



Respectful Work & Learning Environment

Policy supersedes Harassment Policy, Approved May 11, 1992, updated 2004

Policy #:	8001
Approved by:	Board of Governors
Date of most recent approval:	May 13, 2019
Supersedes/Amends	<i>Harassment Policy</i> , Approved May 11, 1992, updated 2004 <i>Respectful Work and Learning Environment Policy</i> approved March 2010
Office of Accountability:	Director, Diversity, Equity & Sustainability Initiatives
Administrative Responsibility:	Director, Diversity, Equity & Sustainability Initiatives

Policy Review: Review of the *Respectful Work and Learning Environment Policy* will be conducted every five (5) years. The next scheduled review day for these procedures is May 2024.

Acknowledgements: OCAD U's Office of Diversity, Equity & Sustainability Initiatives wishes to acknowledge the following institutions whose related policies and procedures provided background in the development of this *Policy*: McMaster University, Ryerson University, Queen's University, The Ontario Public Service and the Ontario Human Rights Commission.

Policy Complements

- *Student Non-Academic Misconduct Policy*
- *Policy on Prevention and Response to Sexual and Gender-based Violence*
- *Response to Violent or Threatening Behavior Policy*
- *Policy on Academic Accommodations for Students with Disabilities*
- *Accommodation in Employment for Persons with Disabilities*
- *Policy on Integrity in Research and Scholarship*
- Memorandum of Agreement between the University and the OCAD Faculty Association,
- Collective Agreements between the University and OPSEU Local 576 Units 1 & 2

Preamble

1. Ontario College of Art & Design University (“OCAD U or the “University”) is committed to supporting equity, diversity, inclusion and the dignity of all people. The University promotes equity and inclusion in its learning and work environment and in the conduct of the University’s affairs. OCAD U will not tolerate harassment, discrimination, or bullying against any community member. Harassment and discrimination violate an individual’s human rights and this conduct runs contrary to the University’s fundamental values.
2. The University will endeavor to ensure that individuals who believe that they have been subjected to, or witnessed, harassment, discrimination and/or bullying are able to express concerns, register complaints, and seek advice and assistance without fear of retaliation or reprisal.
3. Prevention through training, education, and community initiatives is a fundamental aspect of the University’s commitment. As part of this commitment, the University provides a range of educational and community-based initiatives that foster understanding and awareness and promote knowledge exchange on human rights and equity issues of concern to the University community.
4. OCAD recognizes the importance of certain rights and freedoms at a university dedicated to intellectual inquiry and creative practice. The University is committed to upholding all fundamental human rights, including freedom of association, freedom of conscience, opinion and belief, and freedom of thought, inquiry, artistic and creative expression. Nothing in this policy is to be interpreted, administered or applied in a way that infringes upon academic freedom, or upon legal conduct between individuals that is based on mutual consent. Nothing in this policy is to be understood to prevent any faculty, employee, or student, from instructing, evaluating and engaging in fair criticism or another’s behaviour of performance. In exercising these freedoms, all its members are required to respect the rights and freedoms of others, including the right to freedom from discrimination, harassment, and bullying.
5. All members of the university community, particularly those in management and leadership positions, are responsible for:
 - Conducting themselves in an appropriate manner, treating others fairly, and with dignity and respect;
 - Being cognizant of the fact that working and learning can best be accomplished in a climate of understanding and mutual respect and that harassment and discrimination can occur even when there is no intention to harass or offend another person;
 - Establishing, contributing to, and maintaining a respectful environment by demonstrating respect for others, and not by condoning and/or engaging in conduct that is inconsistent with the law or this policy.

6. OCAD U recognizes that it:
- Has a duty to act in a manner consistent with the Ontario *Human Rights Code and Occupational Health and Safety Act*;
 - Has a commitment to academic freedom and freedom of thought, inquiry, and expression which may result in respectful disagreements regarding beliefs and principles; and
 - Cannot condone behaviour that is likely to undermine the dignity, self-esteem or productivity of any of its members.

OCAD U is committed to an inclusive and respectful working and learning environment, free from harassment, discrimination and/or bullying.

7. Prevention of discrimination, harassment and bullying are matters of not only individual concern but of significance for the overall climate and wellbeing of the University community. Whether or not a formal complaint has been made, OCAD U will address issues, incidents and complaints of discrimination, harassment and bullying. In fulfilling this responsibility, the University is committed to balancing the principles of fairness, thoroughness, timeliness, and confidentiality, as appropriate in each circumstance.
8. In seeking to prevent and address discrimination, harassment, and bullying, this *Policy* is guided by the ***Human Rights Code***, the ***Accessibility for Ontarians with Disabilities Act***, and the ***Occupational Health and Safety Act***, and related legislation and policies.

Scope of the *Policy*

9. This *Policy* and its provisions apply to all acts of discrimination, harassment, sexual solicitation, poisoned environment and bullying where the University has jurisdiction to address the conduct and to take steps to safeguard the University community.
10. The *Policy* applies to OCAD U community members engaged in University-related activities.
- a. ***Community members include*** all OCAD U students (graduate, undergraduate, and continuing education students and students in process), staff, faculty, visiting professors, sessional faculty, teaching assistants, librarians, volunteers, visitors, observers, institutional administrators, officials representing OCAD U, and contractors and employees of other organizations not related to the University but who nevertheless work on, or are invited onto, University premises.
 - b. ***University-related activities*** include events (authorized and non-authorized) that occur on University premises or on non-University premises, including social media, where there is a clear nexus to the work or learning environment.

Limitations of the *Policy*

11. This *Policy* shall not be interpreted, administered, or applied in such a way as to detract from the rights and obligations of the President, Vice-Presidents, Associate Vice-Presidents, Deans, Associate Deans, Directors, Managers or others with supervisory authority to make personnel decisions, day-to-day management decisions or to take

other supervisory actions affecting employees or students, including discipline, provided that the management and supervisory conduct and decisions do not discriminate against the employee or student on the basis of a prohibited ground and do not amount to harassment or bullying.

12. Harassment and bullying does not include legitimate, constructive, and/or fair criticism of an employee or student's performance/behavior and creative expressions, or the legitimate (i.e. not discriminatory, abusive or defamatory) exercise of academic freedom, or freedom of thought, inquiry and expression in teaching and research.

13. Nothing in this *Policy* is intended to discourage, prevent or preclude an individual from filing a grievance through the applicable collective agreement, initiating legal action (civil or criminal) or exercising any other legal rights, including filing a complaint with the Human Rights Tribunal of Ontario, the police or courts or any other legal body.

PROHIBITED CONDUCT

14. This *Policy* prohibits discrimination or harassment based on the following grounds, and any combination of these grounds:

- Age
- Creed (religion and spirituality)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation
- Gender identity
- Gender expression
- Family status (being in a parent-child relationship)
- Marital status
- Disability (including mental, physical, developmental and learning disabilities, including temporary and episodic disabilities)
- Race
- Ancestry
- Place of origin
- Ethnic origin
- Citizenship
- Colour
- Record of offences (conviction for a provincial offence, or for an offence for which a pardon has been received)
- Association or relationship with a person identified by one of the above grounds
- Perception that one of the above grounds applies

Discrimination

15. Discrimination means any form of unequal treatment based on a *Code* ground, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but disadvantage **Code** protected groups of people. Discrimination may take obvious forms or it may happen in very subtle ways, including a series of micro-aggressions. Even if there

are many factors affecting a decision or action, if discrimination is one factor, that is a violation of this *Policy*. The failure to meet procedural or substantive duties to accommodate, as well as authorizing, condoning, adopting or ratifying behavior that is contrary to the *Code*, can amount to discrimination.

Harassment

16. Harassment means a course of comments or conduct that are known, or ought reasonably to be known, to be unwelcome. Harassment can involve words or actions that are known or should be known to be offensive, embarrassing, humiliating, or demeaning. Harassment can be based on a ground of discrimination identified in the ***Human Rights Code*** or it can be *personal harassment*, as defined in the ***Occupational Health and Safety Act***. Sexual assault is a crime as defined in the *Criminal Code* and is also a form of sexual harassment under this *Policy*.

Sexual Solicitation

17. This *Policy* prohibits sexual solicitations or advances by any person who is in a position to grant or deny a benefit to the recipient of the solicitation or advance. This includes managers and supervisors, as well as faculty and staff, where one person is in a position to grant or deny a benefit to the other. Reprisals for rejecting such advances or solicitations are also not allowed.

Poisoned Environment

18. A poisoned environment is created by comments or conduct based on a ***Code*** ground (including comments or conduct that are condoned or allowed to continue when brought to the attention of management) that create a discriminatory work environment. The comments or conduct need not be directed at a specific person, and may be from any person, regardless of position or status. A single comment or action, if sufficiently serious, may create a poisoned environment.

Bullying

19. Bullying means a form of repeated, persistent and aggressive behavior that is directed at an individual or individuals, and is *intended* to cause (or should be known to cause) fear and distress and/or harm to another person's body, feelings, self-esteem or reputation. Bullying usually occurs in the context where there is a real or perceived imbalance of power.

CONFIDENTIALITY, REPORTING AND THE PROTECTION OF PERSONAL INFORMATION

20. Individuals need to be able to discuss their concerns and receive advice and assistance in a safe environment. The University recognizes the importance of confidentiality for anyone coming forward with an issue, incident or complaint of discrimination, harassment or bullying and for anyone named as an alleged respondent and will protect confidentiality to the extent permitted by its legal obligations. To ensure a fair process, protect against reprisals, maintain a healthy work and learning environment and to ensure the integrity of investigations, complainants and respondents are advised not to discuss complaints under the *Policy* with anyone who is not necessary to the process of resolution, counseling, fact finding, and implementation of a disposition, or who is acting as their

support person or representative. Where copies, portions or a summary of an Investigation Report have been provided to a complainant or respondent the Report must be kept in strict confidence. In case of any intentional or unnecessary breaches of confidentiality, the complainant, respondent or other relevant person may be subject to disciplinary action by the University.

- 21.** The University respects personal privacy and will not disclose the name of a complainant, respondent or witness or any other details that would identify the parties, except where:
- Required for the fact finding and resolution of a complaint and taking corrective action (preventative, remedial and/or disciplinary);
 - A student or employee is deemed to be at risk of harm to self or others;
 - There are reasonable grounds to be concerned with risk of future violence or the safety of the University or broader community;
 - Disclosure is required by law or to comply with the ***Occupational Health and Safety Act*** or with the ***Human Rights Code***;
 - Evidence of the disclosed incident is available in the public realm; or
 - Where there is a need for notification in order to comply with the reporting requirements of regulatory bodies.

22. When discussing issues, incidents or reporting a complaint to any University office, individuals should be advised of the reporting requirements and limits to confidentiality that apply to the office/individual. Individuals should be advised that where the University becomes aware of a serious or persistent issue or incident that falls under the *Policy*, it may be obliged to investigate and/or follow up to address the conduct. As part of the University's internal responsibility to maintain an environment free from discrimination, harassment and bullying, information may be shared on a need-to-know basis.

23. The Director, Diversity, Equity & Sustainability Initiatives will, on behalf of the Policy Administrators, make available to the University community an annual report concerning the number, general type and general disposition of cases, and on educational and other activities related to this *Policy*. Any annual reporting will protect the privacy of the parties.

OPTIONS FOR RESOLVING CONCERNS AND COMPLAINTS

24. Community members who raise an issue, report an incident or make a complaint may pursue one or more of the options below. Prior to pursuing one of the options below, community members should read section 18 on Confidentiality. When the University becomes aware of an issue or an incident, it may be obliged to investigate or follow up, as appropriate. In all circumstances, the University will endeavor to ensure that the person registering the concern has a voice in the decision-making process on how to follow up on the concern and that confidentiality is maintained.

I. Informal Resolution Options

25. An informal resolution is facilitated by an organizational member through means other than a formal complaint with investigation. This process can include clarification of the issues, facilitated conversations, informal dispute resolution, **coaching, workplace restoration**, mediation, **conciliation**, as well as **restorative justice** procedures.

Seek Information, Advice or Referral

26. All community members who believe they have witnessed or been subjected to discrimination, harassment, sexual solicitation, or bullying as well as those who are the subject of a complaint or concern under this *Policy*, may benefit from having access to advice and information about the *Policy* and procedures. Community members may also benefit from information and guidance on human rights issues in general as well as assistance determining the best process for addressing harassment, discrimination and bullying.

27. In the case of human rights harassment, discrimination, sexual solicitation, poisoned environment or reprisal, all community members can consult with the Office of Diversity, Equity & Sustainability Initiatives (ODESI) and a student or employee may choose to consult with their immediate supervisor or union representative (employees); or Associate Dean (students) to receive advice and information on available options for resolving the situation, to receive appropriate referrals to university resources, relevant policies and procedures, and to obtain the perspective of a neutral person who is not connected to the dispute.

28. In the case where the harassment is not connected to a prohibited ground under the Human Rights Code (i.e. personal harassment), an employee may consult with the Director, Human Resources or union representative and a student may consult with OCAD Student Union and the Vice-Provost, Students & International, for the purpose of receiving advice and assistance with a view of resolving the situation informally.

29. If a complaint is against a direct supervisor, the complainant may seek advice and assistance directly from ODESI, Human Resources, or their union, as is appropriate for the type of harassment.

Communicate Directly (Self-Managed)

30. This option provides the parties with the flexibility to manage the resolution process and seek suitable solutions. Initially, individuals may choose to address their concerns directly on their own, or with the support of a friend or colleague. Community members may choose to seek advice or assistance from a supervisor, professor, or another person in authority. Employees or students, as well as those who may assist them, may also seek guidance or coaching from the Policy Administrator(s).

31. This process does not require documentation and no records will be retained in the official employee or student file. This step is not required prior to involving a supervisor

or before filing a formal complaint and is not recommended in situations where it is believed that speaking to the person could lead to an escalation of the comment or conduct, or to safety risks. In the event that the matter is not resolved or if the community member feels that they cannot speak directly to the other person, they should notify an appropriate supervisor.

Request Assistance from a Supervisor or ODESI

- 32.** Individuals may use this option in situations where they feel unable to take direct action, or if the offensive behavior persists in spite of it being brought to the person's attention. The purpose of the process is to seek assistance addressing the concern. The complainant may consult any OCAD U supervisor with whom they feel comfortable to resolve the matter.
- 33.** The supervisor may support the parties to resolve the matter by clarifying expectations under OCAD U policy, restoring the work or learning environment and addressing issues and concerns of discrimination, harassment, and bullying. Where information emerges in this process indicating a breach of this *Policy*, the supervisor may take appropriate action to remedy the discrimination and prevent further incidents.
- 34.** Following the resolution, the supervisor will forward a written communication to one or both parties, setting out the terms and/or agreement, will assist in bringing about whatever administrative or other action is needed to implement the resolution, and will ensure that the Director, Diversity, Equity & Sustainability Initiatives receives a copy of the written communication and any written acknowledgement by the parties. No record of the informal resolution will be kept in either the complainant or respondent's student or personnel file.

Request Mediation

- 35.** Mediation services are provided for in this *Policy* as a support service that is available to the University community to ensure a healthy work environment. Mediation is voluntary and offers a facilitated environment that can assist parties to resolve human rights concerns and/or enhance the workplace and strengthen communication, relationships, trust and collegiality.
- 36.** It is up to the parties to determine the issues that they would like to discuss at the mediation and in order to ensure that parties can speak freely, the mediation process is confidential and without prejudice (any statements or offers cannot be used against the parties in future complaints or proceedings). The mediator is neutral and independent and will not be reporting back to the University on what was discussed or on the details of any agreement that is reached between the parties. If there is something in the agreement that requires the support or action of the University, that information will be shared separately and with the consent of the parties. Nothing will be retained in either party's official employment file.
- 37.** At the conclusion of mediation, if a mutually acceptable resolution is agreed to by the parties, the mediator will prepare a *Resolution Agreement* and have it signed by both parties, who will each be provided with a signed copy. In the event that mediation

does not resolve the issue or if there is a breach of an agreed upon settlement, the complainant will have the right to submit a formal complaint in accordance with this *Policy*.

Request Training and/or Coaching

38. Through the Policy Administrators, training, education and coaching sessions can be organized for the University community to build awareness and understanding on preventing and responding to a range of human rights and bullying issues and on this *Policy* and related procedures. The relevant supervisor and/or the Policy Administrators will facilitate any request or requirement for coaching/education/training on behalf of either the complainant or the respondent.

II. Formal Resolution Options

Make a Formal Complaint

39. A formal process of complaint resolution is used when parties have not reached an agreeable resolution or wish to have their concerns addressed through a formal process with an independent fact finding process resulting in a written report with findings and where necessary, a decision (disposition) by the University. Refer to Appendix 1 for Formal Complaint Investigation Procedures. The disposition can be subject to a grievance under the applicable collective agreement by staff and faculty.

Identify the need for a University-Initiated Investigation

40. Through data gathering on issues, incident and complaints, ODESI and/or members of the University community may become aware of situations where a University-initiated investigation may be warranted, including, but not limited to circumstances where:

- Repeated allegations are made about the conduct of the same individual and/or environment;
- None of those coming forward regarding an issue or incident have been willing to proceed with a complaint;
- The power differential in the alleged incident suggests the potential for a pattern of repeated discrimination, harassment or bullying;
- The University has a duty to investigate as per the ***Occupational Health and Safety Act***;
- Available information suggests there may be a poisoned environment or systemic discrimination; and/or available information suggests there may be concerns about climate and/or conduct in an area of the University.

GUIDELINES

Right to Representation

41. At any interview or proceeding related to the informal or formal complaint process under this *Policy*, complainants, respondents and witnesses, may have present their union/association representative(s), agent (e.g. legal counsel), and/or a support person, such as a friend, relative or partner.

Potential Outcomes

42. Based on the findings of the investigation and an application of human rights law and policy, a decision must be made about whether the evidence substantiates a complaint and whether the findings amount of a breach of this *Policy*. If the complaint is substantiated, the organization must take steps to address the human rights violations and prevent future occurrences. Human rights laws and policy are preventative and remedial and this should be reflected in the outcomes of substantiated complaints.
43. In cases of harassment and/or discrimination, the objective of a remedy is two-fold. The first objective is to prevent the continuation or repetition of the conduct. The second objective is to restore the complainant to the position they would have been in had the harassment or discrimination not occurred. Any remedies and/or resolutions of harassment and discrimination complaints will also take into consideration and address the interests of the OCAD U community at large.
44. In determining the appropriate consequences, the decision maker, in consultation with the Policy Administrators, will take into account the nature of the violation of the *Policy*, its severity, and whether the individual has previously violated the *Policy*. Where there is a finding of harassment, discrimination, or bullying, there are a range of remedies and/or sanctions that may be imposed. These include, but are not limited to one or more of the following:
- Modification of the complainant's work or learning arrangements to remedy the impact of the *Policy* breach;
 - A verbal and/or written apology to the complainant from the respondent;
 - A program of education, training or one-on-one remedial coaching and assessment for the respondent and/or the department;
 - A written warning or directive from the relevant supervisor to the respondent to cease the behavior, with failure to do so leading to further penalty;
 - The exclusion of the respondent from one or more designated University activities or duties or transfer to another area of the University;
 - A no contact order, which may include restrictions on registration for specific classes, other academic or non-academic activities, or attendance at specific meetings, events; contact with particular individuals or groups of individuals; or access to a physical area of the University;
 - For students, suspension for a set time or expulsion, as set out by the *Non-Academic Misconduct Policy*;
 - For employees, a disciplinary suspension for a set time or dismissal.
45. Complainants will not be penalized where a complaint is not found to be in breach of this *Policy* as this may deter people from making valid complaints. There may be very rare cases, however, where there is objective evidence to show that the complaint was vexatious or made in bad faith. Only where the evidence that a complaint is vexatious or made in bad faith is compelling should disciplinary measures of any sort apply to complainants.

Time Period for Filing Complaints

46. A complainant must normally file a complaint of harassment or discrimination within one (1) year of the date of the last alleged incident. OCAD U recognizes that there may be extenuating circumstances that may prevent a formal complaint from being made within this time period and a complaint outside this timeframe may be permitted at the discretion of the Policy Administrators.

Interference and Reprisal

47. Every person has a right to claim and enforce their right to a place of work and learning free of harassment, discrimination, and bullying. No person shall be negatively treated for bringing forward a complaint, providing information related to a complaint, or helping to resolve a complaint. Protection from reprisal covers complainants, witnesses, advisors, representatives of complainants and witnesses, investigators, and decision makers/management. A person who believes that they have been subjected to reprisal may file a complaint under the procedure.

48. Interference with the conduct of a fact finding, or reprisal against any of the involved parties or witnesses, whether the complaint turns out to be substantiated or unsubstantiated, may itself result in disciplinary action up to, and including, termination.

Cooperation and Self-Incrimination

49. It is possible that individuals questioned as witnesses, those bringing concerns forward, or complainants in a formal process, by cooperating with the University's processes, reveal their own infraction of University non-academic policy or guidelines. In such instances, and given the University's commitment to addressing discrimination, harassment and bullying, this information will not result in any disciplinary proceedings by the University.

Interim Measures and Ongoing Support of All Parties

50. In some cases, the University may take temporary steps while an investigation or informal resolution is proceeding to maintain a healthy work or learning environment, safeguard complainants and witnesses, to protect the integrity of an investigation, and/or to protect the respondent from having their conduct construed as reprisal. These steps may include limiting contact between the respondents and the complainant/witnesses or temporarily removing one or more of the parties from the work or learning environment or from decision-making bodies, pending the outcome of the investigation.

51. Where the respondent is in a position of authority with respect to the complainant, the appropriate supervisor may, where it is feasible to do so, reassign either the complainant or the respondent to different duties or supervisors, or permit a student an academic accommodation, for example, switching sections of a course, pending the resolution of the complaint. Any steps taken should not penalize the complainant or put them at a disadvantage for making a complaint.

52. In the event of concerns for the safety of individuals involved in an investigation process, the Policy Administrators and/or Vice-President, in consultation with the Director, Safety & Security Services, will take appropriate action.

Liability

53. No one charged with responsibility under this procedure, who carries out his/her duties in good faith, shall be personally liable in accordance with the University's *Policy on Legal Representation* for any action or claim arising out of their good faith execution of those duties.

ROLES AND RESPONSIBILITIES

All Community Members

54. All members of the university community are responsible for:

- a) Conducting themselves in an appropriate manner and treating others fairly, and with dignity and respect at all times;
- b) Being cognizant of the fact that working and learning can best be accomplished in a climate of understanding and mutual respect and that harassment and discrimination can occur even when there is no intention to harass or offend another person;
- c) Establishing and maintaining a respectful environment by demonstrating respect for others and by not condoning and/or engaging in conduct that is inconsistent with the law or this *Policy*;
- d) Cooperating fully in any investigation under this *Policy*.

Management Staff

55. Senior Administrators, Deans, Associate Deans, Directors, Managers, Program Chairs, Directors and Supervisors are responsible for building awareness and understanding of this *Policy* and for creating and maintaining a harassment- and discrimination-free organization. Management staff should provide regular training on this *Policy* and must address potential problems before they become serious. Management staff must act immediately upon becoming aware of potential violations under this *Policy*, whether or not a complaint has been filed, including:

- a) Intervening to stop unacceptable behavior;
- b) Contacting the Office of Diversity, Equity & Sustainability Initiatives for advice and assistance and for a preliminary assessment, prior to advising complainants, taking action or facilitating resolution;
- c) Taking action to protect complainants who raise concerns, file complaints, or report alleged incidents under this *Policy*;
- d) Facilitating the resolution of concerns and informal complaints and addressing broader public interest issues;
- e) Ensuring all dispositions of formal complaints are implemented in a timely and thorough manner.

Office of Diversity Equity and Sustainability Initiatives

56. The Office of Diversity, Equity & Sustainability Initiatives (ODESI) acts as a neutral,

arms-length, subject matter expert in the areas of harassment, discrimination, sexual solicitation, poisoned environment and reprisal. In its capacity as human rights advisor, ODESI provides information and guidance to students, employees and management, on the various options for addressing and resolving matters under the *Policy*, on ensuring a fair and effective administration of OCAD U's human rights policies and on the related obligations in the resolution of complaints.

- 57.** ODESI is separate from the person designated to receive and investigate complaints and does not act as an advocate for the organization or for the person seeking advice. As an arms-length Office, ODESI is not subject to pressure from the parties to divert, suppress, or advance complaints. ODESI will ensure that all information is kept in the strictest of confidence, subject only to the requirements set out in this *Policy*.
- 58.** ODESI is responsible for the administration and interpretation of this *Policy* and related procedures and for advising the President when a formal review of these procedures is required.

DEFINITIONS

59. Academic Freedom

As outlined in the Memorandum of Agreement between the University and the OCAD Faculty Association, the University recognizes that “academic freedom is essential to the teaching function of the university, as well as to the creative and scholarly pursuits of the faculty, academic staff, other staff, and students. This includes a commitment to unfettered intellectual and aesthetic inquiry and judgement and to the provision of those textual, audio, and visual resources necessary to free inquiry and practice. Academic freedom includes: the right of responsible teaching from a subjective point of view; the right to freedom of creative practice or expression; and the right of dialogue, discussion, debate and criticism”. Academic freedom applies to faculty and students.

60. Bad Faith and Vexatious Complaints

A complaint made in bad faith is one that is known by the complainant to be false and/or one in which a complaint is made for a purpose other than gaining a satisfactory remedy. A vexatious complaint is one instituted maliciously and without probable cause and/or one which is not based on reasonable factual grounds, but is merely vindictive. In determining whether a complaint is vexatious or made in bad faith, one considers the knowledge and intention of the complainant. If a complainant is merely bringing forward a complaint to annoy or embarrass a respondent, and knows that there is no actual discrimination or harassment, then it can be said that the complaint is vexatious or made in bad faith.

61. Complainant - A person who brings forward a concern and/or makes a complaint (an allegation, whether oral or written, of harassment, discrimination, bullying, sexual solicitation or poisoned environment).

62. Conciliation- A process where parties seek to reach an agreed upon resolution with

the assistance of a conciliator who is a neutral third party. Conciliation often takes place after some information gathering has occurred and/or information and advice has been received about the human rights issues and possible remedies or ways to resolve the matter.

63. Employee - Any OCAD U faculty, academic staff, administrative staff, managers and contract or temporary employee. Employees of the University may also be students at the University. An employee will be treated as a “student” under this *Policy* where an incident occurs while the employee is acting within her/his role as a student, and outside the scope of his/her employment.

64. Mediator – A neutral party who assists in negotiations and facilitates voluntary agreements between parties in a dispute.

65. Micro-aggressions – The brief and everyday slights, insults, indignities and denigrating messages sent to equity-seeking communities by individuals who are often unaware of the hidden messages being communicated. Micro-aggressions can include *micro-insults*, such as verbal and nonverbal communications that demean a person's identity, as well as *micro-invalidations* such as communications that subtly exclude, negate or nullify the thoughts, feelings or experiential reality of equity-seeking communities.

66. Policy Administrators – Members of the OCAD U community who are charged with the responsibility of administering this *Policy*. In this *Policy*, these are:

- Director, Human Resources;
- Director, Diversity Equity & Sustainability Initiatives; and
- Vice-Provost, Students & International

67. Respondent – A person against whom a complaint has been made.

68. Resolution Agreement – A document prepared by a mediator or conciliator outlining a mutually acceptable resolution agreed to by the parties after a resolution process. Both parties sign this document.

69. Restorative Justice – An approach to addressing conduct that enables the person who caused the harm to come together with the person and community that was affected to create a meaningful solution that will repair damage and restore relationships.

70. Supervisor – Any employee who has charge over any work and/or learning environment, and/or authority over an individual employee or student.

71. Student – A person who is:

- Registered in an OCAD U course of study;
- Engaged in any academic work which leads to the recording and/or issue of a mark, grade or statement of performance by the appropriate authority in the

- University or another institution; or
- Entitled to a valid student card who is between sessions but is entitled because of student status to use University facilities.

72. Trivial and Frivolous Complaints

In considering whether allegations are trivial or frivolous, it is the subject matter and not the amount or nature of the remedy sought that acts as a guide for assessing the allegations. A distinction must be made between a complaint in which the subject is not trivial or frivolous, but where the possible remedy may be very limited, and a complaint in which the subject matter itself is trivial. Only the latter type of complaint should be dealt with as trivial or frivolous.

A trivial complaint is one in which there may be a technical breach of this *Policy* but the impact of the breach is of such a trivial nature that involvement of the Office of Diversity, Equity and Sustainability Initiatives is not warranted.

A frivolous complaint is one which is clearly insufficient on its face, and one in which a complainant alleges the *Policy* has been breached but the evidence does not in any way bear this out. It is one which may be perfectly true in its actual allegations, but yet is liable to be dismissed because it is totally insufficient in substance.

73. Workplace Coaching- A process of guiding employees through learning and growth to enhance performance. Coaching can support employees to achieve specific goals or outcomes or can develop skills or deepen competency in key performance areas.

74. Workplace Restoration- The establishment or re-establishment of harmonious working relationships amongst individuals and within a team, group or unit, following a violation of this *Policy*.

[Original Signed]

Jaime Watt

Chair, Board of Governors, Ontario College of Art & Design
University Date July 2019

[Original Signed]

Sara Diamond

President, Ontario College of Art & Design
University Date July 2019

FORMAL COMPLAINT INVESTIGATION PROCEDURES

1. The formal complaint will:
 - a) be in writing indicating that it is a formal complaint and be signed and dated by the complainant;
 - b) set out the particulars of the allegations, including, where possible, the dates and nature of the allegations and the names of any witnesses to the conduct; and
 - c) be provided to the Director, Diversity Equity and Sustainability Initiatives, who will submit the complaint to the appropriate Vice-President, who will act as the decision-maker.

2. The Decision Maker for a Formal Complaint under this *Policy* will be the appropriate Vice President. Should there be a conflict of interest with a Decision-Maker or where a Vice President is named as a respondent to a complaint, the Policy Administrators will determine the most appropriate Decision Maker to assume the decision-making responsibilities. Where an assessment has been undertaken and the President is properly named as a respondent to the Complaint, the Chair of the Board of Governors will be the Decision Maker on the allegations involving the President.

3. The Vice-President will consult with the appropriate Policy Administrator and make a determination as to whether the complaint falls under this *Policy* (establishes a Prima facie case) and should be advanced for investigation and/or whether the subject-matter of concerns or a complaint is trivial or frivolous. This decision may be made at any stage of the complaint or investigative process. Where appropriate, the Policy Administrators may retain an external, independent fact finder to gather preliminary information and conduct an assessment.

4. If it is determined that the allegations do not fall under the definitions set out in this *Policy*, or that the complaint is trivial or frivolous, the complainant will be advised accordingly and will be advised of other available options and procedures. The respondent will receive notification of the decision.

5. If it is determined that the allegations fall within the definitions set out in this *Policy*, the Policy Administrator will recommend to the Vice-President that fact finding be initiated and will recommend an external, independent fact finder with the requisite expertise and experience conducting human rights and harassment investigations and in the subject matter of the complaint. The appropriate Vice-President, will appoint the fact finder on a case-by-case basis.

6. The Vice-President will formally confirm receipt of the complaint with the complainant and will identify the external independent fact finder that has been appointed. The complainant's supervisor will be copied on the correspondence indicating the receipt of the formal complaint.

7. If the Complaint is proceeding to investigation, once the Notice of Allegations is prepared, the Vice-President will notify the respondents that they have been named in a complaint, will identify the fact finder, and will provide a detailed Notice of Allegations. The respondent's supervisor will be copied on this correspondence. An individual who is identified as a respondent in the course of the investigation will be notified by the Vice President that they are being named as a respondent once the Notice of Allegations is prepared and they will be given an opportunity to meet with the fact finder and respond to any allegations.
8. On behalf of the University, fact finders will act promptly and expeditiously to investigate the allegation(s) in accordance with the principles of natural justice and procedural fairness. The fact finding will be conducted in a neutral manner, with the purpose of determining facts that will either prove or disprove the complaint.
9. The fact finder's duties will include:
 - a) Obtain and review the formal complaint that is signed and dated by the complainant to ensure that the allegation(s) fall within the definitions set out in this *Policy*. This review may include a meeting with the complainant to discuss the details of the formal complaint.
 - b) Interview the complainant to clarify the allegations and confirm that respondents are properly named and/or determine any personal respondents.
 - c) Inform the parties about this *Policy* and the investigation procedures. The fact finder will also establish a timeline for the investigation to be completed and communicate it to the parties. If the fact finder foresees significant and unexpected delays in the completion of the process, they will notify the complainant, the respondents, and the primary Policy Administrator. The fact finder will advise them of the reasons for the delay and provide an estimate of the time required to complete the fact finding process.
 - d) Prepare a Notice of Allegations for each respondent, setting out the allegations against them and providing sufficient particulars to enable them to respond to the complaint. The Notice of Allegations will be provided to the Vice President to be shared with the respondents along with the Notice of Complaint correspondence.
 - e) Invite the respondent to provide a written response to the complaint within three (3) weeks. Extensions may be provided at the discretion of the fact finder and in consultation with the appropriate Policy Administrator.
 - f) Provide the respondent with a reasonable opportunity to consult with counsel, a union or Human Resources representative, student advocacy representative or personal representative.
 - g) Gather testimonial evidence through interviews with the parties and any other person deemed relevant to the fact finding, as well as any relevant documentary evidence.
 - h) Provide the complainant and respondents with an update on the progress of the investigation every three weeks.
 - i) Prepare a draft written report upon completion of the fact finding, which sets out the allegation(s) and the information obtained, and provides a conclusion as to

whether, on a balance of probabilities, the *Policy* has been breached. To the extent possible, the fact finder will make all reasonable efforts to draft the Report in a manner that protects the identity of witnesses.

- j) Provide the complainant with the draft Investigation Report and the respondents with the portion of the Report that pertains to them, and provide the parties with three (3) weeks to respond to the fact finder, prior to finalizing the Report.
- k) Provide a copy of the final Investigation Report to the primary Policy Administrator who will review it and provide feedback for the fact finder's consideration to ensure the Report is consistent with human rights principles, law, and policy.
- l) Finalize the Investigation Report and provide it to the Policy Administrator, who will forward it to the appropriate Vice-President.
- m) Make recommendations to the appropriate Vice-President on individual remedies to make the complainant whole and on public interest remedies to address the circumstances that led to the Complaint and any systemic human rights issues indicated by the findings. Even where there is no breach of the *Policy*, the fact finder may make recommendations on any systemic and institutional barriers that were identified during the investigation.

10. The complainant and the respondents are expected to participate fully in the investigation and to provide any information required by the fact finder upon request. Accommodation requests can be made to the fact finder, Policy Administrator or Human Resources, to ensure full and equitable participation in the process for parties and witnesses. Lack of participation will not stop the matter from proceeding under the *Policy*.

11. The complainant or respondent may be accompanied during the investigation process by counsel, a union or Human Resources, Student Advocacy representative or personal representative. In human rights investigations, the accompanying person is there in a supportive capacity only, and not as an advocate or to speak on behalf of, or for, the person being interviewed. The fact finder will take notes and at the end of the interview, or shortly thereafter, will provide a copy for review and signature by the interview subject. Neither the representative nor the interview subject are permitted to take notes or to keep a copy of the investigator's notes in order to preserve the integrity of the investigation, ensure confidentiality and for the protection of all involved in the investigation. The accompanying persons may consult with either the complainant or the respondent in the course of the interviews.

12. The fact finder may identify the situation when the parties by mutual agreement wish to refer the matter to an internal or external mediator, or any of the other process provided for in this *Policy*. In this situation, the fact finder refers the matter to the Policy Administrators to either initiate the mediation process or direct the parties otherwise. In this case, the formal process is suspended. In the event that there is a need to revert to the formal fact finding process, the process will resume.

13. If it is determined by the fact finder that this *Policy* has not been breached, the Vice-

President, in consultation with the Policy Administrators, will advise the parties accordingly and may choose to provide them with all or with a portion of the Fact Finder's written report. No further action will be taken and no record of the complaint will be placed in the complainant's or respondent's official employment file or student file.

14. If the fact finder determines there is objective evidence to show that the complaint was vexatious or made in bad faith, with intent to injure or mislead, a record will be kept in the Complainant's employee file or student record and the University may take disciplinary action as set out in this *Policy*.
15. If it is determined by the fact finder that this *Policy* has been breached, the appropriate Vice-President, in consultation with Policy Administrators, will determine an appropriate disposition which is a final determination of how the case or issue will be addressed. In cases where suspension or dismissal requires approval beyond the Vice-President level, such matters will be referred to the President.
16. The complainant and the relevant supervisor will receive information about any findings that pertain to their allegations, as well as sanctions/remedies taken by the University, pursuant to relevant legislation. Personal respondents and the relevant supervisor will receive information about any findings that pertain to the allegations in which they have been named. As appropriate, and as required by relevant legislation, primary witnesses may also receive information about the findings and sanctions/remedies that pertain to their experience of harassment/discrimination.
17. The appropriate supervisor will ensure that the disposition is fulfilled and will file a copy of the disposition in the respondent's official employment file (in the case of an employee) or in the respondent's student file (in the case of a student). A copy of the disposition will be placed in the file of the Director, Diversity Equity and Sustainability Initiatives.
18. A Vice-President, in consultation with *Policy* Administrators, may initiate a fact finding in the absence of a formal complaint and in circumstances where they deem it appropriate to do so, as per section 34 of this *Policy*. The University will utilize the same methods of fact finding, adapted as necessary to meet the circumstances. Based on the results of this fact finding, appropriate action may be taken.
19. In the event that a respondent to a Formal Complaint who does not have access to recourse through a union has one or more of the specific concerns listed below, a request may be made to the appropriate Vice-President to convene an appeal. The respondent has 10 working days to request an appeal from the date of receiving the disposition. The grounds for appeal are:
 - The disposition was grossly disproportionate to the findings of the fact finder;
 - There are significant new facts or evidence that have come to light that could change the outcome of the case. An appeal is not available where the new facts or evidence could have been identified prior to the disposition by the exercise of reasonable

- diligence.
- The disposition or findings upon which the disposition is based, are contrary to law.
- 20.** The appropriate Policy Administrator shall identify and recommend an independent external Appeal Adjudicator. The Appeal Adjudicator will be appointed by the appropriate Vice-President to hear the appeal. After gathering information from the parties, the Appeal Adjudicator will first determine whether there are grounds for an appeal and, if so, they will proceed to hear the appeal. After hearing the appeal, the Appeal Adjudicator can either recommend that the disposition be upheld, that the disposition be amended, and/or that further steps be taken by the University as appropriate. At the request of a respondent, the appropriate Vice-President, in consultation with the Policy Administrators, may suspend or vary the imposition of the disciplinary measures, pending the outcome of an appeal by the respondent.
- 21.** An appeal is not intended to be a re-argument of a response to a complaint nor is it an opportunity for a party to repair any deficiencies in the presentation of their response. The purpose of an appeal is to determine if there is any significant error in the rendering of a disposition. In general, OCAD U will only reconsider a disposition where it finds that there are compelling circumstances for doing so and where these circumstances outweigh the public interest in the finality of dispositions.
- 22.** In the case of Formal Complaints, complaint and appeal documents, notices of allegations, investigation reports and disposition documents remain with the Director, Diversity, Equity and Sustainability Initiatives and are confidential. Access to these records is restricted to the parties to a complaint and those who need to know in order to carry out their duties as decision makers, advisors to decision makers and those tasked with implementing a disposition and/or remedying discrimination. This can include access to specific records for mediators, trainers and coaches, fact finders, Policy Administrators, and the decision-maker (Vice President) under this *Policy*. The complete investigation file, with witness identity and statement and documentary evidence, remains with the independent fact finder.
- 23.** All individuals involved in the complaint resolution process must keep records safe and secure. This means locked cabinets and/or secure electronic devices. Electronic records should be managed in a separate folder and password protected or made secure in an appropriate manner.
- 24.** In the circumstance where a party or a witness has a concern about the conduct of a fact finder, complaints should be made in writing to the Policy Administrator during the course of the investigation or within the time period for an appeal. The Policy Administrator will, in consultation with the decision maker, determine the appropriate course of action. Parties or witnesses making a complaint about a fact finder must point to the evidence that they have, or would be reasonably available, to support their assertions.