

 CAPILANO UNIVERSITY		POLICY	
Policy No.	Officer Responsible		
B.511	President		
Policy Name			
Discrimination, Bullying and Harassment Policy			
Approved by	Replaces	Category	Next Review
Board of Governors	E.501	A	June 2019
Date Issued	Date Revised	Related Policies, Reference	
June 19, 2018	NEW	B.101 Vision, Values, Mission, Goals and Strategic Directions B.511.1 Discrimination, Bullying and Harassment Procedure B.401 Sexual Violence and Misconduct B.701 Student Code of Conduct B.506 Standards of Conduct B.512 Human Rights, Diversity, Inclusion, and Equity S2003-01 Academic Freedom Respectful Learning and Working Environment Statement	

1. PURPOSE

1.1. UNIVERSITY COMMITMENT

Among Capilano University’s values are diversity, the individuality of learners, open engagement with ideas and respectful engagement with each other, personal accountability for integrity and success, and transparency and an ethic of fairness. The University is committed to providing a respectful learning and working environment that allows for full and free participation of all members of the University community. Discrimination, bullying and/or harassment undermine these objectives and violate the fundamental rights, personal dignity and integrity of individuals or groups of individuals. Discrimination, bullying and/or harassment are serious offences and are not tolerated by the University, and may be cause for disciplinary sanctions including, where appropriate, suspension, dismissal or expulsion.

The University abides by the B.C. *Human Rights Code* and the B.C. *Workers Compensation Act*. The Discrimination, Bullying and Harassment Policy (the “policy”) is intended to prevent discrimination, bullying and/or harassment and to provide procedures for reporting, investigating and resolving incidents and complaints where this behaviour occurs, including discrimination-based harassment, sexual harassment, and workplace bullying and harassment.

1.2. ACADEMIC FREEDOM

This policy is not intended to infringe upon the ability of instructors and students to engage in academic discussion. In exercising academic freedom, members of the University community must conduct their behavior in a responsible manner that respects the rights of other members of the University community.

2. DEFINITIONS

“Balance of probabilities” means the standard of proof used to determine findings of fact, requiring the evidence shows that the discrimination, bullying and/or harassment that is the subject of the formal complaint is more likely than not to have occurred.

“Complainant” means a member of the University community who has filed a formal complaint under this policy and its associated procedure.

“Confidential Information” means all information, oral or written, created, gathered, received or compiled through the course of a complaint under this policy and associated procedure.

“Discrimination” is any form of adverse treatment or omission of a person or group, whether intentional or not, on the basis of one or more of the prohibited grounds under the *B.C. Human Rights Code* and for which there is no *bona fide* and reasonable justification. Discrimination has the effect or purpose of unreasonably interfering with that person’s or group’s access to the opportunities, benefits and advantages available to other members of society.

“Discrimination-based harassment” is a form of discrimination that adversely affects the recipient on one or more of the prohibited grounds under the *B.C. Human Rights Code*, including sexual harassment. Discrimination-based harassment is behaviour or the effect of behaviour, whether direct or indirect, which meets one of the following conditions:

- a) Is abusive or demeaning;
- b) Would be viewed by a reasonable person experiencing the behavior or effect of the behavior, as an interference with their participation in a University-related activity;
- c) Creates an intimidating, humiliating or hostile environment.

“Employee” means any person employed by the University.

“Harassment” where it appears in this policy refers to behavior that satisfies any one or more of the following as defined in section 2:

- a) “Personal harassment and bullying”
- b) “Discrimination-based harassment”
- c) “Sexual harassment”

“Member of the University community” means employees, students, agents, board members and volunteers.

“Personal harassment and bullying” is objectionable and unwanted behaviour that is verbally or physically abusive, vexatious or hostile, that is without reasonable justification, and that creates an intimidating or humiliating environment for learning or working. Personal harassment and bullying need not be based on one of the *B.C. Human Rights Code*’s prohibited grounds. This conduct usually involves a course of conduct but a single incident may be sufficient to be considered personal harassment and bullying when the conduct is of a very serious nature.

Examples of personal harassment and bullying include but are not limited to the following behaviours:

- a) verbal aggression or yelling;
- b) persistent demeaning or intimidating comments, gestures or conduct;
- c) threats to a person’s employment or educational status, person or property;
- d) persistent comments or conduct, including ostracism or exclusion of a person, that undermine an individual’s self-esteem so as to compromise their ability to achieve work or study goals;
- e) unwarranted and excessive supervision or criticism of an individual;
- f) abuse of power, authority or position;
- g) sabotage of a person’s work;
- h) hazing;
- i) spreading of malicious rumours or lies;
- j) cyberbullying and harassment;
- k) making malicious or vexatious complaints about a person;
- l) physical assault or threats; or
- m) making aggressive or threatening gestures.

Personal harassment and bullying does not include:

- a) the exercise of appropriate managerial or supervisory direction, including appropriate performance management and the imposition of discipline;
- b) reasonable action taken by an instructor relating to management of the classroom and assignment of course work;
- c) constructive criticism;
- d) reasonable changes to assignments or duties;
- e) correction of inappropriate behaviour;
- f) instructional techniques such as using irony, conjecture, and refutation, or assigning readings or other instructional materials that advocate controversial positions; or
- g) respectful expression of differences of opinion.

“Prohibited grounds” are the grounds protected against discrimination by the *B.C. Human Rights Code*. As of this date, prohibited grounds are: age, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression and, in the case of employment, unrelated criminal conviction.

“Reasonable person standard” means whether or not a reasonable person in roughly the same position as the complainant would judge discrimination to have occurred as a result of another person’s behaviour or pattern of behaviour.

“Respondent” means a member of the University community against whom a complaint of discrimination, bullying and/or harassment has been made under this policy and its associated procedure.

“Retaliation” means an adverse action taken against any member of the University community for:

- a) Having invoked this policy or associated procedure in good faith;
- b) Having participated or cooperated in any investigation under this policy or procedure; or
- c) Having been associated with a person who has invoked this policy or participated in the procedure.

“Sexual harassment” is a comment, conduct or representations of a sexual nature, including sexual advances, requests for sexual favours, suggestive comments or gestures, or physical contact by a person who knows, or ought reasonably to know, that the conduct or comment is unwanted or unwelcome. The behavior interferes with another person’s participation in a University-related activity; or leads to or implies employment or academically-related consequences for the person harassed; or creates an intimidating, humiliating or hostile environment.

Examples of sexual harassment include but are not limited to the following behaviours:

- a) the expression of sexist attitudes, language and behaviour;
- b) unwanted touching or physical contact;
- c) unwelcome sexual flirtations, advances or propositions;
- d) leering or staring;
- e) displaying or circulating pictures or other material of a sexual nature which are not part of the legitimate study, display, use or distribution of topics, material or art forms falling within appropriate academic norms;
- f) exploitation of the fiduciary relationship between students and employees of the University;
- g) express or implied promise of a reward for complying with a sexually-oriented request;
- h) reprisal, or express or implied threat of reprisal, for refusing to comply with sexually-oriented requests; or
- i) denial of opportunity, or the express or implied threat of the denial of opportunity, for failure to comply with a sexually oriented request.

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

“University-related activity” includes an activity or event conducted under the authority of the University at any location, on or off campus. All activities on the University’s campuses are University-related unless they are conducted under the control of a person, organization, association or group that is separate from the University.

3. SCOPE AND JURISDICTION

3.1. This policy and its associated procedure apply to all members of the University community.

- 3.2. A complaint under this policy may only be made by a member of the University community against another member of the University community.
- 3.3. WorkSafeBC complaints may only be made by those members of the University community to whom the University's WorkSafeBC coverage applies and may be made about the behaviour of members of the University community or about the behaviour of others who are not members of the University community.
- 3.4. The policy applies to all situations where activities are connected to work with the University and could impact employment during and outside of regular business hours at the workplace and away from the workplace. This may include:
 - a) Participation in University-related activities;
 - b) Work assignments outside of University premises;
 - c) Work-related conferences, training sessions, or seminars;
 - d) Work-related travel; or
 - e) Work-related social functions that the University sponsors or organizes.
- 3.5. In cases involving behaviour that may fall within the definition of "sexual violence and misconduct" in the University's Sexual Violence and Misconduct Policy (B.401), an individual may choose to proceed under that Policy.

4. ROLES AND RESPONSIBILITIES

4.1. MEMBERS OF THE UNIVERSITY COMMUNITY

- 4.1.1 All members of the University community (as defined in section 2) have a responsibility to ensure awareness of, and adherence to this policy, all other University policies and procedures, and all applicable laws. All members of the University community are integral to creating a respectful and safe environment and are expected to treat each other with dignity and respect, and must refrain from engaging in discrimination, bullying and/or harassment.
- 4.1.2 Members of the University community must participate in any procedures taken under this policy. Failure to comply with the provisions or any resolution agreed upon or imposed as a result of this policy and its associated procedure may result in disciplinary action by the University.
- 4.1.3 All members of the University community, including those in positions of authority, involved in a complaint have the obligation to respect and maintain the confidentiality of information as described in section 8.

4.2. INDIVIDUALS WITH SUPERVISORY RESPONSIBILITIES

- 4.2.1 Supervisors and managers are responsible for fostering and maintaining work and learning environments free from discrimination, bullying and/or harassment, and to take prompt remedial action should discrimination, bullying and/or harassment occur.

- 4.2.2 Supervisors and managers must receive training to recognize the potential for discrimination, workplace bullying and/or harassment, and to respond and mediate informally and/or follow the procedure for reporting under this policy.
- 4.2.3 Supervisors and managers must address complaints promptly, confidentially and fairly, and seek advice from the Associate Vice President, Student Success, the Associate Vice President, Human Resources and/or the Conflict Resolution Advisor when appropriate.
- 4.2.4 Supervisors and managers must implement the recommendations (including disciplinary measures) when required as an outcome of the procedure of this policy.

5. ACCESS TO OTHER PROCEDURES

5.1. GENERAL

- 5.1.1 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 or WorkSafeBC. The University may elect to suspend its process until the outcome of the process outside the University is determined.
- 5.1.2 This policy and its associated procedure are separate from any criminal or civil proceedings. The University is not responsible for determining violations of criminal or civil law.
- 5.1.3 The University will cooperate in any criminal investigation.

5.2. COLLECTIVE AGREEMENTS

Both the faculty and staff collective agreements contain harassment provisions. Complainants who are members of the faculty or staff unions may choose to proceed under the provisions of their collective agreements rather than under this policy. A complainant may not concurrently pursue a complaint under both this policy and their respective collective agreement. An employee who commences a complaint under this policy and procedure shall not forfeit their entitlement to pursue a complaint through the grievance procedure under their respective collective agreement.

6. COMPLAINTS

- 6.1. A member of the University community who believes that they have a complaint of discrimination, bullying and/or harassment is encouraged to make a direct request to the accused that the unwanted behaviour or action(s) cease. If their request is unsuccessful, or if they consider it inappropriate or uncomfortable to make such a request, the individual may seek assistance from their supervisor or manager, Human Resources, the Conflict Resolution Advisor or union representative.
- 6.2. The filing of a complaint under this policy and associated procedure is the right of every member of the University community and may be exercised without fear of reprisal or retaliation.

- 6.3. The University will exercise care to protect and respect the rights of both the complainant and the respondent. The University will seek to achieve procedural fairness in dealing with all complaints, including the following:
- a) Any complainant who wishes the University to conduct a formal investigation must be prepared to be identified to the respondent. The principles of confidentiality, as outlined in section 8, will be followed.
 - b) Respondents must be informed of a complaint made against them under this policy. Complainants and respondents must be given the opportunity to present evidence in support of their positions.
 - c) Those responsible for interpreting, administering and applying this policy will use a reasonable person standard and will apply this policy in an unbiased, non-arbitrary manner.
 - d) Complaints made in good faith will be addressed in a timely manner without reprisal.
- 6.4. If the matter becomes the subject of any other problem resolution procedure, including the subject of a charge laid pursuant to the *Criminal Code of Canada*, the University may elect not take any further action until the other process has been concluded and further action is requested by the complainant.
- 6.5. If an individual, in good faith, makes a complaint but is not able to satisfy the balance of probabilities, the complaint may be dismissed. However, the complainant may still access support services including but not limited to Counselling and Learning Support, the Employee and Family Assistance Plan or the Conflict Resolution Advisor.

7. INTERIM MEASURES

The University reserves the right to impose interim (temporary) measures while a complaint is being resolved or investigated, prior to the determination of responsibility, where the reported discrimination, bullying and/or harassment significantly disrupts the learning or working environment. Interim measures are not intended to be punitive, but are intended to provide a safe environment for all parties.

8. CONFIDENTIALITY AND PRIVACY

8.1. GENERAL

The University recognizes the protection of confidentiality is essential to the proper functioning and implementation of this policy and its associated procedure.

Supervisors and managers involved in a complaint must keep all Confidential Information (as defined in section 2) confidential. All Confidential Information must be treated as confidential by both the respondent and complainant, their representatives, witnesses, officials designated by this policy, and members of the University community. Records are held in confidence to the extent allowed by or required by:

- a) This policy and its associated procedure;
- b) The law, including the *Freedom of Information and Protection of Privacy Act* (FIPPA). All recorded information will be treated as “supplied in confidence” for purposes of compliance with FIPPA and responding to access requests; and
- c) Judicial and quasi-judicial proceedings, including but not limited to proceedings before the BC Human Rights Tribunal and WorkSafeBC investigations.

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

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

9. TIME LIMITATION

The University is committed to addressing complaints of discrimination, bullying and/or harassment in a reasonable time frame from the date of the incident(s) on which the complaint is based. The time frame may be extended if the delay was incurred in good faith or if the delay does not result in prejudice against any of the individuals involved, or where an investigation is required as a result of a WorkSafeBC claim for compensation relating to workplace bullying and/or harassment.

10. RETALIATION

The University will not tolerate any retaliation, directly or indirectly, or threats of retaliation against anyone who makes a complaint of discrimination, bullying and/or harassment or who participates in a process that responds to a complaint. 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.

11. FRIVOLOUS OR VEXATIOUS COMPLAINTS

11.1. An investigation may determine that a complaint is not supported or that there is no breach of this policy. Such a finding does not automatically mean that the complaint was frivolous or vexatious.

11.2. Frivolous or vexatious complaints are those where the complainant or others know of no foundation in fact that would suggest a breach of this policy, and where the complaint is filed for the purpose of bringing an adverse consequence to the respondent or another member of the University community. Such complaints in and of themselves are a breach of this policy, and any member of the University community engaged in the presentation or filing of such a complaint may be subject to sanctions and/or discipline, up to and including student expulsion from the University or termination of employment

12. RECORDS

- 12.1. Investigative reports and records of proceedings are confidentially maintained by the Office of Student Affairs or Human Resources. All records relating to a complaint will be kept for a period of no less than ten (10) 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, or will otherwise be confidentially destroyed.
- 12.2. Records are not available to be copied or viewed by members of the University community unless required by this policy, its associated procedure or required by law for the purposes of external legal proceedings.

13. AMENDMENT

Substantive revisions will not be made to this policy without consultation with the University administration, Capilano Faculty Association, MoveUP and the Capilano Students' Union.

14. DESIGNATED OFFICER

The President is responsible for the administration of this policy and the development and subsequent revision of any associated procedure.

15. ANNUAL REVIEW

This policy and associated procedure will be reviewed annually.