



October 19, 2012

James R. Gaines, Ph.D.  
Vice President  
Office of the Vice President for Research  
University of Hawaii System  
2800 Woodlawn Drive, MIC 201  
Honolulu, HI 96822

Re: Proposed Executive Policy E5.229 Whistleblower and Retaliation Policy for  
Allegations of Research and Scholarly Misconduct

Dear Vice President Gaines:

UHPA has reviewed the proposed Whistleblower and Retaliation Policy E5.229. While we are cognizant of the need to have appropriate executive policies in place to ensure research integrity, there are substantive problems with E5.229. UHPA has identified defects that will lead to serious problems in implementation and enforcement for both administrators and faculty members.

In the past UHPA has commented extensively on the contents and interpretations of proposed research integrity policies noting there are obligations under Chapter 89 H.R.S. and the collective bargaining agreement to represent faculty members in these circumstances. Our assessment of E5.299 indicates that there was a failure to evaluate the relative relationship between existing policy with an eye towards competing concepts of operational definitions, procedures, and investigations.

The proposed E5.229 is duplicative of E5.211. Both policies address retaliation and misconduct leading to competing policies and procedures. UHPA suggests that UH consider one policy that incorporates the concepts necessary to fulfill the needs of the UH as well as the federal government. A proliferation of policies adds unnecessary complexity and the potential for conflicting outcomes.

There exist contradictions between provisions of proposed E5.299 and existing E5.211. An example includes two different statutes of limitations. E5.211 references six years while E5.229 speaks to 180 days. With both policies addressing retaliation and misconduct these differences cannot easily be reconciled.

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There are provisions for fact finders and a Deciding Official appointed by the UH President. It is unclear whether the same fact finders and Deciding Official would be engaged in both the E5.211 complaint and the E5.299 retaliation charge; or whether there is a separation of authority which can result in different and conflicting outcomes. Applying the standards of "good faith" can result in divergent findings among reasonable persons dealing with the same facts in bifurcated forums.

Finally, UHPA notes that where a faculty member is participating in an ethics investigation, they are disqualified from participation in any department personnel deliberations regarding the accused for three years following the termination of an appointed investigator. Any proposed or modified policy must confirm to these principles.

The UHPA review reflects the top line concerns, but we note there are other problems. UHPA believes it is important that UH reconcile these policies that undermine each other and seek additional consultation with us.

Sincerely,  
  
Kristeen Hanselman  
Associate Executive Director

cc: Thomas Apple, Chancellor, UHM  
Ching Yuan Hu, Interim Assistant Vice Chancellor for Research and Graduate  
Education and Research Integrity Office, University of Hawaii  
J.N. Musto, Executive Director, UHPA