



COMMITTEE REPORT

SESSION:

Public

ACTION REQUESTED:

Decision
 Discussion/Direction
 Information

Financial Impact Yes No

Included in Budget Yes No

TO: Academic Council

DATE: February 22, 2022

FROM: Andrew Sunstrum, Director, Human Rights Office

SUBJECT: Procedures to Prevent and Address Discrimination and Harassment By or Against Students – Consultation

ACADEMIC COUNCIL MANDATE:

In accordance with Article 1.3(b) of By-law No. 2, the Academic Council will be consulted on the establishment of Legal, Compliance and Governance Policies, as reflected in the university’s Policy Framework. The attached Procedures to Prevent and Address Discrimination and Harassment By or Against Students are being presented to Academic Council (AC) for consultation.

BACKGROUND/CONTEXT & RATIONALE:

The Secretariat plays a significant role in advancing the strategic objective of creating a sticky campus. This work is done with a focus on initiatives to improve the culture within which students learn and employees work. Several years ago, the Secretariat began to focus on how the university improves its culture by increasing its capacity to manage conflict and promote respect. The university established the Respectful Campus Policy (“RCP”) to communicate the University’s Human Rights responsibilities and obligations in a central document that applies to all University Members. In addition, the RCP places a greater emphasis on preventing harassment and discrimination by addressing disrespect and microaggressions and placing greater emphasis on informal dispute resolution processes such as mediation. While the principles and obligations described in the RCP apply to all University Members (with the exception of workplace harassment), the dispute resolution procedures for employees and students will remain separate. The Procedures to Prevent and Address Discrimination and Harassment by or

Against Employees were approved in 2021 and the corresponding student procedures are now ready for review and approval.

ALIGNMENT WITH MISSION, VISION, VALUES & STRATEGIC PLAN:

- This policy instrument supports the university's values of integrity and respect by demonstrating the university's commitment to establishing a safe, inclusive, and equitable culture at the institution.
- By promoting a respectful, inclusive, and equitable culture at the university, this policy documents also supports the strategic pillar of creating a "sticky campus". If we want the university community to want to spend time on campus, they must feel protected and be familiar with their various rights, roles, responsibilities and obligations as they relate to preventing and responding to all forms of harassment and discrimination. We must also move toward more constructive ways of resolving disputes earlier and in less adversarial ways.

CONSULTATION:

- Policy Advisory Committee (Consultation - September 2021)
- Ontario Tech Student Union (Consultation - December 2021)
- GNHR (Consultation - January 27, 2022)
- Academic Council (Consultation – February 2022)
- Online Consultation (Consultation – February 2022)
- GNHR (Approval – March 2022)

Consultation Comments and Response

Respectful Campus Procedures (for Students)

- We received feedback suggesting correction of minor typos and to clarify certain language.
- **Response:** revisions were made as suggested.
- We received feedback suggesting that the procedures should make clear how students can raise concerns related to alleged disrespectful behavior, including microaggressions.
- **Response:** Revisions were made to clarify that allegations of disrespect and/or microaggressions can be made directly to a Person of Authority.

NEXT STEPS:

- Comments from pending consultations including those from Academic Council will be considered and a revised draft brought forward for approval by the Governance, Nominations and Human Resources Committee.

SUPPORTING REFERENCE MATERIALS:

- Procedures to Prevent and Address Discrimination and Harassment By or Against Students – Written Consultation

Classification Number	<i>To be assigned by Policy Office</i>
Parent Policy	Respectful Campus Policy
Framework Category	Legal, Compliance and Governance
Approving Authority	Governance, Nomination and Human Resources Committee
Policy Owner	General Counsel
Approval Date	DRAFT FOR CONSULTATION
Review Date	
Supersedes	

PROCEDURES TO PREVENT AND ADDRESS DISCRIMINATION AND HARASSMENT BY OR AGAINST STUDENTS

PURPOSE

1. The purpose of this procedure is to establish a dispute resolution framework for the prevention and handling of Student-based Reports of alleged breaches of the Respectful Campus Policy (*the Policy*); ensuring the University effectively addresses and responds to these Reports consistent with legislative obligations.

DEFINITIONS

2. For the purposes of these Procedures the following definitions apply:

“Administrative Fairness” means that the procedures used in the investigation and decision-making processes adhere to the following elements:

- The Complainant, if any, is given a full and fair opportunity to raise allegations and provide relevant and material evidence in support of those allegations;
- The Respondent knows what the allegations are and receives enough information to provide a meaningful response;
- The Respondent is given a full and fair opportunity to defend against the allegations and provide relevant and material evidence rebutting those allegations;
- The parties receive adequate notice of the nature of the proceedings and of the issue to be decided.
- The parties have a right to an impartial decision maker and freedom from bias
- The decision maker is required to consider all of the relevant evidence and information pertaining to a specific case.
- The decision-making processes run in a timely fashion
- The parties have a right to a support person and/or representation during dispute resolution meetings; and
- The parties are provided the reasons for the decision.

“Balance of Probabilities” means an investigative standard that must be met to determine whether a violation of policy has occurred based on a finding that “it is more likely than not” that the offence at issue was committed by the Respondent. This is a lower standard than beyond a reasonable doubt, but more than mere suspicion.

“Complainant” refers to an individual who is alleged to have experienced a breach of the Policy.

"Discrimination" is a distinction, without lawful justification, whether intentional or not, which has the effect of denying benefits to, or otherwise disadvantaging, an individual on the basis of a Protected Ground (defined below). Discrimination may involve direct actions that are

discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging one or more groups of people.

"Discriminatory Harassment" means engaging in a course of vexatious comment or conduct, against a University Member based on any Protected Ground, that is known or ought reasonably to be known to be unwelcome. Discriminatory Harassment may include, for example, taunting or mocking someone's race, ridiculing an individual's disability or targeting others with sexual, gender-based or homophobic slurs.

"Disrespect" is behavior that falls short of Harassment, but nevertheless has harmful impacts on the campus environment, e.g. rude, inconsiderate and passive aggressive behavior. Disrespect, if left unaddressed, can escalate to Harassment or Discrimination.

"Extenuating Circumstances" means circumstances outside of an individual's control that result in delays in the dispute resolution processes described in this procedure. Extenuating circumstances include, but are not limited to, having multiple witnesses, difficulty in scheduling interviews, availability of resource persons or materials, time of year, involvement of law enforcement or existence of a judicial hearing, or other circumstances that may arise through the course of the investigation.

"Harassment" for the purposes of this procedure Includes Discriminatory Harassment (with the exception of sexual harassment, which is addressed under the University's Student Sexual Violence Policy and Procedure) and Reprisal (defined below). Harassment normally includes a series of incidents but can be one severe incident which has a lasting harmful impact on the individual.

"Interim Measures" means temporary measures designed to prevent additional breaches of the Policy and/or to protect the safety of the Complainant or others. Interim Measures may be instituted at any point following a Report and prior to a determination being made. Interim Measures take into consideration the severity of the allegations and the varying risks associated with the potential for subsequent policy breaches. Examples of interim measures include, but are not limited to, a no-contact order, trespass or restricted access order, suspension, exclusion from athletic or other extra-curricular activities, limiting access to services or facilities, or other safety measures.

"Investigation" means a part of the Dispute Resolution Process in which the University conducts a systematic inquiry into alleged breaches of the Policy.

"Investigator" means an individual who has the required training and experience to conduct a fair and objective Investigation.

"Mediation" is a structured process in which parties in dispute are assisted by a third-party to discuss a dispute and attempt to arrive at a mutually agreeable resolution. Mediation is a voluntary process and can only proceed if all parties involved agree to participate. Depending on the circumstances, mediation may result in a signed agreement summarizing the agreed upon terms of settlement.

"Person(s) of Authority" includes any person who has charge of a workplace, authority over another Employee or authority in the administration of education. Anyone who supervises an

Employee at Ontario Tech University is a Person of Authority. For the purposes of this procedure, Faculty members, and Faculty Leadership (e.g. Deans, Associates Deans, etc.) are also considered Persons of Authority vis-à-vis their relationship to students.

"Protected Ground(s)" are the Grounds contained in the Ontario Human Rights Code under which individuals are protected against discrimination and harassment. Students are protected under the following Grounds: "race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status and disability."

"Report" refers to a Reported violation of the Respectful Campus Policy by or against a Student.

"Reprisal" is a form of Harassment that includes retaliation, coercion, dismissal, threats or intimidation of anyone who in good faith: raises complaints or concerns, exercises their rights, or participates in a remedial process under the Policy.

"Respect" is a standard of interpersonal communication and behaviour characterized by self-restraint and consideration for others.

"Respondent" refers to anyone who is alleged to have engaged in a breach of the Policy.

"Student" means an individual who is currently registered in any course or program of study at Ontario Tech, or who was registered as a Student at the time of the alleged breach of the Policy.

"Support Worker" means a trained and registered Mental Health Counsellor in Student Mental Health Services assigned responsibility for providing support for Students who have experienced, are accused of or have witnessed a breach of the Policy.

"University Member" means any individual who:

- is employed by the University or holds an appointment with the University, including paid, unpaid and/or honorific appointments ("**Employee**");
- is registered as a student, in accordance with the academic regulations of the University; and/or
- Is otherwise subject to University policies by virtue of the requirements of a specific policy (e.g. Booking and Use of University Space) and/or the terms of an agreement or contract.

"Working Days" means all weekdays, excluding statutory holidays and University closure dates as indicated on the University website.

SCOPE AND AUTHORITY

3. The University Secretary and General Counsel is the Policy Owner. The Policy Owner is responsible for overseeing the implementation, administration, interpretation and application of these Procedures.
4. This Procedure applies to Reports made by or against Students. This Procedure necessarily overlaps with other University procedures that are concerned with preventing and addressing incidents of Harassment and Discrimination. Ontario Tech University will administer the overlap according to the following principles:

- 4.1. Reports brought forward by a University Student involving a Respondent who was, at the time of the incident(s), acting in the capacity of a University Employee, including a Respondent who was a Student acting in the capacity as a University Employee (e.g., Teaching Assistants), will proceed under this procedure in conjunction with the Employee procedures.
 - 4.2. Reports brought forward by a University Employee involving a University Student who is accused of a breach of the Policy will also proceed under this Procedure in conjunction with the Employee procedures.
 - 4.3. Allegations of student sexual violence, including alleged incidents of sexual harassment involving a Student, will be handled in the manner prescribed under the [Student Sexual Violence Policy and Procedures](#).
 - 4.4. Students who wish to challenge a grade because of alleged Harassment or Discrimination are expected to make use of the grade appeal and reappraisal procedures as a first step. At the conclusion of the grade appeal and/or reappraisal process, the Student may elect to file a report under this procedure if they remain dissatisfied. In such instances, the Human Rights Office will review the information and evidence gathered during the grade appeal and/or reappraisal process to determine whether any outstanding allegations warrant further action under this Procedure.
 - 4.5. Where an individual, other than a University Member, is alleged to have engaged in a breach of the Policy against a Student, the Office of Campus Safety will consult with Members at risk, and other Members if necessary, to determine and implement reasonable measures to protect the health and safety of its Students. Because the University does not have the jurisdiction to compel statements from members of the general public, or to impose sanctions upon them, it will not normally conduct a formal Investigation in such cases.
5. This Procedure is a mechanism for alternative dispute resolution. It does not preclude Complainants from pursuing resolution through external resources and processes, including those offered through the Human Rights Tribunal of Ontario. However, The Human Rights Office may not accept a complaint or may halt dispute resolution processes under this procedure if a complainant decides to pursue external processes on the same or similar matter.
 6. **Notice:** All notifications required under these Procedures will be delivered by email to a ontariotechu.net or ontariotechu.ca account, as applicable.
 - a) Emails will be deemed received by a Student one (1) Working Day after they are sent. All Ontario Tech Students are required to monitor their ontariotechu.net accounts regularly, including during examination periods.
 - b) A Student's failure to monitor their email account will not give rise to any right of appeal under these Investigation Procedures.

PROCEDURE

This Procedure assumes that a centralized process is necessary to ensure uniformity and fairness in dealing with alleged violations of the Respectful Campus Policy involving Students. It is intended to provide a framework that protects confidentiality and ensures that, as far as

possible, the initiation and pursuit of a formal report will not be an intimidating experience. Accordingly, the emphasis is on informal resolution, using facilitation and negotiation, save where the nature of the matter necessitates a more formal resolution process. The university intends that the existence of this document should help create an environment that nurtures and supports the work of all University Members.

7. **Confidentiality:** Complaint information and evidentiary details will be kept confidential, except under the following circumstances:
 - The Complainant chooses to proceed with a formal Report, in which case information will be shared only to the extent necessary to achieve Administrative Fairness, and as otherwise required by law;
 - Information is received suggesting there is a clear risk of harm, including self-harm, to the Student or other individuals;
 - Reporting is required by law (e.g., the suspected abuse or neglect of someone under 16 years of age, which will be reported to the Children’s Aid Society, or reporting is required by a regulatory body); and
 - Information is required for a police investigation, or for litigation purposes.
8. **Timeliness:** All efforts must be made to ensure that proceedings are handled in an expeditious manner. Timeframes, where specified, may be subject to an extension only as a result of Extenuating Circumstances.
9. **Safety is Paramount:** Ontario Tech University has an overriding obligation to protect the safety of all University Members. When a University Member is at risk of imminent harm, we reserve the right to respond appropriately, independent of a Complainant's and/or Respondent's course of action under this Procedure.
10. **Support Services:** [Student Life](#) has appropriate mental health support services for Students who experience Harassment and Discrimination or to assist Students who are involved in dispute resolution processes described in this Procedure.
11. **Right to a Support Person(s).** Complainants and Respondents who attend an interview or meeting under this procedure may be accompanied by a support person or legal representative. The role of a support person is to provide moral support. Individuals who choose to attend an interview with a support person must choose a support person who is not otherwise connected to the matter under Investigation (i.e. a witness or fellow Complainant) and will notify the Human Rights office of their support person’s name at least 24 hours prior to the meeting. During an investigative interview, a support person will not be permitted to make legal submissions or arguments on behalf of the individual, or to disrupt the interview. In any event, individuals who are being interviewed must answer the interview questions themselves.
12. **Reprisal:** Any Reprisal, or expressed or implied threat of Reprisal, for making and pursuing a Report under this Procedure is itself considered a breach of the corresponding Policy. Any individual experiencing Reprisal may file a Report, and that Report will be processed under this procedure.

PREVENTATIVE MEASURES

13. **Range of Dispute Resolution Options:** Several options to resolve Human rights concerns are available for Complainants. Informal approaches can foster prompt resolution and prevent escalation; particularly when concerns are raised expeditiously. These are opportunities for parties to resolve a dispute, ensure the campus is free from Harassment and Discrimination and address broader issues that caused or contributed to the dispute.
14. **Talk to the person about their behaviour:** Where appropriate, Complainants are expected to make good faith efforts to attempt to resolve matters themselves before filing a Report. If a person feels they are experiencing a breach of the Policy, they should immediately make known to the person responsible that the conduct is unwelcome or offensive. It is important that this message be clear and unambiguous. When presented with a legitimate concern, University Members are expected to make reasonable adjustments to their behaviour to resolve the matter. If addressing the person responsible could lead to safety risks, or is not appropriate, Complainants may pursue other resolution options outlined in these procedures.
15. **Talk to a Person of Authority:** incidents of alleged disrespect may be raised to a person of authority if attempts to resolve the behaviour directly with the individual are not successful.
16. **Consultation:** Students may benefit from having expert information and advice before deciding how to proceed with a human rights concern. Students can confidentially consult a representative of the Human Rights Office for more information about Human Rights and Dispute Resolution options. Consultations are confidential and can provide information, coaching, and referrals to assist Complainants.

REPORTING

17. **The Reporting Process**
Incidents of Harassment and/or Discrimination should be promptly reported to the Human Rights Office, and no later than one (1) year after the last incident of alleged Harassment or Discrimination.

Step 1 – Submitting a Report

- 17.1. Student may initiate a “Report”, and the corresponding “Reporting Process”, by completing the Report form that is available from the Human Rights Office.
- 17.2. The University may initiate an Investigation under these Investigation Procedures without a formal written Complaint if the situation represents an immediate risk of harm to an individual or individuals or there is evidence to suggest the existence of systemic issues.

Step 2 – Interim Measures

- 17.3.** Upon receiving a Report, the University will immediately determine whether Interim Measures are necessary, considering the severity of the allegations, and the potential risks to University Members. Interim Measures will be implemented where reasonable and appropriate in the circumstances. Person(s) of Authority, the Complainant, Respondent, the Office of Campus Safety or any other relevant stakeholder, may be consulted on a confidential basis, to determine appropriate Interim Measures.

Step 3 – Assessment

- 17.4.** The Human Rights Office will review the Report and determine if the conduct alleged in the Report would amount to Discrimination or Harassment. This determination will be based on an assumption that all of the alleged facts were true. The Human Rights Office may meet with any person to assess the nature and validity of the Complaint. Meetings will be conducted in a sensitive, confidential and tactful manner.
- 17.5.** If the allegations set out in the Report would not, if true, amount to Discrimination or Harassment, the Human Rights Office will respond to the individual submitting the Report in writing, usually within 30 days, advising that the Report has been reviewed, and that the information provided does not support an allegation of Discrimination or Harassment. The individual submitting the Report will also be advised that the Human Rights Office may reconsider the Report if additional and significant information is provided. If there is another process or resource at the University that would be more appropriate for the subject matter of the Report, the individual will be advised of this alternative process. Complaints that do not meet the requirements for a formal report under relevant policy, but nevertheless describe behaviours that are contrary to the University's values, (e.g. rude, disrespectful, antagonizing behaviour) may be referred to the applicable Person of Authority for appropriate follow-up or may be eligible for the informal resolution processes described in this procedure at the discretion of the Human Rights Office.
- 17.6.** If, on the other hand, the information provided would, assuming the alleged facts were true, support a finding that Discrimination or Harassment had occurred, the below dispute Resolution options will be considered.

Step 4 – Informal Resolution

- 17.7.** A Complainant may choose to pursue an Informal Resolution at any time. Where appropriate, an informal resolution process can be pursued if the Complainant and Respondent consent to an informal resolution process being pursued and to its format.
- 17.8.** Examples of Informal Resolution processes may, depending on the circumstances, include: communicating to a Respondent that the behaviour is unwelcome and must stop; meeting with a university official to discuss the ways in which future occurrences of the disclosed incident can be prevented; training or education for

individuals and groups; and Mediation or other alternative dispute resolution processes.

- 17.9.** The informal resolution process may result in one of the following outcomes:
- a.** If the Complainant is satisfied by the actions taken through the Informal Resolution process, the Human Rights Office will prepare a written summary of the resolution and the Complainant will confirm acceptance in writing. If accepted, the Report will be deemed resolved.
 - b.** If no satisfactory resolution is achieved, the Complainant may consider pursuing a Formal Resolution.
- 17.10.** Once an informal resolution process has commenced, an Investigation may be delayed for a maximum period of 30 calendar days, after which, unless a resolution has been reached, the Investigation will proceed.

Step 5 – Investigation

- 17.11.** An Investigation will be conducted if informal resolution options are not appropriate in the circumstances or were not successful in resolving the dispute. Every effort will be made to conclude an investigation within thirty (30) days following the receipt of a formal report. The purpose of an Investigation is to: gather evidence and witness statements; weigh the evidence; make findings of fact based on the evidence; and produce an Investigative report. In an investigation under this Procedure, the Investigator must make a determination having weighed the evidence on a Balance of Probabilities that either: (1) a policy breach occurred; or (2) a policy breach did not occur.
- 17.12.** The Human Rights Office will ensure an Investigation process that is appropriate in the circumstances and that complies with Administrative Fairness requirements.
- 17.13.** The Investigator will advise the Respondent in writing that a Report has been received and that they are the subject of an investigation of a Report. This notice will, at minimum, be delivered to a ontariotechu.net or ontariotechu.ca email account, as applicable. The notice will: (i) advise that an investigation is being initiated, (ii) contain a brief summary of the allegations, and (iii) indicate they will be contacted by the Investigator for a meeting in due course. The notice will also provide contact information for Support Services, and will indicate that the Respondent has the right to be supported and accompanied by their legal counsel and/or other support.
- 17.14.** The Investigator will keep all information obtained during an Investigation confidential, and all relevant documents, including electronic documents, will be kept securely.
- 17.15.** At any point during the Investigation, the Investigator may set meetings with any individual to obtain further information. The Investigator also has access to any document or piece of evidence they deem necessary to complete a thorough investigation. University Members, therefore, are required to cooperate with formal resolution processes commenced under this procedure.

- 17.16. At a minimum, the Investigator will make reasonable attempts to meet with the Complainant and the Respondent and provide them with the opportunity to submit written or other documentary evidence relevant to the case.
- 17.17. The Investigator may also choose to seek information from other witnesses, taking care to ensure that they are given a reasonable opportunity to understand the allegations and provide relevant information.
- 17.18. During the course of the investigation, the Investigator will keep the Complainant and Respondent apprised of the status of the investigation and the expected time to completion.

Step 6 – Determination & Corrective Action

- 17.19. Based on all available evidence, the Investigator will determine whether there has been a violation of Policy, weighing the evidence on a Balance of Probabilities. The Investigator's determination will be reported in an Investigative Report. The Complainant and Respondent will receive a copy of a report summarizing the investigation findings.
- 17.20. In the event that the Investigation found a breach of policy, the Investigator will make recommendations to adequately resolve the inappropriate behavior.
- 17.21. The Human Rights Office will ensure that the results of the investigation are brought to the attention of, and reviewed by, the Provost's Office. The Provost's Office will be responsible for implementing the investigator's recommendations. Where the investigation report identifies that a Student has breached the policy, decisions on appropriate disciplinary sanctions will be made by the Provost's Office pursuant to the Student Conduct Policy. Refer to the Student Conduct Policy for more information about the decision-making process and for details about the review and/or appeal mechanisms that are available to Students.

MONITORING AND REVIEW

- 18. These Procedures will be reviewed as necessary and at least every three years. The General Counsel, or successor thereof, is responsible to monitor and review these Procedures.

RELEVANT LEGISLATION

- 19. Ontario Human Rights Code

RELATED POLICIES, PROCEDURES & DOCUMENTS

- 20. Student Conduct Policy
- Fair Processes Policy
- Student Sexual Violence Policy
- Respectful Campus Policy
- Accommodation Policy

Academic Accommodations for Students with Disabilities Procedures

DRAFT