the complaint procedure requirement of Title II of the Americans with Disabilities Act (ADA) of 1990. Chapter 489-3, HRS makes it unlawful to "deny or attempt to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, gender identity and expression, sexual orientation, color, religion, ancestry, or disability." The ADA requires public entities to have complaint procedures for members of the public so that "No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity."

2. Objectives

To provide prompt and equitable resolution of complaints alleging discrimination on the basis of race, sex, gender identity and expression, sexual orientation, color, religion, ancestry, or disability.

3. Applicability

Complaints may be filed under this procedure by any member of the public who is not covered by other University procedures and who believes that she or he or a specific class of individuals has been subjected to discrimination with regard to places of public accommodation, services, programs, and activities provided or made available by the University. Members of the University community should refer to UH Systemwide Administrative Procedure

A9.920 (Discrimination Complaint Procedure for Employees, Students, and Applicants for Employment or Admission) which covers discrimination and is the appropriate procedure for University students, employees, and applicants for employment or applicants for admission to academic programs.

4. Definitions

For the purposes of this policy, the following definitions apply:

- a. "Place of public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility/program whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors. The University is an educational institution that serves students; only certain programs are offered to the general public. Thus, the definition is based on the function or program and not the physical structure or facility. A facility like a campus theater may serve as a classroom for students (excluding the general public), and at other times as a venue for entertainment events open to the general public.
- b. "Gender identity and expression" means an individual's actual or perceived gender, as well as a person's gender identity, self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the individual's sex at birth as being either female or male.
- c. "Sexual orientation" means having a preference for heterosexuality, homosexuality, or bisexuality, having a history of any one or more of these preferences, or being identified with any one or more of these preferences.
- d. "Campus Administrator" or designee is an administrator who is authorized to review the EEO/AA Coordinator's decision and render a final determination under A9.900. The Campus Administrator is usually a dean, director, or vice chancellor who has authority over the issue or program.
- e. "Retaliation" is defined as adverse action or hostile treatment against an individual because he or she has engaged in any of the following activities:

1. opposed discriminatory conduct, based on a reasonable, good faith belief that this policy has been violated; or
2. filed or threatened to file a complaint about discriminatory conduct; or
3. testified, assisted, or participated in any manner in an investigation or other proceeding related to a discrimination complaint.

5[4]. Complaint Procedures

Members of the public are encouraged to resolve their concerns informally by contacting the department or relevant campus administrator who can assist them. If this is not reasonable under the circumstances, the complaining party may contact the campus EEO/AA Coordinator, as follows:

- a. Complaints should be in writing. Alternative means of filing complaints, such as telephone or personal interview, will be made available for persons with disabilities. Verbal complaints should be documented by the EEO/AA Coordinator.

Complaint statements must contain:

- i. the name and address of the complainant, and
- ii. a description of the alleged discrimination in sufficient detail to permit follow up or investigation.

The complaint may also include any evidence which supports the allegation.

- b. Complaints should be filed as soon as possible but no later than 180 calendar days from the date of the alleged discrimination.
- c. Complaints should be addressed to the campus EEO/AA Coordinator.
- d. The EEO/AA Coordinator or designee(s) will seek to resolve the complaint informally or investigate, as appropriate. Investigations will be completed within 90 calendar days of the date the complaint was filed. Time may be extended as appropriate, on a case-by-case basis, provided the complainant and respondent are notified in writing.
- e. If an investigation is conducted, the EEO/AA Coordinator or designee(s) will analyze the findings and render a decision or resolution. [submit a brief fact-finding report to the Campus Administrator who has authority over the issue. The

Campus Administrator or designee will make a determination on the merits of the case and] The EEO/AA Coordinator or designee will send the complainant and respondent a written decision or [description of the] resolution via certified or return-receipt mail within 30 calendar days of completion of the investigation [receipt of the fact-finding report]. The decision letter will summarize the basis for the decision and notify the complainant and respondent of their option to appeal the decision and where to file the appeal.

The decision will be sent to the complainant's and respondent's last known addresses; the parties are responsible for notifying the EEO/AA Coordinator of any change of address. The deadline for rendering a decision may be extended for 30 additional calendar days, provided the complainant and respondent are notified in writing.

- f. The complainant or respondent may file an appeal of the EEO/AA Coordinator's decision. [request a reconsideration of the decision. The request for reconsideration] The appeal must explain why the [Campus Administrator's] decision or resolution should be overturned. The appeal [request] should be made to the Campus Administrator [Chancellor] with authority over the issue or designee within 30 calendar days of receipt of the EEO/AA Coordinator's or designee's [Campus Administrator's] decision. This deadline for filing an appeal may be extended for 30 additional calendar days, provided the complainant or respondent notifies the Campus Administrator [Chancellor] in writing.
- g. The Campus Administrator [Chancellor] or designee will reconsider the case and send the complainant and respondent a final written decision or resolution within 30 calendar days of receipt of the appeal. The deadline for rendering a decision may be extended for 30 additional calendar days, provided the complainant and respondent are notified in writing.

6[5]. Non-exclusivity

Use of this complaint procedure is not a prerequisite to the pursuit of other remedies, e.g., state or federal agency complaint options.

7[6]. Notice

Chancellors are responsible for issuing this complaint procedure to their campuses and for publicizing the name, title, address, and phone number of the EEO/AA Coordinator or designee

responsible for handling Chapter 489, HRS, and ADA/Section 504 complaints.

8[7]. Non-retaliation

The University prohibits retaliation against any individual because that individual has opposed any act or practice made unlawful by Chapter 489, HRS, the ADA, or Section 504 of the Rehabilitation Act, or because that individual has made a complaint, served as a witness, or participated in any manner in an investigation under this procedure. Complaints of retaliation will be handled as separate charges using the procedure outlined in part 4 above. Any member of the University community who engages in retaliation will be subject to discipline.

9[8]. Recordkeeping

A record of each complaint filed under this procedure will be maintained by the campus EEO/AA Coordinator for a period of two years. The record will indicate the nature of the complaint and the disposition or resolution.