

## Sexual Misconduct Policy

All students and staff of Discovery Community College are entitled to study and work in an environment that is free from sexual misconduct. The College considers sexual misconduct to be a serious violation of an individual's fundamental rights. Members of the College community who engage in sexual misconduct may be subject to a range of disciplinary measures, up to and including suspension, dismissal, or expulsion from the College. Members of the College community who experience and report sexual misconduct will be provided with support by the College and assistance with accessing additional support services.

Understanding what constitutes sexual misconduct is often difficult. Freedom from misconduct and harassment does not mean that you will be protected from exposure to controversial material and ideas, nor does it mean that every encounter you have at Discovery Community College will be agreeable. Discovery Community College is a place of learning in which the free exchange of information, ideas, and perspectives is valued and encouraged. The legitimate study of topics of a sexual nature within the College's curriculum is not considered sexual misconduct.

### Definitions

Sexual misconduct refers to a spectrum of non-consensual sexual contact and behaviour including the following:

- sexual assault
- sexual exploitation
- sexual harassment
- stalking
- indecent exposure
- voyeurism
- the distribution of a sexually explicit photograph or video of a person to one or more persons other than the person in the photograph or video without the consent of the person in the photograph or video and with the intent to distress the person in the photograph or video
- the attempt to commit an act of sexual misconduct
- the threat to commit an act of sexual misconduct

A complaint of sexual misconduct is different than a report of sexual misconduct. A person may choose to disclose or complain of sexual misconduct without making a formal report. A report is a formal notification of an incident of sexual misconduct to someone at the institution accompanied by a request for action.

A student making a complaint of sexual misconduct will be provided with resolution options and, if appropriate, accommodation, and will not be required or pressured to make a formal report.

### Disclosure and reporting options

- **No Report:** The complainant may wish to disclose sexual violence to seek emotional support, medical support, or advocacy, but may not want to report to police or other campus authorities. Subject to certain limited exceptions, this decision should be respected, and the complainant should still be offered support services.
- **Report to Police:** The complainant may wish to make a police statement, which would generally be followed by a criminal investigation.

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- **Third Party Report to Police via Community Victim Service Agency:** The complainant may wish to make an anonymous third-party report through a community-based victim support worker; reports are sent to police by an intermediary agency and provide detailed information about the incident and the respondent, but do not include the name or contact information of the complainant. A third-party report is not in and of itself a police investigation; it is an option of last resort for the complainant who would not otherwise provide information to the police but who may want to access support and let the police know of a sexual predator to protect others.
  - **Medical Assistance / Forensic Medical Exam:** It is advisable for anyone who has experienced a sexual assault to seek medical attention to address possible physical injury, pregnancy and/or sexually transmitted infections. The complainant will be referred to the nearest hospital.
  - **Formal Complaint to College:** The complainant may wish to make a formal report to the College, precipitating the College Sexual Misconduct process if either the complainant or respondent is a student, staff, visitor, or guest to the College. The complaint procedure process is outlined below.

### Complaint Procedure

#### Initial Consultation: Student Services Manager

A member of the College community who feels he or she has experienced or witnessed sexual misconduct and is considering a complaint process is encouraged to discuss the matter with the student services manager. The student services manager will engage in a confidential discussion regarding the complainant's options, and provide the complainant with information and guidance regarding:

- Whether the behaviour(s) in question may fall within the definition(s) of sexual misconduct under this policy
- Possible procedures and options available to the complainant under this policy or under alternate policy or process (as appropriate)
- Where a complainant wishes to pursue a formal complaint, he/she will be referred to the appropriate individual as provided in the policy
- Available support for the complainant

The student services manager does not determine whether behaviours are sexual misconduct; the student services manager only confirms that behaviours as described by the complainant may constitute sexual misconduct. Only a formal investigation can determine whether sexual misconduct has taken place.

The student services manager works with the complainant, providing options for the complainant to deal with presented behaviours.

The student services manager will maintain confidentiality of this discussion. However, if the complainant claims that the sexual misconduct involves violence, the student services manager must report the situation to the director of student operations who will investigate and may encourage the complainant to report the situation to the police, following one of the reporting options set out above. A complainant is not precluded from reporting to police if they have reported the complaint to the College.

If the complainant, after initial consultation, wishes to proceed to a formal complaint of sexual misconduct under the policy, the student services manager may provide advice on the necessary elements for a formal complaint.

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### Informal Resolution

If a complainant wishes to pursue further actions after an initial consultation with the student services manager and the misconduct and/or harassment behaviours are subject to process under this policy, he/she may first seek informal resolution. Informal resolution is not mandatory and may not be appropriate for all manner of sexual misconduct. The complainant may choose to proceed immediately to formal resolution.

If the behaviours are student-to-student and classroom based, the complainant may request that the instructor or student services manager intervene to address the misconduct or harassment behaviours and act as appropriate to the situation.

Where misconduct or harassment behaviours are not student-to-student and classroom based or faculty intervention is not appropriate or possible, the complainant may seek informal resolution through the director of student operations. When a director of student operations receives a verbal or written complaint of sexual misconduct, he/she will follow-up on such allegations in a timely manner including informing the respondent of the complaint and providing a copy of this policy. Such follow-up may involve attempting to facilitate a mutually agreed-to resolution between the complainant and respondent, applying appropriate College policy or procedures, and/or taking appropriate preventative, disciplinary or remedial measures. Disciplinary actions may include but are not limited to:

- Warning or reprimand
- Referral to external services
- Restricted/no access to specific areas of the College or to a specific campus
- Suspension/expulsion from specific classes and/or from the College

Where the director of student operations determines that the investigation of the allegations of sexual misconduct may result in serious consequences for the College, he/she will consult with the chief executive officer to determine if the complaint resolution process should move directly to a formal investigation.

### Formal Complaint

Where the complainant wishes to pursue a formal complaint and both complainant and respondent are students, the complainant must submit a written and signed formal complaint to the student services manager.

Where the complaint involves a college employee as complainant or respondent, a written and signed formal complaint must be submitted to the director of student operations.

- The student services manager or director of student operations will review the merits of any complaint that falls under the provisions of this policy and determine that it falls under the provisions of this policy and will arrange for a formal investigation, including whether an internal or external investigator should be appointed.
- When the complaint moves to formal investigation under college policy, an investigator will be appointed. Every effort will be made to do this within five (5) working days of the complaint being received by the student services manager or director of student operations

The appointed investigator will ensure that both the complainant and the respondent are aware that a formal investigation has commenced, and that each has a copy of the sexual misconduct policy.

The investigator will receive information from the complainant, the respondent, and any other

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individuals whom the investigator believes may have information relevant to the complaint.

Information may be received through written documentation, and/or interviews. The investigator will ensure that both the complainant and the respondent are aware of the positions of the other, and of any allegations made against them, and are given a reasonable opportunity to respond.

Where an investigator conducts interviews, the complainant and the respondent may request that a support person be present. This person will act as an observer/support and will not participate in the proceedings.

After completion of the investigation, and within ten (10) working days, the investigator will complete a written report, including a copy of the written complaint and findings of fact, and submit the report to the director of student operations. The report will state whether there is a finding of misconduct based on the balance of probabilities and may include recommendations for resolution of the complaint and/or for remedial or disciplinary action.

#### Formal Decision

After reviewing the report of the investigator, the director of student operations will make decision(s) on findings of sexual misconduct and on appropriate actions in the circumstances.

The decision will be rendered, in writing, to the complainant and respondent as soon as possible but in any case, within ten (10) working days of the receipt of the report of the investigation. Included will be a summary of the findings of the investigator with the decision to the complainant and the respondent.

Where it has been found that sexual misconduct has occurred, disciplinary decisions may include, but are not limited to:

- Warning or reprimand
- Referral to external services
- Restricted/no access to specific areas of the College or to a specific campus
- Suspension/expulsion from specific classes and/or from the College
- Disciplinary action up to, and including, termination of employment

Where it has been found that sexual misconduct has occurred, the College will endeavour to protect the complainant from any subsequent harassment, discrimination, or reprisal, within the College's jurisdiction.

Where it has been found that the complaint was frivolous, vexatious, or vindictive in nature, appropriate disciplinary action will be taken against the complainant.

A copy of the investigative report and the formal decisions will be placed in a confidential file maintained by the director of student operations for a period of five years.

In addition to disciplinary outcomes the formal decision may require further action including workshops and/or mediation for the employees/students in the learning or workplace environment affected by the complaint and/or investigation, changes to college practices/procedures that may be deemed to be discriminatory, or other proactive steps to ameliorate existing conditions.

#### Appeals Process

If the complainant or respondent feels that appropriate process was not followed or that this policy was incorrectly applied, he/she may appeal the decisions of the director of student operations to the chief executive officer. The appeal must be submitted in writing within ten (10) days of the decision being received by the complainant/respondent and must provide specific grounds for the appeal, describing how the policy was incorrectly applied and/or due process was not followed. The appeal will deal with

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appropriateness of process or disciplinary decisions and will not reconsider the original complaint.

If the director of student operation's decision results in disciplinary action against a College employee, that employee shall have access to appropriate College appeal processes.

#### Procedural Fairness and Confidentiality

Any processes undertaken pursuant to this sexual misconduct policy will be based on the principles of administrative fairness. All parties involved will be treated with dignity and respect.

All information related to a complaint or report is confidential and will not be shared without the written consent of the parties, subject to the following exceptions:

- If an individual is at imminent risk of severe or life-threatening self-harm.
- If an individual is at imminent risk of harming another.
- There are reasonable grounds to believe that others in the institutional community may be at significant risk of harm based on the information provided.
- Where reporting is required by law.
- Where it is necessary to ensure procedural fairness in an investigation or other response to a Complaint or Report.

*Sexual Misconduct Policy written 2021-08  
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