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3.6.1 SEXUAL AND GENDER BASED VIOLENCE + MISCONDUCT PROCEDURES FOR STUDENTS

ENABLING POLICY

3.6 Sexual and Gender-based Violence and Misconduct Policy

Please refer to this policy for definitions.

1. PURPOSE

These Procedures outline the process the University will follow when a member of the University community chooses to disclose or report an incident(s) of sexual or gender based violence or misconduct including the role and responsibility of specific members of the University to support all currently enrolled Emily Carr University of Art + Design students in understanding and accessing key resources and supports available for safe Disclosure, Reporting and Investigation when impacted directly or indirectly by Sexual and Gender-based Violence and Misconduct.

2. SURVIVORS/VICTIMS WHO CHOOSE TO DISCLOSE

The University acknowledges that it can be difficult to disclose an incident of sexual violence and that a survivor will disclose when they feel ready. The University recognizes that disclosing incidents of Sexual and Gender-based Violence and Misconduct takes courage and can have a traumatic effect on the survivor/victim, that there are many barriers to disclosing, and that those barriers may be different based on lived experience and identity. The University is committed to treating Survivor/Victims with dignity, respect and sensitivity, and will provide appropriate support in a timely manner.

It is the survivor/victim's choice whether to choose to disclose an incident(s) of sexual and gender-based violence. A survivor/victim can disclose at any time to anyone at the University. However, the University encourages disclosure as soon as they are ready to do so in order to access the support they need.

Survivors/victims may choose to disclose an incident(s) without making a report to the University in order to access external criminal or civil processes.

The University recognizes that survivors/victims are most likely to disclose to another member of the University community and can disclose to anyone they trust. However, survivors/victims

are encouraged to disclose to the appropriate University resources in order to access specialized care and support. The Student Resource Coordinator in Counselling and Wellness and Student Services members of the Threat Assessment Team are trained to provide support and guidance with regards to Sexual and Gender Based Violence and Misconduct policy and procedures. Survivor/victims may choose to have a support person present when they make a disclosure to a university resource.

Survivors/victims will be provided with information on all of their options including reporting and can request the options they need, based on their circumstances. If a survivor/victim chooses not to seek any support, that is their choice and will be respected.

Survivors/victims will be provided with culturally specific resources and support if needed, in order to facilitate a safer pathway to disclose, report or foster healing.

Appropriate support and reasonable modifications will be made available to all survivors/victims who disclose or report so as to mitigate any disruption to their studies. These supports may include:

- safety planning and safety measures
- academic modifications
- class schedule changes
- reassignment of grading (in cases that involve faculty)
- information about options and process for reporting internally or externally
- translation services to support disclosing and reporting processes
- planned access to shared public spaces and campus events
- assistance with finding financial aid or
- other supports as appropriate

Support and modifications can be implemented by Counselling and Wellness or Student Services (Threat Assessment Team) in consultation with the necessary personnel such as Registrar, Dean, VP Academic or Facilities. Any medical Accommodations that are connected to an incident, are confidential and will be managed by Student Accessibility Services. Responding to a Survivor/Victim Who Chooses to Discloses:

The decision to Disclose is not the same as the decision to Report.

A Survivor/Victim who has experienced Sexual and Gender-based Violence and Misconduct may choose to Disclose this information to someone they have a relationship with and trust in order to receive support. Therefore, all Members of the University Community are potential First Responders.

Where the Survivor/Victim is a student, First Responders are encouraged to inform Counselling Services. A First Responder may inform Counselling Services about receiving a Disclosure without sharing the identity of the Survivor/Victim, if they do not have the consent of the Survivor/Victim, and without sharing the identity of the Respondent, except in such cases where a counsellor determines that:

- A. There is a likelihood of a person endangering self or others;
- B. There is abuse of a minor indicated; and/or
- C. There is a legal proceeding, and the adjudicative body subpoenas the counsellor

The following list includes recommended responses to a Disclosure:

- listen without judgment; avoid questioning, blaming or telling the Survivor/Victim what to do;
- ask the Survivor/Victim if they are currently staying in a safe place and if they need medical attention;
- help the Survivor/Victim to identify and/or access available on or off campus services, including emergency medical care, counselling, or the resources set out on the information page, respect the Survivor/Victim's right to choose the services they feel are most appropriate and to decide whether to Report to the police;
- recognize that Disclosing can be traumatic, and an individual's ability to recall the events may be limited;
- recognize that an individual has the right to self-identify as a Survivor/Victim or to use any other term that they feel identifies their experience.

Survivor/Victims should be advised of the policy and these procedures and be informed of the available resources. Members of the University community should refer a survivor/victim to the appropriate internal and community resources. When disclosures are made to members of the university community who are not counsellors, confidentiality cannot be guaranteed; however, discretion will be exercised to the maximum degree possible to protect the anonymity of all parties involved.

Recognizing that employees responsible for responding to disclosures may experience vicarious trauma, at their discretion, employees can consult with Human Resources and direct supervisors for appropriate support.

2.2 Third Party Statements + Anonymous Reports

Third Party Statements The University provides an option for disclosure statements to be made through a third party, or anonymously. Third party statements are made by someone other than a survivor/victim or someone impacted by sexualized violence.

A third party could be a witness, a friend, co-worker, or someone who received a disclosure from a survivor/victim. In order to move forward with a third-party statement, you must have the consent of the survivor or person impacted by sexualized violence to proceed.

Third party statements can be submitted to the Threat Assessment Team. Third Party statements do not need to have any identifying victim/survivor information. Third party statements should contain the following:

- What act(s) took place?
- Where did the act(s) take place?
- When did the act(s) take place?
- How did the third-party learn of, or witness the act(s)?
- Third party contact information must be provided for follow up.

Anonymous Reports are statements alleging sexual or gender-based violence and misconduct that are shared with no information to identify the source of the complaint.

The university may be limited in what actions they can take or if an investigation can take place based on the information available. This being said, third party and anonymous reports will be used to;

- A. ensure the University is upholding a duty of care, by determining if there are safety concerns for the campus community;
- B. identify whether an occupational health and safety assessment, violence threat-risk assessment or other type of investigation(s), including conduct investigation can be launched, and;
- C. compile statistics wherever possible.

Third-Party Statements and Anonymous Reports will be reviewed by TAT using a Violence Risk Triage and Screening process as outlined in 6.10.1 Threat Assessment Team procedures.

2.3 What to do if a Member of the Emily Carr Community witnesses an act of Sexual and Gender- Based Violence and Misconduct.

Where Members of the University Community witness acts of Sexual and Gender-based Violence and Misconduct, they should determine whether individuals are in distress requiring emergency services and if so, they should immediately contact emergency services (911 and Campus Security).

If a university employee witnesses an act of Sexual and Gender-based Violence and Misconduct, they must report the incident to the Threat Assessment Team.

3. SURVIVORS/VICTIMS WHO CHOOSE TO REPORT

Survivor/victims can receive information on internal and community reporting options available to them from Counseling Wellness or Student Services (Threat Assessment Team). A Survivor/victim can receive information on reporting options before choosing to make a report to the University.

A survivor/victim who chooses to report is initiating a formal legal process which requires the University to identify and refer to their role as the complainant in the reporting process.

Reports can be made to, Threat Assessment Team directly or via the Co-Ordinator of the Threat Assessment Team.

- The Administrative Authority responsible for determining response to policy violations with regards to student respondents is VP Students.
- The Administrative Authority responsible for determining response to policy violations with regards to employee respondents is AVP Human Resources or delegate.

Complainants may also choose to report to a local police department, make an anonymous third-party report, explore civil process or file a complaint to the Human Rights Tribunal.

Survivor/victims may decide to report to the University and/or external reporting options.

In cases where the individual accused of sexual violence is not a member of the University community or in circumstances where the University is unable to initiate an investigation under these procedures, a report may be referred to the local police, or to other community resources at the complainant request.

The University reserves the right to inform the relevant law enforcement agency without the consent of the complainant if there is a reasonable belief that the safety of a member of the University is at high risk. This decision will be evaluated by the Threat Assessment Team utilizing appropriate risk assessment triage tools and processes. In these circumstances, the University will disclose to the complainant that the report to law enforcement is required and will set up safety and support measures as needed.

3.1 Confidentiality in the Reporting process

Reports of Sexual and Gender-Based Violence and Misconduct involve the investigation, disclosure and collection of sensitive personal information about the Complainant and the Respondent. While discretion will be exercised to the maximum degree possible to protect the reputations and interests of all individuals, to uphold the expected standards for procedural fairness, some information must be shared with the Respondent as part of the investigation process.

All parties involved in a Sexual and Gender-Based Violence and Misconduct investigation are expected to keep all information pertaining to the investigation confidential other than to seek representation, counselling, or to share it in the course of the investigation with the appointed investigator. A breach of confidentiality or an individual's right to privacy could result in a separate misconduct investigation.

In the case of a Respondent who is a university employee, confidentiality will be managed within the context of an investigation, where the University is required to share information in order to meet its legal requirements or obligations set out in applicable collective agreements, linked policies, provincial legislation and labour jurisprudence. The rules for procedural fairness require the University to disclose details of the reported incident including the identity of a Complainant.

3.2 Support During Reporting

If the Complainant decides to make a Criminal complaint or wishes to access a community support agency, a member of the Counselling Wellness or Threat Assessment Team (TAT) can accompany them to the police station or have police attend to campus. If criminal charges are laid, the Co-Ordinator of Threat Assessment Team can act as a liaison with the police and support the Complainant of progress in the criminal case, unless reporting restrictions (sealing orders or other restrictions) have been imposed.

3.3 Responding To Reports

Complainants and respondents will be made aware of all resources available to them when making a report and during an investigation process which may include a safety plan to protect the health and safety of the complainant, witnesses and other impacted parties. Please see Appendix Outlining Complainants and Respondents rights.

Complainants and Respondents will not have to engage or communicate with each other directly during a report and investigation process. This includes not being in the same space as part of the process.

The University will seek to achieve procedural fairness in dealing with all reports. The respondent will be given reasonable notice in writing of the details contained in the report and provided an opportunity to respond. Complainants will be advised of all decisions that affect them, provided with an opportunity to be heard and rationale for decisions made.

3.4 Initial Assessment and Inquiry

A member of the Threat Assessment Team will take initial statements and bring reports to the Administrative Advisor(s). The purpose of this initial assessment is to determine whether the incident falls within the University's scope and jurisdiction to investigate under this policy.

The initial assessment will normally be completed within ten (10) business days of the receipt of the report.

If it is determined that the report meets the jurisdictional requirements to proceed, a formal investigation will follow with the consent of the Complainant.

If it is determined that the report does not meet jurisdictional requirements, the matter will be considered closed. The Complainant will be notified in writing within five (5) business days of that determination. The Complainant may still access support services and modifications. A record of the report will be kept in Student Services or Human Resources and may be re-opened upon the introduction of new information or evidence.

To initiate an investigation, the Administrative Advisor shall advance a recommendation to appoint an investigator to the President + Vice-Chancellor or designate. The University will make every effort to obtain investigators who are trained in trauma, anti-oppression, anti-racism informed approaches.

If the President is implicated in a report of sexual violence, the report will go to the Board. The Board will hire an external investigator to investigate the report in accordance with these procedures.

At any time in the process, the Complainant has the right to withdraw the report or stop an investigation without consequences to the Complainant's University status. However, the University may continue to act on the incident identified in the report to comply with its obligation under policy and other required legislation. A Complainant who withdraws the report may still access support services and modifications.

4. INTERIM MEASURES

As part of an investigation process, the University may impose or facilitate interim measures that are determined as necessary and appropriate for the safety of individuals involved and the University community. Interim measures are not intended to be punitive but are intended to provide a safer environment for all parties.

The authority to impose interim measures rest primarily with the Administrative Authority. In cases of academic modifications for students, interim measures would be recommended to the appropriate faculty member, or Dean of the department, who would then make final decisions and implement the interim measures.

In some circumstances involving the temporary removal or withdrawal of a respondent, it may be that the President has final decision for interim measures.

Interim measures will be communicated to the respondent and complainant in writing after the determination has been made by the Administrative Authority.

In accordance with the University Act and University policies interim measures may include, but are not limited to:

- Alteration of the academic schedule of any student involved in the report
- Academic modifications
- A no contact requirement
- Restricting a respondent's access to certain University facilities
- Temporary non-disciplinary leave of a respondent
- Reassignment of grading responsibilities (in cases where respondent is faculty)
- Any other interim measure as may be determined by the University

Interim measures will remain in effect at the discretion of the Administrative Authority. When the incident

involves law enforcement or other internal or external investigations, recommendations from these parties may determine interim safety measures applied and the duration of the measures.

Where instances of sexual violence have become public knowledge within a department, safety measures may include communication to a specific department or the broader University Community. This communication would include information about the incident (within the scope of privacy requirements) and information on supports and resources available.

Interim measures may be appealed to the President at any point during which the measure remains in place. Appeals can only be made on the grounds of proportionality of the measure to the incident. The President may choose to uphold, modify or remove the interim measure. The President's decision will be communicated in writing to the respondent within 10 business days.

5. INVESTIGATIONS

The Administrative Authority will determine if the report is within the scope and jurisdiction of the policy and is responsible for appointing an investigator to conduct the investigation.

The Appointment of an investigator will be made in 10 business days of the decision to refer the report to formal investigation.

The Complainant will be notified of the appointment of the investigator within 5 business days of the appointment.

The Respondent will be notified in writing of the investigation and shall receive a full disclosure of the complaint from the appointed investigator.

5.1 Role of the Investigator

The appointed Investigator will have regard for university policies, procedures, collective agreements, and any relevant law, and shall:

- A. Establish an investigation process based on expectations outlined by the University in accordance with policy.
- B. Interpret the provisions of any applicable policy, subject to compliance with the Principles of Procedural Fairness.
- C. Exercise the discretion to develop their own procedures and practices to conduct the investigation, including a determination as to which witnesses to interview.
- D. Not be constrained by strict rules of procedure and evidence.

The investigator shall establish the terms of reference for the investigation, and will at a minimum:

- A. Interview the Complainant, the Respondent, and any witnesses
- B. Review any available documentation or other evidence.
- C. Ensure that the complainant and respondent are able to respond in full to all relevant evidence brought forward by the other party.
- D. Shall collect and compile all evidence into an investigative report.
- E. Provide an investigative report with a determination as to whether the respondent has been found at fault of sexual or gender-based violence as per the policy, weighing the evidence on the balance of probabilities. The investigation report will include findings and conclusions and may include recommendations.

If more than one Report has been made about a Respondent, the Administrative Authority or delegate may determine that a single investigator be used to investigate all Reports pertaining to that Respondent.

5.2 Support During Investigation Process

Individuals interviewed by investigator(s) may be accompanied by a support person for the purposes of advice and/or other forms of support during the interview. The support person could be a friend, colleague, counsellor, Elder or other community member. If the support person is a lawyer, the individual must inform the investigator (s) two (2) business days prior to an investigation meeting.

At any time, a Complainant may withdraw from an investigation by making a formal request to the Administrative Authority. The University may be required by law to proceed with the investigation.

If criminal, civil, or administrative proceedings are undertaken, the University reserves the right to proceed with, defer or suspend its own investigative processes. Where possible, the University will discuss this with the Complainant ahead of making a decision.

If the Complainant or the Respondent refuses to cooperate with the investigator, the investigator may either proceed with the investigation or make a recommendation to the Administrative Authority regarding further action. They will

have the discretion to determine the next steps, based on the recommendation of the investigator and consideration of any legal obligations on the part of the University.

Upon deferral, suspension or cessation of an investigation, all parties will be notified.

All investigations will be conducted in a timely manner within regular updates provided to complainants, respondents, and witnesses to ensure ongoing communication and support.

6. DETERMINATION, REMEDIAL ACTIONS & SANCTIONS

In cases where the Respondent is a student, the investigation report will be submitted to the Administrative Authority who will review the report and may consult with Executive leadership and the TAT.

If the Administrative Authority determines that the available evidence does not support any sanctions, the complainant and the respondent will be notified in writing. This does not preclude further investigation and sanctioning upon the introduction of new information or evidence. The Complainant and Respondent may still access support services and modifications as set out in the policy and these procedures.

An appointed member of TAT will inform the Complainant in writing of the outcome of the investigation, but not necessarily the details of any disciplinary action taken against the respondent, unless sharing that information is necessary for the protection of the complainant's health and safety.

If the Respondent is an employee, the investigation report will be submitted to AVP of Human Resources or a designated person who will review the report and consult with Executive leadership.

If the Respondent is a student, the Administrative Authority for students, VP Students may recommend a range of sanctions including but not limited to one or more of the following:

- Written warning or reprimand
- No-Contact Directive
- Behavioural Contract
- Written Apology or Participation in an Alternative Dispute Resolution Process
- Education/Training Project
- Referral to community resources
- Suspension or Denial of Specified University Privileges including access to Campus
- Expulsion

Where the Administrative Authority determines that suspension or expulsion is justified, they will make recommendations to the President. The President will render a decision after reviewing the investigation report and recommendations. If the sanction decided is suspension or expulsion, the President will notify the Board of Governors as per the University Act and the respondent will be notified in writing of the specific sanctions being imposed and the appeal process.

6.2 Breach of Sanctions

Failure to complete or abide by imposed or agreed-upon sanctions is considered to be a further violation of the policy.

Breach of sanctions may lead to the imposition of new or escalated disciplinary actions and sanctions.

7. APPEAL

Respondents have the right to appeal the findings of an investigation where they have obtained new relevant information and evidence and / or can demonstrate a procedural error had occurred that would have materially impacted the outcome of the investigation. Appeals shall be made to the President + Vice-Chancellor, and must contain the following:

- A. Evidence of new relevant information that had not been previously considered or;
- B. What was the procedural error that occurred;
- C. What evidence exists that demonstrates, on the balance of probabilities, that an error material to the outcome of the investigation occurred.

The President + Vice-Chancellor shall review the argument and evidence produced by the respondent. The AVP Human Resources and the external investigator will be given the opportunity to respond to the argument and

evidence advanced by the appellant respondent. The President + Vice-Chancellor may request a meeting with any party prior to rendering a final decision.

Students can access support with appeals process from Student Services or through Emily Carr Student Union.

9. RECORD KEEPING

Investigative reports and records of proceedings are confidentially maintained by Student Services. All records relating to a report will be kept for a period of no less than seven (7) 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 Student Services Department and will otherwise be confidentially destroyed.

10. AWARENESS AND EDUCATION

The University will create a Sexual and Gender Based Violence Advisory Committee and invite student, staff, and faculty representatives to participate. The purpose of the committee is to support the vision and shape the direction of Sexual and Gender Based Violence prevention and response at the University by serving as a key consultation point for major Sexualized Gender Based Violence initiatives and programs that relate to students, staff, and faculty. The committee actively works to raise awareness among the student population specifically. It provides them with information and tools to support them in preventing the occurrence of Sexualized Violence, and to know what to do, and where to go, when it does occur.

10.1 Awareness Raising

Student Services will support the creation and dissemination of accessible information about the policy, the support and response options as well as training opportunities through information guides and online resources.

The Sexual and Gender Based Violence Advisory will support the creation of a Sexual and Gender-based Violence Prevention Webpage that will provide information about the Policy as well as support and response options and an up to date list of events, campaigns, and training opportunities. The information on this page will be maintained by Student Services, Program Manager Violence Prevention + Incident Response.

10.2 Prevention Programming

Sexualized Violence education and prevention work is a shared responsibility and therefore various units, offices, and departments may initiate Sexualized Violence prevention efforts in various formats (e.g., lectures, online learning modules, handouts, workshops, etc.). Any unit, office, or department wishing to create or implement training or education regarding Sexual and Gender-based Violence should consult with Advisory Committee for information, advice, and resources and to ensure all University community members are drawing on consistent principles, definitions, and approaches to the work of preventing and responding to Sexualized Violence.

Student Services will work with the Sexual and Gender-based Violence Advisory to develop and collaborate in the design of sexual and gender-based violence prevention and response education. This will include tailored programming for specific populations. An up to date list of current education can be accessed through the Sexual and Gender-based Violence Prevention webpage.

APPENDIX (A)

Complainant's Rights

A Complainant has the following rights:

- (a) to be treated with fairness, dignity, and respect;
- (b) to be given access to available support and resources throughout the process;
- (c) to timely assistance with safety planning;
- (d) to timely information about referrals to available on-and off-campus support services and resources;
- (e) if the complainant is a Student, to seek independent consultation
- (f) to have the process explained to them in an accessible manner, including the possible outcomes;
- (g) to have their personal information kept confidential (except when disclosing it is required by law or University policy);
- (h) to be informed that any information collected may be disclosed in criminal or civil proceedings;
- (i) to present their side of the story, and to respond to other participants' information;
- (j) to be accompanied by a support person;
- (k) to legal representation (at the Complainant's cost);
- (l) if the Complainant is an employee, to seek support, independent consultation, and representation by their faculty association or union;
- (m) to decline to participate in aspects of the investigation;
- (n) to request a review or grieve a decision by the Director not to investigate;
- (o) to regular updates on the status of the process;
- (p) to opportunities to engage in voluntary resolution processes where appropriate;
- (q) to written notice of any resolution that directly affects the Complainant; and
- (r) to written notice of the outcome of any appeal or grievance.

Respondent's Rights

A Respondent has the following rights:

- (a) to be treated with fairness, dignity, and respect;
- (b) to be given access to available support and resources in alignment with the Policy;
- (c) to receive timely notice and information about the allegations against them;
- (d) to know the identity of the person who made the Report;
- (e) if the Respondent is a Student, to seek independent consultation or support from the Student Union.
- (f) to be presumed to have not violated this policy until a fair investigation is completed;
- (g) to have the process explained to them in an accessible manner, including the possible outcomes and consequences;
- (h) to have their personal information kept confidential (except when disclosing required by law or University policy);
- (i) to be informed that any information collected may be disclosed in criminal or civil proceedings;
- (j) to present their side of the story, and to respond to other participants' information;
- (k) to be accompanied by a support person;
- (l) to legal representation (at the Respondent's cost);
- (m) if the Respondent is an employee, to seek support, independent consultation, and representation by their faculty association or union;
- (n) to decline to participate (however, the process may still proceed in the absence of the Respondent);
- (o) to opportunities to engage in Alternate Resolution Processes were appropriate;
- (p) to written notice about the outcome of an investigation and sanctions; and
- (q) to appeal or grieve the decision, as applicable, (within the appropriate time frame) and to receive written notice of the outcome of any appeal or grievance.