



Type:	C – Institutional (Board)	Last Approved: May 28, 2020
Executive Responsibility:	President	Next Review: May 2023
Administrative Responsibility:	Associate Vice-President, Human Resources and Associate Vice-President, Student Affairs	Procedure: 41.17.001

1. STATEMENT:

Vancouver Island University (VIU) is committed to providing and maintaining a safe and respectful learning, working and living environment where Members of the University Community feel free from sexual misconduct and violence. VIU does not tolerate any form of Sexual Misconduct.

VIU takes seriously its duty to support Members of the VIU Community who experience Sexual Misconduct and to support those against whom a Report of Sexual Misconduct is made. Members of the VIU Community should receive appropriate support with respect to issues of Sexual Misconduct.

VIU will make available programs and resources to educate its community such that members have the resources to understand and prevent Sexual Misconduct, to respond effectively and supportively as bystanders or confidantes, and to access support services when they are affected by Sexual Misconduct.

VIU will undertake appropriate procedures for investigating a Report in a manner that applies principles of procedural fairness and ensures due process.

Members of the VIU Community about whom a Report is made may be subject to VIU's administrative processes, and if found to have violated this Policy will be subject to disciplinary measures.

This Policy and its associated Procedure provide a framework for fostering a safe environment through ongoing awareness and prevention initiatives, and for enacting VIU's commitment to responding in a timely, supportive, and effective manner when a Disclosure or Report is made.

2. SCOPE:

2.1 Prohibited Conduct

Any act of Sexual Misconduct is prohibited.

The following act(s) of Retaliation are prohibited:

- Any retaliation or threat to retaliate directly or indirectly against anyone who makes a Disclosure and/or Report
- Any retaliation against a person who is named a Respondent or participates in a VIU process that addresses a report
- Exertion of pressure on an individual to withdraw a report

Making a Report that is found to be vexatious, malicious, or in bad faith is a violation of this policy.

2.2 Jurisdiction

This Policy and the associated Procedure apply to Members of the VIU Community and to risks, threats and incidents of Sexual Misconduct that affect the working, learning, or living environment at VIU, including the following:

1. occur on property that is controlled by VIU;
2. occur at an event or during an activity sanctioned or under the responsibility of VIU, wherever occurring, including but not limited to online courses, field schools, athletic events, campus clubs and other VIU events
3. occur in online environments including all forms of digital, electronic, or social media.

VIU does not have jurisdiction to investigate an allegation against a person who is not a Member of the VIU Community under this Policy. Under certain Circumstances the University can prohibit access to University property.

This Policy does not prevent VIU from proceeding with any other process under other applicable VIU policies, collective agreements, contracts (eg. VIU student-athlete agreements, student residence agreements, VIU homestay agreements), risk assessment protocols, or prevailing laws.

This Policy does not restrict or prevent individuals from seeking recourse through criminal or civil proceedings or other legal avenues; however, processes under this Policy may be suspended when external proceedings are underway (see 3.2.1 of the Procedure).

A Report involving a VIU employee who has terms and conditions of employment formalized through a collective agreement may be dealt with in accordance with this Policy and Procedure or the relevant collective agreement, depending on the provisions of that collective agreement.

3. PRINCIPLES AND COMMITMENTS:

- VIU is committed to providing and maintaining a safe and positive learning, working, and living environment free from Sexual Misconduct.
- VIU recognizes that individuals of all gender identities, gender expressions, and sexual orientations may experience Sexual Misconduct.

- VIU recognizes that Sexual Misconduct is overwhelmingly committed against women, particularly women who experience multiple intersections of historical disadvantage such as, but not limited to, Indigenous women, women with disabilities, and racialized women.
- VIU recognizes that those whose gender identities, gender expressions, or sexuality have been historically marginalized, and people with disabilities are also at heightened risk of experiencing Sexual Misconduct.
- VIU is committed to providing comprehensive and inclusive Sexual Misconduct prevention initiatives for Members of the VIU Community, including education and awareness programs, safety measures and campus communications, and training on this Policy and its related Procedure.
- VIU is committed to reducing barriers to making a Disclosure or Report.
- VIU is committed to offering and providing support to Members of the VIU Community who make a Disclosure or Report or who are named as a Respondent.
- VIU is committed to supporting Members of the VIU Community who receive a Disclosure of Sexual Misconduct, and to providing ongoing Disclosure training to all Members of the VIU Community.
- VIU is committed to ensuring the personal agency of those who have experienced Sexual Misconduct by respecting their right to make their own decisions. Personal agency means that an individual is the decision-maker about making a Disclosure and/or Report, pursuing external processes such as criminal or civil action and accessing support services, including Accommodations.
- VIU will respond to and address Disclosures and Reports and conduct investigations of Reports in a timely manner.
- VIU is committed to procedural fairness when responding to Disclosures and Reports and conducting investigations.
- VIU will ensure that individuals receiving, investigating and adjudicating Reports of Sexual Misconduct have adequate training and competency to understand sexualized violence, the effects of trauma on memory and behavior, and fundamentals of trauma-informed interviewing.
- VIU is committed to applying risk and threat assessment protocol.
- VIU is committed to addressing Reports made against Members of the VIU Community and, if a violation of this Policy is found to have been committed, imposing restrictions and/or discipline upon those members.
- VIU is committed to complying with applicable statutes and regulations pertaining to its responsibilities as an employer.
- VIU is committed to fulfilling its legal obligation to protect privacy when responding to Disclosures and Reports and conducting investigations.

4. SEXUAL CONDUCT EDUCATION AND RESPONSE STEERING COMMITTEE:

To enact its commitment to providing comprehensive and inclusive sexual misconduct and violence prevention initiatives to Members of the VIU Community, including education and awareness programs, safety measures and campus communications, VIU will establish a Sexual Conduct Education and Response Steering Committee.

VIU's Sexual Conduct Education and Response Steering Committee will be chaired by the Associate Vice President, Student Affairs or delegate and will include a diverse membership, appointed by the President & Vice-Chancellor.

5. REPORTING:

The President & Vice-Chancellor will report annually to the Board of Governors on the implementation of this Policy.

VIU will compile anonymized data related to Reports and will make this data available to the public annually.

6. POLICY REVIEW:

VIU will review this Policy at least once every three years. The Sexual Conduct Education and Response Steering Committee will participate in the policy review process and will ensure that VIU students and employees are consulted as part of the process.

7. DEFINITION OF SEXUAL MISCONDUCT:

For the purposes of this Policy and the related Procedure:

"Sexual Misconduct" means a wide range of unwanted acts – physical, verbal or psychological – carried out through sexual means or by targeting sexuality, gender identity or gender expression, that is attempted, threatened or committed against an individual without their consent. Sexual Misconduct includes, but is not limited to the following:

- **coercion:** persistent pressure for sexual activity. Coercion is the use of a position of power, emotional manipulation, peer pressure, blackmail, threats to family, friends or pets, or the promise of rewards or special treatment, to persuade someone to do something they do not wish to do, such as engaging sexually or performing sexual acts. It may also involve pressuring someone to engage in sexual activity
- **cyber sexual harassment:** sexual harassment (defined below) conducted in whole or in part through electronic means, such as email, web postings, text messages and other forms of electronic communication, transmission, or publication.
- **cyber sexual violence:** knowingly publishing, distributing, transmitting, selling, making available or advertising an intimate image of a person knowing that the person depicted in the image did not give their consent to that dissemination, or being reckless as to whether or not that person gave their consent to that dissemination. An intimate image includes, but is not limited to, a visual or audio recording made by any means, including a photographic, digital or video recording, in which a person is nude, partially nude, and/or engaged in sexual activity or making sexual utterances.
- **indecent exposure:** deliberately exposing one's body causing another person to be alarmed, frightened, or offended.

- **sexual assault:** any form of sexual touching or the threat of sexual touching without the individual's consent.
- **sexual exploitation:** sexual abuse of children and youth under 18 years of age through the exchange of sex or sexual acts for drugs, food, shelter, protection, other basics of life, and/or money. Sexual exploitation includes involving children and youth in creating pornography, capturing images and sexually explicit websites.
- **sexual harassment:** vexatious comments and/or conduct that is sexual in nature, offensive, intimidating, or humiliating, and is known or ought to be known to be unwelcome. Sexual harassment also includes a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance.

Examples of sexual harassment include, but are not limited to:

- Demanding a hug, date or sexual contact
- Unwanted touching
- Use of derogatory language, sex- and/or gender-specific derogatory names, and/or comments related to a person's sexual appearance, characteristics or behaviour
- Sexual jokes, including sexual jokes or offensive sexual material circulated by email
- Spreading sexual rumours
- Bragging about sexual prowess
- Distributing and/or displaying sexually explicit images of self or others to a person who has not consented to being a recipient of the images
- Unwanted questions about sexual history
- **sexual violence:** any unwanted sexual act that is forced, manipulated or coerced. Sexual violence is characterized by a broad range of behaviours that may involve the use of force, threats or control towards a person that makes that person feel distressed, unsafe, frightened or threatened and is carried out in circumstances in which the person has not freely consented or is incapable of consenting.
- **stalking:** behaviours that occur on more than one occasion, which collectively instill fear in the person who has been victimized, or threaten a person's safety or mental health. These behaviours include non-consensual communications (face to face, phone, email, social media); threatening harm to the person being stalked and/or to family, friends, or pets; vandalizing property; showing up uninvited to the person's home or workplace or place of study; surveillance; and, sending unsolicited gifts.
- **voyeurism:** Secretly observing, in person or by mechanical or electronic means, a person in a context in which they have a reasonable expectation of privacy.

Where referred to above, "**consent**" means voluntary and explicitly stated agreement to engage in an activity or to continue to engage in an activity. For clarity:

- consent cannot be implied
- consenting to one kind of sexual activity does not mean that consent is given for another sexual activity
- consent applies only to each specific instance of sexual activity

- it is the responsibility of the person initiating each sexual act to take positive steps to ensure consent before engaging in each sexual act
- consent can be withdrawn by any participant at any point, regardless of prior consensual activity
- there is no consent where a person is incapable of consenting, for example if the person is not of a legal age to consent or does not have the capacity to consent, such as due to intoxication or impairment
- there is no consent where a person abuses a position of trust, power, or authority over another person
- there is no consent where a person uses coercion or threat of violence.
- Intoxication of the person initiating sexual activity does not relieve the initiator of responsibility to ensure consent.

8. OTHER DEFINITIONS:

For the purposes of this Policy and the related Procedure:

“Accommodation” means an academic or non-academic intervention which may include, but is not limited to, a safety plan; “no contact” directives; workplace accommodations such as workload adjustments, job reassignment, and/or leave of absence; class scheduling or class re-assignment; other academic accommodations such as extensions on assignments, deferrals and/or relocation of exams, withdrawal of courses; temporary or permanent adjustments to housing arrangements in VIU Residences; and other appropriate and reasonable interventions.

“Complainant” means a Member of the VIU Community who makes a Report under this Policy.

“Disclosure” means telling a Member of the VIU Community about an experience of Sexual Misconduct. A Disclosure does not initiate an Investigation. An individual may make a Disclosure to request personal support or Accommodation. Information about making a Disclosure is provided in section 2.3 of the related [Procedure 41.17.001](#).

“Member of the VIU Community” means an individual who falls under one or more of the following categories:

- enrolled in a VIU credit or non-credit course, or who was a VIU student at the time of the Sexual Misconduct;
- enrolled in The High School at VIU or who was enrolled as a student in The High School at VIU at the time of the Sexual Misconduct;
- employee of VIU, including faculty and staff members;
- holder of a teaching or research appointment at VIU;
- VIU-authorized volunteer;
- Guest or visitor participating in a VIU-organized activity; or
- contractually required to abide by VIU policies.

A **“Report”** is made to request VIU to take action which could include Accommodations and disciplinary measures in relation to the Respondent(s). Information about making a Report is provided in section 2.4 of the related [Procedure 41.17.001](#).

“Respondent” means a Member of the VIU Community who is named in a Report under this Policy as having violated this Policy.

“Student” means an individual who is enrolled in a VIU credit course or non-credit course, or who was a student at the time of the incident.

“Third Party Reporting Agency” means one of the following provincially recognized community-based victim services organizations: Haven Society in Nanaimo, Cowichan Women Against Violence Society in Cowichan, Specialized Victim Support Services in Powell River, and Oceanside RCMP Victim Services in Parksville/Qualicum

9. RELATED VIU POLICIES AND DOCUMENTS:

[Student Conduct Code 32.05](#) and [Procedure 32.05.001](#) define Standards of Behaviour expected of all students enrolled at Vancouver Island University and articulate the scope of disciplinary action which may be taken in response to Student Conduct Code violations. Disciplinary action toward students in relation to this Policy will be undertaken in accordance with *Student Conduct Code 32.05*.

[Student Conduct Appeals 32.06](#) and [Procedure 32.06.001](#) articulate the rights of students to appeal disciplinary action imposed by the University under *Student Conduct Code 32.05* and describes the process for appeal.

NOTE: Under the terms of their particular contracts, VIU student-athletes, Mariners coaches, VIU homestay family members, and students living in VIU Residences or with VIU homestay families may be subject to further action if it is determined that they violated this Policy.

BCGEU Local 702 Collective Agreement
CUPE Local 1858 Collective Agreement
VIUFA Collective Agreement
