
	SUBJECT: Employee-Student Sexual Misconduct Policy (Boucher)	POLICY NUMBER: C501	AUDIENCE: All CCNM Community (Boucher)
	APPROVED BY: Senior Leadership Team	DATE APPROVED: October 4, 2023	DATE EFFECTIVE: October 4, 2023
	DEPARTMENT: Human Resources	SUPERCEDES: Sexual Violence & Misconduct Policy (CCNM – Boucher Campus)	DISTRIBUTION: Online (CCNM Website)
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1 POLICY

- 1.01 To provide a safe and respectful learning and working environment free from Sexual Misconduct and to ensure that all Community Members approach cases of Employee-Student Sexual Misconduct in a consistent, fair, and timely manner.


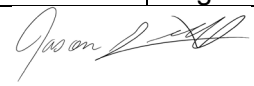
2 SCOPE

- 2.01 This Policy shall apply to all Community Members at the Boucher campus, regardless of their position or status within CCNM. The Human Resources Department shall ensure that Employees are aware of this Policy and their obligations and rights hereunder.
- 2.02 Legal Counsel shall ensure a copy of this Policy is published on the CCNM website and accessible to all Community Members.
- 2.03 This policy does not apply where there exists a consensual relationship between the Student and Employee which predates the arrival of one of the parties to CCNM. In such cases, the Employee must advise their direct Manager/Supervisor immediately of the relationship, and the direct Manager/Supervisor must immediately inform the Executive Director, Human Resources.

3 DEFINITIONS

- 3.01 “Complainant” means a Community Member who makes a complaint under this Policy.
- 3.02 “Community Members” includes Students, Employees, patients, visitors, committee members, board of governors, student groups, and other stakeholders formally recognized by CCNM.
- 3.03 “Employee” means any person who is employed or engaged by CCNM in any capacity, including full-time or part-time employees, faculty members, contractors, and volunteers.
- 3.04 “Frivolous/Vexatious/Bad Faith” means those actions which lack a reasonable basis, are brought with malicious intent, or are intended to harass, annoy, or cause undue burden or distress to another party. Frivolous complaints are without merit or lack supporting evidence, Vexatious complaints are repetitive and made to harass or annoy, and Bad Faith complaints or actions are made with dishonest or malicious intent, disregarding the rights and interests of others.
- 3.05 “Procedural Fairness” means the principle of ensuring fairness and transparency in the procedures used to address Sexual Misconduct complaints. It means that all parties involved in a complaint are provided with a fair and impartial process that respects their rights. This includes being informed about the complaint, having an opportunity to present their version of events, and being treated in an unbiased manner throughout the investigation and resolution process.
- 3.06 “Reprisal/Retaliation” means any adverse action taken against an individual in response to their involvement in a Sexual Misconduct complaint or their exercise of rights protected under this Policy. This includes actions such as intimidation, threats, adverse employment decisions, or any form of negative treatment.
- 3.07 “Respondent” means Community Member that is the subject of a Sexual Misconduct complaint.
- 3.08 “Sexual Misconduct” means in relation to a Student, any physical sexual relations with the Student, touching of a sexual nature of the Student or behaviour or remarks of a sexual nature toward the Student by an Employee where the act:



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- a. constitutes an offence under the *Criminal Code*;
 - b. is defined as sexual misconduct under British Columbia’s *Sexual Violence and Misconduct Policy Act*;
 - c. infringes the rights of the Student under human rights legislation to be free from sexual solicitation or sexual advances or to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance;
 - d. violates any law related to sexual harassment or sexual assault, including but not limited to sexual harassment, sexual assault, and sexual exploitation;
 - e. contravenes any other policy, rule, or other requirement of CCNM respecting sexual relations between Employees and Students; or
 - f. occurs without the explicit and consent of all parties involved.
- 3.09 “Student” means any person who is enrolled in a program or course offered by CCNM, including full-time or part-time students, and exchange students.

4 RESPONSIBILITY

- 4.01 All Community Members are responsible for creating a safe learning environment for Students, free from any form of Sexual Misconduct.
- 4.02 Employees must maintain appropriate professional boundaries and avoid engaging in any conduct or behavior that may exploit or take advantage of their position of authority, trust, or influence. Any such conduct or behavior that violates this Policy and will not be tolerated.
- 4.03 Students involved in an instance of Sexual Misconduct retain the right not to report an incident of nor make a complaint about Sexual Misconduct, request an investigation is not undertaken, and choose not to participate in any investigation.
- 4.04 All individuals who pursue, participate, or cooperate in the investigation or administration process under this Policy are entitled to be free from reprisal or retaliation, or a threat of reprisal or retaliation, whether direct or indirect. Further, any Community Member who reports an incident of Sexual Misconduct or participates in an investigation related to such an incident, shall not be subjected to disciplinary action or sanctions for violations of any CCNM policies, including the *Drug and Alcohol Abuse Policy* as such actions relate to the complaint. Any violations of this provision shall be subject to disciplinary and/or corrective action, up to and including termination. Any person who experiences reprisal or retaliation, or a threat of such, must immediately bring the concern to the attention of the Executive Director, Human Resources.

5 DISCLOSURE OF INFORMATION

- 5.01 Any information collected at any time pursuant to this Policy shall be treated as confidential, except where disclosure is necessary to investigate the complaint, take corrective action with respect to the complaint, or disclosure is required under law. Further, confidentiality cannot be assured in the following circumstances:
 - a. an individual is at imminent risk of self-harm; and/or
 - b. an individual is at imminent risk of harming another; and/or

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c. there are reasonable grounds to believe that others in CCNM or greater community may be at risk of harm.

In such circumstances, information would only be shared with necessary services to prevent harm, and the name of the Student would not be released to the public.

5.02 CCNM will ensure that all physical and electronic records and documents related to the investigation and complaint resolution process are kept in a secure location within the Human Resources Department.

5.03 Persons involved in a complaint must and are expected to maintain confidentiality. If breaches of confidentiality occur, they will be followed-up and depending on the circumstances, may result in sanctions and/or discipline against the person responsible for the breach.



6 REPORTING, INVESTIGATING & RESOLVING COMPLAINTS

6.01 Reporting

- a. Community Members who become aware of an incident of Employee-Student Sexual Misconduct must immediately report it to Executive Director, Human Resources.
- b. The Executive Director, Human Resources, is responsible for reviewing any complaints made under this Policy and may delegate any of their obligations hereunder to the Human Resources Manager, EDI Officer or Legal Counsel.
- c. Within five (5) business days of receipt of the complaint, the Executive Director, Human Resources shall hold a consultation meeting with the Complainant.
- d. The Executive Director, Human Resources will conduct a preliminary review of the complaint based on the reports from the consultation meeting, if any, and submitted documents, and determine if the complaint constitutes Sexual Misconduct under this Policy.
- e. If a complaint does not *prima facie* meet the definition of Sexual Misconduct under this Policy, the Executive Director, Human Resources will advise the Complainant that it will not be investigated.
- f. Where the Executive Director, Human Resources determines the complaint involves an allegation of Sexual Misconduct, they shall proceed with an investigation.

6.02 Investigation

- a. The Respondent and Student involved in the Sexual Misconduct will receive a Notice of Investigation within ten (10) business days of receipt of the complaint by the Executive Director, Human Resources. The Respondent will be provided with the details of the allegation(s) and advised of the process to be followed in the resolution of the complaint.
- b. Investigations will be conducted by the Human Resources Manager, EDI Officer and/or the Legal Counsel. In consultation with the President & CEO, the Executive Director, Human Resources may refer exceptional cases (in consideration of the allegations and/or parties involved) to an external consultant to conduct an impartial investigation when appropriate (all collectively referred to as "Investigator").
- c. The Investigator(s) will:
 - i. Focus on finding facts and evidence, including interviewing the Complainants, Respondents, and witnesses;



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- ii. Obtain statements from all parties involved, and ask the parties to review and sign off their statement;
 - 1. Complainants and Respondents may invite support persons (including a union representative) to meetings of the complaint process. However, support persons are not active participants in the investigation. The Investigator may exclude the support person, with the consent of the interviewee, from all or part of the interview if they believe that the presence of the support person will impact the quality of the interview; and
 - 2. Students who have experienced Sexual Misconduct will not be asked irrelevant questions during the investigation process by the Investigator or any other Employee, including irrelevant questions relating to the Student’s sexual expression or past sexual history.
- iii. Gather additional relevant supporting documents and physical evidence (if available);
- iv. Complete the investigation in a timely manner, and where this is unforeseen delay, promptly inform the Student and Respondent.
- v. Produce an investigation report that summarizes the allegations, the steps taken during the investigation, and the evidence gathered, and draws conclusions on credibility of all parties involved and makes findings of fact (the “Investigation Report”); and
- vi. Submit the Investigation Report to the Executive Director, Human Resources.

6.03 Resolution

- a. The Executive Director, Human Resources, with the President & CEO, and Dean shall review the Investigation Report. However, if any of them have a personal relationship with any of the parties involved in the complaint that could affect their ability to impartially evaluate the report, they will recuse themselves. The Executive Director, Human Resources, shall inform the Student involved in the Sexual Misconduct and Respondent of the outcome of the investigation and any disciplinary measures taken against the Respondent, where appropriate. Where the Executive Director, Human Resources has recused themselves, either the President & CEO or Dean will inform the Student, as applicable.
- b. The Executive Director, Human Resources will provide the Complainant and Respondent with an opportunity to appeal the decision within ten (10) business days by submitting a letter to the Executive Director, Human Resources, advising of their intent to appeal and grounds for the appeal. Appeals shall only be permitted on limited grounds, such as procedural irregularities or new evidence that was not available during the investigation.
- c. A Complainant has the right to withdraw a complaint at any stage of the process. However, CCNM may continue to act on the issue identified in the complaint to comply with its obligation under this Policy and/or its legal obligations.
- d. CCNM will take appropriate action to ensure that the safety and well-being of the affected parties are protected throughout the investigation process.

7 DISCIPLINARY MEASURES

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7.01 If a person, in good faith, discloses or files a Sexual Misconduct complaint that is not supported by evidence gathered during an investigation, that complaint will be dismissed, and no record will be placed in the Complainant’s or Respondent’s file. Disclosures or complaints that are found under this Policy to be Frivolous, Vexatious, or in Bad Faith will not be tolerated.



- 7.02 Employees found to have engaged in Sexual Misconduct may be subject to immediate disciplinary measures or corrective actions. This may include:
- a. Disciplinary action up to and including termination of employment for just cause; or
 - b. The placement of certain restrictions on the Respondent’s ability to access certain premises or facilities; and/or
 - c. Any other actions that may be appropriate in the circumstances.

8 PROHIBITION OF NON-DISCLOSURE AGREEMENTS

- 8.01 Any agreement between CCNM and any person, including a collective agreement or an agreement settling existing or contemplated litigation, that is entered into on or after July 1, 2023, shall not contain any term that, directly or indirectly, prohibits CCNM or any person related to CCNM from disclosing that an allegation or complaint has been made that an Employee committed an act of Sexual Misconduct toward a Student. Any such term that is included in an agreement shall be void.
- a. However, CCNM recognizes that there may be circumstances where a Student may request an agreement related to disclosure about the Sexual Misconduct. Therefore, CCNM may enter into an agreement that contains a term described above if the Student requests that CCNM do so, provided that:
 - i. the Student has had a reasonable opportunity to receive independent legal advice;
 - ii. there have been no undue attempts to influence the student with respect to the request;
 - iii. the agreement includes an opportunity for the Student to decide to waive their own confidentiality in the future and the process for doing so; and
 - iv. the agreement is of a set and limited duration.

9 SUPPORT AND ACCOMODATIONS

- 9.01 Once an investigation has been initiated, interim measures may be considered by the Human Resources Department to safeguard the integrity of the process and protect the Complainant or Student (if different from the Complainant), who will be notified in writing of any such measures. Interim measures will be established in consultation with Security and the Employee’s Manager/Supervisor. Interim measures are not penalties and do not constitute a finding of Sexual Misconduct.
- 9.02 CCNM shall provide support and accommodations to complainants, witnesses, and affected parties throughout the investigation and resolution process. This may include access to counseling services, academic accommodations, or other reasonable measures to ensure the well-being and safety of the affected parties. Individuals are not required to file a formal complaint to access supports and services.

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Additionally, Students affected by Sexual Misconduct can access supports and services by contacting the Accessibility and Student Support Advisor and Student Counsellor. The Accessibility and Student Support Advisor shall also provide Students who request such information about supports available in the community.

Context

Internal Documents	Workplace Violence, Harassment, and Sexual Harassment Policy
Legislation, standards, and regulations	Sexual Violence and Misconduct Policy Act Private Training Regulation under the Private Training Act