
Review of Equal Employment Opportunity and Affirmative Action at the University of Hawaii

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

House Concurrent Resolution 197, H.D. 1, S.D. 1 of 1990, requested the auditor to (1) review the functions and missions of the Equal Employment Opportunity and Affirmative Action Office and make recommendations on how it should be restructured, and (2) determine whether an office for victims of discrimination should be established. This report presents our evaluation and recommendations.

We acknowledge the cooperation and assistance of officials, faculty, staff, and students of the University of Hawaii System, the affirmative action officers of universities in other states, and other state and federal officials contacted during the course of this evaluation.

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Chapter 1

Introduction and Background

The equal employment opportunity and affirmative action (EEO/AA) program at the University of Hawaii came under criticism during the 1990 legislative session. One concern was over the conflicting responsibilities of an EEO/AA officer who serves as the counselor during intake, neutral investigator upon the filing of a complaint, representative of the university in determining cause, and finally, the one who recommends a sanction when warranted. A second concern was the need to provide an advocate for victims of discrimination.

In House Concurrent Resolution 197, H.D. 1, S.D. 2, the Legislature requested the auditor to undertake two tasks: (1) review the structure, functions, and missions of the EEO/AA office and make recommendations for improvements and (2) determine whether an office for victims of discrimination should be established.

Objectives of the Study

1. Determine the functions, missions, organization, and activities of the EEO/AA office on each campus and of any other unit responsible for enforcing civil rights laws.
2. Evaluate the effectiveness of the current organizations, procedures, and programs of the EEO/AA offices and of other offices with related functions.
3. Determine whether the EEO/AA offices should be restructured, with emphasis on the office at UH-Manoa.
4. Determine the need for an independent office to assist victims of discrimination at UH-Manoa and at the other campuses.
5. Make recommendations for improving the university's EEO/AA program.

Scope and Methodology

The study was guided by the large set of overlapping federal and state laws governing equal employment opportunity and affirmative action, including those pertaining to sexual harassment of students. The organizational units of the University of Hawaii (UH) system were studied to determine whether they are carrying out their

statutory responsibilities and whether they are organized to provide the required opportunities and programs.

The study encompassed the EEO/AA programs of the UH system but focused on UH-Manoa. We reviewed policies, planning, goals and objectives, organization and staffing, complaint handling, caseload, and litigation. We also assessed the Board of Regents' budget request for fiscal biennium 1991-1993 for expanding the university's EEO/AA program. We did not test the data collected. We also gathered information from other colleges and universities of comparable size that could serve as models for improving the university's program.

The time period covered in this study was from January 1, 1986, when the EEO/AA director was placed in the office of the president, to December 31, 1990. The work was conducted in conformance with generally accepted government auditing standards.

Background

Equal employment opportunity and affirmative action at universities operate under special conditions. First, although universities must comply with civil rights laws and the due-process handling of issues, they do so within the academic tradition of independence and collegiality. Second, although the relationship between instructor and student differs from that between employer and employee, it is still a relationship between superior and subordinate and can adversely affect the student.

In redressing discrimination, the federal government seeks a twofold remedy. The first is vigorous enforcement of laws against discrimination, primarily through a complaints process. The second, and considered equally important, is affirmative action, or programs on the part of public employers to remedy past discrimination and to assure equal access to employment without regard to race, sex, or ethnic characteristics.

Equal employment opportunity laws

Equal employment opportunity laws protect individuals from the denial of employment or promotion on the basis of race, color, religion, sex, age, national origin, handicap, marital status, arrest or court record, and status as a veteran. Other federal and state civil rights laws and rehabilitation acts protect employees and potential employees from discrimination in recruitment, examination, appointment, training, promotion, tenure or retention, discipline, or any other aspect of personnel administration. The university, like other employers, is bound by these laws.

The university (and the Department of Education) are also governed by federal laws that specifically protect students from discrimination on the basis of race, sex, color, or national origin. Prohibited practices include the use of quotas, discriminatory denial of admission, and sexual harassment.

Affirmative action

Affirmative action is defined by the federal government as “those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.”¹ They seek to modify past employment practices or systems that exclude any individual or that cause any group to be underrepresented. All governmental agencies must have affirmative action plans with three elements: reasonable self analysis, reasonable basis for concluding that affirmative action is appropriate, and reasonable action.

The self analysis would make use of statistical data, or “utilization analyses,” to indicate whether employment practices have resulted in adverse impact or disparate treatment of certain groups. The analysis includes data on the extent to which women and minorities are represented. The reasonable basis would show whether certain groups have been artificially restricted and whether corrective action is appropriate. Reasonable action is decided based on problems uncovered by the self analysis. It may include goals or timetables or other practices to redress any adverse impact or discriminatory treatment.

University of Hawaii

The university has a full-time EEO/AA director in the Office of the President at Manoa. All other campuses have part-time coordinators who have full-time responsibilities as counselors, librarians, or administrators. In one instance, the provost of a community college serves as the part-time EEO/AA officer. Each four-year campus has its own affirmative action plan. The community colleges have a single affirmative action plan developed by the Office of the Chancellor for Community Colleges.

The Board of Regents adopted the university’s policy on equal employment opportunity and affirmative action in 1976. The board and the university are now reexamining the EEO/AA program because of concerns reported to the 1990 Legislature.

The subsequent chapters of this report focus on the statutory framework for EEO/AA programs, the experiences of other colleges and universities, and an examination of the program in the University of Hawaii system.

Chapter 2

Equal Employment Opportunity and Affirmative Action at Universities and Colleges

Civil rights laws influence the recruitment, hiring, promotion, and termination of employees and students. These laws define discrimination as a conscious, overt act of ill will, or bias, and as an identifiable unequal treatment of individuals or groups on the basis of their race, color, religion, national origin, sex, age, and mental or physical handicap. Discrimination against veterans of the Vietnam era is also prohibited. This chapter summarizes these federal and state civil rights laws and how some universities have responded to these mandates.

Federal Law and Regulations

Constitutional guarantees for equal protection, due process, and freedom of speech and assembly lay the groundwork for the federal laws on civil rights. The laws prohibit discrimination in public accommodations, employment, housing, and federally funded educational programs. They address remedies for employees who are damaged by discrimination and for students who are sexually harassed. The legal consequences can be costly--the loss of federal contracts and the imposition of sanctions against the educational institution and the state. We have divided the pertinent statutes into those affecting admission to the university and those affecting employees or applicants for employment.

Laws affecting admission to the university

Title VI of the Civil Rights Act of 1964, as amended, says that no one may be excluded from, denied the benefits of, or subjected to discrimination under any program or activity receiving federal funds from the U. S. Department of Education (USDOE) because of race, color, or national origin. Equal access and treatment is required in admission, recruitment, employment, and treatment. The USDOE Office of Civil Rights enforces compliance through orders for remedial actions or, as an ultimate sanction, termination of federal assistance.

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age. This act has no age limitation, but it generally deals with children and the elderly. The administration and enforcement of the law rests with the USDOE Office of Civil Rights.

Title IX of the Education Amendments of 1972 requires that institutions, in all their activities, not discriminate against students on the basis of sex. The law is inclusive, covering such aspects as

pregnancy, childbirth, decisions to terminate pregnancy, and sexual harassment. The latter occurs (1) when sexual advances, requests, or verbal conduct are used as a condition of a student's education, (2) when rejection of or submission to such conduct is used as the basis for academic decisions affecting the student, or (3) when the conduct interferes with the student's educational environment. Enforcement is by the Office of Civil Rights of the USDOE.

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal funds from discriminating against handicapped individuals. All recipients of USDOE assistance must operate their federally assisted programs or activities so that in their entirety they are accessible to handicapped persons. This law applies to students from preschool through postsecondary education. Enforcement is by the Office of Civil Rights of the USDOE.

***Laws affecting
employment at the
university***

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in all aspects of employment, including hiring and promotion, tenure, salaries, benefits, training, demotion, layoff, firing, transfer, and any other condition of employment. Enforcement activities are handled by the EEOC or the U.S. Attorney General.

Executive Order 11246, as amended by 11375, prohibits federal contractors (including educational institutions) that hold contracts or subcontracts over \$10,000 from discriminating on the basis of sex, color, race, religion, or national origin in all aspects of employment. All organizations, agencies, and institutions holding federal contracts or subcontracts of \$50,000 or more must have affirmative action plans. The Office of Federal Contract Compliance of the U.S. Department of Labor has been assigned responsibility for the Executive Order. It may delegate enforcement to the EEOC or to the USDOE Office of Civil Rights.

The Equal Pay Act of 1963, as amended, prohibits an employer from using gender as a reason for paying lower wages to an employee. Enforcement is under the EEOC.

The Age Discrimination in Employment Act of 1967 prohibits public employers from discriminating against most employees over age 39. Enforcement is by the EEOC.

Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974 provides that no agency, contractor, or subcontractor may discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era. Enforcement is by the Secretary of Labor.

Sections 503 and 504 of the Rehabilitation Act of 1973 forbid discrimination against handicapped employees or potential employees in any program receiving funds from the Department of Health and Human Services and the USDOE. The law applies to firms or institutions with federal contracts of \$2,500 or more.

Title IX of the Education Amendments of 1972, as amended, described earlier, also prohibits discrimination against any employee on the basis of sex. Title IX obligations apply to all programs in the entire school, not just the department or program receiving federal financial assistance.

Law affecting disabled persons

The **Omnibus Americans with Disabilities Act of 1990** requires handicapped persons to be given equal treatment. In enacting this law, Congress sought additional protection for some 43 million Americans with one or more physical or mental disabilities. Public and private institutions will have to modify their programs and facilities--in some instances, on a large scale--to bring them into conformance. The EEOC, the U.S. Attorney General, and the Office of Federal Contracts Compliance Programs will issue regulations no later than a year after enactment of the law. The regulations will be effective 18 months after the law's enactment.

Federal enforcement

Several federal and state agencies enforce these laws, although most complaints are resolved at lower levels of operation and do not reach federal enforcement commissions.

In Hawaii, the Honolulu office of the EEOC investigates charges alleging discrimination in employment. The Office of Civil Rights of the USDOE enforces the laws prohibiting discrimination in programs or activities receiving federal financial assistance from the USDOE. The department will investigate complaints no later than 180 days from the date of the alleged discrimination. The Office of Federal Contract Compliance Programs of the U. S. Department of Labor is responsible for enforcing Executive Order 11246, which requires all those receiving federal financial assistance above a certain amount to promote and ensure equal opportunity.

State Constitution and Laws

Article I of the State Constitution provides due process and equal protection of the laws and prohibits the denial of civil rights because of race, religion, sex, or ancestry. State laws generally follow the federal lead. Hawaii has over 50 anti-discrimination statutes. The major ones are Chapter 378, HRS, prohibiting discriminatory practices by employers, employment agencies, or labor organizations; Chapter 489, prohibiting discrimination in public accommodations; and Chapter 515, prohibiting discrimination in real property transactions. For the University of Hawaii, Section 304-1 provides that no one shall be deprived of the privileges of the institution on the basis of race, color, religion, sex, national origin, or handicap.

State enforcement

All state departments have grievance procedures for their employees. Most departments have a process whereby an agency EEO officer counsels complainants, investigates formal complaints, makes a determination whether there is cause for the complaint, recommends remedies when applicable, and refers the complaint to the department head for a final decision. The EEO/AA officer tries to help the parties resolve the matter informally. Complainants may also file complaints simultaneously with the federal EEOC office in Honolulu and the new state Civil Rights Commission.

Several state agencies have additional responsibilities for handling complaints from the public. For example, the Department of Education is responsible for complaints alleging discrimination in the public schools. The Department of Health is responsible for protecting the civil rights of patients in psychiatric facilities, and the Department of Human Services investigates complaints of discrimination in some of its programs, such as Food Stamps and Medicaid. Two agencies that are particularly pertinent to this study are the Civil Rights Commission and the Office of the Ombudsman.

Civil Rights Commission

In 1988, the Legislature established a five-member state Civil Rights Commission because of reports of lengthy delays in processing complaints and obtaining redress, and because of concerns about potential conflicts of interest when an EEO officer serves as an investigator for the department as well as an advocate for the complainant. The Legislature sought to establish a uniform procedure to vigorously enforce Hawaii's civil rights laws.

The commission consists of five members appointed by the governor with the consent of the Senate. Under Chapter 368, HRS, the commission is empowered to receive, investigate, and conciliate

complaints alleging discriminatory practices based on race, color, religion, age, sex, marital status, national origin, ancestry, arrest or court record, or handicapped status in employment, housing, public accommodations, or access to services receiving state financial assistance. It may hold hearings and order appropriate legal and equitable relief. It may also take action in circuit court to enforce any of its orders.

Act 386 of 1989 established procedures for investigating and conciliating complaints and holding commission hearings. Remedies that can be ordered by the commission include hiring and reinstatement, admission to various programs, payment of damages, and payment of costs of the action. The law also authorizes persons injured by unlawful discriminatory practices to sue for damages. Various state laws were transferred to the jurisdiction of the commission as of January 1, 1991, and the commission is now staffed and ready to accept complaints.

The commission plans to have a staff of 24, including investigators and attorneys. Its rules will clearly separate prosecutorial and adjudicatory functions. Those involved in investigating or prosecuting a complaint are prohibited from advising or discussing the complaint with the commission.

The Ombudsman

Under Chapter 96, HRS, the ombudsman has wide-ranging jurisdiction to investigate the administrative acts of agencies including those that may be “unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with the law.” The investigatory powers of the ombudsman could cover students who have complaints against faculty or staff.

Support For Civil Rights In Higher Education

University of California

Universities across the nation confront unique problems in responding to civil rights laws. Many of them, however, have been able to move from enforcing antidiscrimination laws to strengthening affirmative action programs. We cite two examples here.

Like many other colleges and universities, the University of California system will be facing high faculty turnover and increasing enrollments. Over the next 15 years, California will need 6,000 new tenured faculty, or about 400 per year, a marked increase over the current rate of 300. The university system anticipates that the representation of women and majorities could improve dramatically over the next two decades if certain affirmative measures are taken.

A study done by the university identified four strategies to improve the recruitment and retention of women and minority faculty: developing a pool of students with potential for academic careers, identifying and attracting applicants, enhancing tenure opportunities, and continuing their advancement beyond tenure.¹ The recommendations included using planned interventions instead of piecemeal solutions, holding all managers accountable by measuring their rate of success, establishing standards for measuring success, establishing specific annual goals, and targeting special groups.

Ohio State University

The single-campus Ohio State University is about equal in size to the entire UH system. The affirmative action problems that Ohio State University sought to solve in 1985 were very similar to the problems currently faced by UH-Manoa.² A 20-member committee appointed by the president found that the university had passively responded to the goals and timetables imposed by the federal government and was not committed to affirmative action. The committee recommended an advocacy program with these key elements:

- A detailed written policy of affirmative action that would be widely and continuously disseminated throughout the university and community, and would be publicly emphasized on appropriate occasions by the president and other spokespersons;
- An executive officer of affirmative action through whose advice and counsel all university administrators could be held accountable for acceptable effort--and eventual success--in affirmative action, using the same budgetary and personnel rewards and sanctions by which they were being held accountable in their other responsibilities; and
- A university coordinating council for affirmative action, where administrators of all units would meet regularly under the auspices of the president.

Most of the recommendations are being implemented. An office of human relations was created that is responsible for two major programs--affirmative action and career development for faculty and staff. The affirmative action section has a staff of five professionals: an associate executive officer who is responsible for affirmative action and also serves as a student advocate; an administrative associate director responsible for supervision and budget; a case officer who investigates formal and informal complaints with the assistance of two part-time law students; an information research officer who prepares the workforce analysis with a graduate

assistant; and a staff advocate who works on program development and training.³

National Survey of Affirmative Action Offices

The results of a 1987 survey by the University of South Carolina compares the structure, staffing patterns, and areas of responsibility of affirmative action programs in institutions of similar size.⁴ One-third of the respondents had enrollments under 20,000 students, 44 percent had enrollments between 22,000 and 28,000, and 22 percent had over 28,000 students. Over 50 percent had faculty counts of over 1,000 and staff of more than 2,000. The material here is from colleges and universities comparable in size to UH-Manoa.

- **Staffing patterns.** The typical full-time staff consisted of an affirmative action officer, an executive secretary or administrative assistant, a data manager or research analyst, and an investigator. Students provided clerical and other office support on a part-time basis.
- **Reporting lines.** The majority of affirmative action officers (64 percent) reported to their university president or chancellor. Other reporting lines led to a vice president or vice chancellor (22 percent), provost (7 percent), personnel director (5 percent), and the special assistant to the president (2 percent).
- **Areas of responsibility.** All affirmative action officers wrote and updated affirmative action plans, reported to compliance agencies, kept abreast of the EEO/AA laws and court decisions in consultation with university counsel, investigated complaints of discrimination, and monitored faculty and staff employment statistics.
- **Influence.** About 74 percent of the affirmative action officers reported that they influenced hiring decisions. The leverage they held during the recruitment process came from developing recruitment networks, meeting with search committees (and sometimes having membership on those committees), negotiating target hiring with academic deans based on annual vacancy projections and underutilization, reviewing and approving recruitment plans, reviewing applicants and indicating the candidates who should receive additional attention. Some of these officers were authorized to review and approve the final selection.

Chapter 3

The Equal Employment Opportunity and Affirmative Action Program at the University of Hawaii

Civil rights laws compel two kinds of antidiscrimination programs. The first is an enforcement program that prosecutes acts of discrimination and protects victims either individually or as a class. The second is an affirmative action program that removes barriers to equal opportunity and remedies practices of past discrimination. To the extent that an affirmative action program is successful, the need for an enforcement program will decline. In this chapter we assess enforcement and affirmative action activities at the University of Hawaii (UH).

Findings

1. The university's enforcement program can be improved by giving more support to victims of discrimination and strengthening its complaint procedures. A new office to handle complaints of sexual harassment is not necessary and may fragment enforcement efforts.
2. The Board of Regents (BOR) and the university need to commit to a stronger affirmative action program that sets targets for certain groups, devises strategies to achieve goals, and provides the means for holding administrators accountable for their efforts.
3. The university's equal employment opportunity and affirmative action (EEO/AA) programs are weakened by inadequate resources, unclear assignment of responsibilities, and insufficient staff to carry out these responsibilities.

Strengthen the Enforcement Program

The EEO/AA office at the university consists of a full-time staff of one--the EEO/AA director at UH-Manoa. This curtails the types of assistance that can be given to members of the university community, particularly those who believe they have been victims of discrimination. Enforcement will require more staff and also clearer procedures for pursuing complaints. Several agencies have been set up to enforce the civil rights laws. The enforcement program needs to inform the university community of these agencies and help it use

them to full advantage. The separate office proposed to enforce complaints about sexual harassment will likely detract from an overall enforcement program.

Complainants need help in choosing an appropriate course of action from several options. Enforcement usually begins with counseling. If the complaint is not resolved at this informal stage, the complainants can seek the formal enforcement steps of the university EEO/AA offices. Complainants can also file simultaneous complaints with such outside agencies as the state Civil Rights Commission, the federal Office of Civil Rights of the U.S. Department of Education, and the federal Equal Employment Opportunity Commission. Each of these agencies has its own procedures.

At each stage of the enforcement process, the EEO officers play a different role. Their most useful and productive role is the counselor and advocate who can resolve the problem expeditiously. As we noted in an earlier study, 75 percent of the complaints are resolved informally.¹ When complaints are heard early, they have a better chance of being resolved before positions harden. The university's EEO officers do try to conciliate matters, resolve the complaint, counsel complainants on their rights, and inform them of options to pursue the issue with other agencies. When the informal process fails, the formal process begins.

The formal process is guided by written procedures. Here, the EEO officer shifts from the role of counselor to that of neutral investigator. Some at the university see this as a conflict of interest damaging to the credibility of the EEO/AA office. Yet most EEO/AA offices at universities combine these functions. Further, the person who does counseling need not be the same as the one who investigates. Enforcement can be carried out by one office if different people perform these functions.

Need for student advocate

University faculty and staff, like other state employees, have an advocate in their union. If they believe that the university's internal process is unfair, they can, with the help of their union, seek redress from outside agencies, such as the state Civil Rights Commission or the federal Office of Civil Rights.

Students, however, have no one to represent their interests. They need someone who will work *with* them and *for* them, from the filing of a complaint through its resolution. An advocate for students could be placed with the dean of students in the office of the vice president of student services. This position could be responsible for counseling students and helping those who believe they have been victims of discrimination and sexual harassment.

Need for clear procedures

After investigating two complaints against the university--one alleging sexual harassment and the other relating to a class action suit on behalf of the handicapped--the federal Office of Civil Rights informed the president in June 1990 that the university's grievance procedures were flawed.² On the sexual harassment complaint, the Office of Civil Rights concluded that the university's procedure (1) did not outline the specific steps involved, (2) contained no time frame, (3) did not provide for notice of findings and remedies to both parties, (4) did not provide remedies or delineate who has the authority and responsibility for imposing remedies, and (5) contained no provision for appeal. On the matter of discrimination against handicapped persons, the office found that the university did not have a grievance procedure that could be used for complaints of this kind.

As part of its corrective action plan, the university developed a systemwide grievance procedure for handling EEO/AA complaints. Issued by the vice president for finance and operations in December 1990, it covers all discrimination complaints by students, employees, and applicants for admission or employment.³ Campuses that have separate procedures for complaints alleging sexual harassment are to continue following them.

The university's action is a step in the right direction. Certain parts of the procedure, however, could be clearer. For example, when an investigation is completed, the investigating officer is supposed to submit the findings to the campus administrator having authority over the issue. For Manoa this could be either a vice president or the director of personnel. It is not clear which of several vice presidents will make the decision or when a vice president or the director of personnel will have jurisdiction. The university should monitor the implementation of this new procedure to make sure it works as it should.

No need for new office to handle sexual harassment complaints

In response to recent concerns about sexual harassment, the university is proposing to create a separate Office of Sexual Harassment Policy Enforcement (OSHPE) to be staffed with four full-time positions--a coordinator, advocate, secretary, and part-time peer counselors. Expected to cost almost \$200,000 annually, this office, responsible for handling only one type of violation, would have almost as many resources at its disposal as the system-wide EEO/AA office the university has requested in the next budget. We believe a new office is unwarranted and may detract from the university's enforcement program as a whole.

The proposed office is to be responsible primarily for enforcing student complaints about sexual harassment. We do not believe the

number of complaints justifies creating a new office staffed with four positions. Moreover, the procedures created for the new office may lead to a more time-consuming complaints process.

The idea of having a separate office for sexual harassment complaints came originally from the Sexual Harassment Task Force appointed by the president in May 1989. Unfortunately, the task force was asked to look only at sexual harassment and not at other issues of enforcement. Inevitably, its solution focused on that small portion of an enforcement program. In April 1990, the president formed the Sexual Harassment Policy Committee to review the recommendations of the task force. The committee's proposal included establishing OSHPE to deal mainly with student complaints of sexual harassment. In October 1990, the Board of Regents expanded OSHPE to serve the entire system and included it in its biennial budget request. The board placed OSHPE in the Office of the Vice President for Student Services. Although the board approved the budget for establishing the office, it did not adopt the policies and procedures recommended by the committee.

Few complaints

A survey of formal and informal sexual harassment complaints filed with the dean of students or the EEO/AA director showed 74 complaints in the six years between September 1983 and August 1989. Of these, 36 were complaints by students against faculty and 6 were complaints against staff or supervisors. This makes an average of 7 complaints per year against faculty and staff. The remaining complaints were between faculty, between students, or by faculty against students.

We recognize that these figures may not reflect the extent of the problem and that not all students or employees who are harassed report such incidents. However, with only 7 complaints a year, we believe a new office is not warranted. Instead, the university should strengthen the existing EEO/AA office and have that office test the proposed sexual harassment procedures. Should the level of complaints rise, extra positions could then be added to carry out the increased workload. In addition, the establishment of a position of student advocate in the Office of the Dean of Students should go far in helping students through the complaints process.

Redundant procedures

The Sexual Harassment Policy Committee recommended a new grievance procedure. Our concern is that the new sexual harassment procedure may actually result in a more lengthy grievance process. The EEO/AA office should pilot test the procedure before recommending its adoption by the university.

The OSHPE procedure is similar to the university's more general complaints procedure. In both cases, complaints are investigated by the EEO/AA officer. The main difference is that for complaints filed with OSHPE, the EEO/AA officer, after completing the investigation, turns over the case file to the OSHPE coordinator. The coordinator then forms an "investigation panel" by selecting 3 people from a pool of 30 appointed by the president. The panel has 20 days to review the case file and 20 days to report its findings to the vice president of academic affairs. In cases filed with the EEO/AA office, the EEO/AA officer will report the findings directly to the vice president. The vice president can approve or disapprove of the findings and determine if remedial actions are needed. Appeals can be made to the president.

The purpose of the new procedure was to separate investigatory and adjudicatory functions in EEO/AA offices and to remove them from the president's office. However, the procedure adds more time and people to the process, and the final decision is still made by a vice president who is part of the administration.

The Civil Rights Commission was created to address the concern of having an administrative agency decide on cases in which it has an interest. Employees of the university who believe the institution cannot act fairly on their behalf could also seek recourse with the commission. Students could be assisted by the proposed advocate to seek recourse with the federal Office of Civil Rights. It is not necessary to add new procedures and offices at the university.

Hunter College of the City University of New York has had some problems with a similar process. A sexual harassment panel consisting of administrators, faculty, staff, and students assigns the investigation of formal complaints to at least three panel members who make their recommendations within 60 days to the president of the college or the vice president for student affairs. The vice president of student affairs observed as follows:

There are two persistent problems associated with our procedure. The first is the matter of time taken during the investigative phase. It seems to drag on too long. The second and more serious problem is the expectation of the incumbent co-chairs [of the panels] that their recommendation will always be accepted. The concept of the "recommendation" needs clarification.⁴

Expand Purview of EEO/AA Office

The Legislature asked that we determine whether there should be an office for victims of discrimination. We do not believe this is necessary. Instead of further dispersing and fragmenting responsibilities, we believe that an expanded and strengthened EEO/

AA office could help complainants of all types of discrimination. There is no more need for a separate office to handle complaints of discrimination than there is for a separate office to handle only complaints about sexual harassment.

Complainants have other avenues of redress and support. At the university are the EEO/AA offices and coordinators, the Center for Student Development on the Manoa Campus, and the student services offices on other campuses. Faculty and staff can also turn to their respective unions. At the state level, complainants can file complaints with the Civil Rights Commission and the Ombudsman. Federal agencies include the Honolulu office of the Equal Employment Opportunity Commission, the USDOE Office of Civil Rights, and the Office of Federal Contract Compliance Programs.

Concentrate More Effort on Affirmative Action

Affirmative action describes those actions taken by the institution to modify past employment practices that excluded individuals or caused groups to be underrepresented. All government agencies are required to analyze their employment practices, provide a reasonable basis for corrective action, and create goals, timetables, or other practices to redress the situation.

The university has been found to be in noncompliance on several occasions. The Office of Federal Contract Compliance Programs (OFCCP) first reviewed UH-Manoa in 1979 and found significant problems that the acting chancellor committed the university to remedying. The problems covered such areas as the university's recruitment practices and the nature of its statistical reports.

A second compliance review in 1984 resulted in a letter of findings from the OFCCP saying that UH-Manoa had "failed to adhere to its commitments either in performance or in implementation."⁶ The OFCCP alleged that UH-Manoa had violated federal regulations by submitting an affirmative action plan that did not have an adequate workforce analysis or utilization analysis. The review found problems in the university's affirmative action plan, in its evidence of good-faith efforts to attain goals, and in the university's programs to meet goals and objectives.

Two recent investigations by the Office of Civil Rights of the U.S. Department of Education uncovered deficiencies in the university's handling of complaints about sexual harassment and about discrimination against handicapped persons.

The university should have an affirmative action program that strives for a community that is free of barriers to equal opportunity and that works to overcome the effects of past discriminatory practices.

Affirmative action would seek to aggressively recruit, select, and retain women and minorities, and it would support students, faculty, and staff in all aspects of equal opportunity.

The university is weak in certain key elements that must be part of an improved affirmative action program:

- *A clear policy and oft-repeated commitment* to affirmative action. The Board of Regents, the president, and key representatives of the university must stand behind the policy and heighten public awareness of the university's commitment to it.
- *A comprehensive plan* that explicates the goals and objectives of the institution, the strategies to reach those ends, and proposes the criteria for measuring progress. Part of the plan is a program to educate the university community on the rights and obligations of the institution and the individuals in it.
- *A mechanism for reporting on progress and holding university personnel accountable* for attaining program goals. This includes reporting regularly to the board of regents.
- *An organizational structure* that is appropriate for the institution and its affirmative action mission. There should be sufficient staff with clearly assigned roles and responsibilities. The executive officer and campus EEO/AA officers should have enough authority to effect change.
- *A budget* that is sufficient to support all of the planned functions.

Need for explicit policy commitment

The university does not have from its Board of Regents a strong and complete policy statement on nondiscrimination. Better policies and procedures to carry out this mission are also needed. Adopted by the Board of Regents in 1976, the university's policy statement on nondiscrimination is out of date. Only recently in 1990 did the board consider a policy change. In the intervening 14 years, numerous amendments have been made to federal and state laws and guidelines.

Most of the university's operating policies and procedures were written in the early 1980s and, like the board's policy, are out of date. The policies do not define the services to be provided in this area, especially for students, and they do not delineate the roles of the various offices. Most important, the responsibilities of the EEO/AA director at Manoa are unclear and confusing.

The Office of Civil Rights of the U. S. Department of Education recently reviewed the university's policy on nondiscrimination and found the university to be in violation. The office noted that the policy failed to describe the scope or coverage of the UH policy on discrimination against handicapped persons and that the recruitment and informational brochures distributed by the university's colleges and departments failed to include a statement of the university's nondiscrimination policy.⁷

In October 1990, the vice chair of the regents' committee on budget and long-range planning acknowledged the need to review the university's policy on affirmative action, but the board did not adopt the vice chair's statement or recommendations. Although the subject was not part of the board's agenda, the vice chair made the following statement:

All the money in the world would not effect meaningful change without significant support for such a change and without the establishment of a campus atmosphere supportive of such change. Affirmative action requires more than just good intentions.⁸

The vice chair of the committee then recommended that the board take action on a long list of items needing attention:

- Review the current BOR policy on affirmative action to reaffirm, revise, and update if necessary.
- Review proposed policies on sexual harassment.
- Transmit to the BOR a sexual harassment report for review and possible endorsement.
- Review the criteria by which faculty and staff are evaluated for hiring.
- Review the situation relative to the number of residents, and graduates of local high schools, who are employed as graduate assistants and who would be potential faculty.
- Provide ethnic group reporting that identifies students and faculty of Hawaiian ancestry apart from the all inclusive Asian/Pacific Islander category.
- Provide to the BOR a feasibility study of the concept implemented at the University of Wisconsin whereby the institution seeks to affirmatively hire new staff from underrepresented groups.

- Revise the “targets of opportunity” program proposed by the president that allows departments to hire additional staff from underrepresented groups by allocating to them a percentage of all new positions from program change requests.

We believe the board should initiate a re-examination of the university’s policy and program on affirmative action and set a deadline for its completion. This list is a good place to start.

Need for substantive affirmative action plans

Even the best of the affirmative action plans prepared by the various campuses do not convey the sense of commitment to redress imbalances and eliminate discrimination. The Office of Federal Contract Compliance Program (OFCCP) under Executive Order 11246, as amended, requires that recipients of federal contracts of more than \$50,000 submit an annual plan for their affirmative action programs. UH-Manoa, Hilo, West Oahu, and the community colleges as a whole prepare such plans each year.

All of them have some elements in common, such as statutory references, a utilization analysis (a statistical report on the numbers and percentages of women and minority employees required by the federal executive order), and policy statements by the governor, the Board of Regents, and the UH system administration. However, the plans vary widely in content and in the information they provide on the procedures used at each campus.

The OFCCP has issued detailed rules on the required contents of the plans, covering matters such as workforce analyses, goals and timetables, and disseminating and implementing the program:

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. . . . Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor’s good faith efforts must be directed to correct the deficiencies.⁹

None of the plans, however, include such needed specifics as goals or targets for each campus, how and when goals will be reached, or a timetable for action. The plans offer no indication of where the organization is headed and how it will get there. The plans do not describe strategies that will be used to prevent discrimination and sexual harassment. They do not show how the handicapped, veterans, AIDS victims, and others will be afforded equal

opportunity in hiring, recruitment, and selection. Most activities are left to the discretion of deans, directors, and chancellors but without any way to establish accountability.

The utilization studies alone are not sufficient. They are simply statistics, with no hint of how the figures are projected to change if the institution were to take action. They show Blacks, Hispanics, American Indians, Hawaiians, and Filipinos as underutilized minorities, but the plans have no specific targets for them.

An affirmative action plan should include specific goals along with strategies and timetables for reaching them. The achievements of managers and departments would be measured against these goals. The University of California study recommended establishing standards for measuring success through specific annual goals and the targeting of special groups. Also included were a series of planned interventions, such as the recruitment of minority students, financial assistance, special help for junior faculty to enable them to gain tenure, the use of mentors, and fellowships and advanced training programs to provide opportunities for advancement in administration.¹⁰

Students at UH-Manoa have proposed the University of Wisconsin-Madison plan as a possible model. The Madison plan targets minority students and uses fellowships and other strategies to attract them. The plan had a specific goal to hire 70 minority faculty over three years by such means as inviting minority scholars as visiting faculty and providing funds for national searches. After two years, Madison reports significant progress on many initiatives and the reaching of some goals. The hiring of minorities is on schedule.¹¹

Need for more monitoring of recruitment and selection

The university's recruitment and selection practices have not been actively monitored. The decentralized hiring process makes monitoring particularly important. Without goals, timetables, and staff, the monitoring appears to be negligible.

At the Manoa campus, for example, the aggregate data on women and minorities in full-time and tenured and probationary positions in 1979 and 1989 show that the university has made some progress overall in the hiring of women but appears to be losing ground in the hiring of minorities. (See Tables 3.1 and 3.2 on pages 24 and 25.) The number of tenured women faculty has risen from 15.2 percent to 18.5 percent, and the number of women probationary faculty has risen from 21.9 percent to 32.6 percent. Minorities have decreased from 29.4 percent to 28 percent. Hawaiians and Filipinos remain the most underutilized groups. These data, however, are meaningless unless seen against the targets for employing underrepresented groups in different disciplines and the efforts made to achieve them.

Decentralized hiring

In January of 1986, the president delegated authority for most of the personnel transactions to management personnel, informing all vice presidents, chancellors, deans, and directors that the Personnel Management Office would “no longer audit, monitor, or otherwise oversee the processing of personnel documents.” Administrators at UH-Manoa were urged to establish internal policies and procedures as soon as possible.

This decentralized approach has meant that the recruitment, selection, and hiring of faculty and staff are the responsibility of individual departments, deans, directors, and vice presidents. In May 1990, the president issued a memorandum to the vice presidents and directors informing them of their affirmative action responsibilities. He stated that as part of the university’s conciliation agreement in 1985 with the U.S. Office of Federal Contract Compliance, the university had adopted a policy of evaluating managers on their EEO/AA efforts as part of their annual evaluation. The president acknowledged that regular EEO/AA assessments were “critical,” since substantial responsibility for affirmative action rested with the colleges and units.¹²

As far as we could determine, there is no mechanism for holding the vice presidents, deans, and directors accountable. Staff evaluations are confidential, and it is not clear how they lead to changes in the hiring and recruitment practices of a college or unit.

Lack of EEO/AA staff

The lack of staff makes monitoring difficult. As we discuss in the next section, there is no EEO/AA officer for the system as a whole. At Manoa, the EEO/AA office is staffed only by a director. At the other campuses, the responsibilities for equal employment opportunity and affirmative action are delegated to staff members as part-time assignments and added to their other duties.

Correct Organizational Weaknesses

Little progress has been made in correcting problems uncovered in our 1981 management audit of the university. We recommended that (1) an affirmative action plan be developed for the university system together with a program for its implementation; (2) the roles and responsibilities of the system EEO officer, the campus coordinators, and the unit coordinators be clarified and duties thereby assigned; and (3) a plan be developed to integrate the various EEO/AA functions spread throughout the system so that progress on EEO/AA programs could be facilitated.¹³

**No systemwide
EEO/AA Office**

The organizational structure today is still characterized by functions that are not clearly allocated, resources that are meager, and services that are inconsistently and unevenly provided throughout the UH system. Monitoring and accountability remain a stubborn problem.

There is need for a systemwide office within the university. The EEO/AA office at Manoa is understaffed and cannot do justice to both the responsibilities of the Manoa program and the responsibilities of the system. The director has no direct involvement in the operational aspects of the EEO/AA program on other campuses. The community college system and the West Oahu and Hilo campuses each work independently. Their coordinators are part-time faculty and staff who are assigned other work as well.

Mixed responsibilities of UH-Manoa director

The EEO/AA office at UH-Manoa is responsible for the Manoa program as well as a number of systemwide functions. The office is staffed by one full-time director, a part-time secretary, and student helpers. The responsibilities, we believe, are far more than a single person can effectively handle.

**TABLE 3.1
Full-Time Tenured and Probationary Faculty by Gender
at the University of Hawaii at Manoa**

	1979		1989	
	Number	Percent	Number	Percent
Tenured Faculty				
Male	862	84.8	746	81.5
Female	154	15.2	169	18.5
TOTAL	1016	100.0	915	100.0
Probationary Faculty				
Male	182	78.1	201	67.5
Female	51	21.9	97	32.6
TOTAL	233	100.0	298	100.1

Source: University of Hawaii, EEO/AA Office, "UH Manoa--Full-Time Faculty by Rank and Tenure," 1979, 1989.

Note: Academic management personnel and librarians who also hold faculty rank are not included.

TABLE 3.2
Full-Time Tenured and Probationary Faculty by Ethnicity
at the University of Hawaii at Manoa

	1979		1989	
	Number	Percent	Number	Percent
Tenured Faculty				
White	718	70.7	659	72.0
Minorities	298	29.4	256	28.0
TOTAL	1016	100.1	915	100.0
Minorities				
Hawaiian*	10	1.0	13	1.4
Chinese/Korean	98	9.7	84	9.2
Filipino	8	0.8	12	1.3
Japanese	168	16.5	131	14.3
Other	14	1.4	16	1.8
TOTAL	298	29.4	256	28.0
Probationary Faculty				
White	173	74.2	227	76.2
Minorities	60	25.9	71	23.9
TOTAL	233	100.1	298	100.1
Minorities				
Hawaiian*	9	3.9	6	2.0
Chinese/Korean	12	5.2	22	7.4
Filipino	1	0.4	2	0.7
Japanese	33	14.2	34	11.4
Other	5	2.2	7	2.4
TOTAL	60	25.9	71	23.9

Source: University of Hawaii, EEO/AA Office, "Full-Time Tenured and Probationary Faculty by Ethnic Grouping," 1979, 1989.

Note: Academic management personnel and librarians who also hold faculty rank are not included.

*Includes Part Hawaiian.

The director's responsibilities at Manoa cover the entire EEO/AA spectrum: (1) update annually the UH-Manoa Affirmative Action Plan, (2) develop appropriate actions to implement the plan, (3) process and investigate complaints on sexual harassment and discrimination in employment, (4) disseminate information and conduct educational programs on equal employment opportunity and affirmative action, and (5) conduct workshops for deans, department chairs, department personnel committees, secretaries, and others.

The director's systemwide responsibilities are to (1) advise the president on concerns related to equal employment opportunity and affirmative action and prepare periodic reports, (2) identify problem areas through the collection and assessment of employment data, (3) draft policies and procedures for the president, (4) act as liaison with the state and federal agencies on matters relating to equal employment opportunity and affirmative action, and (5) work with the Office of the Vice President for Academic Affairs to encourage academic monitoring of tenure, promotion, and merit awards. In addition, the director represents the entire university system on such boards and commissions as the State Commission on the Status of Women, the Governor's Advisory Board on Affirmative Action, and others.

These responsibilities do not include the operational aspects of the EEO/AA program, such as developing internal monitoring procedures, interpreting regulations, and giving educational workshops and programs.

Part-time assignments on other campuses

The EEO/AA programs at the community colleges and at the Hilo and West Oahu campuses are assigned to a mix of faculty and administrative, professional, and technical staff. They are assigned this work in addition to their regular full-time responsibilities. Table 3.3 shows the position and workload of the coordinators at the community colleges and the Hilo and West Oahu campuses.

Unlike the Manoa campus, where responsibilities for equal employment opportunity and affirmative action are assigned to a single office, the community colleges disperse these responsibilities among various faculty and staff. The personnel director for community colleges takes care of matters dealing with discrimination in employment and sexual harassment, and personnel matters. Another specialist in the chancellor's office handles matters related to students and faculty. Each community college also appoints coordinators to investigate complaints, monitor recruitment and selection, and attend to special needs (handicapped students, for example) and services to veterans.

Both Hilo and West Oahu have EEO/AA officers who have other duties as well. At the Hilo campus, the officer is a faculty member who is given a reduced teaching load to coordinate the program. The EEO/AA officer handles complaints of sexual harassment among employees, and the dean of student services handles complaints involving students. At West Oahu, the officer is the librarian. Both officers prepare the affirmative action plan. Their work has focused mainly on recruitment and selection.

TABLE 3.3
EEO/AA Coordinators at the Community Colleges and the Hilo and West Oahu Campuses

College	Position	Assignment
Honolulu	Director of Career Development Center	As needed
Kapiolani	Provost	As needed
Leeward	Librarian	3 credit overload
Windward	Counselor	About 20 percent
Kauai	Counselor	3 credit overload
Maui	Administrative Services Officer	As needed
Hilo	Faculty	Reduced teaching load
W. Oahu	Librarian	As needed

Source: Interviews with EEO/AA Coordinators, University of Hawaii, 1990

We were not convinced that part-time coordinators have sufficient time and authority to carry out the full range of EEO/AA responsibilities. Since the EEO/AA work is added on to their normal duties, most of them have had to be selective, concentrating on recruitment and selection and on problems relating to sexual harassment. The coordinators spoke of a need for programs to promote affirmative action and to educate students on their rights. They want help in planning programs to educate students, faculty, and staff about affirmative action and the procedures for handling complaints of sexual harassment and other discriminatory acts.

No regular informational programs

Informational programs on equal employment opportunity and affirmative action are not being carried out on a regular basis for faculty, students, and administrators. Much more could be done in the way of educating students and faculty of their rights and responsibilities in such areas as sexual harassment. Even on the largest campus, there is no budget for educational activities. The approximately 30 seminars and workshops hosted, sponsored, or presented since 1986 by the EEO/AA director and the office of the president were supported by other sources. These presentations were on a variety of topics, such as grievance rights, race and sexual harassment, sex equity, and investigative skills.

Inadequate budget for the EEO/AA program

For a university system with an enrollment of 72,000 students and 7,400 employees, the budget for EEO/AA is decidedly skimpy. The only budget specifically committed to this is for the EEO/AA office at Manoa--one full-time director, a .30 FTE secretary, twenty hours per week for student help, and \$5,000 for computer assistance and office supplies. For the community colleges, Hilo, and West Oahu, the coordinators receive no additional compensation for EEO/AA work. The UH-Hilo officer is given release time for EEO/AA work.

Recently, the Board of Regents approved a budget proposal for an expanded systemwide office for the EEO/AA program for the fiscal biennium 1991-1993 of \$242,694 for the first year and \$229,757 for the second. Table 3.4 gives the budget for this expanded office.

**TABLE 3.4
Proposed Staff and Budget for an EEO/AA Systemwide Office, Fiscal Biennium 1991-93**

ITEM	FY1991-92	FY1992-93
Complaints Investigator	1.0 FTE \$38,388	1.0 FTE \$40,569
Handicap Access Officer (Architect)	1.0 FTE \$44,184	1.0 FTE \$46,728
Data Analysis/Monitoring (Computer Information Specialist)	1.0 FTE \$29,100	1.0 FTE \$30,768
Office Support, Secretary, Student Help, Current Expenses	1.0 FTE \$131,022	1.0 FTE 111,692
TOTAL	\$242,388	\$228,261

Source: University of Hawaii, Office of the President.

The BOR approved another \$250,000 for a study on affirmative action which will include an examination of salary equity. The board also budgeted the Office of Sexual Harassment Policy Enforcement at \$186,561 and \$193,664 for the next two years of the biennium.

Inappropriate staffing proposal

The expanded systemwide EEO/AA office is warranted, but the staffing proposal does not appear directed at improving enforcement or affirmative action. The proposed complaints investigator should enable the office to have separate people doing counseling and investigation. But the positions requested for architectural and computer programming services are not necessary. These services could be provided by offices such as its facilities planning office and the institutional research office that are already supposed to be doing this work at the university.

The UH-System should look at institutions such as Ohio State University, whose program is oriented toward advocacy and tailored to meet affirmative action goals. Ohio State has an associate executive officer for affirmative action who is in a position to hold all managers accountable for acceptable effort in affirmative action. The program has budgetary and personal awards, grants, and sanctions to use as incentives. In addition, the office has an administrative director responsible for staff supervision and the budget, a case officer to investigate complaints with part-time assistance from law students, an information research officer who prepares workforce analysis with student help, and a staff advocate who works on program development and training.

In reviewing the systemwide EEO/AA office, the university should make provision for an associate officer who would be responsible solely for Manoa. This position could be separate from that of the EEO/AA director, who would have systemwide responsibilities and would report to the president.

Recommendations

1. The Board of Regents and the administration of the University of Hawaii should strengthen its enforcement program by:
 - a. Establishing a systemwide EEO/AA office whose director reports to the president of the university. The office should have sufficient staff and resources to plan, carry out, and support the education, enforcement, and compliance programs of all units in the university system. A staff member within the expanded office could be assigned specific responsibility for UH-Manoa.

- b. Giving the EEO/AA office sufficient staff to enable it to assign counseling and investigation duties to separate staff members.
 - c. Placing emphasis on informal resolution of complaints and encouraging the use of outside agencies such as the new Civil Rights Commission.
 - d. Establishing an advocate position in the Office of the Dean of Students at Manoa to work with student victims of sexual harassment and other types of discrimination.
 2. The Board of Regents and the administration of the university should improve its affirmative action program by:
 - a. Updating and revising its EEO/AA policy.
 - b. Developing a systemwide affirmative action plan that has specific goals for employment, strategies to attain them, and timetables for action. The plan should have the means to hold administrators accountable for achieving goals of their units.
 - c. Reviewing the responsibilities of EEO/AA coordinators on each campus to ensure that they each have sufficient time and enough authority to carry out the responsibilities of the position.
 3. In weighing the university's request for an Office of Sexual Harassment Policy Enforcement and also the need for an office for victims of discrimination, the Legislature should consider instead the alternative proposed in this study for expanding the existing EEO/AA office and strengthening the enforcement program overall.

Notes

Chapter 1

1. 29 *Code of Federal Regulations* 1608.1(c).

Chapter 2

1. Joyce Bennett Justus, *The University of California in the Twenty-First Century: Successful Approaches to Faculty Diversity*, Sacramento, California, University of California System, Spring 1987.
2. The President's Committee on Affirmative Action, *Affirmative Action Advocacy at the Ohio State University*, Columbus, Ohio, June 1985.
3. Interview with Sue A. Blanshan, Ph.D., Executive Officer, Office of Human Relations, The Ohio State University, December 5, 1990.
4. Paula Cox, *National Survey of Affirmative Action Offices*, University of South Carolina System, June 1988.

Chapter 3

1. Hawaii, Legislative Auditor, *A Study On Implementation of the Civil Rights Commission for the State of Hawaii*, January 1989, Report No. 89-8, p. 25.
2. Letter to Dr. Albert J. Simone, President, University of Hawaii from John E. Palomino, Regional Civil Rights Director, Docket No. 09-89-2094, "Sexual Harassment," June 29, 1990 and Docket No. 09-89-2118 et al, "Discrimination against Handicapped Persons under Section 405 of the Rehabilitation Act of 1973," June 29, 1990.
3. Administrative Procedures Memorandum No. 90-14, Memorandum to Vice-Presidents, Chancellors and Systemwide Administrators from Ralph T. Horii Jr., Vice President for Finance and Operations, December 14, 1990.
4. Letter to Aileen A. Osaki, Legislative Analyst, from Sylvia Fishman, Vice President for Student Affairs and Dean of Students, Hunter College of the City of New York, New York, July 23, 1990.

5. Conciliation Agreement between the U. S. Department of Labor, Office of Federal Contract Compliance Programs and University of Hawaii at Manoa, 1984.
6. Ibid, p. 3.
7. Letter to Dr. Albert J. Simone, President, University of Hawaii, from John E. Palomino, Regional Civil Rights Director, 1990, p. 3.
8. Minutes of regular meeting of the University Board of Regents, October 19, 1990.
9. 41 *Code of Federal Regulations* 60-2.10.
10. Justus, *The University of California in the Twenty-First Century*.
11. Office of the Chancellor, University of Wisconsin-Madison, *The Madison Plan*, February 9, 1988.
12. Memorandum to UHM Vice Presidents, Director Takushi, Director Sakaguchi, Director Sathre, from Albert J. Simone, President, Subject: Annual Evaluation of Affirmative Action Responsibilities and Results, May 15, 1990.
13. Hawaii, Legislative Auditor, *Management Audit of the University of Hawaii*, Report No. 81-9, Honolulu, March 1981.
14. Hawaii, University of Hawaii at Manoa, *Affirmative Action Plan*, Honolulu, April 30, 1989 to April 29, 1990, p. 26.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted drafts of this review to the University of Hawaii and the Board of Regents on February 4, 1991. A copy of the transmittal letter to the university is included as Attachment 1. The responses from the university and the Board of Regents are included as Attachments 2 and 3.

The Board of Regents and the university both concur generally with our recommendations except for the recommendation that, instead of creating a new Office of Sexual Harassment Policy Enforcement, the university should strengthen the existing EEO/AA office.

In its response, the board said that it wishes to reaffirm its commitment to taking more aggressive leadership in the area of affirmative action. It has proposed affirmative action studies that will, among other things, address recruitment and retention of women and minorities. As a result of the report, the university will develop a comprehensive plan that will add teeth to the current affirmative action plans.

The president acknowledged that the university is still struggling to meet certain standards. In response to our report, the university will form a systemwide Affirmative Action Advisory Committee to prepare a long-term affirmative action plan to guide the university's current plans and future budget requests. The president stated that some of the recommendations in the report have already begun to be implemented. As a result of certain editorial notes and suggested corrections appended to the president's response, we corrected the enforcement agencies responsible for the Age Discrimination Act of 1975 and the Equal Pay Act of 1963, and the duties of the director of personnel at the community colleges.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813



(808) 548-2450
FAX: (808) 548-2693

February 4, 1991

C O P Y

The Honorable Albert J. Simone
President
University of Hawaii
2444 Dole Street
Honolulu, Hawaii 96822

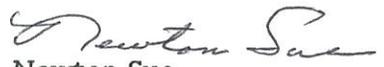
Dear President Simone:

Enclosed are three copies, numbers 6 to 8 of our draft report, *Review of Equal Employment Opportunity and Affirmative Action at the University of Hawaii*. We ask that you telephone us by Thursday, February 7, 1991, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, February 19, 1991.

The Chairman of the Board of Regents, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,


Newton Sue
Acting Legislative Auditor

Enclosures

UNIVERSITY OF HAWAII

PRESIDENT

February 19, 1991

Mr. Newton Sue
Acting Legislative Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

RECEIVED
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OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Mr Sue:

Thank you for the opportunity to comment on your draft report on Equal Employment Opportunity and Affirmative Action at the University of Hawaii. The report is very comprehensive and reflects extensive research on the complex legal and administrative aspects of these issues.

The University is in agreement with many of your recommendations and, in this legislative session, we have already taken steps to present the first in a series of budget requests for EEO/AA programs. Non-budgetary initiatives, such as evaluating administrators' EEO/AA efforts and results, are already underway.

Our immediate goal is to move the University's equal opportunity and affirmative action programs from a reactive stance that is responsive to external enforcement authorities to a proactive, goal-oriented program. Much has been accomplished since our 1984 transition plan with the U.S. Office of Federal Contract Compliance; however, we are still struggling to fulfill certain standards. Thus, the current budget request reflects the staffing and resources required to (1) more adequately fulfill our compliance responsibilities and (2) initiate the planning, educational, and advocacy activities necessary to carry us beyond minimum compliance standards to a more visible and measureable goal-oriented program that will ultimately strengthen the entire academic enterprise.

We recognize that the programs we implement must be backed by long-term planning. Therefore, we intend to form a systemwide Affirmative Action Advisory Committee to respond to your report by preparing a long-term affirmative action plan that will guide our current annual plans and provide informative justifications for future budget requests. Due to the timing of your report and

the nature of our academic calendar, we will form the advisory committee this spring and reconvene in the Fall 1991 semester when it is easier to maintain the continuity of student representation.

Currently, each Chancellor of the University issues an annual Affirmative Action Plan with numerical hiring goals and annual timetables for achieving these goals. The goals are specified for each department/division, by occupational group, sex, and ethnicity. Methods for achieving these goals are spelled out in campus guidelines for recruitment, selection, and appointments and each Chancellor initiates their own means of insuring that additional steps are taken. For example, last year UH Manoa, notified deans and department heads that their affirmative action efforts and results will be evaluated by the Vice President for Academic Affairs; we developed a guidebook for affirmative action recruitment; directives were sent to deans and department chairs informing them of underrepresented groups for their department and campuswide goals; training was provided on EEO/AA leadership for managerial personnel and affirmative action hiring procedures for department chairs; affirmative action was an agenda topic for meetings of the University Executive Council, the Manoa Executive Council, and the Council of Deans and Directors.

Despite these ongoing practices, we agree with your analysis that progress toward achieving our goals has been unsatisfactory. Last year, in response to concerns raised by students and faculty, the Manoa Campus administration outlined a more aggressive, results-oriented plan that would help to strengthen affirmative action programs for the campus. The plan was developed in consultation with student and faculty groups and was based on successful strategies practiced by comparable research institutions, with special consideration for Hawaii's ethnic representation. The concept behind the plan was to provide tangible incentives for achieving goals and more programmatic efforts to eliminate barriers to the academic and professional advancement of women and minorities. Thus, the plan addressed the "pipeline" issues of recruiting and mentoring Hawaii's minority graduate students, a "targets of opportunity" or TOPS program with a pool of faculty positions to achieve annual faculty hiring goals, mentoring and dual careers programs to retain women and minority faculty, equity studies to assist the University in identifying any pay inequities for staff and faculty and to improve the workplace climate for women and minorities, an Office of Sexual Harassment Policy Enforcement (OSHPE), and, most important, educational programs directed towards students and employees to promote nondiscrimination on campus. In addition, a proposal was made to increase the staff support of the Manoa Campus EEO/AA Office so that it could better

Mr. Newton Sue
February 19, 1991

Page 3

handle its current workload and be more active in educational, planning, and coordination activities related to these initiatives.

Proactive affirmative programs require additional resources. Thus, we placed the above plan as the second highest priority on the University's budget, next to academic advising. We regret that only three elements of this plan survived the budget review process, since each element was developed as part of an interactive plan. For this reason, we believe the Auditor's report has concluded that the OSHPE is an inappropriate allocation of resources when compared to the two surviving elements of the plan. We disagree with this conclusion. The OSHPE addresses an important equal opportunity issue on the Manoa Campus: the issue of sexual harassment. Studies of the Manoa Campus and numerous national studies have shown that behavior of a sexually harassing nature is prevalent in schools and the workplace. The best means of preventing this type of behavior is by changing attitudes. The OSHPE will accomplish this in two ways. First, by providing campuswide education on gender equity issues for all persons. Second, by devoting resources to a model complaint procedure and advocacy services to students, OSHPE sets an example of how strongly the University is committed to its policy of nondiscrimination. In the context of our overall plan, the OSHPE serves as a model for other types of EEO/AA policy education and enforcement.

The University is in full agreement with your recommendation to increase staff support for the EEO/AA Office. As you have noted in your report, the typical full time staffing for a campus the size of UH Manoa is an executive secretary or administrative assistant, a data manager or research analyst, and an investigator. Our current biennium budget request mirrors this staffing pattern, except that we have included a Section 504 handicap access officer who would provide systemwide technical assistance on facilities, academic, and employment access for the disabled. University facilities and grounds on all campuses have been cited for violations of federal standards for handicap access. We are currently under a five year transition plan involving extensive capital improvement and repair and maintenance renovations. These costs are also included in our biennium budget request.

I will be consulting with the Chancellors regarding your recommendation for a systemwide EEO/AA Office. Funding to support this comprehensive level of services is not in our current budget proposal. For example, given the delegation of authority, it may be more appropriate to establish an independent EEO/AA office under the Chancellor for Community Colleges. The organization of that office would be similar to the Manoa Campus,

Mr. Newton Sue
February 19, 1991

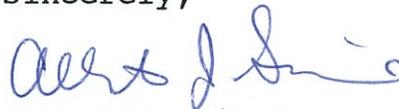
Page 4

i.e., with sufficient staff to separate the counseling and investigative functions and to carry out proactive, goal-oriented affirmative action programs. An advocate position could be established in the Chancellor's Office to work with students and other individuals with sexual harassment and discrimination complaints.

The report has helped to clarify the institutional responsibility and legal mandate the University has to investigate complaints, render decisions, and take corrective actions. These roles are often perceived as duplicative of external EEO agencies or "conflicting interests" because it is assumed that the University's self-interests are in some way in conflict with affirmative action practices. On the contrary, the University has a strong self-interest in EEO/AA. Equal opportunity and affirmative action programs reflect sound management practices and values that are integral to our academic mission. Furthermore, the University has a legal obligation to correct discriminatory practices when they occur by establishing compliant procedures, investigating complaints of discrimination and retaliation, rendering decisions on complaints, and taking remedial action if merited. Federal enforcement agencies do not view these roles as duplicative of external agency functions. University offices for victims of discrimination such as campus EEO/AA offices are federally mandated and intended to prevent and correct discrimination at the most immediate and accessible level.

In closing, I would like to thank you for your comprehensive and thoughtful report on issues of great concern to the University. We have already begun to implement some of your recommendations and look forward to working with you as you monitor our progress.

Sincerely,



Albert J. Simone
President, University of Hawaii and
Chancellor, University of Hawaii at

Manoa

Attachment

Attachment 1

Editorial Notes and Suggested Corrections

P. 1, par. 1, line 7

The EEO officer's role has often been described as having numerous, conflicting responsibilities. The EEO/AA officers of the University do not recommend sanctions and under our new complaint procedures, do not make determinations of cause.

Under previous compliant procedures for the Manoa Campus, the EEO/AA Director did have responsibility for making Step 1 decisions that could be appealed to a higher level official. We believe there were independent decisions because the EEO/AA Director does not have line authority over employees and is the campus advocate for EEO/AA enforcement. However, in response to concerns raised about possible conflicting roles, the investigative and decision making roles have now been separated.

P. 5, par. 4

The Age Discrimination Act of 1975 is enforced by the U.S. Department of Education, Office for Civil Rights and not the U.S. Equal Employment Opportunity Commission (EEOC)

P. 6, par. 5

The U.S. EEOC enforces the Equal Pay Act of 1963.

P. 7, par. 2

For postsecondary educational institutions, Section 504 is enforced by the Office for Civil Rights, U.S. Dept. of Education. Section 503 is enforced by the Office of Federal Contract Compliance, U.S. Dept. of Labor. In any case, both Section 503 and Section 504 should be listed under your topic "Laws affecting disabled persons," on page 7.

P. 7, par. 4

The Americans with Disabilities Act of 1990 is enforced by the U.S. EEOC.

P. 8, par. 4, line 5

EEO officers do not serve as advocates for complainants, thus there is no conflict of interest between the EEO officer's investigative role and advocacy role. EEO officers, like civil rights commissions and state and federal enforcement agencies, are advocates for compliance with equal opportunity and affirmative action laws. The EEO officer's duty is to inform complainants of their civil rights but not to serve as their personal advocate. Only after an EEO officer or enforcement agency investigates a complaint and finds proper cause will they advocate on behalf of the complainant to insure that corrective action is taken.

There are several types of EEO advocacy on college campuses. Personal advocates for complainants are usually friends, colleagues, or paid advocates such as union agents or attorneys. Personal advocates fully support and represent the complainant's position and are not intended to be neutral in their views. Program advocates focus on needs of a particular segment of the campus community. A number of universities have program advocates who head affirmative action programs such as women's centers, programs for minority or nontraditional students, disabled student services programs, etc. Their primary role is to advocate for issues rather than individuals, however, they often provide personal counseling and moral support for the people they serve.

P. 14, last two paragraphs

Many faculty and staff, such as lecturers and casual hires, do not have a union advocate because they are not covered under a collective bargaining agreement.

P. 16, par. 2 ("Few Complaints")

The proposed sexual harassment office would do more than just handle complaints. It would provide education on gender equity issues, counseling, and advocacy. For this reason, the need for the office was not based on the number of complaints but on studies that reflect the prevalence of this form of discrimination.

The U.S. Merit Systems Protection Board has conducted two massive studies of the incidence of sexual harassment among white collar federal employees. In their study, about 42% of women and 14% of men reported that they experienced sexually harassing behavior on the job. In surveys of the Manoa Campus, about 18% to 26% of students and employees report such experiences while at the University.

P. 13, last par.

The first sentence should be corrected to read "The EEO/AA Office at the Manoa Campus consists of a full time staff of one . . ." On a systemwide level, each campus has a part-time EEO/AA coordinator accessible to students and employees. As noted later in the report, most of these coordinators have regular full-time responsibilities as faculty or counselors. In addition, the Chancellor for Community Colleges has a Director of Personnel and EEO/AA who provides central administrative support and oversight for the campus EEO/AA coordinators.

P. 21 and 22

All of the campus affirmative action plans contain numerical hiring goals and annual timetables for achieving these goals. The goals are specified by job group or academic department/field, sex, and ethnicity.

P. 26, last par.

Second and third sentences should be corrected to read:
"The personnel director for community colleges takes care of matters dealing with discrimination in employment, sexual harassment, development of the systemwide affirmative action plan, training, and personnel matters oriented towards faculty and non-faculty employees. Another specialist in the chancellor's office handles matters related to Section 504 (handicap access) of the U.S. Office for Civil Rights.



Board of Regents of the University of Hawaii

February 13, 1991

Chairperson

Dr. Kenneth N. Kato

Mr. Newton Sue
Acting Legislative Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

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OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Mr. Sue:

Vice-Chairperson

Mr. H. Howard Stephenson

On behalf of the University of Hawaii Board of Regents, I wish to thank you for the opportunity to review your draft report entitled "Review of Equal Employment Opportunity and Affirmative Action at the University of Hawaii." I understand that the President will comment in detail on the report's administrative recommendations. Therefore, I will focus my comments on policy matters related to the Board's oversight responsibilities.

Members

Mr. Robin K. Campaniano

Ms. Momi W. Cazimero

Mr. Edward M. Kuba

Dr. Ruth M. Ono

Ms. Diane J. Plotts

Mr. Herbert M. Richards, Jr.

Mr. Roy Y. Takeyama

Mr. John T. Ushijima

Mr. Dennis R. Yamada

Your primary recommendation to the Board (page 13) is already being addressed. Last fall, the Board asked the University administration to draft a revised policy on EEO and affirmative action and a new policy on sexual harassment. The Board is eager to adopt a strong and forward-thinking policy. We believe that the recent controversies over affirmative action issues make this an opportune moment to publicly reaffirm our position.

At our October 1990 meeting, the Board took a very critical look at the administration's affirmative action budget proposals. The Board's actions in approving and disapproving certain items reflect our open commitment to an affirmative action program that is well-planned and has a decided impact.

The Board felt that certain administration proposals were premature given the information at hand. For this reason, the Board augmented the dollar amount for the proposed pay Equity Study and changed it to Affirmative Action Studies. In the Board's opinion, the University should look more broadly at barriers to the recruitment and retention of women and minorities. With documentation and feasibility studies, the Board and the administration will be in a better position to justify the University's affirmative action proposals as fiscally responsible, with clear purpose and properly targeted impact. The Affirmative Action Studies will help to address several of items noted on pages 20 and 21 of the Auditor's report.

Mr. Newton Sue
February 13, 1991
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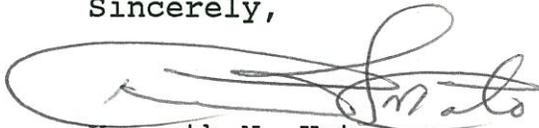
With some modifications, the Board also approved the administration's proposed Office of Sexual Harassment Policy Enforcement (OSHPE). We disagree with the Auditor's recommendation that the OSHPE is not necessary. The Board feels that the need for the program has been well documented and backed by campuswide planning and policy revision. The OSHPE proposes to provide policy enforcement, student advocacy, preventive educational services, and personal counseling. The Board recognizes that it does not address all issues of discrimination; however, it can have a strong symbolic and material impact on a civil rights issue of current importance.

The programs that the Board did not support have not been rejected in concept. The Board was simply not convinced that these were the appropriate priorities. The administration was asked to report to the Board with more adequate and persuasive rationales for the Targets of Opportunity Programs and other affirmative action strategies. In this respect, we are in agreement with your recommendation on page 21 of the report regarding a re-examination of the University's policy and program on affirmative action. The Board expects that, as a result of the report, the University administration will develop a comprehensive plan that will add teeth to the current annual affirmative action plans issued by the Chancellors.

In closing, the Board wishes to reaffirm its commitment to taking more aggressive leadership in the area of affirmative action. In doing so, we plan to build on the existing strengths and accomplishments of the many University administrators throughout the UH system.

Thank you for considering our comments on your draft report. We appreciate the time and care that went into its preparation, and we look forward to a period of transition toward a more proactive affirmative action program.

Sincerely,



Kenneth N. Kato
Chairperson, Board of Regents

KNK:mm

cc: Members, Board of Regents
President Albert J. Simone