



Policy Title:

Student Non-Academic Misconduct Procedures

University Classification & Policy Number:

A-004-25

Approval Body:

Board of Regents

Responsible Designate:

The Provost & Vice-President, Academic is responsible for the development, administration, and review of this Policy.

Established:

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1.0 Procedure Purpose

The purpose of these Procedures is to outline the specific actions that will be undertaken by the University to implement the Non-Academic Misconduct Policy

2.0 Definitions

All definitions in the Student Non-Academic Misconduct Policy are incorporated into these Procedures and shall apply as fully as if they had been set out verbatim herein.

3.0 Scope

These Procedures apply to the Non-Academic Misconduct of Students as articulated in the Student Non-Academic Misconduct Policy.

4.0 Policy Elements

4.01 Disclosures

4.01.01 At times Disclosures of Non-Academic Misconduct by a Student(s) may be made without a Report to UW Community members for the purpose of finding support or accommodation. Any UW Community member who receives a Disclosure should refer the person who makes the Disclosure to the Policy and Procedures.

4.01.02 The UW Community member receiving the Disclosure is advised to treat the information in confidence. However, in serious cases, the UW Community member receiving the Disclosure may wish to make a formal Report to the University if the person providing the Disclosure is unwilling to do so. UW Community members are encouraged to first seek advice from the Human Rights and Diversity Officer, the Associate Vice-President, Student Engagement, or the Privacy Officer regarding the legal and policy implications of such action.

- 4.01.03 If the person receiving the Disclosure believes the safety of the individual disclosing is at risk, the UW Community member receiving the Disclosure should discuss with the individual possibilities for addressing their safety including contacting police or Campus Security.
- 4.01.04 In the event that a Disclosure is made to Campus Security then Campus Security is required to inform the Associate Vice-President, Student Engagement.
- 4.01.05 In order to maintain statistical information (on an anonymous basis), and to assist the UW Community member who receives a Disclosure, any individual who receives a Disclosure shall contact the Associate Vice-President, Student Engagement, to provide a general overview of the Disclosure.
- 4.01.06 In addition, the UW Community member receiving the Disclosure is encouraged to advise the individual disclosing of any on-campus supports (i.e., counselling), as well as the possibilities for seeking accommodation.

4.02 Making a Report

- 4.02.01 If an individual chooses to make a formal Report regarding an incident of suspected Non-Academic Misconduct by a Student(s) to the University, that individual shall contact the Associate Vice-President, Student Engagement by phone, email, or by setting up a meeting with the Associate Vice-President, Student Engagement. When a Complaint is made, the individual making the Complaint is referred to as the Complainant.
- 4.02.02 If the Complainant does not feel comfortable speaking to the Associate Vice-President, Student Engagement, they may speak to the Human Rights and Diversity Officer who shall Report the incident to the Associate Vice-President, Student Engagement on their behalf.
- 4.02.03 Reports shall include the name and contact information of the person making the Report. Reports shall also include as much information about the incident(s) as the Complainant can provide, including:
 - a) a description of what happened;
 - b) information about the identity and contact information of those involved or witness to the incident(s) if known; and
 - c) the time(s), date(s), and location(s) of the incident(s).
- 4.02.04 If the Complainant declines to provide such information or participate in the Procedures associated with the Policy, the University may choose not to proceed further with the Report unless it determines there to be exceptional circumstances in which case the University may choose to act as the Complainant.
- 4.02.05 Upon receipt of a Report, the Associate Vice-President, Student Engagement will:
 - a) address any immediate safety needs of the Complainant; and
 - b) set up a meeting with the Complainant to explain in plain language all relevant elements of the Policy and Procedures.

- 4.02.06 If there are immediate concerns for safety and security, the Associate Vice-President, Student Engagement may request that University Security Services revoke access or bar entry of any person onto University premises.
- 4.02.07 The Complainant or Respondent has the right to be accompanied by a support person (e.g., a UWSA representative, family member, or friend) in any meeting arising from these Procedures.

4.03 Preliminary Assessment

- 4.03.01 Based on the information available from the Complainant's Report, the Associate Vice-President, Student Engagement will determine whether the Report: a) has sufficient information to move forward; b) whether the Complaint is trivial in nature; c) whether the Complaint is timely or whether an extension of time for the Complaint is warranted; d) whether the matter is within the jurisdiction of the University; and e) whether the Complaint establishes a prima facie case of Non-Academic Misconduct under the Policy.
- 4.03.02 If the Associate Vice-President, Student Engagement determines, it is not appropriate to proceed further with the Complaint based on 4.03.01, the Complainant will be notified, and no further action will be taken. If the Associate Vice-President, Student Engagement determines that the matter is more appropriate to proceed under another University policy or process, they will notify the Complainant and defer the matter to the appropriate Administrator.
- 4.03.03 If the Report satisfies the parameters of article 4.03.01 the Associate Vice-President, Student Engagement will:
 - a) if necessary, implement interim measures;
 - b) notify the Respondent as per article 4.03.02;
 - c) if appropriate, approach the Complainant and Respondent, on the possibility of alternative resolution, or
 - d) if alternative resolution is not appropriate or possible, initiate an investigation.
- 4.03.04 The Associate Vice-President, Student Engagement may redact information in response to health or safety concerns, although this may impact proceedings under this Policy.
- 4.03.05 Where a Report was made but a Complainant is unable or unwilling to proceed, the University may proceed with an investigation and, for the purposes of any proceedings arising therefrom, assume the status of Complainant.

4.04 Notification to the Respondent

- 4.04.01 If a Report is made, the Associate Vice-President, Student Engagement will notify the Respondent of the Complaint against them, along with details of the Complaint, and shall explain in plain language to the Respondent all relevant elements of the Policy and Procedures. The Respondent shall also be provided with an opportunity to respond to any Complaint, and this response shall be considered in any decision-making arising from the Complaint.

4.04.02 The Associate Vice-President, Student Engagement may determine that the Complaint is resolvable by contacting the Respondent, informing them of the incident, that their conduct has caused offence or harm and is not to be repeated. If the Respondent has acknowledged the incident and agreed to alter their behaviour or conduct so as not to cause the offence or harm complained of, and where the Associate Vice-President, Student Engagement is satisfied of the veracity of the Respondent's acknowledgment and agreement, the Complainant will be notified, and the matter will be treated as resolved. The Associate Vice-President, Student Engagement shall maintain a record of such resolution and may monitor the Respondent's conduct to determine compliance. If the Respondent is not compliant, the Procedures will be reinitiated with the breached agreement being considered along with the initial Complaint. No record shall be maintained in the Complainant or Respondent's Student record.

4.05 Interim Measures

- 4.05.01 The Associate Vice-President, Student Engagement shall determine whether interim measures are required, based on their preliminary assessment of factors such as risks of safety or retaliation and the accommodation needs of either the Respondent or Complainant. Consequences for violating interim measures will be clearly communicated to the Respondent and Complainant at the time they are applied.
- 4.05.02 As part of the remedy or sanction process it may be determined that certain interim measures may continue or become permanent.

4.06 Alternative Resolution

- 4.06.01 In some circumstances, the Associate Vice-President, Student Engagement may determine that alternative resolution is the best course of action to resolve the matter before an investigation is commenced or completed. The Complainant or Respondent may request alternative resolution rather than an investigation. If the Respondent or Complainant desires alternative resolution (i.e., facilitated mediation, a written apology, and restorative justice), they must first notify the Associate Vice-President, Student Engagement who will follow up with the other party to determine their willingness to participate in an alternative resolution process. For it to be a meaningful process, participants must engage voluntarily and remain free from reprisal.
- 4.06.02 If the Complainant and Respondent are able to reach a resolution, a written record of the resolution will be prepared by the Associate Vice-President, Student Engagement to be signed by both parties. A copy of the signed written resolution will be provided to the Complainant and Respondent and may be provided to relevant University Administrators if it is required to implement the terms of resolution.
- 4.06.03 In limited, less serious cases (e.g., minor classroom disputes), a University Official may be able to facilitate an informal/alternative resolution process themselves. If any formal remedy or sanction is required, they shall notify the Associate Vice-President, Student Engagement.

- 4.06.04 A failure to comply with the terms of an alternative resolution disposition may result in the commencement or resumption of an investigation, and such other sanctions or remedies as are determined under the Policy to be appropriate.

4.07 **Determining an Investigation**

- 4.07.01 If an alternative resolution process for the matter is not viable or successful, the Associate Vice-President, Student Engagement may recommend to the Associate Vice-President, Human Resources that an investigation take place.

- 4.07.02 The Associate Vice-President, Student Engagement may choose not to recommend an investigation where:

- a) there is insufficient information to proceed with an investigation;
- b) the Complainant requests no investigation be commenced and the University does not assume the position of Complainant;
- c) the Complaint has already been resolved by another process such as informal or alternative resolution;
- d) the Associate Vice-President, Student Engagement determines that the Complaint should be held in abeyance pending the resolution of another process in order to protect the integrity of that process, or because it is a more appropriate process in the circumstances (including but not limited to a criminal investigation); or
- e) the Complaint is determined to be inconsistent with the intent of the Policy.

- 4.07.03 If the Associate Vice-President, Student Engagement determines that an investigation will not take place for reasons listed in article 4.07.02, the reasons will be provided in writing to the Complainant and Respondent, and the process will be considered complete.

- 4.07.04 If the Associate Vice-President, Human Resources, accepts the recommendation of the Associate Vice-President, Student Engagement that there be an investigation, the Associate Vice-President, Human Resources will take the following steps:

- a) designate an Investigator to conduct the investigation;
- b) provide the Investigator with all relevant documents; and
- c) notify the Complainant and the Respondent of the investigation and their obligations of confidentiality and to respect privacy as set out in the Policy and Procedures.

- 4.07.05 The Complainant and Respondent may be accompanied by a support person throughout the workings of the Policy and Procedures. The support person may supplement the Student's presentation to:

- a) raise specifics of the case as previously discussed between that person and the Student;
- b) raise procedural matters if correct procedures have not been followed;
- c) assist in overcoming barriers the Student may be experiencing including language comprehension issues or discomfort presenting; and
- d) deliver a closing statement.

4.08 Conducting an Investigation

- 4.08.01 After reviewing the Report, the written response, and any relevant documentation, the Investigator shall contact the Complainant and the Respondent to arrange separate interview times. At the time of initial contact, the Investigator will explain to all parties the investigation process, their duty to make their findings on a balance of probabilities, and their role as Investigator.
- 4.08.02 The Investigator will conduct interviews with the Complainant and the Respondent separately and may need to meet with each party more than one time during the course of the investigation. The Complainant and Respondent shall have the opportunity to provide the Investigator with information, documents, the names of witnesses, and other submissions or evidence that they believe are relevant to the Complaint. The Investigator may request and shall be provided with any evidence they deem relevant to the investigation. The Investigator shall interview relevant witnesses and review documentary or other evidence obtained.
- 4.08.03 The Investigator shall ensure that both the Complainant and Respondent have had a full opportunity to review and respond to all material aspects of the allegations, and the evidence upon which the Investigator will rely.
- 4.08.04 The Complainant or Respondent may still request alternative resolution of the Complaint before the final investigation report is sent to the Associate Vice-President, Student Engagement. Such requests will be considered and decided upon by the Associate Vice-President, Student Engagement.

4.09 Investigation Report

- 4.09.01 Upon conclusion of the investigation, the Investigator shall prepare an investigation report based on the guidelines provided by the Associate Vice-President, Student Engagement. The investigation report shall contain:
 - a) a summary of the Complaint and the response;
 - b) relevant legal authority(ies) and issue(s);
 - c) a summary of the documentary and other evidence provided and relied upon;
 - d) a summary of interview evidence from the parties and witnesses; and

- e) an analysis setting out the findings of fact, and a finding as to whether the Policy has been breached on a balance of probabilities.

4.10 Remedy / Sanction

- 4.10.01 A summary of the investigation report including the Investigator's decision as to whether there is a breach of this Policy and a copy of the Complaint and the response shall be sent to the Associate Vice-President, Student Engagement and the Associate Vice-President, Human Resources. Prior to a decision being made about sanctions, the Respondent shall be provided with an opportunity to meet with the Associate Vice-President, Student Engagement (or appropriate Administrator) and the Associate Vice-President, Human Resources.
- 4.10.02 Upon reviewing and considering the investigation report and the Investigator's decision as to whether there is a breach of this Policy, and the Respondent's response to the decision (if any), the Associate Vice-President, Student Engagement in consultation with the Associate Vice-President, Human Resources, shall determine the appropriate resolution, remedy, or sanction.
- 4.10.03 The Associate Vice-President, Student Engagement (or appropriate Administrator) shall ensure the resolution, remedy, or sanction is implemented and a copy of the determination shall be kept with the Associate Vice-President, Student Engagement.
- 4.10.04 The Associate Vice-President, Student Engagement may impose any remedy or sanction they determine to be appropriate on a principle of progressive discipline up to, and including, expulsion from the University.
- 4.10.05 Students whose sanctions include some form of financial restitution will be given the opportunity to arrange payment to the University. Failure to pay within the designated time as prescribed in a Student's sanction(s) will result in the outstanding debt being added to the Student's University account. Failure to fulfill the obligations under any sanction will result in an additional \$50 fine for every sanction not complied with by the designated deadline, and the obligations under the sanctions must still be completed. Failure to comply will itself be deemed Non-Academic Misconduct and the Associate Vice-President, Student Engagement accordingly may increase the sanctions imposed on the Student at their discretion.
- 4.10.06 When a suspension (permanent or time-limited) is imposed the Associate Vice-President, Student Engagement shall inform the Dean of the Student's faculty and the Provost & Vice-President, Academic.

4.11 Appeal Process

- 4.11.01 A Respondent may appeal the decision that there has been Non-Academic Misconduct.
- 4.11.02 To appeal the decision, the Respondent shall contact the Associate Vice-President, Student Engagement to request an appeal within fifteen (15) working

days of the original decision. The Respondent shall set out the reasons for the appeal, in writing.

- 4.11.03 Where a decision is appealed, the Complainant (or Associate Vice-President, Student Engagement) shall be notified and permitted to file a written submission in response to the written appeal of the Respondent within seven (7) working days of receiving a copy of the Respondent's written appeal.
- 4.11.04 The appeal will be determined by a four-person appeal committee formed by the Associate Vice-President, Student Engagement. The appeal committee shall consist of:
- a) Provost and Vice-President Academic;
 - b) Faculty Dean;
 - c) Registrar;
 - d) an excluded senior manager responsible for Student Services; and
 - e) one full-time Student holding no position within either the University residence system or the UWSA. If the appeal is being heard from an undergraduate Student, the undergraduate Student member of the panel shall sit as part of the panel. If the appeal is being heard from a graduate Student, the graduate Student member of the panel shall sit as part of the panel.
- 4.11.05 Upon the request of the Respondent, the Associate Vice-President, Student Engagement may suspend imposition of the discipline pending the conclusion of the appeal. Where such request is granted, interim measures may be implemented or maintained through the appeal process.
- 4.11.06 The appeal is a pure appeal on the record, not a rehearing of the evidence. The appeal committee may permit new evidence to be filed or in exceptional circumstances, to be heard, where such evidence was not reasonably available during the investigation. Where new evidence is permitted on behalf of one party, the other party shall be permitted a reasonable opportunity to respond.
- 4.11.07 The appeal committee shall make their determination based on the following:
- a) whether there was a substantial procedural or legal error in the application of the Policy;
 - b) whether there is new evidence that could not have reasonably been presented earlier, and would have materially affected the decision as to breach and/or sanction;
 - c) whether the decision as to breach is consistent with the evidence; or
 - d) whether the remedy or sanction is reasonable in the circumstances.

- 4.11.08 In deciding the appeal, the appeal committee shall review the investigation file, the investigation report (in particular, the Investigator's findings), the reasons for appeal provided by the appellant and any response by the other party(ies), and (if applicable) the remedies or sanctions imposed.
- 4.11.09 The appeal body shall make a determination on a basis of majority vote and will communicate their reasons for decision in writing to the Associate Vice-President, Student Engagement (or appropriate Administrator), normally within fifteen (15) working days of having received all written statements in the appeal by the Respondent and/or the Complainant. The Associate Vice-President, Student Engagement (or appropriate Administrator) remains responsible for the implementation of any remedy or sanction arising from the decision of the appeal committee.
- 4.11.10 A decision of the appeal body is final.

4.12 Maintenance of Statistics and Records

- 4.12.01 All records related to the workings of this Policy, regardless of format or medium (e.g., paper records, emails, voice messages, and all electronic records), which contain personal information are protected under *The Freedom of Information and Protection of Privacy Act* ("FIPPA") or *The Personal Health Information Act* ("PHIA").
- 4.12.02 Records created under this Policy and Procedures will be retained by the Associate Vice-President, Student Engagement for five years after the Respondent's last date of registration. After five years, the records will be securely destroyed or deleted.
- 4.12.03 In implementing this Policy, only the fewest number of copies reasonably necessary of any record containing personal information shall be maintained. Unnecessary copies should be destroyed.

4.13 Privacy

- 4.13.01 Complainants, Respondents, and witnesses are free to speak about their own experiences. However, individuals are not permitted to share information learned solely from the investigation or subsequent decision-making process which they did not know beforehand unless consented to by the other party, and any such sharing without consent shall itself be Non-Academic Misconduct.
- 4.13.02 Privacy may be impacted and therefore limited as a result of other proceedings such as grievances filed under collective bargaining agreements or legal actions that have been commenced.
- 4.13.03 Where a decision is made that the Policy has been breached, the Complainant will be informed of the decision and that appropriate discipline has been imposed on the Respondent. The Complainant will not be informed of the specifics of such discipline unless there is a safety risk to the Complainant and knowing is paramount for their ongoing safety or, in limited cases, to support other sanctions

such as no contact orders. The discipline imposed on Respondents is their personal information under FIPPA, and only the Respondent may decide to release it to the Complainant. A decision regarding discipline, including any applicable sanctions, will be provided to the Respondent in full.

4.14 Conflict of Interest

In the event that any decision maker or participant in the investigation process is in a conflict of interest in regard to the incident in question or regarding any party to the incident (including a witness), they must declare the conflict and recuse themselves from any decision-making or a position of influence over the outcome of a particular matter, in accordance with the University's Conflict of Interest Policy.

5.0 Relevant Legislation

- Human Rights Code (Manitoba)
- The Freedom of Information and Protection of Privacy Act ("FIPPA"; Manitoba)
- The Personal Health Information Act ("PHIA"; Manitoba)
- The University of Winnipeg Act

6.0 Related Policies, Procedures and Institutional Documents

- Acceptable Use of Information Technology Policy
- Conflict of Interest Policy
- Privacy Policy and Procedures
- Respectful Working and Learning Environment Policy and Procedures
- Sexual Violence Prevention Policy and Procedures
- Student Non-Academic Misconduct Procedures
- University Records Policy and Procedures
- Violence Prevention Policy and Procedures