

## Sexual Violence Prevention Process: Complaints, Disclosure and Reporting Process for Learners

Approval Authority: Senate

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Amendments: none

Category: Academic

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### 1.0 Introduction

This Complaints, Disclosure and Reporting Process for Learners (“Learner Process”) sets out the process for the University to address Complaints, Disclosure and Reports made by Learners pursuant to the NOSM University Learner Sexual Violence Prevention Policy (“LSVPP”).

Unless otherwise specified below, all capitalized terms in this “Learner Process” shall have the same meaning as in the LSVPP.

*\*\*For Respondents who are not NOSM University Learners, the appropriate NOSM University Policies and Procedures will be followed.*

### 2.0 Purpose

The purpose of this Learner Process is to:

- a) advance the principles set out in the LSVPP
- b) outline the process to Disclose, seek support, Report, and make a Complaint.
- c) provide clarity and transparency to the resolution processes set out in the LSVPP and Learner Process in a fair, equitable, transparent, and trauma-informed manner; and
- d) comply with the *requirements of the Strengthening Post-secondary Institutions and Students Act, 2022.*

### 3.0 Application and Scope

The Learner Process applies to incidents of Sexual Violence that are perpetrated against Learners and occur:

- a) **On-campus** - where the Respondent is a Community Member and the Sexual Violence took place on the University’s land and/or facilities either rented or owned or using University-owned or run property or equipment including, but not limited to, telephones, computers and computer networks.
- b) **Off-campus** – the scope includes incidents of Sexual Violence that occur off campus where the Respondent is a Community Member and:
  - i. When the incident is part of a University course, placement, or clinical rotation; or
  - ii. When the incident is part of a University-sponsored event that has been defined as such, including all University-related activities (authorized and non-authorized) with a clear nexus to the working or learning environments.

- c) In virtual environments, if the activities are related to university affairs - for example, online learning or Learning Management Systems.

#### 4.0 Accessing the Sexual Violence Prevention Policy: Disclosure and Reporting

Disclosure and Reporting are separate actions that a Complainant *can choose to take*. Learner Support Services offers confidential support and services to those who have experienced Sexual Violence. A Disclosure does not automatically result in a Report being made and does not initiate a process to address the Incident of Sexual Violence. The decision to Disclose and the decision to Report are separate decisions.

- 4.1 Disclosure is the sharing of information by a Learner with a Designated Community Member (e.g., Staff, Faculty, Board Member) regarding an incident of Sexual Violence experienced by that Learner. A Disclosure may, but need not, be made to Learner Support Services.
- 4.2 Reporting is the sharing of information by a Learner with Learner Support Services or Campus Safety regarding an Incident of Sexual Violence experienced by that Learner, with the intention of initiating one of the processes set out in the LSVPP and the Learners Process, which could result in a disciplinary action being taken against the Community Member alleged to have committed Sexual Violence.
- 4.3 If a Complainant makes a Disclosure to a Community Member other than Learner Support Services, they should be directed to Learner Support Services if the Complainant wishes to proceed with the matter. In emergencies, where the safety or health of the Complainant may be at risk, the Complainant will be directed to make a report to Campus Safety.
- 4.4 A Community Member who witnesses an Incident of Sexual Violence affecting a Learner should contact the Learner Support Services or Campus Safety immediately.
- 4.5 The University recognizes that an individual who has experienced an incident of Sexual Violence may require time and reflection before deciding whether or not they wish to Disclose or Report the incident. Notwithstanding those considerations, individuals who have experienced an incident of Sexual Violence are encouraged to make a Disclosure and/or Report as soon as they can do so, recognizing that the passage of time may affect the University's ability to address the issues raised by Disclosure or a Report.
- 4.6 The University respects a Complainant's right to choose whether and how to pursue action related to an Incident of Sexual Violence. In the absence of a Report, except as otherwise provided for in this Policy, a Disclosure will usually result in no further action against a potential Respondent. Note that in certain circumstances, the University may be compelled (by law or to protect the safety of others) to take certain actions (including initiating the processes resulting from a Report under this Policy) if it has been made aware of an incident of Sexual Violence. See 14 [Now 15] of the Policy entitled "University's Obligation when a Complainant Requests No Investigation or Chooses Not to Participate."

## 5.0 The Disclosure Process

- 5.1 A Disclosure can be made to any Designated Community Member (e.g., Staff, Faculty, or Board Member). A Disclosure may relate to a Respondent who is or is not a Community Member.
- 5.2 Learner Support Services is the first point of contact for a Learner affected by an Incident of Sexual Violence. A Member of the University Community who receives a Disclosure (“**Disclosure Recipient**”) should inform the Complainant about the LSVPP and direct them to Learner Support Services.
- 5.3 The University recognizes that Disclosures are often shared in confidence, that the Complainant may have an expectation of confidentiality, and that in many cases, confidentiality is essential for Complainants to come forward. The Disclosure Recipient may consult with Learner Support Services for advice, except as directed by the Complainant or as indicated by the provisions in the “Confidentiality and Privacy” section of this *Policy* and is expected to hold such information in confidence.
- 5.4 Community Members outside of Learner Support Services who receive a Disclosure of an incident of Sexual Violence and who receive the Complainant’s permission to do so can provide to Learner Support Services the name and contact information of the person who made the Disclosure and the date of the Disclosure to them for follow-up support and services.
- 5.5 The University will make support and services, including counselling, access or referrals to medical, legal or other services, and academic and other Supportive Actions, available to Learners who Disclose having been affected by an Incident of Sexual Violence.
- 5.6 A Complainant is not required to make a Report about an Incident of Sexual Violence to obtain the support and services or Supportive Actions referred to in this *Policy*.

## 6.0 Reporting Process

To initiate a Report in non-emergency situations, the Complainant should contact Learner Support Services via [svpinfo@nosm.ca](mailto:svpinfo@nosm.ca). In case of emergency, Sexual Violence can be reported to 911. A Report can also be made later following the incident.

- 6.1 Reporting can be initiated in person, by phone, or online via the Sexual Violence online complaint form. A Complainant can also request that Learner Support staff file a Report on their behalf. Learner Support Services will maintain a confidential database of Reports received.
- 6.2 The University has the jurisdiction to investigate Reports of Sexual Violence made against a Community Member under the LSVPP and Learners Process.
- 6.3 While the University does not have jurisdiction to address allegations made against a person who is not a Community Member, in the event of such allegations, the

University will provide support to Complainants who are Learners (see LSVPP section 6.0 entitled “Education, Support, and Resources”) and may in some circumstances be able to take measures such as restricting access to campus by the person against whom allegations are made.

- 6.4 A Complainant remains free to report an incident of Sexual Violence to municipal police services even if they have Reported the incident to the University. Conversely, a Complainant is free to Report an incident of Sexual Violence to the University if they have reported the incident to municipal police services. A Complainant may choose to report to one or the other, to neither or both.
- 6.5 The Reporting process set out in the LSVPP and Learner Process is deemed to be commenced once a Complainant (or the University) has Reported an incident of Sexual Violence to Learner Support Services. This Policy intends for the Reporting process and each of its steps to be completed as expeditiously as practicable.
- 6.6 At the time of the commencement of the Reporting process, Learner Support Services will make the Respondent aware of the available supports.
- 6.7 Both the Complainant and the Respondent have the right to be accompanied by a support person and as may be appropriate, a union, association, or legal representative at any point during the Reporting process and subsequent processes under the Learners Process. A support person may not be a witness or a potential witness to the incidence of Sexual Violence. The support person, association, or legal representative, whether or not Members of the University Community, are expected to adhere to the provisions outlined in this Policy’s “Confidentiality and Privacy” section.
- 6.8 Confidentiality requirements may change once the Complainant or the University decides to Report under this *Policy*. In addition to the provisions outlined in the “Confidentiality and Privacy” section of the Learners Process, all Community Members who are involved in receiving a Report or who are involved in addressing or investigating it must treat the matter as discreetly and confidentially as practicable, within the context of their roles in implementing the LSVPP and the Learners Process. Information will only be shared to the extent necessary to carry out responsibilities under the LSVPP and the Learners Process, otherwise by law or as required to provide a fair process during the investigation and decision-making process.

## **7.0 University’s Response to a Report**

As set out in 8 and 9 of the Learners Process, the prime options following a Report being made are (i) an informal resolution process and (ii) a formal resolution process. In addition, other informal and/or interim options may also be available to a Complainant, including:

- a) Referral to contacts for suitable support, services or resources available within and outside the University and in the municipality;

- b) Offer from the University to, where appropriate, communicate with the Respondent to inform them that the conduct is unwelcome and to note the no-retaliation provisions of this *Policy*;
  - i. Examples of such measures for learners include separation of the parties, exam or assignment deferral, class and/or schedule changes, emergency bursaries, and/or housing changes;
- c) Regular updates about the investigation and decision-making processes that may occur.
  - 7.1 Learner Support Services will assist the Complainant and discuss the potential available options with the Complainant. Learner Support Services will outline information about available support and services, including information about Supportive Actions, interim conditions and interim measures that may be available to address the immediate situation.
  - 7.2 Learner Support Services can, on a confidential basis, consult or seek the assistance of other internal personnel or resources of the University for direction and can consult or seek the assistance of external parties relevant to the particular incident being Reported.
  - 7.3 Learner Support Services will be responsible for coordinating the implementation of Supportive Actions, interim conditions and interim measures as expeditiously as practicable, including referrals as appropriate to address any non-compliance.

## 8.0 Informal Resolution Process

The informal resolution process contemplates a neutral facilitator discussing possible outcomes with the Complainant and Respondent. Informal resolutions may include an apology, a no-contact order, course registration preference, and counselling/education.

- 8.1 An opportunity to engage in an informal resolution process requires two conditions to be in place:
  - i. Both the Complainant and Respondent must agree to participate in the process and to the terms of an informal resolution process; and
  - ii. The process cannot require face-to-face contact between the Complainant and Respondent (such contact may be permissible if agreed upon by both the Complainant and Respondent).
- 8.2 A Complainant or Respondent can request Informal resolution at any stage after a Report has been made under this *Policy*.
- 8.3 If no decision is reached under the Informal process, or the Respondent fails to comply with the informal resolution, the Complainant may request to return the matter to the processes set out in 12.0 [13.0] of this *Policy*.

## 9.0 Formal Resolution Process – INVESTIGATION

While Learner Support Services receives Disclosures and initiates Reports, the investigation processes may also be coordinated through the Director of Human Resources in conjunction with the Director of Learner Support Services. If it is determined that the matter falls within the scope of this Policy, the Director, Learner Support Services will decide whether to commence an investigation. Generally speaking, unless there are strong reasons why an investigation would not be necessary or appropriate, the Directors will direct that a matter that falls within the scope of this Policy proceed to investigation.

- 9.1 If the Director of Learner Support Services determines that the Report does not appear to fall within the scope of the LSVPP and/or the Learner Process or decides not to commence an investigation, the Director of Learner Support Services will notify the Complainant of this determination.
- 9.2 If there is a determination that a Report will not be investigated, the Complainant may seek a review of that decision by requesting in writing within 31 calendar days of the decision that the Provost and Vice President Academic review the decision. Within 31 days of receiving the request from the Complainant, the Provost will advise the Complainant of their decision to either maintain the determination that the Report not be investigated or to move forward with an investigation.
- 9.3 The Complainant can choose not to request an investigation by the University. The Complainant also has the right not to participate in any investigation that may occur. Where a choice not to participate in an investigation is made, the Complainant will be advised that this may affect the nature of the investigation and the ability to draw conclusions from any investigation report. For further clarity about what will occur in this situation, see 11 of the Learner Process - "University's Obligation when a Complainant Requests No Investigation or Chooses Not to Participate."
- 9.4 Once a determination has been made to commence an investigation, a competent person with the appropriate skills, training and/or experience will be appointed to conduct the investigation. The Investigator will either be a Community Member or a person who is external to the University, as appropriate to the circumstances.
- 9.5 The Director of Learner Support Services will send a written notice to the Respondent that an investigation of a Report is being initiated and will provide the name of the Investigator. This notice will include the particulars of the incident reported and indicate that the Respondent will have opportunities to respond to the allegations. The notice will indicate that the Respondent has the right to seek legal advice and to bring a support person, including a union (e.g., PARO) or association representative or legal counsel, to any meetings during the investigation.
- 9.6 The investigation must be completed promptly, considering the circumstances of the particular matter, including its complexity and the requirements of fairness and due process.
- 9.7 The Investigator will provide the Respondent with a reasonable opportunity to respond in writing or orally to the allegations. If the response is oral, the Investigator should normally confirm the content of the response with the Respondent in writing. If the Respondent does not respond within a reasonable timeframe set by the Investigator or chooses not to participate in the investigation, the Investigator may

proceed in the absence of their response.

- 9.8 The Investigator will provide the written particulars of the response from the Respondent (including the Investigator's written confirmation of any oral response provided by the Respondent), if any, to the Complainant. The Complainant may submit a reply to the response within a reasonable timeframe set by the Investigator. If no written reply is received within the requested time, the Investigator can proceed without a reply. The Investigator will provide the written particulars of the reply from the Complainant, if any, to the Respondent.
- 9.9 The Complainant and Respondent may choose to submit any additional information to the Investigator, including the names of any potential witnesses.
- 9.10 The Investigator may choose to conduct interviews with either or all parties at any time during the investigative process at the Investigator's discretion or at the request of a party. The Investigator may also choose to seek witness information. During the investigative process, University employees and the Investigator will not ask the Complainant irrelevant questions, including those relating to the Complainant's sexual expression or past sexual history.
- 9.11 The Investigator will act promptly, fairly, impartially, and professionally. The Investigator will treat the information gathered during the investigation in a confidential manner in accordance with the requirements of this Policy.
- 9.12 The Investigator will remind the Complainant, Respondent, and witnesses of the provisions outlined in this Policy's "Confidentiality and Privacy" section. In speaking with these individuals, the Investigator will keep confidential the personal information of witnesses, including names and identifying details, to preserve the integrity of the investigation.
- 9.13 Following the completion of the investigation, the Investigator will provide the Directors with a written confidential report containing a summary of the information gathered during the investigation and the findings of fact made based on the balance of probabilities.
- 9.14 The Director of Learner Support Services will inform the Complainant and the Respondent (and/or their designated representatives) in writing of the results of the investigation, with a reminder as to the provisions outlined in the "Confidentiality and Privacy" section of this Policy.

## **10.0 Formal Resolution Process - Decision Making**

- 10.1 In the case of a Learner Respondent, the Provost and Vice President Academic will review the investigation report to determine whether or not the matter will be referred for a hearing under the NOSM University Learner Code of Conduct and, if so, will determine the appropriate sanctions to be imposed. An appeal of this decision can be made as outlined in the NOSM University Learner Code of Conduct.
- 10.2 In the case of a Respondent who is a postgraduate medical resident, the

investigation report will be reviewed with the Provost and Vice President Academic to determine whether the LSVPP has been breached and, if so, impose the appropriate discipline, sanction, or corrective action. An appeal of the decision can be made under the relevant collective agreement.

- 10.3 Complainants and Respondents will be notified of the outcomes of investigations. Subject to any applicable legal obligations and access to information and privacy legislation, Complainants may be made aware of what corrective actions have been taken or will be taken (if any). Other participants (e.g., witnesses) may also be notified when a process has concluded.
- 10.4 Wherever practicable, the University will continue to conclude an Investigation even if the Respondent and/or Complainant is no longer a Member of the University Community. A leave of absence or any other temporary break from the University does not constitute the end of a relationship with the University for the purposes of this Policy.

### **11.0 University's Obligation When a Complainant Refuses Investigation or Participation in an Investigation**

- 11.1 The Complainant can choose not to request an investigation by the University and has the right not to participate in any investigation that may occur.
- 11.2 If a Complainant requests that the University not investigate or act on their Disclosure or Report of an Incident of Sexual Violence, the University will consider the Complainant's request but may decide to proceed, having regard to the health and safety of Community Members and its legal and moral obligations and responsibilities. Even if the Complainant chooses not to participate, they remain entitled to receive support outlined in this Policy, to be made aware of the outcome of an investigation, and, subject to any applicable legal obligations and access to information and privacy legislation, may be made aware of what corrective actions have been taken (if any).

### **12.0 University's Obligation When Someone Other Than the Complainant Makes a Report or a Report Is Made Anonymously**

- 12.1 An allegation of Sexual Violence made by someone other than the Complainant can also be the subject of a Report to the University. However, the University's ability to address the allegation will depend on a number of factors regarding the information available and the Complainant's decision respecting whether or not to participate in a University process.
- 12.2 If a Report is made anonymously, the University's ability to address the allegation will depend on several factors, including the information available to substantiate the allegation and to permit a fair process.

### **13.0 Confidentiality and Privacy**

- 13.1 All Reports and Disclosures of Sexual Violence to the University will be treated



confidentially and in accordance with the *Freedom of Information and Protection of Privacy Act* (FIPPA) and with the provisions of applicable collective agreements.

- 13.2 All Community Members who receive a Report or Disclosure of sexual violence or who are involved in addressing or investigating it must keep the matter confidential. This is to protect the rights of those involved in the allegations; to prevent an unjustified invasion of their personal privacy; to preserve the integrity of the investigation, and safeguard individuals against unsubstantiated allegations.
- 13.3 Where a Complainant wishes to make a Report, fairness to the Respondent will require sharing the Complainant's identity and relevant allegations. The University will advise a Complainant before it shares this information with the Respondent.
- 13.4 The University will make every reasonable effort to maintain confidentiality when it becomes aware of an incident of Sexual Violence and will limit disclosure of information about individuals to those within the University who need to know for the purposes of, or those consistent with, addressing the situation, investigating, or taking corrective action. Under the following circumstances, however, the University might face additional legal obligations and may not be able to guarantee complete confidentiality if:
- a) an individual is at risk of self-harm;
  - b) an individual is at risk of harming others;
  - c) Community Members or members of the broader community may be at risk of harm; and/or;
  - d) investigation or reporting to authorities where required by law (the following examples are not meant to be exhaustive: an incident involving a minor, occupational health and safety obligations, human rights legislation and/or community safety).
- 13.5 If a person requests that the University not act on a report of sexual violence, the University must weigh that person's request against the University's legal obligation to take action and provide a learning, living and work environment that is safe and free from sexual violence for all members of the University community.

#### **14.0 Procedural Fairness**

The University has a duty of procedural fairness to the parties with respect to the process by which investigations and decisions are made that may result in findings of sexual violence and may potentially impose serious consequences against Community Members who have engaged in such conduct. The basic requirement of procedural fairness is that a person against whom allegations are made must know the allegations and evidence against them and be allowed to answer before making a decision. Further to the right to know, Complainants and Respondents will also have notice of the investigation and decision-making process and will have the matter decided by impartial decision-makers. As such, the University reserves the right to adjust the process to ensure procedural fairness in accordance with the facts of the individual case with notice to the Complainant and the Respondent.

#### **15.0 Interim Measures**

In some circumstances, it may be necessary to implement interim measures, which are temporary measures put in place to protect the parties and the community during the process. Interim measures may be implemented as part of Supportive Actions before and during the formal complaint process and pending a final decision. Where Interim measures are necessary, the University will seek to implement the least disruptive measures that still promote safety and security. Such measures are without prejudice to the ultimate outcome of the complaint process and are not intended to be disciplinary in nature. Examples of Interim Measures that might be considered include:

- a) Changes within university housing if the parties are residents.
- b) Restrictions to access campus or part of campus
- c) No contact/communication orders
- d) Employment/workplace restrictions
- e) Changes to class and/or section enrollments

Non-compliance with the interim measures may result in additional measures and/or discipline being imposed. The Complainant will be advised of interim measures imposed where permitted by FIPPA for health and safety reasons.

## 16.0 Supporting Documents

- Sexual Violence Prevention Policy
- Human Rights Anti-Discrimination and Harassment Policy
- Workplace Violence Policy
- Occupational Health & Safety Act
- UME Code of Student Conduct
- NOSM University Code of Respect
- PARO Collective Agreement

## 17.0 Relevant Legislation

- [Ontario Bill 132, Sexual Violence and Harassment Action Plan Act, 2016](#)
- [Ontario Regulation 131/16: Sexual Violence at Colleges and Universities \(rev. September 16, 2021\)](#)
- [Freedom of Information and Protection of Privacy Act \(FIPPA\)](#)
- [Ontario Human Rights Code](#)
- [Criminal Code of Canada](#)

## Review and Revision History

Review Period: 3 years or as required.

Date for Next Review: 2026 01 01