

	<b>Employee Sexual Misconduct Policy</b> #10.21	
<b>CATEGORY:</b> People & Culture	<b>APPROVAL DATE:</b> October 2, 2023	
<b>EFFECTIVE DATE:</b> October 2, 2023	<b>REVIEW DATE:</b>	
<b>APPROVAL:</b> Board of Governors		
<b>SPONSOR:</b> Executive Director, People & Culture		
<b>CONTACT:</b> Satoshi Uyede, Executive Director, People & Culture		
<b>PREVIOUS VERSIONS:</b> N/A		

## RELATED POLICIES

[Respectful Work & Learning Environment Policy](#)

[Response to Violent or Threatening Behaviour Policy](#)

[Policy on Conflict of Interest in Faculty-Student Relationships](#)

[Policy on Prevention and Response to Sexual and Gender-based Violence](#)

## 1. STATEMENT OF COMMITMENT

- 1.1 The University is committed to creating and maintaining an environment in which Sexual Misconduct is not tolerated and in which Students of the University can study free from incidents of Sexual Misconduct.

## 2. APPLICATION AND SCOPE

- 2.1 The overarching purposes of this Policy are to reaffirm the University's commitment to a safe and healthy campus and set out the University's policy with respect to sexual misconduct committed by an employee against a student. The policy will also provide Staff with information to help them respond effectively when a Student reports an incident of Sexual Misconduct.
- 2.2 Complaints of Sexual Misconduct, as defined by this Policy, against Employees of the University may be made through the University's Office of Diversity, Equity and Sustainability Initiatives, as per the Respectful Work and Learning Environment Policy.

- 2.3 This policy applies to all employees and contractors of OCAD University, including but not limited to: administrative, confidential and/or professional staff, faculty and sessional instructors, governing board or council members, and all other senior administrators.
- 2.4 The Policy recognizes that many faculty and staff hold positions of power or trust, and students may experience heightened vulnerability relative to faculty and staff, particularly in situations in which the employee has a supervisory relationship or influence over a student's current or future academic activities, working conditions, or career advancement. Special consideration will be given to situations involving Sexual Misconduct in which there is the potential that this vulnerability was exploited.
- 2.5 Nothing in this Policy is intended to discourage, prevent, or preclude an individual from filing a report and/or complaint under any other University policy and/or initiating legal action (civil or criminal) or exercising any other legal rights.

### 3. DEFINITIONS

- 3.1 **Complaint:** means the sharing of information by a Student through the Office of Diversity, Equity and Sustainability Initiatives with the intention of proceeding to a resolution.
- 3.2 **Employee:** means an employee of the University, including administrative, professional, confidential, and academic staff, faculty members, instructors, and other employees responsible for teaching, evaluation, academic supervision and/or related activities for credit and non-credit courses, research, tutorials, and workshops.
- 3.3 **Sexual Misconduct:** means, in relation to a Student of the University: (*Strengthening Post-secondary Institutions and Students Act, 2022*):
- (a) 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 of the University where:
    - (i) the act constitutes an offence under the *Criminal Code (Canada)*,
    - (ii) the act infringes the right of the Student under clause 7(3)(a) of the *Human Rights Code* to be free from a sexual solicitation or advance, or

(iii) the act constitutes sexual misconduct as defined in this Policy or contravenes this Policy or any other policy, rule or other requirement of the University respecting sexual relations between Employees and Students; or

(b) any conduct by an Employee of the University that infringes the right of the Student under clause 7(3)(b) of the *Human Rights Code* to be free from a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance.

3.4 **Student:** means any person taking one or more courses at the University, either full-time or part-time, in any program of study, including special students. For clarity, a Student is a person who is registered in a University course of study and/or engaged in any academic work that leads to the assigning of a mark, grade or statement of performance by the appropriate authority within the University and/or entitled to a valid student ID card.

#### 4. EXAMPLES OF SEXUAL MISCONDUCT

4.1 In addition to the foregoing, Sexual Misconduct includes, but is not limited to, the following:

4.1.2 Sexual solicitation or advances;

4.1.3 Sexual assault, including any unwanted act of a sexual nature, either implied or explicit;

4.1.4 Sexual harassment, including any unwanted remarks, behaviours, gestures, or communications of a sexually oriented nature and/or a course of unwanted remarks that detrimentally affects the working, learning, or living environment, or leads to adverse consequences for the individual directly subjected to the harassment;

4.1.5 Sexual violence, including any sexual act or act targeting a student's sexuality, gender identity or gender expression, whether physical or psychological in nature that is committed, threatened, or attempted against a student without the student's consent.

4.1.6 Stalking and cyberstalking through the use of the internet or other electronic means, or engaging in unwelcome conduct, expressed or implied, that causes an individual to fear for their physical or psychological safety;

- 4.1.7 The distribution of a sexually explicit photograph or recording of an individual to one or more individuals other than the individual in the photograph or recording without the consent of the individual in the photograph or recording;
  - 4.1.8 Indecent exposure of one's body to another individual either physically, electronically, or through any other means, for a sexual purpose without the individual's consent, or coercing another individual to remove their clothing in order to expose their body;
- 4.2 The above list is not exhaustive and other acts may constitute Sexual Misconduct under this Policy even if they do not appear in the list.

## **5. PROCEDURES**

- 5.1 Employees who receive information from a Student in relation to an allegation of Sexual Misconduct should direct Students to seek advice and assistance from the Dean of Students. If information about an incident of Sexual Misconduct is shared with an Employee by a Student or another person with direct knowledge of a situation, the information should immediately be relayed to the Office of Diversity, Equity, and Sustainability Initiatives (ODESI) as per the Respectful Work and Learning Environment Policy (RWLEP). The Office of People & Culture is made aware of all serious human rights matters and is included on all RWLEP correspondence involving employees.
- 5.2 An investigation is conducted by ODESI, as per the RWLEP.
- 5.3 If personal security while on campus is a concern, Safety, Security and Campus Operations staff are available on a 24/7 basis and can provide guidance and support.
- 5.4 In situations in which the evidence of an offense of Sexual Misconduct is in the public domain (e.g. social media), the University may initiate an investigation, as per the RWLEP.
- 5.5 The Disclosure and Complaint options described in this Policy are in addition to, and not in substitution for, other internal or external options or any other legal rights an individual may have.

## **6. DISCIPLINE AND DISCHARGE**

- 6.1 If an Employee of the University commits an act of Sexual Misconduct toward a Student of the University, the University may impose discipline up to and including discharge from employment, and

6.1.2 The discharge or disciplinary measure is deemed to be for just cause for all purposes; and

6.1.3 The Employee is not entitled to notice of termination or termination pay or any other compensation or restitution as a result of the discharge or disciplinary measure; and

6.1.4 Despite subsection 48 (17) of the *Labour Relations Act, 1995* and subsection 14(17) of the *Colleges Collective Bargaining Act, 2008*, and despite any provision of a collective agreement or employment contract specifying a penalty for the infraction, no arbitrator, arbitration board or other adjudicator shall substitute any other penalty for the discharge or disciplinary measure imposed by the University.

6.2 The specific relationship between the Employee(s) and the Student(s) named in a complaint will be a factor that is considered when determining appropriate actions taken by the University if a complaint is substantiated.

## **7. NO RE-EMPLOYMENT**

7.1 If an Employee of the University commits an act of Sexual Misconduct toward a Student of the University and the University discharges the Employee for that act or the Employee resigns from their employment, the University shall not subsequently re-employ the Employee.

7.2 Subject to subsection 16.1(6) of the *Ministry of Training, Colleges and Universities Act*, an agreement between the University and any person shall not contain any term that, directly or indirectly, prohibits the University or any person related to the University from disclosing that an allegation or complaint has been made that an Employee of the University committed an act of Sexual Misconduct toward a Student of the institution, and any such term that is included in an agreement is void.

## **8. REVIEW OF THIS POLICY**

8.1 The Executive Director, People and Culture is responsible for the review and implementation of this Policy. This Policy will be reviewed at least once every three years.

8.2 Revisions to the Policy will be considered in consultation with the Vice-Provost, Students; OCAD Student Union; Office of Diversity, Equity & Sustainability

Initiatives; Safety, Security and Campus Operations; Student Wellness Centre; and other stakeholders.

8.3 Amendments made to this Policy, other than those described in subsection 8.4 of this Policy, require the approval of the Board of Governors.

8.4 Updates to the identity of officials, offices, and departments at the University that provide information about processes, supports and/or services contained in this Policy do not require approval of the Senate or the Board of Governors.

8.5 A copy of this Policy as approved and amended is posted on the University's website. A print copy of this Policy is available on request.