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1. DEFINITIONS

Capitalized terms used in this Procedure have the meanings set out in the related [Policy](#).

2. DISCLOSURES AND REPORTS

2.1 Assistance

VIU encourages anyone impacted by Sexual Misconduct to seek assistance. The [Sexual Violence and Misconduct](#) website contains detailed information about assistance available and contact information.

An individual who has experienced Sexual Misconduct may contact law enforcement to explore criminal reporting options in addition to, or instead of, engaging VIU processes. Local community-based victim services programs and RCMP are available to come on campus to provide assistance. [Designated support offices](#) are able to assist in making arrangements for these supports to come on campus to discuss the possibility of making a criminal report.

2.2 University Processes

Under this Procedure there are two actions an individual who has experienced Sexual Misconduct may choose to take – make a Disclosure and/or make a Report.

It can be difficult to talk about Sexual Misconduct. While VIU respects the rights of individuals to choose to Disclose and/or Report an incident of Sexual Misconduct, VIU strongly encourages a Member of the VIU Community who has experienced Sexual Misconduct to do one or both to enable the university to provide support. An individual who chooses to make a Disclosure has the option to make a Report at any time in the future. VIU's ability to take action and to provide support might be limited by the passage of time.

A Member of the VIU Community who has experienced Sexual Misconduct has the right to:

- Be taken seriously and be treated with respect;
- Be informed about on- and off-campus services and resources;
- Decide whether or not to access available services and to choose those services felt to be most beneficial;
- Decide whether to make a Report to VIU and/or to contact RCMP;
- Have a safety plan;

- Have reasonable actions taken to prevent further unwanted contact with the other person involved in the incident;
- Receive clear and transparent information throughout the process;
- Be accompanied by a support person throughout the process.

2.3 Disclosure

An individual may choose to make a Disclosure to any Member of the VIU Community without making a Report. A Disclosure does not initiate an investigation or other action by VIU, subject only to conditions explained in 7. Confidentiality and Privacy. A person who makes a Disclosure does not need to prove that the Sexual Misconduct occurred in order to access supports and/or receive Accommodations.

A Member of the VIU Community who makes a Disclosure will be entitled to receive appropriate personal support and Accommodations from VIU as determined by VIU. Such support may include information about and referrals to programs and services including VIU Counselling Services, the VIU Student Health Clinic, Nanaimo's Sexual Assault Response Program (SARP), Island Health's Forensic Nursing Program, other confidential community resources, and the VIU Employee and Family Assistance Program. A list of resources can be found [here](#).

A Member of the VIU Community who receives a Disclosure can contact and receive support and information from VIU's Sexual Misconduct Support Centre (located in B200 at the Nanaimo campus and in the Student Services offices at the Cowichan and Powell River campuses), or from any Member of the VIU Community who is trained to receive Disclosures as described below.

Many Members of the VIU Community have been trained to respond supportively when a person chooses to make a Disclosure, to provide information about support services and Reporting options, and to assist with the Reporting process should the person choose to make a Report at any time in the future. Those trained individuals are identified [here](#) and will:

- listen without judgement;
- help identify and/or access available on- or off-campus services, including medical care and counselling;
- respect the right of individuals to choose the services they feel are most appropriate and to decide whether to Report to VIU and/or contact RCMP;
- recognize that experiencing and Disclosing Sexual Misconduct can be traumatic and the ability to recall the events may be limited;
- respect the choices people make as to what and how much they disclose about their experience;
- honour the right of individuals to use their own words to describe and define their experience with Sexual Misconduct; and
- make every effort to respect confidentiality of the person making a Disclosure, keeping in mind that a person who receives information through a Disclosure may be required to disclose some of the information received in certain circumstances as explained in 7. Confidentiality and Privacy.

2.4. Report

A Member of the VIU Community who makes a Report to VIU will be entitled to receive appropriate personal support and Accommodations from VIU as determined by VIU and as explained in 2.3

Disclosure above. The making of a Report to VIU is a request for action on the part of VIU that may include an investigation, safety measures, and/or disciplinary action involving the other party.

A Report may be made either to VIU's Human Rights and Respectful Workplace Office directly or to a Third Party Reporting Agency with a request that the Third Party Reporting Agency submit the Report to VIU's Human Rights and Respectful Workplace Office. A Report can be initiated using the contact information set out in Appendix 1.

About Third Party Reporting Agency Reporting

Third Party Agency Reporting is a process that allows people who have experienced sexual violence to report details to a provincially recognized community-based victim services organization. Members of the VIU Community can request that a report provided to a Third Party Reporting Agency be submitted anonymously or with names of the Complainant and the Respondent(s) to VIU's Human Rights and Respectful Workplace Office. VIU will not require a Complainant to repeat the Reporting process at VIU. A Report conveyed to VIU via a Third Party Reporting Agency will be acted upon as if it had been made to VIU's Human Rights and Respectful Workplace Office.

VIU has the authority to address a Report made against a Member of the VIU Community and can act to the extent of its relationship to that member.

An individual who made a Report has the right to withdraw it at any stage of the process, although VIU may be required to continue to act on the Report in order to comply with its obligations to foster a safe learning, working and living environment.

Third Party or Anonymous Allegations

A third party (someone other than the individual who experienced Sexual Misconduct) or an anonymous individual may submit an allegation of Sexual Misconduct under the process identified above. VIU's ability to address the statements made in such circumstances will be dependent on whether evidence required to make findings of fact is available. In many cases only the person who has experienced Sexual Misconduct and the person accused of perpetrating the misconduct can provide this evidence. If the person who experienced Sexual Misconduct does not wish to participate in the process VIU may be unable to act.

An anonymous Report conveyed to VIU via a Third Party Reporting Agent will be included in VIU's data collection and will inform campus safety efforts, but no investigation will be undertaken.

2.5 For An Individual Who Has Been Accused of Sexual Misconduct

VIU recognizes that being accused of Sexual Misconduct might cause a Respondent to feel stressed or anxious. Depending on the relationship with VIU a Respondent may be offered appropriate personal support and Accommodations from VIU as determined by VIU.

A Member of the VIU Community who is accused of Sexual Misconduct has the right to:

- be treated with dignity and respect;
- be informed about on- and off-campus services and resources;
- decide whether or not to access available services and to choose those services felt to be most beneficial;
- receive clear and transparent information throughout the process;

- be accompanied by a support person throughout the process.

3. OVERVIEW OF VIU'S RESPONSE TO A REPORT OF SEXUAL MISCONDUCT

3.1 Interim Measures

VIU will take immediate action to assess and facilitate the safety of individuals named in a Report and the broader institutional community. Such actions are not be interpreted as a determination that any misconduct occurred.

Efforts to address concerns for safety will include a triage evaluation by members of VIU's Risk and Threat Assessment Team. The triage evaluation will involve an analysis of the facts presented in the Report, and a review of available files and records that may establish a historical context for assessing the current level of risk of harm to self or others. The risk and threat assessment process may involve interviewing witnesses and/or other individuals who may have information that can contribute to the compilation of facts pertaining to the assessment of risk.

While the University is engaged in the risk and threat assessment process, action to address the safety concerns of the Complainant, while also considering the interests of the Respondent, may be taken such as:

- “no contact” directive;
- restricted access to some or all VIU properties, facilities, and sponsored events, including removal from classes and/or VIU Residences;
- alternative housing arrangements on- or off-campus;
- restricted and/or supervised access to classes and/or online teaching and learning platforms;
- changes to examination schedules and/or locations;
- workplace reassignment, administrative leave of absence, suspension of services contracts, or other interim measures;
- referral to Counselling and/or other support services on- or off-campus.

3.2 Investigation

When a Member of the VIU Community makes a Report VIU has a responsibility to investigate to the extent required to facilitate the safety of the VIU community and to assess the need for disciplinary action.

Except in circumstances where there is a serious safety risk to others such that VIU has a legal obligation to act, the person making the Report can determine the extent of VIU's investigation keeping in mind that VIU will not be able to take disciplinary action without conducting an investigation that yields sufficient evidence to substantiate a finding on the balance of probabilities that a violation of Policy occurred.

A Report involving a VIU employee who has terms and conditions of employment formalized through a collective agreement will be dealt with in accordance with the rights and procedures contained in the applicable collective agreement to the extent that such provisions apply to Sexual Misconduct.

3.3 Management of the Investigation Process

VIU administrators (“Investigation Manager”) will have responsibility for managing the Report process as appropriate depending on the circumstances detailed in the Report and the relationship to VIU of the persons involved.

Executive Director, Student Affairs (or delegate)

- when both the Complainant and the Respondent are students;
- in cases involving a member of the general public (including homestay families, volunteers, guests, visitors) where a student is a Complainant or Respondent;
- cooperatively with the Executive Director, Human Resources in cases involving an individual with a contractual relationship to VIU (e.g. employee, contractor) where a student is a Complainant or a Respondent.

Executive Director, Human Resources (or delegate)

- when both the Complainant and Respondent are employees or contractors;
- in cases involving a member of the general public (including homestay families, volunteers, guests, visitors) where an employee, contractor or sub-contractor is a Complainant or Respondent;
- cooperatively with the Executive Director, Student Affairs in cases involving an individual with a contractual relationship to VIU (e.g. employee, contractor) where a student is a Complainant or a Respondent.

3.3.1 Upon receipt of a Report

Upon receipt of a Report the Investigation Manager will review the Report to determine whether:

- a) VIU has jurisdiction to investigate;
- b) there is sufficient information to proceed with an investigation;
- c) it would be more appropriate to proceed under another VIU policy or process; or
- d) the allegation has already been adequately addressed by another process.

If the Investigation Manager determines that an investigation should proceed, then the Investigation Manager will notify the Complainant and appoint an investigator.

If the Investigation Manager decides that an investigation will not proceed, the Investigation Manager will notify the Complainant in writing of that decision along with their reasons within five (5) working days of receipt of the Report.

4. STAGES OF THE INVESTIGATION

4.1 Stage One – Appointment of Investigator

The investigator(s) may be a VIU employee from the Student Conduct Support Office and/or the Human Resources Office, and/or the investigator may be an external third-party contracted for the purpose of conducting the investigation. The Investigation Manager may appoint one or more investigators depending on the circumstances (e.g. complexity of the incident(s), number of parties involved, seriousness of the allegations, and potential perception of bias). The investigator(s) will:

- Normally be appointed by the Investigation Manager within 10 working days of the Report being submitted,

- Be identified by name and background to the Complainant and the Respondent within 1 working day of being appointed,
- Have no stake in the outcome of the investigation and will have no personal relationship with any of the people named in the Report.

Should either the Complainant or the Respondent have an apprehension of bias regarding the investigator, they shall submit their concern in writing to the Investigation Manager within 3 working days of being notified of the investigator's appointment. If the concern of bias is not addressed to the satisfaction of the individual bringing the concern forward, the Investigation Manager will appoint a different investigator or a co-investigator.

The Investigation Manager will provide the investigator(s) with a copy of the Report, the relevant policies and procedures, and information about any interim safety measures.

The Investigation Manager will provide a copy of the Report to the Respondent. If there are multiple Respondents, information relating to each specific Respondent will be provided.

4.2 Stage Two – Conducting the Investigation

Right to Support

An individual (Complainant, Respondent, witness) involved in an investigation may be accompanied by a support person whose role is to provide emotional support. The support person may be internal or external to VIU but may not be a party or witness to the matter. The support person does not act in the place of the individual; information and answers are to be provided by the individual unless the investigator determines otherwise.

A support person must agree in writing to maintain confidentiality in accordance with these Procedures.

Legal Representation

If an individual intends to be represented by legal counsel, they must so advise the investigator in writing a minimum of three (3) university working days prior to any scheduled interview or meeting.

Establishing the Facts

Applying the principles of procedural fairness, the investigator will give the parties the opportunity to provide information relevant to the investigation. The investigator may investigate and interview witnesses at the investigator's discretion.

Should additional allegations be made during the course of the investigation, such allegations are to be brought to the attention of the Investigation Manager to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation, they are to be presented in writing to the Respondent named in the new allegations.

Should the Complainant or Respondent refuse to cooperate with the investigation, the investigator may either proceed with the investigation or recommend to the Investigation Manager that the complaint be dismissed. The Investigation Manager will make a decision to dismiss the complaint or may direct the investigator to continue the investigation.

Exploring Options for Resolution

If the investigator believes that resolution at this stage may be appropriate, the investigator will confer with the Investigation Manager to identify suitable options for resolution that the investigator will then discuss with the Complainant. If the Complainant agrees that the options for resolution may be appropriate, the investigator will advise the Respondent of the resolution options. If the Respondent agrees to participate in the proposed resolution process and the investigator continues to be satisfied that resolution at this stage is appropriate given the agreement of both parties, the investigator will facilitate the resolution process. Participation in the resolution process is entirely voluntary. If either the Complainant or the Respondent decides to withdraw from the resolution process, the investigation will proceed. If the matter is resolved the Investigation Manager will take appropriate steps to end the investigation and document the resolution for the file.

4.3 Stage Three – Validating the Facts – Preliminary Summary of Facts

Once the investigator has gathered the relevant facts, the Complainant and the Respondent will be given an opportunity to comment.

The investigator will prepare a preliminary summary of facts and submit it to the Investigation Manager within five (5) working days of completing the investigation. The preliminary summary of facts will contain the following elements:

- a description of the allegations;
- other information collected in relation to each allegation;
- summaries of interview statements and the facts of the case, undisputed and disputed.

In the event that multiple people are named as Respondents, an individualized preliminary summary of facts may be required for each Respondent when aspects of the allegations are specific to a certain Respondent.

The Investigation Manager will within two (2) working days of receiving the summary of facts, submit the summary of facts to the University Secretary for review to ensure compliance with the BC *Freedom of Information and Protection of Privacy Act*. Within three (3) working days the University Secretary will confirm compliance or provide an appropriately redacted/revised summary of facts to the Investigation Manager.

The Investigation Manager will within two (2) working days of receiving the summary of facts provide it to the Complainant and Respondent who then have ten (10) working days to provide written comments.

The investigator will consider any additional information provided by the parties and incorporate it into the report if it is deemed appropriate to do so. If new and/or additional information is provided, and/or further investigation is required following each party's review and response to the preliminary summary of facts, the investigator will disclose all new or additional information that is obtained if it will be used to substantiate the final report. The parties will be given five (5) working days to review and respond to this additional information.

4.4 Stage Four – Decision and Findings

At the completion of the investigation the investigator will decide whether section 2.1 of the Policy was violated in relation to each allegation made. Findings will be based on a balance of probabilities; whether it is more likely than not that a policy violation occurred.

Within ten (10) working days of the deadline for the parties to respond to the preliminary summary of facts, the investigator will provide to the Investigation Manager a written report (“Investigative Report”) setting out:

- a) a description of the allegations;
- b) a description of the investigation process;
- c) a summary of the evidence considered;
- d) an analysis of the evidence, including assessment of credibility required to make a determination;
- e) the findings of fact and a determination as to whether, on a balance of probabilities, a violation of policy occurred responding to each allegation in the Report; and
- f) if the allegations are not founded, a statement as to whether or not the allegations may have been made vexatiously, maliciously, or in bad faith.

The investigator may also comment on any underlying factor(s) encountered during the course of the investigation that may have contributed to the situation or may have had a negative effect on the learning and/or working environment.

In the event that multiple people are named as Respondents, an individualized Investigative Report may be required for each Respondent when aspects of the allegations are specific to a certain Respondent.

4.5 Stage Five – Closure of Investigation

The Investigation Manager will within two (2) working days of receiving the Investigative Report(s) submit the Investigative Report(s) to the University Secretary for review to ensure compliance with the *BC Freedom of Information and Protection of Privacy Act*. Within three (3) working days the University Secretary will confirm compliance or provide appropriately redacted/revised Investigative Report(s) to the Investigation Manager.

The Investigation Manager will within two (2) working days of receiving the Investigative Report(s) from the University Secretary provide appropriate copies to the Complainant and Respondent.

4.6 Revision of Timeline

If during the course of the investigation it becomes apparent that the timelines cannot be met, the Investigation Manager will contact the Complainant, the Respondent and the investigator as appropriate as soon as possible to inform them of the revised timeline.

5. DISCIPLINARY ACTION

If the investigator determined that there was a Policy violation the Investigation Manager will provide a copy of the Investigative Report to the appropriate administrative authority.

Sexual Misconduct is a violation of the VIU [Student Conduct Code Policy 32.05](#). A student found to have violated the *Sexual Misconduct Policy* will be subject to disciplinary action in accordance with [Student Conduct Code Procedure 32.05.001](#).

An employee found to be in violation of the *Sexual Misconduct Policy* will be subject to disciplinary action in accordance with applicable terms and conditions of employment or collective agreement.

6. APPEALS

An appeal of a discipline decision may be made as provided in the applicable policy, terms and conditions of employment or collective agreement. Where no such provision exists, there is no right to appeal.

7. CONFIDENTIALITY AND PRIVACY

Confidentiality is integral to creating an environment where individuals feel safe disclosing or reporting incidents of sexual misconduct and seeking support. VIU will keep information confidential to the extent possible and will act in accordance with British Columbia's *Freedom of Information and Protection of Privacy Act* ("FIPPA").

Anyone who participates in an investigation, including the Complainant and Respondent, and learns information about an identifiable individual ("Personal Information") through the investigation shall not disclose such information to anyone other than their personal advisors or as required or permitted by law or this Procedure. This does not prevent such individuals from disclosing information about themselves or information that they obtained outside of the investigation.

7.1 VIU employees receiving personal information

VIU employees who receive personal information through a Disclosure, Report or investigation will:

- a) make reasonable efforts to maintain confidentiality;
- b) use the information only for the purposes of addressing the situation, providing support, investigating, or taking disciplinary action;
- c) disclose personal information only as permitted under FIPPA.

7.2 Disclosure of information

VIU may disclose information in order to ensure that investigations are fairly conducted, in accordance with the following principles:

- a) the Respondent has the right to know pertinent details of the allegations made;
- b) the Complainant and the Respondent have the right to know the outcome of the investigation including the reasons for the decisions rendered as a result of a Report;
- c) details of disciplinary action taken as a result of a Report will be disclosed only if such information is necessary for health or safety reasons; and
- d) confidential information will be disclosed only to the extent required to conduct the investigation and/or to determine or implement appropriate disciplinary action.

7.3 Disclosure of personal information

VIU may use or disclose personal information in circumstances where:

- a) the use or disclosure is expressly authorized by the affected individual;
- b) an employee needs the information to perform employment duties;
- c) there are compelling health or safety reasons; or

- d) the use or disclosure is authorized or required by law (for example, obligations related to occupational health and safety, workers compensation, human rights legislation, or the *Child, Family and Community Services Act*).

7.4 Public Statements

When an incident that may be related to a Disclosure or Report under this Procedure becomes known to the public, VIU may respond to queries regarding the processes detailed in this Procedure and how the specific incident is being managed. Information regarding details of a specific Report and/or its investigation can be disclosed with the permission of the parties or in accordance with law. VIU may correct misleading or inaccurate public information.

8. RECORDS

Records associated with a Disclosure that is made to one of the following offices (Counselling, Student Health Clinic, VIU Residences, Student Affairs, Human Resources, Health and Safety Services, Human Rights and Respectful Workplace Office) will be securely and confidentially retained in that office according to established protocols.

The Investigation Manager will ensure the secure and confidential maintenance of all correspondence, and documents related to an investigation. All such records will be retained for a minimum of 7 years following the last date of contact with the file.

APPENDIX 1

REPORTING OPTIONS

NANAIMO CAMPUS

Human Rights and Respectful Workplace Office	Building 300, Room 100 Nanaimo	250-740-6440
Third Party Reporting Agency Confidential Community-Based Victim Services	Haven Society	Crisis Line: 1-888-756-0616 (24/7) Victim Services: 250-756-2452 (ext. 234)

COWICHAN CAMPUS

Human Rights and Respectful Workplace Office	Building 300, Room 100 Nanaimo	250-740-6440
Third Party Reporting Agency Confidential Community-Based Victim Services	Cowichan Women Against Violence Society (CWAV)	250-748-7000

POWELL RIVER CAMPUS

Human Rights and Respectful Workplace Office	Building 300, Room 100 Nanaimo	250-740-6440
Third Party Reporting Agency Confidential Community-Based Victim Services	Specialized Victim Support Services	604-485-2620

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