



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Resolution of Charge **2021-02**

(COMPL-C-18-00352)

University of Hawai‘i Employee’s Violation of the Fair Treatment law

November 17, 2021

The Hawai‘i State Ethics Commission (“Commission”) has resolved a Charge issued against Sarita Rai (“Respondent Rai”), Director, Study Abroad Center (“SAC”), University of Hawai‘i, for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

I. Facts

Respondent Rai admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) Respondent Rai, at all times relevant herein, was employed by the University of Hawai‘i at Manoa (“University”), a state agency, as the Director of the Study Abroad Center (“SAC”).
- b) Respondent Rai, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Rai is and was required to comply with the State Ethics Code.
- c) Respondent Rai asserts that she is not in the class of employees subject to mandatory ethics training in HRS § 84-42. Respondent Rai further asserts that she is not required by the University to participate in voluntary ethics training available on the State Ethics Commission’s website and that she has not received training of any kind on the Hawai‘i State Ethics Code.

¹ This Resolution does not make formal findings; instead, the Commission relies on the facts admitted by Respondent Rai.

- d) Respondent Rai joined the SAC as a junior faculty member in 1990 and became Director of the SAC in 1995.
- e) Beginning prior to Respondent Rai's hire and becoming Director of the SAC in 1995, and continuing until late 2018, the SAC's practice was to offer an International Student Identity Card ("ISIC") for purchase to participants in SAC study-abroad programs.
- f) According to its website, the ISIC – produced and distributed by the ISIC Association, a private non-profit organization – “allow[s] students around the world to instantly prove their official student status and access over 150,000 student discounts and offers worldwide.” See ISIC, “Which card is right for you?”, available at <https://www.isic.org/cards/>.
- g) Beginning prior to Respondent Rai's hire and becoming Director of the SAC in 1995, and continuing until early 2019, the SAC maintained a bank account at First Hawaiian Bank (“FHB”) for ISIC funds (hereinafter, “FHB-ISIC account”). Respondent Rai did not establish the FHB-ISIC account, nor did she initiate the practice of selling ISICs to participants in the study abroad program; instead, these practices existed before Respondent Rai became Director in 1995. At the time, Respondent Rai was informed and understood that the funds generated from the sale of ISICs to participants were neither SAC funds nor University funds. The FHB-ISIC account was a non-interest-bearing account to support SAC activities.
- h) Students participating in study abroad programs who wished to purchase an ISIC from SAC were instructed to deliver a personal check to SAC, written out to “ISIC.” SAC staff then deposited those checks into the FHB-ISIC account. SAC used funds from the FHB-ISIC account to make bulk purchases of ISICs from the ISIC Association.
- i) According to Respondent Rai, the ISIC Association set the retail price for the ISICs. In recent years, the retail price was set at \$25.
- j) Respondent Rai maintains that the \$25 collected for the ISIC was not a mandatory fee, and that students had a choice as to whether to purchase the ISIC. Indeed, in a 2018 student packet for an SAC program, the \$25 ISIC fee was listed as an “additional requested item[]” – along with a photograph and a deposit of \$500 – following a list of mandatory documents.
- k) The actual per-card cost to SAC, when purchased in bulk, was \$21.25. Students were charged \$25.00 for the ISIC. As such, SAC was left with an excess of funds – in the amount of \$3.75 – for each card sold. Approximately 200-250 students participated in SAC programs each year, and most purchased an ISIC through the SAC.

- l) When Respondent Rai became Director of SAC in 1995, the FHB-ISIC account contained around \$50 at most. When the FHB-ISIC account was closed in 2019, the balance was approximately \$9,592.53. The balance of funds in the FHB-ISIC account came almost exclusively from the excess per-card funds from students' purchases of ISICs.
- m) As Director, Respondent Rai had access to the FHB-ISIC account directly via a debit card. Respondent Rai and two SAC staff were signatories on the FHB-ISIC account. SAC staff reimbursed Respondent Rai from the FHB-ISIC account for expenditures she made using personal funds. SAC staff members were reimbursed from the FHB-ISIC account for certain expenditures they made with their personal funds. Reimbursements were made based on actual receipts and all transactions were recorded on the FHB-ISIC account check register.
- n) The University has extensive fiscal policies regarding the use of University funds – that is, funds received from students as tuition and fees (Tuition and Special Funds – TSF) and/or funds appropriated by the Legislature (General – G funds) and funds generated by University activity. Except for three G funded salaries, no other funds from the University are allocated to the SAC. All other SAC operational costs are generated through Study Abroad fees paid by each student who participates in overseas Study Abroad programs. Study Abroad fees are deposited and expended through the Research Corporation of the University of Hawai'i ("RCUH"). Similarly, the University of Hawai'i Foundation ("UH Foundation") – a private, 501(c)(3) organization that serves as the central fundraising organization for the University of Hawai'i System – has extensive policies on the use of donor funds. As a general rule, neither University funds nor UH Foundation funds may be used for parties, holiday events, or social events for University staff. Only under rare circumstances, and with prior approval of the Dean/Vice Provost and/or UH Foundation account authorizer, can a manager celebrate an individual staff or group's extraordinary accomplishments by providing a meal that can be reimbursed with UH Foundation funds. Alcoholic beverages can only be reimbursed with UH Foundation funds for UH business meetings with prior approval.
- o) From 2015 to 2018, Respondent Rai and SAC staff used FHB-ISIC account funds for roughly two dozen expenditures on food and beverages totaling \$4,305.14, including the following:
 - i. On approximately eight occasions between 2015 and 2018, while Respondent Rai and/or other SAC employees were meeting and dining with representatives from other universities, Respondent Rai authorized the expenditure of funds from the FHB-ISIC account to pay for alcohol.

- ii. Respondent Rai and/or SAC staff used FHB-ISIC account funds to pay for food and alcohol for SAC's annual holiday luncheon in 2015, 2016, and 2017. These annual holiday events, held in December, were advertised as "thank you" events for other University staff and SAC volunteers.
- iii. Respondent Rai asserts as follows: these events allowed for recruitment of potential faculty advisers and the evaluation of the SAC programs with participants. The recruitment and evaluation are conducted by Respondent Rai and faculty members of the Study Abroad Council who are appointed by the University of Hawai'i at Manoa Faculty Senate. The SAC operates very differently from most study abroad programs in the rest of the United States. Respondent Rai asserts that, in most universities, the study abroad program's function is contracted out to a third-party that handles all of the details of student involvement. Faculty at those universities have little or no involvement in the study abroad program. However, at the SAC, faculty are an integral component of the study abroad program and are recruited to serve as a Resident Director for a program location.
- iv. Respondent Rai further asserts as follows: Resident Directors are required to demonstrate that they have: a) the ability to work well with undergraduate students; b) provide an appropriate syllabus for classes to be taught at the site; and c) detail how their selection as a Resident Director will assist their own individual research endeavors. The faculty applicant must also demonstrate how they will work with the students to assist students gain a better understanding of how another culture operates. Additionally, the applicant Resident Director must provide a confidential reference from their Department Chair which will address the four areas mentioned above. Finally, the Dean of the college of the faculty applicant must sign off on the application before the SAC will review the application. Applying for a Resident Director assignment is not a simple task, given the need to demonstrate competence in the areas mentioned above. Thus, there is a critical need to ensure a steady supply of Resident Director applicants.
- v. Respondent Rai further asserts as follows: she works with individual department chairs and deans to smooth the application process. Special presentations are offered to all faculty to assist them in completing a successful application as a Resident Director. However, over the years it has been clear

that the most successful recruitment tool is one faculty member working with another faculty member on a one-to-one basis. This can happen in a variety of situations, but the Study Abroad Council and Respondent Rai have determined over the decades that the SAC holiday event, bringing together past Resident Directors and potential Resident Directors has proved to be the best recruitment tool. Respondent Rai and the Study Abroad Council use the annual SAC holiday event to personally thank the Resident Directors and discuss their time on site with them, to recruit Resident Directors for potential new sites, to thank administrators for assisting their faculty and discuss and evaluate the program. This is the business function aspect of the SAC holiday event.

- vi. Unlike SAC's formal information sessions offered once a year in September, the holiday luncheons were invitation-only events for SAC staff, student volunteers, and University administrators, among others, with alcohol, and without a formal program for recruitment.
 - vii. Respondent Rai used personal funds and personal funds from the SAC Council Chair to pay for the 2018 holiday luncheon after being instructed by her superiors to cease spending any funds from the FHB-ISIC account.
- p) Respondent Rai contends that each of the above-referenced expenditures for food and alcohol was connected to SAC business – that is, in each instance, the expenditure supported an SAC-related event or a relationship with an individual at another university with which SAC interacts.
- q) Respondent Rai did not submit a request to expend University funds and/or UH Foundation funds for any of these purchases. Respondent Rai used or authorized the use of FHB-ISIC account funds, which she (and two other signatories) controlled in her capacity as Director of the SAC, to pay for or to reimburse herself or other SAC staff for these purchases. Respondent Rai erroneously believed that the FHB-ISIC account funds were private funds that could be used for these purchases.
- r) The University conducted its own investigation beginning in 2018 and concluding in late 2020. The University determined that the FHB-ISIC account funds belonged to the University. Respondent Rai accepted the conclusion that monies in the FHB-ISIC account were University funds. The University further found that Respondent Rai violated certain administrative and fiscal policies and issued a written reprimand to Respondent Rai, ordered an audit of SAC funds, and directed her to take

further corrective action. The University instructed Respondent Rai to cease collecting money from students for ISICs and to transfer all funds in the FHB-ISIC account to the University, and Respondent Rai did so. The University noted that Respondent Rai's expenditures from the FHB-ISIC account for lunches/dinners when partner institutions visited and end of the year parties, etc., were for SAC events and activities and that there was clearly no personal gain by Respondent Rai in collecting such fees. The University did not request that Respondent Rai reimburse the University for any of the expenditures from the FHB-ISIC account funds.

- s) Respondent Rai has not been involved in prior Commission proceedings and she has cooperated with the Commission's investigation.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the declaration contained in the State Constitution that "[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government."² To this end, the Hawai'i Constitution further directs that the Legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

In accordance with this constitutional mandate, the Legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law "so that public confidence in public servants will be preserved."³ Additionally, the Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee's actions.

B. Application of the State Ethics Code to Respondent Rai

At all times relevant herein, Respondent Rai was a state employee⁴ and was bound by the State Ethics Code's Fair Treatment law, HRS § 84-13(a), which provides in relevant part:

² Hawai'i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

⁴ HRS § 84-3.

§84-13 Fair treatment. (a) No . . . employee shall use or attempt to use the . . . employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others. . . .

Respondent Rai admits that she violated the Fair Treatment law, HRS § 84-13(a), by using, and/or authorizing the use of, FHB-ISIC account funds on approximately two dozen occasions between 2015 and 2018 to purchase food and alcohol, totaling \$4,305.14, for herself and others. In short, the ISIC-FHB account funds belonged to the University, and – as a general rule – state officials may not use state funds on parties, holiday events, and/or social gatherings for themselves. Indeed, the University’s own policies are clear on this point. Of course, nothing prohibits the SAC staff from using personal funds for social gatherings or to purchase alcohol to accompany a meal. However, Respondent Rai violated the Fair Treatment law by using FHB-ISIC account funds – that is, money that came directly from University students – to pay for SAC holiday luncheons and alcohol.

The Commission rejects Respondent Rai’s contention that, because the SAC holiday “thank you” luncheons included some discussions of SAC programs, the expenditure of University funds was warranted. Respondent Rai publicized these events as “thank you” parties with food and alcohol, not as events for program evaluation and recruitment. The fact that some “networking” activity may have occurred at the holiday parties is not sufficient to justify the expenditure of public funds. The use of public funds for this kind of event is against the law.

III. Resolution of Charge

Respondent Rai fully cooperated with the Commission’s investigation and has not previously been the subject of a Commission charge.

Given the violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve this Charge by (1) issuing this Resolution of Charge, and (2) requiring Respondent Rai to pay an administrative penalty of \$5,500 to the State of Hawai’i.