

 CAPILANO UNIVERSITY		PROCEDURE	
Procedure No.		Officer Responsible	
B.401.1		President	
Procedure Name			
Sexual Violence and Misconduct Procedure			
Policy This Procedure is Under		Date of Next Policy Review	
B.401 Sexual Violence and Misconduct Policy		May 2019	
Date Issued	Date Revised	Related Policies, Reference	
May 10, 2017		B.401.1 (Sexual Violence and Misconduct Procedure) E.407, E.501, E.703, B.310, B.506, S2003-05	

1. PURPOSE

- 1.1. The procedures set out in this document are designed to support the University’s commitment to creating and maintaining a learning and working environment characterized by mutual respect, safety, civility and free inquiry as outlined in Policy B.401 Sexual Violence and Misconduct (the “Policy”). This commitment extends to addressing and reducing incidents of sexual violence and misconduct, and creating a safe environment for Disclosing and Reporting.
- 1.2. These procedures outline the process the University will follow when a Survivor chooses to Disclose or Report.

2. SURVIVORS WHO CHOOSE TO DISCLOSE

- 2.1. The University acknowledges that it is difficult to Disclose an incident of sexual violence and misconduct. It is entirely up to a Survivor to choose to Disclose the incident of sexual violence and misconduct at any time. However, the University encourages Survivors to Disclose immediately or as soon as the Survivor feels comfortable and safe to do so. Survivors may choose to Disclose without making a Report to the University or reporting to local police.
- 2.2. A Survivor may choose to Disclose to a Member of the University Community about an incident of sexual violence and misconduct, including a Student, a faculty member, a coach or a staff member from Counselling & Learning Support, Accessibility Services, Human Resources, Student Affairs and Services, or Campus Security. A Survivor may also choose to Disclose to staff or faculty members when seeking support and/or accommodation.

3. RESPONDING TO A SURVIVOR WHO CHOOSES TO DISCLOSE

- 3.1. Members of the University Community should provide a compassionate, respectful and reassuring response to a Survivor who chooses to Disclose. The most important thing to do for the Survivor is to be there in a supportive capacity. (Please refer to the University website and guidelines for providing a supportive response.)
- 3.2. Members of the University Community should refer a Survivor to the appropriate body within the University, as set out below. Survivors should be advised of the Policy and these procedures, and be informed of the available resources, Reporting, and other options available to them.
- 3.3. If the Survivor is a Student who is seeking support or academic accommodation, Members of the University Community should refer the Survivor to Counselling Services to ensure that the Survivor receives all necessary and reasonable academic or other accommodations.
- 3.4. If the Survivor is any other Member of the University Community who is seeking support or accommodation, Members of the University Community should refer the Survivor to the Associate Vice President, Human Resources to ensure the Survivor receives all necessary and reasonable supports and accommodations.

4. SURVIVORS WHO CHOOSE TO REPORT

- 4.1. The following Reporting options are available to Survivors, depending on the status of the Respondent:
 - If the Respondent is a Student, the Report will be made to the Office of Student Affairs;
or
 - If the Respondent is any other Member of the University Community, the Report will be made to the Associate Vice President, Human Resources.
- 4.2. Survivors may also choose to report to a local police department (e.g. North Vancouver RCMP, West Vancouver Police, Vancouver Police Department) or make an anonymous third party report to a local police department through a community-based anti-violence worker. Survivors may decide to Report to either or both the University and local police, or to neither.
- 4.3. In cases where the individual accused of sexual violence and misconduct is not a Member of the University Community or in circumstances where the University is unable to initiate an investigation under these procedures, a Report may be referred to the local police, or to other community resources at the Survivor's request.

4.4. The University reserves the right to inform the relevant law enforcement agency without the consent of the Survivor if it has a reasonable belief that the safety of a Member of the University Community is at risk. (Refer to section 10 of the Policy.)

5. RESPONDING TO A REPORT

5.1. Where the University receives a Report, the University will exercise care to protect and respect the rights of both the Complainant and the Respondent.

5.2. The University will address immediate safety concerns with the Complainant and, where necessary, establish a safety plan to protect the health and safety of the Complainant.

5.3. The University will seek to achieve procedural fairness in dealing with all Reports. The Respondent will be given reasonable notice in writing of the details contained in the Report and provided an opportunity to respond to the complaint.

5.4. Initial Assessment

5.4.1. The Office of Student Affairs will conduct an initial assessment where the Respondent is a Student. The Associate Vice President, Human Resources (or designate) will conduct an initial assessment where the Respondent is any other Member of the University Community. The purpose of the initial assessment is to determine whether the incident falls within the University's jurisdiction to investigate under this Policy.

5.4.2. Upon completion of the initial assessment of jurisdiction, the Office of Student Affairs or the Associate Vice President, Human Resources (or designate) will determine whether there is enough initial evidence or potential evidence for the investigation to be conducted in a fair manner.

5.4.3. The initial assessment of both jurisdiction and available evidence may include the examination of physical evidence and/or contact with the Respondent(s) and/or Witnesses to solicit initial statements.

5.4.4. The initial assessment will normally be completed within ten (10) business days of the receipt of the Report by the Office of Student Affairs or the Associate Vice President, Human Resources.

5.4.5. If the Office of Student Affairs or the Associate Vice President, Human Resources determine that the Report meets both the jurisdictional and evidential requirements to proceed, a formal investigation will follow.

5.4.6. If the Office of Student Affairs or the Associate Vice President, Human Resources determine that the Report does not meet jurisdictional and/or evidential requirements,

the matter will be considered closed. The Complainant will be notified in writing within five (5) business days of the determination. The Complainant may still access support services and accommodations as set out in Section 6 of the Policy. A record of the Report will be kept by the Office of Student Affairs or Associate Vice President, Human Resources and may be re-opened upon the introduction of new information or evidence.

5.5. Appointing an Investigator(s)

5.5.1. The University will choose to appoint either an internal investigator(s) or an external investigator(s) to conduct the formal investigation.

5.5.2. The Associate Vice President, Student Success or the Associate Vice President, Human Resources may recommend the appointment of an external investigator(s) for matters that are deemed extremely sensitive, or where the nature and extent of the incident may be perceived to predispose or bias an internal investigator(s).

5.5.3. Where the Respondent is a Student, the recommendation of the Associate Vice President, Student Success is made to the Vice-President, Academic and Provost, who may appoint an external investigator(s). Where the Respondent is any other Member of the University Community, the recommendation of the Associate Vice-President, Human Resources is made to the Vice-President, Finance and Administration, who may appoint an external investigator(s).

6. INTERIM MEASURES (SANCTIONS)

6.1. The University may impose or facilitate interim measures as may be appropriate for the safety of the individuals involved and the University community. Interim measures are not intended to be punitive, but are intended to provide a safe environment for all parties pending an investigation.

6.2. The authority to impose interim measures rests with the Associate Vice President, Student Success and/or the Associate Vice President, Human Resources.

6.3. Interim measures will be communicated to the Respondent in writing after the determination has been made by the Associate Vice President, Student Success or the Associate Vice President, Human Resources.

6.4. In accordance with the *University Act*, University policies and applicable Collective Agreements, interim measures may include, but are not limited to:

- alteration of the academic schedule of any Student involved in the Report;
- academic or workplace accommodations;

- a No-Contact Requirement;
- restricting a Respondent's access to some University facilities;
- temporary, non-disciplinary leave of a Respondent;
- involuntary withdrawal; and
- any other interim measures as may be determined by the University.

6.5. Interim measures will remain in effect at the discretion of the Associate Vice President, Student Success and/or the Associate Vice President, Human Resources.

6.6. When the incident involves law enforcement or other internal or external investigations, interim measures may remain in effect until all relevant investigations are concluded.

6.7. Interim measures may be appealed to the President at any point during which the measure remains in place. Appeals can only be made on the grounds of proportionality of the measure to the incident. The President may choose to uphold, modify or remove the interim measure. The decision of the President is not appealable.

7. FORMAL INVESTIGATION OF A REPORT – INTERNAL

7.1. The Associate Vice President, Student Success will appoint a University investigator or, where appropriate, an investigation team to conduct the investigation where the Respondent is a Student. The Associate Vice President, Human Resources will appoint a University investigator or, where appropriate, an investigation team to conduct an investigation where the Respondent is any other Member of the University Community.

7.2. The Associate Vice President, Student Success or the Associate Vice President, Human Resources will make every reasonable effort to ensure that any internal investigator(s) appointed to conduct an investigation under the Policy will have training in the area of sexual violence and misconduct investigations.

7.3. The appointment of the internal investigator(s) will be made within five (5) business days of the decision to refer the Report to formal investigation.

7.4. The Complainant will be notified of the appointment of the internal investigator(s) within five (5) business days of the appointment.

7.5. The Respondent will be notified in writing of the investigation and provided details of the complaint by the Manager, Student Affairs and Services or the Associate Vice President, Human Resources. The Respondent will be given five (5) business days to respond to the complaint either in writing or in person, after which time the investigator(s) will review the available

evidence and determine whether or not the investigation is able to proceed. The deadline for responding may be extended by the Manager, Student Affairs and Services or the Associate Vice President, Human Resources based on a reasonable request from the Respondent.

- 7.6. Reports are investigated by interviewing the Complainant, the Respondent, any Witnesses and by reviewing any available documentation, data or other evidence. In the course of the investigation, the Respondent will be provided all relevant information, data and evidence regarding the complaint and be given an opportunity to respond in full.
- 7.7. Any individual interviewed by the investigator(s) may be accompanied by a support person for the purposes of advice and/or comfort during the interview. The support person will not be permitted to speak on behalf of the individual being interviewed. If the support person is a lawyer, the individual must inform the investigator(s) in a timely manner.
- 7.8. The investigator(s) will collect and compile all evidence into an investigative report. The investigation report will make a determination as to whether there has been a violation of the Policy, weighing evidence on the Balance of Probabilities. The investigation report will outline findings with evidence weighed based on reliability, probative value, and relevance to the issue at hand. The investigation report will include findings, conclusions and recommendations.

8. FORMAL INVESTIGATION OF A REPORT – EXTERNAL

- 8.1. The Vice-President, Academic and Provost or the Vice-President, Finance and Administration will make every reasonable effort to ensure that any external investigator(s) appointed to conduct an investigation under the Policy will have training in the area of sexual violence and misconduct investigations.
- 8.2. The Complainant will be notified of the appointment of the external investigator(s) within five (5) business days of the appointment.
- 8.3. In conducting the investigation, the external investigator(s) will have regard for University policies, including the Policy and these procedures, and any relevant law.
- 8.4. Any individual interviewed by the external investigator(s) may be accompanied by a support person for the purposes of advice and/or comfort during the interview. The support person will not be permitted to speak on behalf of the individual being interviewed. If the support person is a lawyer, the individual must inform the investigator(s) in a timely manner.
- 8.5. The external investigator(s) will collect and compile all evidence into an investigative report. The investigation report will make a determination of whether there has been a violation of the Policy, weighing evidence on the Balance of Probabilities. The investigation report will outline findings with evidence weighed based on reliability, probative value, and relevance to the issue at hand. The investigation report will include findings, conclusions and recommendations.

9. DETERMINATION

9.1. Where the Respondent is a Student

- 9.1.1. The investigation report will be submitted to the Associate Vice President, Student Success and the Vice President, Academic and Provost.
- 9.1.2. If the Vice President, Academic and Provost, in consultation with the Associate Vice President, Student Success, determines that the available evidence does not support disciplinary action or other sanctioning, the Complainant and the Respondent will be notified in writing. This does not preclude the Respondent from further investigation and sanctioning upon the introduction of new information or evidence. The Complainant may still access support services and accommodations as set out in Section 6 of the Policy.
- 9.1.3. If the Vice President, Academic and Provost, in consultation with the Associate Vice President, Student Success determines disciplinary action or other sanctioning is justified, the Respondent will be notified in writing of the specific sanctions being imposed and the appeal process. The possible sanctions are set out in section 10 below.
- 9.1.4. Where the Vice President, Academic and Provost determines that suspension or expulsion is justified, they will make recommendations to the President. The President will normally render a decision after reviewing the investigation report and recommendations. The President may also choose to meet with or solicit a written statement from the Complainant and/or the Respondent for the purposes of evaluating the weight of the sanction. The President may choose to accept, reject, or modify the recommended sanctions.
- 9.1.5. In the event that a sanction is modified in such a way that it increases in severity, the President will provide a written statement of reasoning to the Office of Student Affairs to be placed in the case file.
- 9.1.6. The Vice-President, Academic and Provost will inform the Office of Student Affairs of the decision. The Office of Student Affairs will ensure that the decision is communicated to the Respondent within five (5) business days. The Office of Student Affairs is also responsible for monitoring the completion of imposed sanctions.
- 9.1.7. The Office of Student Affairs will inform the Complainant in writing of the outcome of the investigation, but not necessarily the details of any disciplinary action taken against the Respondent unless sharing that information is necessary for the protection of the Complainant's health and safety.

9.2. Where the Respondent is a Member of the University Community (other than a Student)

- 9.2.1. The investigation report will be submitted to the Associate Vice President, Human Resources and the Vice-President, Finance and Administration.
- 9.2.2. If the Vice-President, Finance and Administration determines that the available evidence does not support disciplinary action or other sanctioning, the Complainant and the Respondent will be notified in writing. This does not preclude the Respondent from further investigation and sanctioning upon the introduction of new information or evidence. The Complainant may still access support services and accommodations as set out in Section 6 of the Policy.
- 9.2.3. If the Vice-President, Finance and Administration determines disciplinary action or other sanctioning is justified, proceedings shall be instituted in accordance with the relevant University policies and/or Collective Agreements.
- 9.2.4. The Associate Vice President, Human Resources will inform the Complainant in writing of the outcome of the investigation, but not necessarily the details of any disciplinary action taken against the Respondent unless sharing that information is necessary for the protection of the Complainant's health and safety.

10. SANCTIONS – WHERE THE RESPONDENT IS A STUDENT

- 10.1. Where the Respondent is a Student and is determined to be responsible for violating the Policy, sanctions may include, but are not limited to, the following:
- a. Letter of Reprimand – A formal letter indicating the Respondent's breach of the Policy and expected conduct moving forward. Normally, this is only used in the case of first-time, minor misconduct or in addition to other sanctions.
 - b. Educational Activity – The Respondent will engage in reflection and growth through participation in tasks such as assignments, projects, and/or workshops.
 - c. Loss of Privileges or Use – A temporary or permanent ban on the Respondent's ability to access/use certain areas on campus including classrooms and buildings. This also extends to the use of University sponsored technology such as email accounts.
 - d. Removal from a Course or Program – Involuntary withdrawal from a course or program at the University. This differs from suspension in that the Respondent may still be permitted to register for classes outside of the specified course or program.
 - e. Suspension – A temporary leave from the University for a specified period of time, normally including a ban from entering campus unless otherwise stated. Behaviour that

occurs during a suspension and falls under the scope of the Policy is still actionable by the University. Suspensions may only be imposed by the President.

- f. Expulsion – Permanent de-registration and removal from the University, normally including a ban from entering campus for a specified period of time. Expulsions may only be imposed by the President.
- g. Other Sanctions As Required – The University reserves the right to impose sanctions other than those listed in this document.

10.2. In situations where a Report has been made, but there is insufficient evidence to proceed, a written warning may be issued to the Respondent. A written warning is used only to restate the applicable sections of the Policy and/or expectations for future conduct and is not considered to be a finding of guilt.

11. BREACH OF SANCTIONS

- 11.1. Failure to complete or abide by imposed or agreed-upon sanctions is considered to be a further violation of the Policy.
- 11.2. Breach of sanctions may lead to the imposition of new or escalated sanctions up to and including suspension and expulsion or termination according to University policy and/or the applicable Collective Agreement.

12. RIGHT TO WITHDRAW A REPORT

- 12.1. At any time in the process, the Complainant has the right to withdraw the Report without consequences to the Complainant's University status and activities. However, the University may continue to act on the incident identified in the Report to comply with its obligation under the Policy and/or its legal obligations. In the event that the University is required by law to report the incident of sexual violence and misconduct to legal authorities (such as the police), the Complainant will be advised of this requirement.
- 12.2. A Complainant who withdraws the Report may still access the support services and accommodations set out in Section 6 of the Policy.

13. APPEALS PROCESS

- 13.1. Where the Respondent is a Student, appeals pursuant to the Policy are made to the Senate Student Appeals Committee and must be filed pursuant to the deadline and grounds found in S2015-03 – Senate Student Appeals and S2015-02 Senate Student Appeals Mandate and Structure and its associated procedures. For the purposes of determining the submission

deadline, the starting date will be the date that the decision is communicated in writing to the Respondent.

- 13.2. Where the Respondent is an Employee, any disciplinary action taken as a result of sexual violence and misconduct may be subject to grievance under the relevant Collective Agreement or, where the Employee is not covered by a collective agreement, appealed to the President. Appeals to the President must be filed within twenty-one (21) calendar days of the decision being communicated to the Respondent in writing. Any decision by the President respecting an appeal under the Policy and these procedures will be final, subject only to Memo 14 Right of Access to Board - Appeals.

14. RECORD KEEPING

- 14.1. Investigative reports and records of proceedings are confidentially maintained by the Office of Student Affairs or Human Resources. All records relating to a Report will be kept for a period of no less than seven (7) years following the completion of all actions pertaining to a particular incident. After this time, records may continue to be kept on file if deemed necessary by the Office of Student Affairs or Human Resources and will otherwise be confidentially destroyed.
- 14.2. Records are not available to be copied or viewed by Members of the University Community unless required by the Policy, these procedures or for the purposes of external legal proceedings.

15. SUPPORT FOR STUDENTS AND EMPLOYEES

- 15.1. The University recognizes that participation in the investigation of a Report as a Complainant, Witness, or Respondent can be difficult and that Students and Employees in these roles may require support. Where not prohibited by a legal barrier or conflict, the Office of Student Affairs is responsible for ensuring that participating Students are aware of the resources available to them should they require support. Human Resources is responsible for ensuring that participating Employees are aware of the resources available to them should they require support. This may occur through the general promotion of such resources or through direct communication with the Student(s) and/or Employees in question.
- 15.2. The University encourages Students and Employees involved in the investigation of a Report to seek support as needed from family members, friends, on- or off-campus counselling, legal counsel, and/or any other available and applicable sources of support