

Policy History
<b>Policy No.</b> HR21
<b>Approving Jurisdiction:</b> Board of Governors
<b>Administrative Responsibility:</b> Vice President Finance & Administration
<b>Effective Date:</b> November 19, 2014

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## Respectful Workplace Procedure

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### A. CONTEXT AND PURPOSE

To outline how complaints made by employees under the University's *Respectful Workplace Policy* will be addressed in the context of a teaching university that strives to foster the exchange of information, ideas, beliefs and opinions and necessarily includes the discussion of potentially controversial topics. Excellence in scholarship, teaching and employment activities flows from active concern and respect for others, including their ability to participate meaningfully in the exchange of information, ideas, beliefs and opinions.

Complaints by employees alleging bullying and harassment by a person in connection with a University-related activity will be dealt with by the University following the processes available to the University.

### B. DEFINITIONS

The following definitions apply to the *Respectful Workplace Policy* and this *Procedure*:

1. **Academic Freedom** has the meaning set out in the University's policy statement on Principles of Academic Freedom or in the applicable collective agreement.
2. **Bullying and harassment**
  - a. Includes any inappropriate conduct or comment by a person towards an employee that the person knew or reasonably ought to have known would cause that employee to be humiliated or intimidated,
  - b. But excludes any reasonable action taken by the University or a supervisor relating to the management and direction of employees or the place of employment.

Examples of bullying and harassment can include but are not limited to the following types of conduct:

- a. verbal aggression or insults,
- b. humiliating initiation practices or hazing,

- c. spreading malicious gossip or rumours about a person,
- d. calling an employee derogatory names,
- e. words, gestures, actions or practical jokes, the natural consequence of which is to humiliate, insult or degrade,
- f. making aggressive or threatening gestures,
- g. physical assaults or threats,
- h. engaging in targeted social isolation,
- i. making personal attacks based on an employee's private life and/or personal traits,
- j. cyber bullying and harassment.

Bullying and harassment does not include the exercise of appropriate managerial or supervisory direction, including performance management and the imposition of discipline; constructive criticism; respectful expression of differences of opinions; reasonable changes to assignments or duties; instructional techniques such as irony, conjecture, and refutation, or assigning readings or other instructional materials that advocate controversial positions; and single incidents of thoughtless, petty or foolish words or acts that cause fleeting harm.

3. **Complaint** means an allegation of discrimination or bullying and harassment in contravention of this Policy.
4. **Complainant** means an employee who claims to have been subject to, or observed discrimination or bullying and harassment in contravention of this Policy.
5. **Discrimination** means any adverse treatment or action (verbal or behavioural), covert or overt, intentional or unintentional, that has no bona fide and reasonable justification and that has the purpose or effect of singling out an individual or group for differential treatment on the prohibited ground of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age, or criminal conviction that is unrelated to employment or intended employment. Discrimination includes sexual harassment as defined below.

Examples of discrimination include but are not limited to the following behaviours:

- a. Words, gestures, actions, jokes, or innuendoes, the natural consequence of which is to humiliate, ridicule, insult or degrade,
- b. Threats, coercion, bullying or intimidation,
- c. Actual or threatened physical assault,
- d. Displaying or circulating offensive pictures or other material,
- e. Persistent rudeness, taunting, patronizing or ostracizing,
- f. Other conduct which adversely affects a person's working or educational environment.

6. **Employee** means an employee of the University, including administrators, faculty and staff.

7. **Record of Resolution** means:

- a. in the case of an informal resolution, the resolution report signed by both the Complainant and the Respondent, or
- b. in the case of a finding by the responsible Senior Administrator regarding a complaint, the written report of the determination in the matter including a summary of the

findings of fact and the discipline imposed, if any.

8. **Respondent** means a person who is alleged to have engaged in discrimination or bullying and harassment of a University employee in contravention of this Policy.

9. **Senior Administrator** means the Vice President responsible for Finance and Administration or designate.

- a. In the case of a complaint involving the Vice President responsible for Finance and Administration, the "Senior Administrator" shall be the President or designate.
- b. In the case of a complaint involving the President, the "Senior Administrator" shall be the Chair of the University's Board of Governors or designate.
- c. In the case of a complaint involving a member of the University's Board of Governors, the "Senior Administrator" shall be an appointed member of the Board selected by the Board, or an individual external to the Board and selected by the Board.
- d. Board members who are employees are dealt with as such in this policy. Board members who are students will be dealt with under Policy *ST7 Student Conduct (Non-Academic)*.

10. **Sexual harassment** means conduct of a sexual nature that is unwelcome, and that detrimentally affects the work environment or leads to adverse job-related consequences.

Examples of sexual harassment include but are not limited to the following behaviours:

- a. Unwanted touching or physical contact,
- b. Unwelcome sexual flirtations, advances or propositions,
- c. Sexually suggestive, obscene or degrading comments or gestures,
- d. Offensive jokes or remarks of a sexual nature,
- e. Leering or staring,
- f. Displaying or circulating pictures or other material of a sexual nature which are not part of the legitimate study, display, use or distribution of topics, material or art forms falling within appropriate academic norms,
- g. Unwelcome questions or remarks about a person's sex life, gender, appearance, clothing, sexual orientation,
- h. Express or implied promise of reward in return for complying with a sexually-oriented request,
- i. Reprisal, or express or implied threat of reprisal, for refusing to comply with a sexually-oriented requests.

11. **Student:** A KPU students is defined as an individual who is registered in credit courses or has commenced studies in non-credit courses and has maintained his/her eligibility to register.

12. **University** means Kwantlen Polytechnic University.

13. **University-related activity** means any activity at any location that is engaged in by the University or by persons acting under the University's control. All activities on the University's campuses are University-related unless they are conducted under the control of a person,

organization, association or group that is separate from the University.

## **C. COMPLAINT RESOLUTION PROCEDURE AND THE COLLECTIVE AGREEMENTS**

All procedures outlined are subject to and must be undertaken in compliance with any applicable collective agreement requirements.

## **D. COMPLAINT RESOLUTION PROCEDURE**

### **1. Resolution Before a Complaint is Filed**

- a. Employees who believe they have been subject to discrimination or bullying and harassment in the workplace are encouraged to seek information and advice about informal resolution of complaints from
  - i. Human Resource Services,
  - ii. the Kwantlen Faculty Association,
  - iii. the BC Government and Service Employees' Union.
- b. Employees who believe they have been subject to, or have observed discrimination or bullying and harassment will usually be encouraged to approach the person believed responsible in order to discuss stopping the behaviour, and/or taking corrective or remedial action.

### **2. Filing a Complaint**

- a. If a Complainant is not satisfied with the outcome of the discussion or if a Complainant does not feel comfortable participating in such a discussion, the Complainant may proceed to file a formal complaint with the office of the Senior Administrator, which will provide the Complainant with a copy of the *Respectful Workplace Policy* and this Procedure.
- b. A complaint alleging discrimination or bullying and harassment must
  - i. be signed,
  - ii. be made in writing,
  - iii. contain particulars of the alleged discrimination or bullying and harassment,
  - iv. include the names of the Complainant(s) and the Respondent(s),
  - v. provide a detailed description of the relevant facts (including dates, times and places),
  - vi. provide the names of any witnesses,
  - vii. propose a remedy for the situation.
- c. Except in exceptional circumstances, a complaint must be filed within 6 months of the alleged incident.
- d. If a continuing situation is alleged in a complaint, the complaint must be filed within 6 months of the last alleged incident.

### **3. Complaint Review**

- a. The Senior Administrator will review the complaint to determine whether the allegations, if

proven, would fall within the scope of the *Respectful Workplace Policy*.

- b. The Senior Administrator may decide to interview the Complainant to assist in making this determination.
- c. If the Senior Administrator determines that the complaint does not fall within the scope of the *Respectful Workplace Policy*, the Complainant will be advised in writing of this determination and will be referred, as appropriate, to other University policies that may address the matter, or to other services within or outside the University that may be able to provide assistance.
- d. At the Senior Administrator's discretion, or upon request by the Complainant or Respondent, the complaint may be dismissed if the Senior Administrator determines that its substance has been appropriately dealt with in another proceeding.

#### 4. Withdrawal of a Complaint

- a. Complainants may apply to the Senior Administrator to withdraw all or part of a complaint at any stage of the process.

#### 5. Pursuance of a Complaint by the University

- a. The University's responsibility to provide a respectful workplace may require the University to initiate and/or proceed with a complaint on its own initiative.
- b. When the University decides to initiate and/or proceed with a complaint, the Senior Administrator decides which applicable University policy and procedure will be followed.

#### 6. Notification of a Complaint

If the Senior Administrator determines that the Complainant's allegations, if proven, would fall within the scope of the *Respectful Workplace Policy*, the Senior Administrator will provide the Respondent with

- i. written notification,
  - ii. a copy of the *Respectful Workplace Policy* and this Procedure,
  - iii. the particulars of the allegations,
  - iv. an invitation to make a written response to the complaint.
- a. If required by the applicable collective agreement, the Senior Administrator will provide the relevant association/union with written notification of the complaint
  - b. In confidence, and on a need-to-know basis, the Senior Administrator may notify the applicable supervisor(s) and/or other appropriate University personnel that a complaint has been made.

#### 7. Response to a Complaint

- a. If the Respondent wishes to respond to the complaint, the response should
  - i. be signed,
  - ii. be made in writing,
  - iii. contain a detailed reply to the allegations in the complaint including dates, time, places,

- iv. provide the names of any witnesses.

## 8. Interim Measures

- a. If the Senior Administrator considers it appropriate, interim measures may be put into place pending the disposition of the complaint.
- b. The Senior Administrator will make a reasonable attempt to ensure that such measures are non-punitive in nature.

## 9. Timely Processing of Complaints

- a. The University will process complaints expeditiously.

## 10. Cooperation in the Disposition of Complaints

- a. The University expects all participants to cooperate in the timely disposition of complaints.
- b. Anyone who interferes with or obstructs the timely investigation or disposition of a complaint may be subject to disciplinary action.

## 11. Informal Resolution / Mediation

- a. If the Senior Administrator deems it appropriate, and with the Complainant's and Respondent's consent, informal resolution of the complaint may be undertaken.
- b. The Senior Administrator may appoint a mediator to assist in the informal resolution of the complaint. The Senior Administrator shall not be the mediator.
- c. All communications between the parties during informal resolution meetings shall be confidential and without prejudice.
- d. If an informal resolution acceptable to both the Complainant and the Respondent is reached, the Senior Administrator shall
  - i. prepare a Record of Resolution for signing by both parties,
  - ii. if appropriate, provide assistance to facilitate the implementation of the terms set out in the Record of Resolution.
- e. All records of the informal resolution/mediation shall be handled subject to and in compliance with any applicable collective agreement requirements.
- f. Both the Complainant and Respondent have the option of withdrawing from informal Resolution/Mediation and revert to the formal process at any time.

## 12. Formal Investigation

- a. If the parties do not agree to the informal resolution/mediation, if it is determined by the Senior Administrator that it is not appropriate to pursue that process, or if that process does not result in a resolution, the Senior Administrator may

- i. make a decision about the complaint if the Senior Administrator determines it is possible to do so based on the information contained in the complaint and the response, or
  - ii. proceed to a formal investigation of the complaint.
- b. If a formal investigation is undertaken, the Senior Administrator shall arrange for the appointment of an internal or an external investigator.
- c. The Senior Administrator will provide the investigator with terms of reference for the investigation, copies of the complaint and the response, and the timeline for completing the investigation and report.
- d. The investigator will
  - i. interview the Complainant to ensure a full understanding of the nature of the complaint,
  - ii. interview the Respondent to ensure that a fair opportunity to respond has been provided,
  - iii. interview any witnesses believed to have information relevant to the complaint,
  - iv. review any documents or other evidence the investigator considers relevant.
- e. If the Complainant or the Respondent refuses to cooperate with the investigator, that individual may be subject to disciplinary measures, and the investigator may proceed with the investigation without that person's input.
- f. After completion of the investigation, the investigator will prepare a written report setting out
  - i. the investigator's findings of fact regarding the allegations contained in the complaint,
  - ii. if applicable, the investigator's findings regarding credibility,
  - iii. any other information, findings or recommendations that have been mandated in the investigator's terms of reference.
- g. The investigator's report will be delivered to the Senior Administrator.
- h. Unless required by applicable collective agreement provisions or by law, the investigator's report will not be disclosed to the parties.
- i. The investigator's and Senior Administrator's reports will be retained for seven (7) years and stored in the offices of the Senior Administrator, subject to and in compliance with any applicable collective agreement requirements.

### 13. Decision

- a. If a formal investigation has taken place, the Senior Administrator will review the investigator's report and make a decision either dismissing or upholding the complaint, in whole or in part.
- b. If the Senior Administrator determines that the Respondent has not engaged in discrimination or bullying and harassment in violation of the *Respectful Workplace Policy*, the Senior Administrator will
  - i. dismiss the complaint,
  - ii. prepare a Record of Resolution, edited as necessary to provide confidentiality, which will be provided to the Complainant and the Respondent,
  - iii. if the senior administrator finds that the Respondent has not violated the respectful

workplace policy, but has violated another University policy, the Senior Administrator may refer proceedings to that other policy.

- c. If the Senior Administrator finds the complaint to have been frivolous, vexatious, or malicious in nature, appropriate action will be taken which may include disciplinary measures.
- d. If the Senior Administrator determines that the Respondent has engaged in discrimination or bullying and harassment in violation of the *Respectful Workplace Policy*, the Senior Administrator will
  - i. uphold the complaint in whole or in part,
  - ii. obtain and review any previous Records of Resolution involving the Respondent,
  - iii. review the Respondent's personnel file and, if appropriate, seek advice from Human Resource Services,
  - iv. subject to and in compliance with any applicable collective agreement requirements, make a decision regarding any disciplinary measure or other penalty to be imposed,
  - v. make a decision regarding the remedy, if any, to be provided to the Complainant. To protect the Respondent's privacy, typically the Complainant will receive notification that the University has taken appropriate action, but not the details of the discipline or other remedial action that has been imposed on the Respondent,
  - vi. prepare a Record of Resolution, edited as necessary to protect confidentiality and privacy, which will be provided to the Complainant and the Respondent and filed in the Respondent's personnel file,
  - vii. in appropriate circumstances refer employees to the University's employee assistance program or encourage them to seek medical advice,
  - viii. take any other steps considered appropriate by the Senior Administrator in the circumstances.

#### 14. Records

- a. Except as otherwise required by any University policy, applicable collective agreements or law, all reports and records issued under these Procedures will be kept confidential.
- b. The investigator's and Senior Administrator's reports will be retained for seven (7) years and stored in the offices of the Senior Administrator, subject to and in compliance with any applicable collective agreement requirements.

#### 15. Annual Review

- a. This *Respectful Workplace Resolution Procedures* will be reviewed annually.

## **E. RELATED POLICY**

HR21 Respectful Workplace Policy

AD2 Complaints About Instruction, Services, Employees, Students or University Policies

IM2 Freedom of Information & Protection of Privacy Policy

ST7 Student Conduct (Non-Academic)