

Procedure Information	
Related to Policy No:	E-1.41
Approved by:	Board of Governors
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## STUDENT SEXUAL MISCONDUCT PROCEDURES

### Definitions

Terms used in these Procedures are as defined in the Sexual Misconduct Policy (the "Policy").

### Procedures: Definition and Role

#### 1. DISCLOSURES, COMPLAINTS, AND REPORTS OF SEXUAL MISCONDUCT

If a person witnesses or experiences Sexual Misconduct or there is reason to believe Sexual Misconduct has occurred or may occur, the person may pursue one or more of the following options:

- a. Disclosure
  - i. A Disclosure is an informal notification to the College that Sexual Misconduct has reportedly occurred. A Disclosure will not be treated as a Complaint and will not be formally investigated by the College unless the College believes there is an imminent risk of harm to a person or there is a legal requirement for the College to do so.
  - ii. A person may make a Disclosure to any employee of the College or support person on campus (e.g. Counsellor, Medical Staff, Manager, Regional Principal, Housing Staff, Student Services Staff, Security, or Students' Union Staff).
  - iii. A person who makes a Disclosure that they have experienced Sexual Misconduct may obtain supports (e.g. medical assistance, counselling) and where appropriate, reasonable academic accommodations, without making a Complaint or Report.
  
- b. Complaint
  - i. A Complaint is a formal notification to the College about Sexual Misconduct, made by the person who experienced Sexual Misconduct. A complaint should be made in-person to the College's Lead Sexual Misconduct Coordinator ("LSMC") (or their designee) or any Regional Campus Principal ("RCP") (or their designee) Contact Information Attached A Complaint may also be made via the College's Sexual Misconduct Reporting Form (see Forms below).

- ii. A Complaint must contain sufficient information and detail of the Sexual Misconduct for the College to initiate an investigation.
- iii. A person who is considering filing a Complaint may consult with a Counsellor, Wellness Coach, or Regional Principal who can answer questions and assist the individual with the Complaint process.
- iv. Upon receipt of a Complaint, the LSMC or RCP will conduct “intake”, which involves the LSMC or RCP meeting with the Complainant and assessing the Complaint to determine if the Complaint, as submitted, contains sufficient information and alleges Sexual Misconduct as prohibited by the Policy. If the Complaint does contain sufficient information and falls within the scope of the Policy, then the College will initiate a formal investigation. The College will advise the Complainant of their rights and options for supports and protective measures during this meeting as well as answer any questions the Complainant may have. If the complaint does not include sufficient information the College will provide supports and services to the Complainant as required.
- v. The person who files the Complaint may withdraw the Complaint at any time. However, the withdrawal of a Complaint does not guarantee that the Complaint will not be investigated or that there will be no consequences to any individuals flowing from the Complaint.

c. Report

- i. A Report is notification to the RCMP of an allegation of Sexual Misconduct that has occurred that a person reasonably believes rises to the level of criminal conduct.
- ii. Individuals who experience or witness Sexual Misconduct that rises to the level of criminal conduct are strongly encouraged to file a Report.
- iii. If a person advises the College that they intend to make a Report, the LSMC or RC can assist them in contacting the RCMP and arrange for the RCMP to meet the reporting party in a location of their choosing (on or off campus).
- iv. The College will cooperate with any criminal investigation arising from a Report; to the extent, it is reasonable to do so and as permitted bylaw.
- v. Whether an individual decides to file or not file a Report does not in any way impact on their ability to file a Complaint or Disclosure.

2. CONTROL OVER PROCESS

The College recognizes that individuals who report having experienced Sexual Misconduct may wish to maintain control over whether and how the College will respond to their experience. Which of the above option(s) the individual elects to pursue will affect the level of that control as explained below:

- a. When the College receives a **Disclosure**, the individual who has experienced Sexual Misconduct will retain substantial control over how their experience is responded to by the College since the College will not be giving notice of the disclosure to the person alleged to have engaged in Sexual Misconduct nor will it be conducting an investigation. However, when an individual makes a Disclosure and does not file a Complaint, they will not have access to the remedies that could flow from a substantiated Complaint and may not have access to all possible accommodations that might be available from filing a Complaint, like a No Contact Directive meaning no contact in person, electronic means and or the use of other parties to make contact. In addition, since the Disclosure will not be formally investigated and the Respondent will have no opportunity to respond to the allegations, no determination on the Disclosure will be made and the Respondent will not be subject to sanctions or discipline.
  
- b. When the College receives a **Complaint** that falls within the scope of the Policy, the College will conduct a thorough and impartial investigation, including giving notice of the Complaint to the Respondent and giving both parties the opportunity to provide their side/their case/and make a submission. In such circumstances, the Complainant will have less control over how their experience will be dealt with by the College, but will be notified of the major steps in the investigation process, afforded the right to provide their side/case and make a submission. The Complainant will also be told if there is a delay in the process and will be told when the investigation has concluded. Where a Complaint is substantiated (i.e., the College determines that the Respondent engaged in Sexual Misconduct), the Complainant will have access to remedies that they will not have access to through a Disclosure. Privacy Restrictions may limit the information provided on the discipline and or sanctions imposed on the Respondent. Within the framework of the process for addressing Complaints and while ensuring procedural fairness, the College will, to the extent reasonably possible, take into account the wishes of the Complainant.

The College may be required to initiate an investigation and/or report alleged Sexual Misconduct to the RCMP, even without the consent of the individual who has experienced the Sexual Misconduct, if:

- i. the allegation involves Sexual Misconduct involving a minor;
- ii. applicable legislation requires the College to carry out an investigation; or
- iii. the College has a reasonable belief that there is a risk to the health or safety of a member of the College community, e.g., the Complaint or Disclosure reveals a broader pattern involving the same Respondent, a weapon was used, or other circumstances exist which cause the College to reasonably believe there exists a risk to the health or safety of a member of the College community.

Should the College deem it necessary to initiate an investigation or inform the RCMP about the reported Sexual Misconduct without the consent of the individual who has experienced the Sexual Misconduct; the College will notify that individual of their requirement to do so.

### 3. RESPONDING TO DISCLOSURES

Where an individual makes a Disclosure to an employee of the College or support person on campus that they have experienced Sexual Misconduct, the employee or support person should:

- a. listen without judgement;
- b. communicate that Sexual Misconduct is not the fault of the person who has experienced it;
- c. help the individual to identify and/or access available on or off campus services such as emergency medical care, victim services, or counselling;
- d. respect the individual's right to choose the services they feel are most appropriate for them and the individual's right to decide whether or not to make a Complaint or a Report;
- e. recognize that disclosing Sexual Misconduct can be challenging, and that an individual's ability to recall the events may be limited or otherwise affected;
- f. respect the individual's choice about how much they disclose about their experience; and
- g. make every effort to respect confidentiality and anonymity.

Employees of the College to whom a Disclosure is made or who otherwise become aware of Sexual Misconduct are required to notify the LSMC (Director - Student Services "the Director"), or Designate, where applicable their Regional Campus Principal, and, in situations where security is imminently required, the Director - CNC Security that they have received a disclosure. The identities of the individuals involved in the Sexual Misconduct should only be disclosed where reasonably required for College purposes and/or for the purposes of protecting the health and safety of any individual(s).

The Director, Regional Principal and/or Director - CNC Security who receives the information will assess it and determine whether, based on that information, there is a risk to the health or safety of anyone. If so, the Director, Regional Principal and/or Director - CNC Security will take steps to protect the health and safety of those at risk. If no risk to health and safety of anyone, and unless otherwise required by law, the College will not formally investigate a Disclosure.

If a student, while making a Disclosure, requests academic accommodations, the Director will work together with the student and the relevant Associate Dean who will appropriately engage with any instructors as appropriate, to ensure that, if

appropriate, the student receives all necessary reasonable support and/or academic accommodations, while maintaining confidentiality, to the extent that it is reasonably possible to do so.

#### 4. MAKING A COMPLAINT

Complaints should be submitted in writing to the LSMC (or RCP, if not located on the Prince George Campus). If a Complaint cannot be made in writing, and the Complainant wishes to make the report verbally to the LSMC, the LSMC will capture the verbal statement of the Complainant, reduce it to a written statement on behalf of the Complainant, review it with the Complainant and confirm with a signature with the Complainant that it accurately sets out the Complaint.

Complaints must include sufficient detail of the allegation of Sexual Misconduct to allow the College to conduct an investigation into the Complaint, including the following:

- a. the date, time, if known, and general location of the alleged Sexual Misconduct;
- b. the names, and if available, contact information or affiliation, of any individuals who engaged in the harming behavior towards the Complainant;
- c. the names, and if available, contact information, of any potential witnesses to the Sexual Misconduct; and
- d. a description of the incident in sufficient detail to provide the College with enough information for it to conduct an investigation.

The College recognizes that individuals who have experienced Sexual Misconduct may need some time before they are physically and/or emotionally capable and prepared to file a Complaint. However, in order to ensure the College is in a position to conduct a thorough and fair investigation, Complaints should be filed as soon as reasonably possible following the incident of Sexual Misconduct. While the College does not restrict the time for filing, a significant delay between the act of Sexual Misconduct and the filing of a Complaint could affect the availability of evidence, witness recollection, and the outcome of an investigation.

#### 5. RESPONDING TO COMPLAINTS

##### a. Initial Complaint Review

When the LSMC or RCP receives a Complaint, they will conduct an intake meeting with the Complainant. During this meeting, the LSMC or RCP will determine if the Complaint alleges a possible violation of this Policy and if so, the Complainant will be provided with written notification of their rights and options via CNC Sexual Misconduct Policy and procedures and information for on and off-campus resources and supports. Additionally, the LSMC or RCP will review the Complaint and ensure that it contains sufficient basic detail necessary for the College to carry out an investigation. *(This is not an interview, which will occur during the*

*investigation. This is basic information gathering to determine jurisdiction of the policy and procedure and to evaluate supports.)*

Should the LSMC or RCP determine there is insufficient detail in the Complaint, they will ask the Complainant to provide further details in a timely manner. If upon receiving further details or not receiving them in a timely manner, the LSMC or RCP determines that the Complaint still does not allege a possible violation of the Policy, it will be dismissed and no further investigation will take place. A record will be created and maintained for all complaints made, including those where the LSMC or RCP determine they will not proceed with an investigation, which record will include the rationale for that decision.

Should the LSMC or RCP determine that a Complaint alleges a possible violation of the Policy and has sufficient detail necessary for the College to carry out an investigation, they will assign the Complaint for investigation.

Prior to or during an investigation, the College may take interim measures to address any concerns it may have about the wellbeing of any member of the College, while minimizing the impact on other individuals involved and recognizing the principle of the presumption of innocence. Interim measures could include actions like moving a party into a different CNC housing room, temporarily limiting access to campus spaces, or temporarily restricting contact between parties. Any interim measures relating to a Complaint will not be disciplinary in nature and should not be perceived as the College prejudging the Complaint or either party.

b. Where an Employee is Party to Complaint

Where the Complaint involves a student, the College will investigate the Complaint in accordance with the process set out in these Procedures except where a party to the Complaint is an employee of the College, in which case the College will follow one of the following procedures in investigating the Complaint:

- i. Where a party to a Complaint is a union employee whose employment is governed by a collective agreement that requires the College to investigate such Complaints in accordance with procedures provided therein, the College will investigate the Complaint in accordance with those procedures. In such circumstances, the College will provide the student involved in the Complaint with a copy of those procedures.
- ii. Where a party to a Complaint is an employee who is not subject to a collective agreement that requires the College to investigate such Complaints in accordance with procedures provided therein, the College will investigate the Complaint in accordance with the procedures provided for in the College's Respectful Workplace Policy. In such circumstances, The College will

provide the student involved in the Complaint with a copy of those procedures.

c. Investigation

Where the LSMC (or RCP in concert with the LSMC) determines an investigation is warranted under these Procedures, the LSMC or RCP will assess the Complaint and:

- i. delegate annually trained individuals with the necessary knowledge and expertise to conduct the investigation internally; or
- ii. hire an external investigator(s) to conduct the investigation on behalf of the College.

Interim Measures while an investigation is being conducted may be imposed to provide support, safety for complainant, respondent and others associated with the alleged complaint.

Prior to an investigation beginning, the LSMC or RC will provide written notice to the parties that an investigation is being initiated under these Procedures, will advise them of the identity of the investigator, will notify them that the investigator will be in contact with them, and will offer both parties the option of seeking support in relation to the Complaint and/or investigation.

The investigator will contact the parties, provide a date, and time to conduct the interview. The investigator will advise the parties about the opportunity to present evidence to the investigator as well as to provide information on witnesses whom they would like interviewed. The investigation process will take into account:

- i. the sensitive nature of the Complaint as a complaint of Sexual Misconduct; and
- ii. ensure procedural fairness for both the Complainant and Respondent.

The investigation process will include, but will not necessarily be limited to:

- i. allowing the Complainant and Respondent the opportunity to individually participate in the investigation and to provide further information as appropriate;
- ii. meet with and notify the Respondent, in writing, of the specific allegations in the Complaint, including the part or parts of the Policy they are alleged to have violated;
- iii. providing the Respondent an opportunity to respond to the Complaint, but not requiring such participation; and
- iv. allowing the parties to draft appropriate, relevant questions they would like asked of the other as well as witnesses. If questions are drafted by the parties and asked by the Investigator, the Investigator will provide the

responses to the parties. This ensures access and transparency and further allows both parties to allow for direct examination of the other through a third party. The Investigator retains the right not to ask questions they deem not relevant to the matter.

Where requested by an investigator, all members of the College community are required to cooperate and fully participate in an investigation. Any member of the community who retaliates against a person who is participating is subject to disciplinary action. A complaint of retaliation will proceed separate and apart from a complaint of sexual misconduct and can be adjudicated prior to a finding of sexual misconduct under this policy.

Upon completion of the investigation, the Investigator will provide the LSMC or RCP with a draft investigation report (the "Report"). The LSMC or RCP will meet with the Complainant and Respondent separately and provide them with an opportunity to individually review the Report. The parties should make an appointment with the LSMC or RCP to gain access to the Report and associated evidence and are not permitted to take away a copy or to photograph or record the document in any way. The parties shall have two business days via appointment during normal business hours to review the document in a room on campus of the LSMC's or RCP's choosing and may be accompanied by a support person or other advisor of their choosing. The parties will have three days following the review of the Report to notify the LSMC or RCP of any information contained in the Report, which is factually inaccurate. If items noted require the Investigator to follow up with witnesses or the parties, then the LSMC or RCP will direct the Investigator to do so. If no items require follow up, the Report will be marked final and all associated documents will be discarded.

## 6. ADJUDICATION PANEL

Once the Report is final, the LSMC or RCP shall convene an Adjudication Panel (the "Panel") consisting of three annually trained decision makers ("the Panelists") who are employees of the College. After the Panel composition is determined, the names and positions of the Panelists will be provided to the parties who will have three business days to inform the LSMC or RCP of any real or perceived conflict of interest in any of the Panelists acting as members of the Panel. Based on the information received, the LSMC or RCP will determine if a real or perceived conflict of interest exists and if so, will appoint an alternate Panelist. Once the Panel is finalized, the Report and all associated evidence will be provided to the Panel, who will be provided with seven days to review the materials. The Panel will then convene a meeting of the Panelists in a timely way. The Panel shall determine, on the balance of probabilities, whether or not the Complaint is substantiated and submit a report. Each Panelist must come to a conclusion and cannot abstain. The Panel's decision will be unanimous or a majority decision of 2 of the 3 Panelists.



Where a Complaint is substantiated, the LSMC will determine the appropriate sanction in accordance with the corrective measures and procedure for determining corrective measures provided for in the Student (Non-Academic) Conduct Policy. If a complaint is substantiated under this policy against an employee, the sanctions will be implemented by Human Resources. Such sanctions includes, for students, the potential for suspension or expulsion from the College.

Where the Complaint is not substantiated, the Respondent will not be subject to sanctions. However, regardless of whether or not a Complaint is substantiated, the College may put protective measures in place, including ongoing no contact directives and other restrictions as the College deems appropriate, which shall not be punitive to the Respondent.

Additionally, where appropriate, the College may continue or implement accommodations to ensure the health, safety and well-being of the Complainant or any member of the College.

The LSMC will notify the parties to the Complaint, in writing, of the Panel's decision. The written notification will also include a rationale of how the Panel reached their decision, how they weighed the evidence, and how they arrived at the decision as well as an explanation of how to appeal (the "Letter of Outcome").

## 7. APPEAL PROCEDURES

Both the Complainant and Respondent have the right to appeal the finding, sanction, or both if the grounds for appeal set out below can be demonstrated. All appeals must be submitted in writing to the Appeals Officer within 48 hours of the delivery of the Letter of Outcome to the party (timestamp on email notification to the parties.)

Appeals must specify grounds that would justify consideration. General dissatisfaction with the outcome or the associated sanction will not be basis for consideration of an appeal.

The grounds for appeal are:

- a. The procedures outlined in this policy were not followed by the original decision-maker, and this has resulted in the Student not receiving a fair hearing or;
- b. Relevant evidence has become available that was not reasonably available at the time of the original decision and here is a strong probability that the newly discovered evidence would have had a significant effect on the decision.

The Appeals Officer will evaluate and render a determination on the appeal request,

based on the standards above, within 5 business days of receipt of the request. Where the Appeals Officer concludes the appeals does not meet either of the above grounds, the appeal will be dismissed. Appeals with sufficient grounds based on #1 or #2 above will be remanded back to the LSMC for further consideration.

The rights for considering an appeal on the sanction:

- a. Any sanction of suspension constitutes sufficient grounds for an appeal of the sanction (Note: while considered sufficient grounds, the appeal request must still be made in writing to the Appeals Officer within 48 hours of the letter of outcome. Definitions of various sanctions, suspension, can be found on in the Student Code of Conduct Policy & Procedures

There is only one level of appeal and no further appeals may be made beyond what is provided for here.

Both parties will be notified when an appeal request has been made. The non-appealing party will have the right to reply. A decision on the appeal will be delivered to the Complainant and Respondent simultaneously and in writing within 10 business days of that decision. The decision on all appeals is final.

#### 8. CONDITIONS OF RETURN

If the outcome of an appeal hearing results with either the respondent and or complainant returning to their studies (face to face classroom/shop or on-line) specific conditions may be required and if so there will be written conditions that will be discussed and agreed to with the respondent and or complainant signing and agreeing to the conditions. Appropriate college staff may be advised of the conditions to ensure compliance to the conditions are upheld.

#### 9. OTHER PROCEEDINGS

The commencement of other proceedings (including but not limited to criminal proceedings, civil proceedings, collective agreement grievances and arbitrations, and human rights complaints) in respect of allegations that form the basis of a Complaint, unless by operation of law, will not bar the College from taking steps to investigate the Complaint and to make its own determination. Where such other proceedings are commenced, the College will, at its discretion, determine whether to proceed with its investigation into the Complaint or hold its investigation in abeyance pending those proceedings.

#### 10. NO RETALIATION

- a. No one may retaliate against any individual because that individual:

- i. makes a Disclosure, files a Complaint, or files a Report;
  - ii. acts as a witness, participates in an investigation, or carries out any responsibility under this Policy or Procedures; or
  - iii. otherwise pursues rights or takes action under the Policy or these Procedures.
- b. Any member of the College Community engaging in such retaliatory conduct will be subject to sanctions or discipline up to dismissal or expulsion. A complaint of retaliation is a complaint separate and apart from any complaint of sexual misconduct and can be adjudicated prior to a finding under the Policy for any other allegations.

## 11. PRIVACY AND INFORMATION SHARING

The College recognizes the impact of improper or inadvertent disclosure relating to allegations of Sexual Misconduct can have on those involved.

The College will keep all information it receives relating to a Disclosure or a Complaint and through any associated investigation procedure as private as possible and will only disclose such information in the following circumstances:

- a. to address a situation where the College has reason to believe there may be a risk of harm to one or more persons;
- b. principles of natural justice or procedural fairness require disclosure; and/or
- c. disclosure is otherwise required by law.

Individuals should be aware that while the College appreciates the need for privacy relating to allegations of Sexual Misconduct, it is required to comply with the *Freedom of Information and Protection of Privacy Act* and may, in certain circumstances, be required to disclose information relating to Complaints or Disclosures pursuant to that legislation.

While the College recognizes that there may be circumstances where individuals involved in alleged Sexual Misconduct may have a legitimate interest in disclosing information or circumstances relating to the Sexual Misconduct, the College strongly encourages individuals to maintain confidentiality over information relating to allegations of Sexual Misconduct while they are being investigated by the College. Any such disclosure while an investigation is ongoing may affect the investigation.

Any disclosure of alleged Sexual Misconduct done for an improper purpose may lead to sanctions or discipline up to suspension.

Any information disclosed by the College to an individual during the course of an investigation into alleged Sexual Misconduct is done so on a strictly confidential basis and any disclosure of that information by the individual may lead to sanctions

or discipline up to dismissal or expulsion.

Any individual who may make a frivolous, vexatious or bad faith complaint may lead to sanctions or discipline up to suspension. A finding of not responsible under this policy is not in and of itself evidence of a frivolous, vexatious, or bad faith complaint.

## 12. ADDENDUMS

Community and Campus Support Resources  
Regional Campuses Contact Information

### **Links to Other Related Policies, Documents, and Websites**

Student Sexual Misconduct Policy E-1.41

### **Forms**

Sexual Misconduct Reporting Form

### **Procedure Amendment Log**

<b>Amendment Number:</b>	<b>Date:</b>
0	May 2017
1	September 2020
2	