Procedures for Policy 6.4 - Sexual Violence Policy – Procedures Documents for Students

Issued by: Provost & Vice-President (Academic), and Vice-President (Finance, Administration & Risk)

Approving Authority: Board of Governors

Policy Effective Date: June 1, 2018

Revised: New (reviewed every 3 years, or earlier as required)

To receive this Policy in an alternate format, contact the Office of Diversity and Human Rights:
Phone: (1) 519-824-2141 x53000 or Email: dhrinfo@uoguelph.ca

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1. Preamble
   a. This Procedures Document for Students (“Procedures Document”) is part of the University’s Sexual Violence Policy (“Policy”) available at: https://uoguelph.civicweb.net/document/153691 and provides specific information regarding Disclosure, Interim Measures and Complaint procedures for incidents of Sexual Violence involving students.
   b. Procedures for allegations against faculty and staff can be found at:

      Violence Prevention in the Workplace
      Harassment Prevention in the Workplace or the Human Rights Policy

   c. Defined terms in the Policy apply to this Procedures Document. In the event of a discrepancy between the Policy and the Procedures Document, the Policy will apply. Unless otherwise stated, Section numbers refer to this Procedures Document.
   d. To receive either the Policy or this Procedures Document in an alternate format, contact the Office of Diversity and Human Rights (“DHR”) Ext.53000 or dhrinfo@uoguelph.ca

2. Director Sexual Violence Support Centre
   a. The Director Sexual Violence Support Centre (Director) provides information about the processes available regarding allegations of Sexual Violence involving students. The Director can provide or facilitate the provision of Supports (see s. 7 of the Policy) to Survivors upon receiving a Disclosure. Survivors do not need to initiate one of the Resolution Options (Section 5) in order to receive Supports.
   b. The Director can also provide recommendations to the University regarding Interim Measures as defined in Section 7. Contact information for the Director is available on the Sexual Violence Support and Information website: https://www.uoguelph.ca/sexualviolence/resources

3. Reporting Incidents of Sexual Violence
   a. Incidents of Sexual Violence can be reported to the University in two ways; by making a Disclosure (Section 4) or by initiating one of the Resolution Options (Section 5).
   b. A criminal complaint may be filed directly with a police service or through the Campus Community Police. Support with this process can be provided through the Case Director.
4. Disclosure

a. Anyone can make a Disclosure. The Sexual Violence Support and Information website provides a number of contacts for individuals who may be affected by Sexual Violence: https://www.uoguelph.ca/sexualviolence/resources.

b. Subject to the University’s legal obligations, a Disclosure does not normally trigger any of the Resolution Options (Section 5). Survivors may choose not to participate in any of the Resolution Options.

c. Once a Disclosure is made and regardless of whether any of the Resolution Options are initiated, the University will provide Supports, as appropriate (Section 7 of the Policy).

d. Except where the University has an obligation to act as determined under Section 8 of the Policy, no actions will be taken against a Person Accused by the University solely on the basis of a Disclosure.

5. Resolution Options

In relation to a specific allegation, a party may initiate one or more of the Resolution Options under these Procedures. The Resolution Options are Alternate Resolution or the Formal Complaint Process described below.

a. Alternative Resolution (“AR”)
   i. At any time, either party may request AR through Student Housing, the Office of Diversity and Human Rights (“DHR”) or Campus Community Police. AR is voluntary, and will only be used if the parties agree and the University determines AR is appropriate in the circumstances.
   ii. In response to a request for AR, the University will review the allegation(s) to determine if it has jurisdiction. The Assistant Vice-President (DHR) will be consulted as part of that review. The determination of jurisdiction will consider whether the allegation(s):

      1. falls under the Scope of this Policy; and
      2. contains sufficient evidence which if true, would support a finding that Sexual Violence occurred (prima facie case)
   iii. If it is determined that the University has jurisdiction, an assessment will be made by the University as to whether AR is appropriate in the circumstances. The University will consider factors including but not limited to:
1. the University's legal responsibility to provide an environment free from Sexual Violence;
2. other legal procedures that may be initiated to protect statutory rights; and
3. the wishes of the parties.

iv. In order to initiate AR, a written statement of the particulars of the allegation ("Statement") will be provided to the Person Accused. However, AR involves no investigation or fact-finding but is an opportunity for the parties to resolve a complaint with the assistance of a trained facilitator.

v. If AR is not successful or if the Parties choose not to undertake AR, the Survivor can choose to proceed to the Formal Complaint Process. The Statement will form part of the materials for the Formal Complaint Process. Other documentation submitted during AR will not automatically be part of the materials for the Formal Complaint Process.

vi. Individuals involved in facilitating AR will not be a witness in any proceeding related to the subject matter of the complaint, unless required by law.

vii. AR processes under this Policy are confidential and without prejudice. Information obtained by the Survivor or the Person Accused through AR cannot be introduced as evidence in any internal disciplinary process, unless required by law.

viii. Any tentative settlement reached through AR must be mutually accepted by the parties and approved by the University.

ix. Allegations of a breach of a settlement may be pursued under the Non-Academic Misconduct Policy.

b. Formal Complaint Process

i. The Formal Complaint Process is managed by DHR.

ii. Under the Formal Complaint Process, the term “Complainant” will be used to identify the Survivor and the term “Respondent” to identify the Person Accused.

iii. The Formal Complaint Process involves documentation, investigation and if appropriate, a decision making process. The standard to be used in the determining whether a breach has occurred is one of a “balance of probabilities”.

iv. If the AVP (DHR) determines that the Formal Complaint satisfies subsection a(ii) above, the AVP (DHR) will advise the parties as appropriate, and initiate the investigation process.

v. The investigation will include among other things, interviewing the parties and relevant witnesses, and requesting and reviewing the relevant documentation. The parties may be accompanied in their interviews by a support person. A support person cannot also act as a witness.
vi. Once the investigation has been concluded, a report will be prepared by the investigator(s) (“Report”) which will include:
   1. the allegations contained in the Formal Complaint;
   2. the nature of the evidence;
   3. an analysis of the evidence; and
   4. one of the following recommendations:
      a. the Sexual Violence Policy has been breached;
      b. the Sexual Violence Policy has not been breached; or
      c. the Sexual Violence Policy has not been breached and the Complaint is vexatious or has been made in bad faith.

vii. The Report will be reviewed by the AVP DHR and forwarded to the Vice-Provost (Student Affairs) for a decision.

viii. The Vice-Provost (Student Affairs) will consider the Report and may consult with the investigator(s) prior to making a decision. The Vice-Provost (Student Affairs) may meet with one or both of the parties or witnesses prior to rendering a decision.

ix. The Vice-Provost (Student Affairs) will normally make a decision within ten (10) University working days of receipt of the Report or after meeting with the parties, whichever is later. The Vice-Provost (Student Affairs) will provide a written decision with reasons to the parties together with a copy of the Report.

x. If there is a finding that there has been a breach of the Sexual Violence Policy, the Respondent may appeal the decision (including penalty) in whole or in part to the Appeals Committee.

xi. If there is a finding that the Formal Complaint was vexatious or made in bad faith, the Complainant may appeal the decision (including penalty) in whole or in part to the Appeals Committee.

xii. Any appeal must be submitted within 15 University working days from the date of the decision. Any appeal to the Appeals Committee will proceed as a hearing de novo in accordance with the rules of procedural fairness. The appellant has the right to be represented by an advisor or legal counsel at the hearing.

xiii. If either party appeals under subsections x or xi above, the other party will be advised of the outcome.

6. Penalties

Upon a finding of a breach of the Sexual Violence Policy, the Vice-Provost (Student Affairs) may impose one or more of the penalties available under the Judicial Committee’s Terms of Reference, as amended from time to time. These include but are not limited to:

a. Warning
b. Non-academic Probation
c. Forbid Entry to Certain Premises  
d. Restriction of Computing Privileges  
e. Community Service or Educational Program  
f. Restricted Access (e.g. restriction of participation in non-academic events or programs)  
g. Recommendation of Suspension or Expulsion

7. Interim Measures

a. Once one of the Resolution Options is initiated, the University may impose such Interim Measures as may be appropriate. The decision to impose the Interim Measures will balance the safety and security of the Survivor and University Community Members with the rights of the Person Accused to procedural fairness and due process. Interim Measures may include, but are not limited to:

   i. separation of individuals in classes or other academic settings or University residences;
   ii. issuing “no-contact” orders;
   iii. restricting individuals from certain buildings including student residences; or
   iv. interim prohibition from certain events.

b. Interim Measures do not indicate a finding of a breach under this Policy. Normally, Interim Measures imposed will continue until the complaint is resolved under the respective Resolution Option(s) or as otherwise determined by the University.

c. Allegations of a failure to abide by the Interim Measures may be pursued under the Non-Academic Misconduct Policy.