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| Title | Sexual Violence and Misconduct Policy – Students and Employees |
| Policy Area | Operations – Human Resources |
| Policy Number | E.2.16 |
| See also <i>(related policies and documents)</i> | Discrimination, Bullying and Harassment Policy Violent and Threatening Behaviour Policy Student Non-Academic Conduct Policy Code of Ethical Practices Policy Use of Information Technology Resources Policy Social Media Policy Safe Disclosure Policy Collective Agreements |

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| Effective Date of Policy: | June 26, 2019 |
| Approval Date: | June 25, 2019 |
| Applies to: | Students, Employees, Members of the Board of Governors |
| Approving Body: | Board of Governors |
| Supersedes: | Sexual Violence and Misconduct Policy June 29, 2016 |
| Authority: | College and Institute Act Sexual Violence and Misconduct Policy Act BC Workers Compensation Act Occupational Health and Safety Regulations |

The following is responsible for the administration of this policy:

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| Primary Office | Contact |
| Student Services | Vice President, Students |

1.0 General Statements

- 1.1 Individuals who have experienced Sexual Violence and Misconduct will be treated with compassion, dignity and respect. The College does not condone or tolerate any form of Sexual Violence and Misconduct, and is committed to creating and maintaining a learning and working environment characterized by mutual respect, safety, civility and free inquiry.
- 1.2 Safety at the College is a priority. The College will address Sexual Violence and Misconduct in the College Community through support, awareness, training and prevention programs, and appropriate handling of Complaints and Disclosures of Sexual Violence and Misconduct.
- 1.3 The College is committed to encouraging individuals to bring forward complaints or concerns about Sexual Violence and Misconduct. The College seeks to remove barriers to, and will not penalize individuals, for the making of good faith Complaints or Disclosures.
- 1.4 The College will respond to Complaints under this policy with processes that are consistent with College policies and with the principles of procedural fairness.
- 1.5 There is no time limitation for a Student or an Employee to bring forward a Complaint or Disclosure under this policy.

2.0 Purpose

- 2.1 The purpose of this policy is to clearly state the College's commitment to addressing Sexual Violence and Misconduct through:
 - a) creating a learning and working environment in which Sexual Violence and Misconduct is not tolerated;
 - b) promoting a culture of Consent to prevent Sexual Violence and Misconduct;
 - c) establishing a fair, supportive and effective response to Complaints and Disclosures of Sexual Violence and Misconduct;
 - d) providing education to the College Community about prevention of Sexual Violence and Misconduct;
 - e) assisting those who have experienced Sexual Violence and Misconduct by providing information and support, including provision of and/or referral to counselling and medical care, and appropriate academic and/or other accommodations;
 - f) defining the roles of individuals for implementing and carrying out the programs and practices contemplated in this policy; and
 - g) using clear, appropriate and fair processes for handling Complaints and Disclosures of Sexual Violence and Misconduct.
- 2.2 See the following link for internal and external resources to assist those who have experienced Sexual Violence and Misconduct. A Disclosure or a formal Complaint of Sexual Violence and Misconduct do not have to be filed to obtain these supports.

http://www.okanagan.bc.ca/Campus_and_Community/Safety_Security/Sexual_Violence.html

3.0 Confidentiality

- 3.1 The College recognizes that confidentiality is an important principle in creating an environment where those who have experienced Sexual Violence and Misconduct can feel safe to disclose and seek support.
- 3.2 The privacy and confidentiality of all members of the College Community involved in any report of Sexual Violence and Misconduct will be protected by the College to the extent permitted under applicable law.
- 3.3 The College does not make disclosures of information related to Complaints or Disclosures except as necessary and is reasonable in the circumstances, including for the protection of health or safety, required or authorized by law, or if the person the information is about has consented to the release of the personal information.

4.0 Scope and Application

- 4.1 This policy applies to Students, Employees, members of the Board of Governors, contractors, volunteers and visitors in a College-Related Activity.
- 4.2 Procedures under the College's [Discrimination, Bullying and Harassment Policy](#) will govern the investigation and/or resolution of the Complaint process for this policy. There are no time limitations for a Student or an Employee to bring a Complaint under this policy.
- 4.3 This policy is not intended to supersede or interfere with collective agreements or other legal processes.
- 4.4 Anyone who has experienced Sexual Violence and Misconduct has the right to pursue criminal or civil legal avenues whether or not they choose to file a Complaint or make a Disclosure under this policy.
- 4.5 All processes under this policy will be undertaken in compliance with principles of procedural fairness and will appropriately protect the rights of both the person making a report of Sexual Violence and Misconduct and the person accused.

5.0 Definitions

Capitalized terms in this policy shall have the meanings set out below, and references to a "person" or "individual" in this policy shall be interpreted as referring to all persons regardless of gender, sexual orientation or gender identity.

- 5.1 **College-Related Activity** includes an activity occurring on College property, at College sanctioned events or conducted under the authority of the College. A College-Related Activity is an activity that has a real and substantial connection to the College, College activities or College-related functions, whether or not the conduct occurred on College property, in person or online.
- 5.2 **College Community** means Students, Employees, members of the Board of Governors of the College, contractors, volunteers and visitors.

5.3 **Complaint** means a verbal or written report made to the College (see below - s.6.3 Option 3: (a), (b) and (c)) by an individual about Sexual Violence and Misconduct occurring at or in connection with a College-Related Activity. A Complaint can be made by a person who has experienced Sexual Violence and Misconduct or who has been a witness to Sexual Violence and Misconduct.

5.4 **Consent** means an agreement between individuals that is active, direct, voluntary, un-coerced, ongoing, unimpaired and based on a conscious choice to engage in sexual activity. Consent can be withdrawn at any point.

For example:

- a) Consent can never be assumed or implied;
- b) Consent cannot be given by someone who is incapacitated by drugs or alcohol, asleep, unconscious or otherwise lacking the capacity to give consent;
- c) Consent can be withdrawn regardless of whether other sexual activities or previous agreements to sexual activity have taken place;
- d) Consent only applies to each specific instance of sexual activity;
- e) Consent to one kind of sexual activity does not mean that Consent is given for another sexual activity; and
- f) Consent cannot be obtained through threats, coercion or other forms of control and intimidation, which includes an abuse of a position of trust, power or authority.

5.5 **Disclosure** refers to the act of reporting or informing the College (see below s.6.2) about an incident or experience of Sexual Violence and Misconduct, whether or not that individual chooses to make a Complaint or take other action. A Disclosure can be made for the purposes of obtaining support and services and/or learn about options to make a formal Complaint.

5.6 **Employee(s)** means any person employed (or who has an appointment) by the College, and includes members of the Board of Governors for the purposes of this policy.

5.7 **No-Contact Direction** means a directive from the College to a person to refrain from contacting or interacting with another person, or any other directive as may be determined by the College.

5.8 **No-Contact Undertaking** means an agreement, mutually undertaken by two or more people, to refrain from contacting or interacting with one another based on specified conditions.

5.9 **Sexual Violence and Misconduct** includes sexual violence and means any contact or conduct of a sexual nature or act targeting a person's sexuality, whether the act or contact/conduct is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's Consent, and includes without limitation:

- a) sexual assault;
- b) sexual harassment;
- c) stalking;
- d) indecent exposure;

- e) voyeurism;
- f) sexual exploitation; and
- g) non-consensual distribution/posting of sexually explicit image(s) in multi-media of a person to one or more persons.

5.10 **Sexual Assault** means any contact of a sexual nature undertaken without consent from all participants, which:

- a) may include a range of sexual activities, including sexual touching, kissing, oral sex or vaginal or anal penetration;
- b) includes sexual contact that is forced, manipulated or coerced;
- c) can occur if the person accused is a partner, friend or acquaintance, a person in a position of authority or a stranger;
- d) can occur between individuals regardless of sexual orientation, gender, gender identity or relationship; and
- e) can occur when an individual engages in sexual activity with another person they know or ought reasonably to have known is mentally or physically incapable of giving or refusing Consent, such as when a person is unconscious, blacked out, intoxicated through the use of alcohol or drugs or otherwise incapable due to a mental or physical disability.

5.11 **Sexual Harassment** means unwelcome conduct of a sexual nature, including conduct of verbal, physical or non-verbal nature, where the person responsible for the remarks, behaviours or communications knows or ought reasonably to know that such conduct is unwelcome and the conduct has a detrimental effect on the learning or working environment. It includes, but is not limited to:

- a) when submission or tolerance of the conduct is made:
 - i) as a term or condition of educational or employment progress; or
 - ii) the basis for an educational decision or an employment decision;
- b) when the conduct has the effect of creating an intimidating, hostile or offensive learning or working environment or otherwise interferes with a person's educational or work performance.

Examples of Sexual Harassment include:

- a) sexual solicitations, advances, remarks, suggestive comments and gestures (including songs and chants);
- b) the inappropriate display of sexually suggestive pictures, posters, objects or graffiti;
- c) non-consensual distribution/posting of sexually explicit image(s) in multi-media of a person to one or more persons, aggressive comments and slurs on any form of social media;
- d) physical contact of a sexual nature; and
- e) sexual conduct that interferes with an individual's dignity or privacy such as voyeurism and exhibitionism.

5.12 **Stalking** is conduct that causes an individual to reasonably fear for their physical or mental safety, such as by:

- a) repeatedly following a person or someone known to them;
- b) repeatedly communicating with a person or someone known to them;

- c) besetting or watching a person's home, or place where the person, or someone known to them, resides, works, carries on business or happens to be; or
- d) engaging in threatening conduct toward another person or a member of their family.

These behaviours may include, but are not limited to, non-consensual communications (face to face, phone, email, social media), threatening or obscene gestures, surveillance, sending repetitive unwanted gifts and uttering threats.

5.13 **Student(s)** means any person enrolled as a student at the College.

6.0 Procedures – Making a Complaint or Disclosure

- 6.1 The College encourages all Students and Employees to report Sexual Violence and Misconduct so that it can be addressed. While there is an expectation that Employees who receive a Disclosure of Sexual Violence and Misconduct will provide the College with notice if the Disclosure reveals the presence of a safety risk in the workplace, any such report by an Employee will, to the extent possible, be handled in a manner respectful of the wishes and privacy of the individual making the Disclosure.
- 6.2 The College makes the following **options** available to all Students and Employees who experience or witness Sexual Violence and Misconduct, or have reason to believe that Sexual Violence and Misconduct has occurred or may occur:

Option 1. Disclosure - with or without a formal Complaint:

A person who experiences or witnesses Sexual Violence and Misconduct may choose to make a Disclosure. For these situations, supports are available whether or not the individual chooses to make a Complaint under this Policy. A person who Discloses may choose to make a formal Complaint at a later date. A Disclosure without a Complaint will not initiate a process to investigate the Sexual Violence and Misconduct incident or engage any resolution process.

- a) Students may make a Disclosure to a counsellor in [Counselling Services Office](#) to access available support, academic accommodations and interim measures;
 - b) Employees can seek assistance through the College's [Employee and Family Assistance Program](#) and may seek appropriate accommodations.
- 6.3 While the College supports the ability of an individual to make informed choices about whether to pursue the filing of a Complaint and the subsequent investigation, in some circumstances the College may be obliged to investigate or respond to a Disclosure when Student and Employee health and/or safety is at risk, and in other legally compelling circumstances.

Option 2. Criminal Reporting:

An individual may make their report through the criminal justice system by contacting the RCMP or local police detachment. If an individual chooses this

route, the College, through its Counsellors, Program Deans/Regional Deans, and Human Resources Advisors are available to support making contact with the RCMP/police. An individual wishing to make a report to police is not required to involve the College. The College will cooperate with any criminal investigation.

Option 3. Complaint (formal):

A Complaint may be made to the College as follows:

- a) For a Student - Complaint should be made to:
a [counsellor in Student Services](#);
Director, Student Services;
Program Dean; or
Regional Dean.
- b) for an Employee, contractor, volunteer or visitor - Complaint should be made to:
[Human Resources Advisor](#);
Program Dean;
Regional Dean; or
Director.
- c) for Board members - Complaint should be made to the Board Chair or Vice-Chair.

6.4 The College will investigate all Complaints, and in appropriate circumstances, may facilitate a resolution process. A Complaint under this policy must concern Sexual Violence and Misconduct in connection with a College-Related Activity. When a Complaint is investigated there will be disclosure of information to the extent necessary to conduct a fair investigation.

6.5 Except where otherwise stated in this policy, the procedures under the College's [Discrimination, Bullying and Harassment Policy](#) will govern the investigation and/or resolution process under this policy. The College will ensure that an investigator appointed to investigate Sexual Violence and Misconduct is experienced and familiar with this policy.

6.6 The College reserves the right to specify alternate processes for the handling of a complaint lodged by a member of the College Community who is not a Student, Employee or member of the Board of Governors.

7.0 Interim Measures or Restrictions (Temporary Measures)

7.1. Prior to the commencement of an investigation or resolution process, or as a result of a Disclosure, the College may impose interim measures (temporary measures or restrictions before an investigation or resolution process is commenced or concluded) as may be appropriate for safety of the individuals involved and the College Community. Interim measures may include, but are not limited to:

- a) alteration of the academic schedule of any student involved in an incident of Sexual Violence and Misconduct;
- b) No-Contact Undertaking or No-Contact Direction;

- c) temporary, non-disciplinary, leave of absence of a person reported to have committed Sexual Violence and Misconduct; and
 - d) any other interim measure as may be determined by the College.
- 7.2. The College may, upon request or on its own initiative, put interim measures in place to address a report of Sexual Violence and Misconduct while matters are under investigation or review by the RCMP or outside agency.

8.0 Academic Accommodations

- 8.1 A Student who has experienced Sexual Violence and Misconduct, including Sexual Violence and Misconduct at a non-College Related Activity, and who may require an academic accommodation (for example, exam deferral, an extension on an assignment, withdrawal from a class, relocation of studies to another campus or from home, etc.), will be supported by the Counselling Department and/or the Accessibility Services Office, in accordance with the College procedures for requesting and granting academic accommodations.
- 8.2 A Student requesting an academic accommodation under this policy is not required to file a Complaint of Sexual Violence and Misconduct to be considered for an academic accommodation.

9.0 General

- 9.1. It is contrary to this policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a person in connection with:
- a) making a report of Sexual Violence and Misconduct;
 - b) filing a Complaint;
 - c) making a Disclosure;
 - d) participating in an investigation or resolution process under this policy; and
 - e) accessing any other remedy available under this policy.
- 9.2. Anyone engaged in conduct outlined in s.9.1 may be subject to discipline.
- 9.3. This policy will be reviewed at least once every three years.
- 9.4. On an annual basis the President will report to the Board on the implementation of this policy.
- 9.5. The College reserves the right to determine the appropriate College policy, processes and procedures to follow to address a complaint or investigation.