

AP 4004: SEXUAL MISCONDUCT

Sexual misconduct can have serious negative impacts on the physical, mental, emotional and spiritual health of an individual and degrades the working and learning environment. The district will not tolerate any form of sexual misconduct.

The district commits to fostering and maintaining a respectful and safe environment where members of the district community can learn, study and work free from any form of sexual misconduct.

To achieve this goal, the district commits to:

- Raising awareness about sexual misconduct through comprehensive, ongoing and inclusive education, prevention, reporting and response initiatives for all members of the District community;
- Reducing the barriers to disclosure and reporting by taking a trauma-informed and survivor-centered approach in the response and investigation of sexual misconduct;
- Providing support services and accommodations to members of the district community who experience, witness or report incidents of sexual misconduct;
- Providing supports to those members of the District community who have reports of sexual misconduct made against them;
- Ensuring that the rights of privacy and procedural fairness for both the complainant and the respondent are respected;
- Being intolerant of retaliation against any person reporting, responding to or investigating an allegation of sexual misconduct;
- Acting as soon as possible when a report of sexual misconduct is received; and,
- Taking reasonable and informed steps to ensure the safety of the District community when made aware of an incident.

Definitions

Accommodation means the provision of options for the complainant to safely remain at, or return to, school or work in a supportive manner. An accommodation can include but is not limited to the following: no contact between the complainant and respondent; shift or class changes; assignment extensions; or/and assessment deferrals.

Complainant means a person who makes a report alleging a violation of this administrative procedure.

Complainant response plan means a strategy that involves identifying the steps that the complainant or survivor and those around them can take to increase their safety. A response plan provides guidelines to follow if one's safety is or may be at risk.

Disclosure means the sharing of information regarding an incident of sexual misconduct with a member of the District community.

District activity means any activity sponsored by the district or district employees for a district community activity, event or other purpose.

District community means:

- Students;
- Employees;
- Anyone holding a district appointment;
- Anyone contractually required to abide by Board policies and district procedures; and,
- Anyone volunteering with a district program or activity.

Intersectional means the ways in which a person's experiences are shaped by the interaction of different social positions, including but not limited to sex, sexual identity, gender identity or expression, Indigeneity, racial and ethnic background, ability, faith, migration status and so on. These interactions are rooted in interconnecting systems and structures of power and produce intersecting forms of privilege and oppression shaped by colonialism, racism, homophobia, ableism, patriarchy, transphobia, queer antagonism, trans-antagonism, bi-antagonism, and/or any other form of discrimination.

Procedural fairness means that any investigation and adjudicative process will be unbiased and allow for both the complainant and the respondent to have equal opportunity to present their information. Procedural fairness must include:

- Ensuring the safety of the complainant or survivor when making the respondent aware of the complaint or disclosure;
- Providing the respondent with notice of an investigation and the details of the allegations against them;
- Allowing the respondent to respond to the allegations; and,
- Treating all parties involved with dignity and respect.

Report sexual misconduct means making a written or verbal report to the member of the District community responsible for initiating an investigation, an advocate of choice or a union executive member or community accountability process. In schools, a student, employee, school volunteer, third-party or witness (in the case of a student) is to report to the school administrator, unless said administrator is the respondent, in which case the report would be made to the Director of Human Resources. District employees, contractors and volunteers not based in a school are to report to their immediate supervisor or to the Director of Human Resources.

Respondent means a person who is alleged to have violated this sexual misconduct administrative procedure and against whom the allegations are made.

Retaliation means any adverse action or threatened action taken or made through any means, including through social or other electronic media, against a person who reports sexual misconduct either in person, as a third party, as a witness or as another person involved. Retaliation includes but is not limited to threatening, intimidating, or harassing conduct that could discourage a person, including a third party, witness or other person involved, from seeking support or other services, disclosing, or reporting sexual misconduct, participating in an investigation, or otherwise engaging with this administrative procedure.

Sexual misconduct means any attempted, threatened, perceived, or committed act by any person(s) toward another person(s), either physically or psychologically that includes the sexualized touching of another person, sexual assault, sexual abuse, sexual harassment, sexual exploitation, racialized sexual harassment, stalking, indecent exposure, voyeurism and the distribution of sexually explicit photographs or videos.

Student includes:

- A person who is registered, enrolled or participating in any course or program offered by the district, including online and distance programming; and,
- A visiting or exchange student who has been admitted to the district for the purposes of taking courses.

Survivor means a person who has experienced sexual misconduct. It does not mean the respondent or those who are found responsible for causing harm to a member of the district community. The district recognizes that some people impacted by sexual misconduct may not identify with this terminology and have the right to determine how they will be referred to.

Survivor-centred means prioritizing the safety and choices of survivors or complainants.

Third-party statement means when someone (such as a teacher, friend, employee, colleague, family member) shares information with the district about sexual misconduct on behalf of the person who has experienced sexual misconduct.

Trauma-informed means incorporating an understanding of the impact that sexual misconduct has on a person's life, so as to minimize re-victimization and facilitate recovery and empowerment.

Procedures

1. Scope and Sequence

- 1.1. For the purposes of sexual misconduct reports, investigations and discipline, this administrative procedure applies to sexual misconduct by any member of the district community toward another member of the district community that is reported to have occurred during or is related to a district activity as described in the Definitions section of this administrative procedure.
- 1.2. This administrative procedure is meant to complement and not supersede any applicable laws, including the *Criminal Code of Canada* or the *British Columbia Human Rights Code*.
- 1.3. The complainant and the respondent will be provided with a copy of the related administrative procedures and other pertinent information utilized by the district in the response to and the investigation of sexual misconduct. Appropriate supports will be offered in response to disclosures of sexual misconduct.
- 1.4. The district has a responsibility to provide a safe environment for all members of the District community, regardless of whether an incident results in a criminal investigation or charges. The district's processes are not intended to take the place of a criminal investigation but to be complementary to that process.
- 1.5. The district will deal with complaints or disclosures of sexual misconduct through internal processes, subject to the principles of procedural fairness, privacy and human rights legislation. These internal processes are not subject to the same burden of proof as a criminal process.
 - 1.5.1 In cases where the police or Ministry of Children & Family Development (MCFD) are automatically involved, this may not apply.
- 1.6. The complainant maintains the right to pursue legal avenues, whether or not the district proceeds under any other district process.
- 1.7. For employees of the district covered by a collective agreement:
 - 1.7.1 This administrative procedure is designed to complement and not conflict with existing collective agreements. Where a collective agreement applies, such as in a disciplinary process, the processes in the collective agreement will be followed. For those who engage with these procedures, the specifics of any collective agreement processes will be identified and explained.
- 1.8. The district will continue to monitor best practices and research, and the Superintendent will review and update this administrative procedure whenever necessary.

2. Investigations

The person making the report of sexual misconduct is called the **complainant**, and the person against whom the allegations are made is the **respondent** (see the Definitions section above).

2.1. To protect the integrity of the investigation, the supervisor or school administrator will ensure that the complainant and respondent are not returned together to school classes or work until a response plan is in place for the complainant.

2.1.1 The response plan will ideally be completed within ten (10) days after the complaint has been received.

2.1.2 The response plan must include a no-contact agreement and confidentiality agreement between the complainant and the respondent.

2.2. Accommodations for one or both of the parties may be necessary to ensure that they are able to achieve this agreement. A breach of a no-contact agreement will be treated seriously and may result in separate disciplinary action. It is understood that a no-contact agreement can only be under the jurisdiction of the district when parties are attending school, work or related activities. When the parties involved are students, their parent will be advised of the no-contact agreement.

2.3. Prior to sending such notice, the district will let the complainant know that notice will be given to the respondent regarding the nature of the investigation and the allegations and/or complaint.

2.4. The investigator will then contact the respondent to advise of the allegations and to provide an opportunity to respond. The interviews will be conducted in a fair, impartial and professional manner.

2.5. To ensure procedural fairness, the respondent will be advised of the investigation, which will include the following:

2.5.1 The nature of the allegation;

2.5.2 A link to or a hard copy of Administrative Procedure 4004 - Sexual Misconduct and any other applicable policies or procedures;

2.5.3 Information about where the respondent may seek assistance;

2.5.4 A request to conduct an interview;

2.5.5 A date and time for the interview;

2.5.6 The right to have an advocate or union representation present during the interview;

2.5.7 Expectations of the respondent in providing information and evidence;

- 2.5.8 How confidentiality will be maintained;
 - 2.5.9 How the respondent will continue to receive education or maintain employment during the investigation;
 - 2.5.10 The requirement for no contact to occur with the complainant and confidentiality concerning the investigation.
- 2.6. To conduct interviews, the investigator will contact the complainant and any witnesses provided by the complainant. The investigator will examine all of the information submitted by the complainant and all witnesses and any other information gathered during the investigation.
 - 2.7. The investigator will give the complainant and the respondent equal opportunity to provide or respond to evidence considered by the investigator in the course of the investigation.
 - 2.8. Prior to the start of the investigation, the school administrator or supervisor or Director of Human Resources will provide the complainant and the respondent with the name of the investigator, who will have training in investigations and will be impartial in the process.
 - 2.9. Should any individual refuse to provide a statement or participate in an investigation, the investigation will proceed, and outcome(s) will be based on the available information.
 - 2.10. The investigator will endeavour to complete the investigation within ten (10) days of being appointed. If there is a delay beyond ten (10) days, all parties will be notified of the delay and the reasons for it.
 - 2.11. Based on the result of the initial investigation, school-based procedures and intervention planning may be required.
 - 2.12. At the conclusion of the investigation, a confidential report will be completed, outlining the investigator's findings, reasons or recommendations for the decisions as a result of the investigation's findings. This confidential report will be subject to the procedures outlined in the Use of Private and Confidential Information section of this administrative procedure.
 - 2.13. The complainant will be notified that the investigation has concluded and will receive the investigation findings. This notice will provide information on additional supports that the complainant may access.
 - 2.14. The respondent will be notified that the investigation has concluded and will receive the investigation findings, and any actions taken as a result of the investigation. This notice will provide information on additional supports that the complainant may access.

3. Education and Awareness

3.1. The provision of education and awareness training to all members of the district community is a goal of the district. To achieve this goal, educational materials will focus on:

- 3.1.1 Changing the attitudes that perpetuate sexual misconduct;
- 3.1.2 Expected social norms; and,
- 3.1.3 Providing information on best practices in prevention and response.

3.2. Students will be provided with age-appropriate education on what constitutes sexual misconduct, what constitutes a healthy relationship, how and where to report and the supports available. All school-based staff will be provided with a sexual misconduct resource and access to educational materials to support students in understanding the definition of sexual misconduct as it relates to the required British Columbia curriculum.

3.3. Employees will be required to read and acknowledge the reading of a copy of this Administrative Procedure when they are hired and regularly during their employment.

4. Use of Private and Confidential Information

4.1. District staff must keep confidential all information provided in, arising from or in connection with, a disclosure or report except as set out in 4.2, 4.3 and 4.4 below. Unauthorized release of confidential information may violate the [*Freedom of Information and Protection of Privacy Act*](#), deter others from coming forward if they have been experienced sexual misconduct and prevent the district from conducting a fair process when a report is made.

4.2. The district will share confidential information only with those persons who require the information for the performance of their duties, such as carrying out an investigation, or as required by law or BCPSEA agreement, as described in this section or to ensure no contact or retaliation. The complainant or respondent will be advised by the school administrator or supervisor regarding what information may be shared and with whom.

4.3. The district may share confidential information in order to ensure that the reporting processes are fairly conducted, in accordance with the following principles:

- 4.3.1 The respondent has the right to know details of the allegations made against the respondent;
- 4.3.2 The complainant has the right to know the outcome of the investigation only if sharing these details is necessary for the protection of the complainant's health or safety as determined by the district; and,

4.3.3 Other persons may be provided confidential information by the investigator only to the extent required to conduct the investigation.

5. Responding to Reports of Sexual Misconduct

5.1. Employees responsible for responding to reports of sexual misconduct **must** complete the **Sexual Misconduct Procedures, Checklist & Response Plan** form under the corresponding Appendix:

5.1.1 For Employees Who Are Complainants: Appendix 4004 A

5.1.2 For Students Who Are Complainants Over 12: Appendix 4004 B

5.1.3 For Students Who Are Complainants Under 12: Appendix 4004 C