

 CAPILANO UNIVERSITY		POLICY	
Policy No.	Officer Responsible		
B.401	President		
Policy Name			
Sexual Violence and Misconduct Policy			
Approved by	Replaces	Category	Next Review
Board	New	A	April 2019
Date Issued	Date Revised	Related Policies, Reference	
April 18, 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. Capilano University (the “University”) is committed to creating and maintaining a learning and working environment characterized by mutual respect, safety, civility and free inquiry. The University does not tolerate or condone behaviour which contributes to a hostile, inequitable and/or an unsafe learning or working environment.
- 1.2. All Members of the University Community (as defined in section 2 below) have the right to work, teach and study in an environment that is free from all forms of sexual violence and misconduct. Safety and security at the University are a priority and any form of sexual violence and misconduct will not be tolerated or condoned. The University expects all Members of the University Community to abide by all laws and University policies.
- 1.3. Members of the University Community who come forward with information about having experienced sexual violence and misconduct will be:
 - treated with compassion, dignity and respect;
 - informed about their options for proceeding, and the services and resources available to them both on and off campus;
 - respected in their choices as to how to proceed;
 - entitled to decide whether they wish to access available services, and which services they believe will be most beneficial, and
 - entitled to decide whether to make a formal report to the University and/or report to local law enforcement.

2. DEFINITIONS

“Balance of Probabilities” means the standard of proof used to determine findings of fact, requiring the evidence shows that the sexual violence and misconduct that has been Reported is more likely than not to have occurred.

“Complainant” means a Survivor who has filed a Report under this Policy and its associated procedures.

“Confidential Information” means all information provided when a Survivor Discloses or Reports and all information related to an investigation or outcome under this Policy and its associated procedures.

“Consent” means an active, direct, voluntary, and conscious choice and agreement between adults to engage in sexual activity. It is the responsibility of the person initiating or pursuing sexual activity to obtain consent at all stages of sexual engagement. More specifically, consent:

- is a freely given “yes”;
- cannot be assumed or based on a perception that it was implied;
- cannot be given by someone who is incapacitated (by drugs and/or alcohol), asleep, unconscious, or otherwise incapable of providing consent;
- can be revoked at any time, regardless of whatever other sexual activities have taken place;
- can never be obtained through threats, intimidation, coercion or other pressure tactics;
- cannot be obtained if someone abuses a position of trust, power or authority, and
- cannot be assumed from previous consent.

“Disclose” or “Disclosing” means the sharing of information by a Member of the University Community regarding an incident of sexual violence and misconduct with a Member of the University Community in order to access support. A Disclosure can be made without a formal Report to the University, under section 7, and/or police.

“Employee” means any person employed by the University.

“Member of the University Community” means Employees, Students, agents, board members and volunteers.

“No-Contact Requirement” means a University requirement that an individual refrains from contacting an individual based on specified conditions (e.g. a No-Contact Requirement may restrict a Respondent’s contact with a Complainant).

“Report” or “Reporting” means a formal report of an incident of sexual violence and misconduct made by a Member of the University Community for the purpose of initiating some form of investigation or adjudication by the University. This is not the same as Disclosing, under section 6, which does not initiate a formal process. This is also not the same as making a report to police.

“Respondent” means a Member of the University Community against whom a Report of sexual violence and misconduct has been made under this Policy and its associated procedures.

“Sexual Assault” is any form of sexual contact that occurs without ongoing and freely given Consent, including the threat of sexual contact without Consent. Sexual Assault can include any form of unwanted touching, kissing, groping, fondling, forced sexual intercourse (including oral and anal), and attempted forced sexual intercourse. Sexual Assault can be committed by a stranger, someone known to the Survivor (sometimes called “acquaintance rape” or “date rape”), or an intimate partner.

“Sexual Violence and Misconduct” is an umbrella term that encompasses a broad range of sexual behaviour, whether physical or psychological, that is committed, threatened or attempted against a person without the person’s Consent. It varies in severity and takes many forms including, but not limited to, sexual violence, Sexual Assault, sexual exploitation, sexual harassment, stalking, indecent exposure, voyeurism, distribution of sexual images or video of a person without their Consent, and cyber harassment or cyber stalking of a sexual nature.

“Student” for the purpose of this Policy, means an individual enrolled in any course (credit or non-credit) at the University.

“Survivor” means a Member of the University Community who has experienced sexual violence and misconduct. Survivors who choose to Report may also be referred to as ‘Complainants.’

“University-related Activity” includes an activity or event conducted under the authority of the University at any location, on or off campus.

“Witness” refers to a person who is identified as having additional relevant information regarding an incident of sexual violence and misconduct.

3. SCOPE AND JURISDICTION

3.1. This Policy applies to all Members of the University Community.

- 3.2. Any Member of the University Community who has experienced sexual violence and misconduct can access confidential assistance and support, referrals and information from the Office of Student Affairs or Human Resources and request accommodation, regardless of the time or place at which the sexual violence and misconduct occurred, or the parties involved.
- 3.3. The University has the jurisdiction to address Reports made against a Member of the University Community and can take action to the extent of its relationship to that member where the incident occurred:
- on any property that is controlled by the University and used for University purposes;
 - at a University-related Activity; or
 - when the Respondent was in a position of power or influence over the Survivor's academic or employment status at the University
- 3.4. The University reserves the right to take necessary and appropriate action to protect the safety and welfare of the campus community and the learning environment. This may include taking necessary and appropriate action in cases where a Member of the University Community is accused of sexual violence and misconduct, and there is a clear connection to the campus community regardless of where the misconduct occurred.
- 3.5. The University does not have the jurisdiction to address Reports made against an individual who is not a Member of the University Community but will make every effort to ensure Survivors are supported. In certain circumstances, the University may be able to restrict the accused individual's access to campus. Where an incident of sexual violence and misconduct does not involve a Member of the University Community, Survivors may choose to make a report to local law enforcement.
- 3.6. All Survivors who are Members of the University Community have the right to pursue criminal and/or civil legal remedies and exercise any other legal rights they may have, including the right to file a complaint with the BC Human Rights Tribunal, whether or not they choose to make a Report under this Policy. All Members of the University Community have the right to forgo Reporting, and instead choose to make a confidential Disclosure to a counsellor, a trusted person on campus, or a community-based anti-violence worker for ongoing support.
- 3.7. This Policy and its associated procedures are separate from any criminal or civil proceedings. The University is responsible for determining whether a Member of the University Community has violated this Policy, and is not responsible for determining violations of criminal or civil law. The University may elect to suspend its process until the outcome of the process outside the University is determined. The University will, to the extent possible, ensure that safety is restored for Survivors who Disclose or Report, and will cooperate in any criminal investigation.

3.8. In cases involving behaviour that may fall within the definition of “sexual harassment” in the University’s Harassment Policy (E.501), a Survivor may choose to proceed under that policy as set out in section 7.4 below.

4. POLICY STATEMENT

4.1. The University is committed to:

- treating Survivors with compassion and recognizing them as the decision-maker regarding their interests, regardless of whether they choose to Disclose or Report;
- participating with internal and external stakeholders in the creation of a campus atmosphere in which sexual violence and misconduct are not tolerated;
- providing accessible, timely and confidential assistance and support to Survivors, regardless of where the incident of sexual violence and misconduct occurred, by providing options, including detailed information, which may include referral to community-based anti-violence organizations, counselling and/or medical care, forensic medical exams, information about reporting and recourse options, and appropriate academic, work and other accommodations;
- ensuring Survivors have their right to dignity and respect protected throughout the process of Disclosing, Reporting, investigating and institutional response;
- investigating incidents of sexual violence and misconduct where appropriate; and
- supporting and training Members of the University Community who are likely to receive Disclosures to ensure Survivors are treated with compassion, dignity and respect in a non-judgmental and empathetic manner.

4.2. The University recognizes that sexual violence and misconduct can occur regardless of sexual orientation, gender identity, or relationship between the Survivor and the Respondent, and that each Survivor will be differently impacted by sexual violence and misconduct.

4.3. Respondents who are found to have committed an act of sexual violence and misconduct will be held accountable by the University and will be subject to disciplinary action up to and including Student expulsion or Employee termination, according to University policy and/or the applicable Collective Agreement.

5. SAFETY AND SECURITY OF THE UNIVERSITY COMMUNITY

5.1. Where a Member of the University Community has reason to believe that sexual violence and misconduct may occur on campus, they should first inform any specific person who may be at risk, and then the Manager of Campus security.

5.2. Where a Report is made of an incident of sexual violence and misconduct by a Member of the University Community or against a Member of the University Community, which has occurred on or off University property and poses a risk to the safety of Members of the University Community, the University shall take all reasonable steps to ensure the safety of the Survivor and the broader University community as well.

6. SURVIVORS WHO CHOOSE TO DISCLOSE

6.1. Survivors may choose to Disclose without making a Report.

6.2. The University recognizes that Survivors are most likely to Disclose to another Member of the University Community. Student Survivors seeking support may Disclose to faculty members, Counselling & Learning Support, Accessibility Services, Student Affairs and Services, the Conflict Resolution Advisor, and/or members of the University administration. Employee Survivors seeking support may Disclose to their immediate supervisor, their union representative, Human Resources, or the Employee Assistance Program.

6.3. Appropriate support services and accommodations will be made available to all Survivors who Disclose. These services may include information about and referrals to Counselling & Learning Support and/or Health Services; safety planning and measures; academic accommodations; class schedule changes; and information about options for Reporting. The University will consider accommodations to the point of undue hardship. Survivors do not need to prove that sexual violence and misconduct occurred in order to access these services and accommodations. However, if accommodations are requested for medical reasons credible medical information may need to be provided in support of that request.

6.4. All Members of the University Community should be knowledgeable about how to appropriately receive and respond to a Survivor who chooses to Disclose. All Members of the University Community should treat Survivors with compassion, dignity and respect.

7. SURVIVORS WHO CHOOSE TO REPORT

7.1. A Report of sexual violence and misconduct can be made under this Policy by any Survivor. Complainants (Survivors who choose to Report) are encouraged to come forward as soon as they are able to do so.

7.2. The following Reporting options are available to Survivors:

- If the Respondent is a Student, the Report is made to the Office of Student Affairs, or
- If the Respondent is any other Member of the University Community, the Report is made to the Associate Vice President, Human Resources.

- 7.3. A Survivor may also decide to Report the incident to local law enforcement, make an anonymous Third Party Report to police through a community-based anti-violence worker, and/or initiate civil legal proceedings.
- 7.4. In cases involving behaviour that may fall within the definition of sexual harassment in the University Harassment Policy (E.501), a Survivor will be given the choice to continue the processes and procedures set out in this Policy and its associated procedures or to file a complaint under the Harassment Policy. If Human Resources determines the behaviour does not fall within the scope of the Harassment Policy, then the Survivor may choose to proceed under this Policy.
- 7.5. If a Survivor, in good faith, makes a Report but is not able to satisfy the Balance of Probabilities the Report will likely be dismissed. However, the Survivor may still access support services and accommodations as set out in Section 6.3 of this Policy.

8. RESPONDING TO REPORTS

- 8.1. The Office of Student Affairs is responsible for investigating and responding to Reports where the Respondent is a Student. Human Resources is responsible for investigating and responding to Reports where the Respondent is any other Member of the University Community. External investigators may be appointed by the University in appropriate circumstances.
- 8.2. The procedures for investigating and responding to a Report are set out in B.401.1 – Sexual Violence and Misconduct Procedure.
- 8.3. Investigations and decision-making are guided by the principles of natural justice. Evidence will be weighed based on reliability, probative value and relevance to the issues at hand. Investigations will lead to a decision and consequences will follow in those instances where sexual violence and misconduct is found to have occurred on the Balance of Probabilities.
- 8.4. Timeliness of investigation and response will vary based on factors including the availability of Witnesses or evidence and/or involvement in other investigations and legal proceedings. As such, any timelines stated in this Policy or its associated procedures are subject to change in appropriate circumstances.

9. INTERIM SANCTIONS

- 9.1. The University reserves the right to impose interim (temporary) sanctions on a Respondent on the basis of a Report, prior to the determination of responsibility, where the reported sexual violence and misconduct significantly disrupts the learning/working environment. Interim sanctions must be reasonably required to protect the Survivor, the public, maintain order, ensure safety of persons and/or property and generally prevent harm.

- 9.2. Interim sanctions include temporary removal from a program, class and/or role, temporary access restriction, administrative hold, a No-Contact Requirement, and/or any other sanction, or combination of sanctions, that are appropriate in the circumstances.

10. CONFIDENTIALITY AND PRIVACY

- 10.1. Confidentiality is an important principle in creating an environment where Survivors feel safe to Disclose, Report and seek support.
- 10.2. The information and records created and received to administer this Policy are subject to the access to information and protection of privacy provisions of the BC *Freedom of Information and Protection of Privacy Act* (“FIPPA”).
- 10.3. Members of the University Community must keep all Confidential Information confidential. Members of the University Community who receive a Disclosure or Report or are involved in addressing or investigating an incident must:
- Make every reasonable effort to protect Confidential Information and maintain confidentiality;
 - Seek the consent of Survivors before disclosing any Confidential Information to any third party. The only exceptions to this rule are related to:
 - Minors in need of protection (BC *Child, Family and Community Service Act*)
 - Survivors, family members or community members who may be at risk of or vulnerable to severe injury or mortality.
 - Perpetrators who may be at risk of committing severe injury or mortality.
 - Where a court has ordered the release of records to the court.
 - Collect the minimum information about individuals that relates directly to and is necessary to respond to a Report, which is considered to be supplied in confidence;
 - Use the Confidential Information only for the purposes of, or those consistent with, addressing the situation, investigating or taking disciplinary action; and
 - Limit disclosure of Confidential Information to those faculty and staff of the University who need to know to perform their duties as an employee.
- 10.4. Members of the University Community may disclose Confidential Information if compelling circumstances exist that affect anyone’s health or safety.
- 10.5. The University will share Confidential Information in order to ensure that the Reporting processes listed in Sections 7 and 8 are fairly conducted, in accordance with the following principles:

- The Respondent has the right to know the pertinent details of the complaint, including the identity of the person who made the Report (the Complainant). However, the identity of the Complainant may be withheld until such time as a risk assessment has taken place to protect the health and safety of the Complainant.
- The Complainant has the right to know the outcome of the investigation, but not the details of any disciplinary actions that may have been taken against the Respondent unless sharing that information is necessary for the protection of the Complainant's health or safety; and
- Other persons do not have the right to know any Confidential Information except to the extent required to conduct an investigation or as required by law.

10.6. The President may authorize the disclosure of Confidential Information in any of the following circumstances:

- the person the information is about has consented in writing;
- disclosure of the information is necessary for the protection of health or safety; and
- disclosure of the information is otherwise authorized or required by law.

10.7. Unauthorized release of Confidential Information is a violation of this Policy, may violate FIPPA, may deter Survivors from coming forward and may prevent the University from conducting a fair process when a Report is made.

11. RETALIATION

11.1. The University will not tolerate any retaliation, directly or indirectly, or threats of retaliation against anyone who Discloses or Reports or who participates in a process that responds to a Report. Members of the University Community who are found to have engaged in such conduct will be subject to sanctions and/or discipline, up to and including Student expulsion from the University or termination of employment.

12. GENERAL PROVISIONS

12.1. This Policy will be reviewed within two years of date the Policy is issued and at least once every three years after the first review, in consultation with Students and other Members of the University Community.

12.2. Once per academic year, the President will report to the Board of Governors on the implementation of this Policy.

13. DESIGNATED OFFICER

- 13.1. The President is responsible for the administration of this Policy and the development and subsequent revisions of any associated procedures.