

PROCEDURE FOR ACAD 07: Sexual Harassment and Violence Involving students

1.0 Preamble

This procedure sets out how the policies in SKG's Policy ACAD 07: Sexual Harassment and Violence Involving students shall be put into effect.

2.0 Application

This procedure applies to all students.

Please note that several policies and procedures of SKG address sexual misconduct, harassment, and violence. The policy ACAD 07: Sexual Harassment and Violence Involving students includes a section that sets out the application of the policy (and thus this procedure). It is important to consult that section to determine the application of this procedure.

3.0 Definitions

"Academic Advisory Circle" and "Circle" means the group of individuals appointed by SKG's board to provide guidance and advice to the board concerning SKG's academic mission and its services and supports to students.

"Complainant" means a person who has experienced sexual harassment or violence and is seeking supports or remedies from SKG. See also "survivor". Where there is more than one complainant in a complaint, the term includes all complainants.

"Director of Academics" means the President of SKG, or an individual designated by the President, who is responsible to administer SKG's academic mission, regardless of the title of that position. The President may determine a designate to carry out the functions of the Director of Academics for the purpose of this procedure, as permitted by the section of this procedure concerning delegation of responsibilities.

"Elder Advisor" means an elder who is a member of an Anishinaabe community who has been requested by SKG to assist in a process of resolution under this policy.

"Employee" means a person who performs work for wages in any capacity for SKG.

"Instructor" means an employee of SKG who is responsible for teaching, evaluation, academic supervision, and/or related activities for credit and non-credit courses, and/or responsible for evaluation of students in any other activity that is part of SKG's academic mission. It includes all such employees, whether faculty members or contract employees.

"Respondent" means a student against whom allegations of sexual harassment or violence have been made. Use of this term does not imply a pre-determination that the respondent is culpable of misconduct. Where there is more than one respondent to a complaint, the term includes all respondents.

"Sexual harassment" means:

- Engaging in a course of vexatious comment or conduct against a student because of sex, sexual orientation, gender identity, or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the student and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

“Sexual violence” means:

- Any sexual act or act targeting a person’s sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against a person without the person’s consent.
- Sexual violence includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, and sexual exploitation.

"SKG" means Shingwauk Kinoomaage Gamig.

“Student” means an individual registered in a course or program of study at SKG, whether full-time or part-time.

“Survivor” means a person who has experienced sexual harassment or violence. See also “complainant”.

4.0 General provisions concerning response to sexual harassment or violence

The following provisions apply in all the processes set out in this procedure concerning response to sexual harassment or violence involving students.

4.1 Right to representation and support

At any interview or proceeding related to the decision-making process under this policy, individuals may bring a support person and/or be accompanied by a legal representative.

Support persons and representatives are expected to respect the provisions of this policy concerning confidentiality and other expectations explicitly set out in relevant sections of this policy.

4.2 No penalties for complaints

Members of the SKG community shall not be penalized for making a disclosure and/or a complaint in good faith or participating in an investigation.

5.0 Disclosures

A disclosure occurs when a person who has experienced sexual harassment or violence tells someone about their experience.

A student who discloses can receive support without making a complaint.

Students who wish to make a disclosure are encouraged to contact the Director of Academics.

Disclosures can be received by any member of SKG's community.

- There is no mandatory reporting requirement when a member of SKG's community receives a disclosure except in the instances described in the section of this procedure headed "Limits to Confidentiality."

Members of SKG who receive a disclosure from a student should inform the student about this policy and encourage the student to contact the Director of Academics so that supports and options can be discussed.

The person receiving the disclosure may also seek supports.

6.0 Supports

Supports shall be available to all students (survivors, respondents, or witnesses) affected by sexual harassment or violence regardless of when or where the harassment or violence took place and whether or not a complaint is made.

Supports may include interim measures (see the subsection below headed "Interim measures)."

The Director of Academics shall ensure that SKG has capacity to provide assistance to students who request it to:

- Gain access to supports and resources that are available in the community, and
- Create a personal safety plan.

The Director of Academics shall assess the need for academic or other considerations, where a survivor requests considerations to address barriers to success their program and/or safety issues that arise from an incident or incidents of sexual harassment or violence. Reasonable considerations shall be provided, based on demonstrated needs.

- Examples of academic considerations include extensions on assignments, provision of incomplete grades, deferrals for examinations, temporary exemption from attendance policies, and permission for late withdrawal from courses.

7.0 Complaints

7.1 Initiating a complaint

Any student may initiate a complaint under this policy against another student.

- Complaints against other members of SKG community (instructors, other employees, volunteers, or others) will be addressed under other SKG policies. Students with complaints against other members of SKG community should consult with the Director of Academics for information and advice on the appropriate complaint process.

The student shall initiate the complaint by contacting the Director of Academics, either in writing or in person.

Students are encouraged to submit complaints in a timely way. It is recommended that the complaint be filed within one year of the date of the incident(s) addressed in the complaint to

facilitate investigation and resolution efforts. SKG, however, will accept a complaint for as long as the individual(s) against whom the allegations of sexual violence are made is/are a student(s).

When a student makes a complaint, the Director of Academics shall provide the student with:

- Information about the provisions of this policy and procedure, including the options available to the student;
- Information about supports available at SKG and in the community; and
- Active support in following the complaint and resolution procedures if the student chooses to proceed with a complaint.

If the student chooses to proceed with a complaint, the student may request that SKG proceed with one of the following options:

1. A resolution process with the involvement of an Elder Advisor, or
2. A formal complaint leading to an investigation.

It is important to note that, if a student proceeds with a resolution process with an Elder Advisor, the student does not forfeit their right to make a formal complaint if they so choose following the resolution process with the Elder Advisor.

7.2 Communication throughout the complaint and resolution process

As the complaint moves through the resolution process, the complainant(s) shall receive written notification, in advance, of steps to be taken under this procedure to provide an opportunity for internal SKG or external community supports to be put in place to address plans for safety, wellness, and academic considerations.

8.0 Interim measures

The Director of Academics shall determine whether measures are required to protect the safety and security of the complainant or members of SKG community before and/or during an investigation or to facilitate resolution of the complaint (interim measures).

Interim measures do not indicate a finding of a misconduct under this policy.

Interim measures may be imposed when:

- There are reasonable grounds to believe that a student's continued presence on campus poses a significant threat and/or risk to the safety or security of themselves or others or to property;
- The student's presence on campus could lead to a breach of court-imposed restrictions (for example, release or probation conditions or a peace bond including a non-association order) or where SKG is unable to reasonably accommodate the conditions;
- There are reasonable grounds to believe that the student poses a threat of disruption or of interference with the normal operations of SKG; or

- There are reasonable grounds to believe that a student’s personal health and wellness are significantly impacting their academic success and/or conduct.

Interim measures may include:

- “No contact” directives;
- Restricted access to SKG services and/or facilities (including specified services, classes, or areas);
- Banning access from campus (includes all SKG buildings or property);
- Suspension of the student; and/or
- Restrictions on any other SKG activities or privileges for which the student might otherwise be eligible, as SKG may determine to be necessary or appropriate.

Interim measures shall remain in effect for as long as reasonably required pending the outcome of the complaint.

A respondent may appeal an interim measure in accordance with the provisions of the appeal sub-section of this procedure.

9.0 Resolution process with an Elder Advisor

In this subsection, “resolution process” means the resolution process involving an Elder Advisor as described in this subsection.

- Where a complainant requests that SKG proceeds with a resolution process involving an Elder Advisor, the Director of Academics shall determine whether a resolution process is appropriate.
- Before making this determination, the Director of Academics shall meet with the respondent to provide information about the resolution process and seek information from the respondent concerning their willingness to engage in a resolution process.
- In making the determination about whether a resolution process should be initiated, the Director of Academics shall consider:
 - SKG’s responsibility to provide an environment free of sexual harassment and violence;
 - Whether a resolution process involving an Elder Advisor would be appropriate given the nature or impact of the conduct that is the subject of a complaint; and
 - Whether all parties are willing to engage constructively in a resolution process.

If the Director of Academics decides to proceed to address the complaint with a resolution process involving an Elder Advisor, the Director of Academics shall:

- Ensure that the resolution process is consistent with and meets the requirements of SKG’s policy HR 07 Conflict Resolution and its associated procedure (which set out a

process for addressing issues based on principles of restorative justice, led by an Anishinaabe elder), with any modifications required by the requirements of this policy.

- Ensure that the Elder Advisor appointed for the process of resolution has capacity to address the sensitive issues surrounding sexual harassment and violence, and trauma-informed procedures leading to fair resolution.

The recommendations of the Elder Advisor shall:

- Recommend one of the outcomes permitted by the procedure for HR 07, or one of the outcomes permitted by the section of this policy with the heading "Outcomes of an investigation"; and
- Present their recommendations and a brief summary of their reasons for the recommendations to each member of SKG community directly involved in the complaint.

The Elder Advisor shall not recommend an apology, commitments to changes in conduct, or an agreement for restorative steps unless the respondent and, if applicable, other affected members of SKG community involved in the process have agreed to abide by the recommendation(s).

9.1 Suspension or termination of a resolution process involving an Elder Advisor

The Director of Academics may terminate a resolution process and initiate an investigation at any time during the resolution process, if warranted by new information concerning the nature or impact of the alleged sexual harassment or violence.

The Elder Advisor or the Director of Academics may suspend or terminate a resolution process involving the Elder Advisor at any time if they determine that the complainant or respondent are a danger to themselves or another.

9.2 Outcomes of a resolution process involving an Elder Advisor

The Elder Advisor shall:

- Recommend one of the outcomes permitted by the procedure for HR 07, or one of the outcomes permitted by the section of this procedure with the heading "Outcomes of a resolution process or investigation"; and
- Present their recommendations and a brief summary of their reasons for the recommendations to each member of SKG community directly involved in the complaint.

9.3 Decision by the Director of Academics

At the conclusion of a resolution process, the Director of Academics shall consider the recommendations of the Elder Advisor and determine the outcome(s) of the resolution process.

In determining the appropriate consequences, the Director of Academics shall take into account:

- The findings and recommendations of the investigator; and
- The nature of the violation of the policy, its severity, and whether the individual has previously violated the policy.

The Elder Advisor's recommendation and the consequences determined by the Director of Academics may include more than one of the outcomes set out in the section of this procedure headed "Outcomes of a resolution process or investigation".

The Director of Academics may determine an outcome permitted by the procedure for HR 07, or one of the outcomes permitted by the section of this policy with the heading "Outcomes of an investigation" (and in accordance with the relevant conditions concerning those outcomes set out in that section).

If the complainant is not satisfied with the outcome of the resolution process, the complainant may initiate a complaint leading to an investigation.

10.0 Investigation

10.1 Initial steps

If a student chooses to make a complaint leading to an investigation, the student shall submit the complaint in writing to Director of Academics. The complaint must include adequate information describing the incident(s) in sufficient detail so that the respondent can understand the complaint.

On receipt of the complaint, the Director of Academics shall determine whether the issues noted in the complaint are within the jurisdiction of SKG to resolve and within the scope of this policy.

If the complaint is within the scope of this policy and the complainant has chosen to proceed with investigation, or if the Director of Academics has determined that an investigation is appropriate, the Director of Academics shall:

- Initiate investigation in a timely way;
- Make assessments related to risk to ensure the safety of the complainant while the complaint is being addressed, and determine any required interim measures;
- Provide a copy of the complaint to the respondent;
- Inform the complainant and respondent about:
 - The investigation process and possible outcomes, and
 - Their rights to representation and support; and
- Invite the respondent to provide a written response to the complaint.

The investigation may proceed regardless of whether the respondent has provided a written response to the complaint.

10.2 Where a resolution process involving an Elder Advisor preceded an investigation

Where the complainant and respondent have participated in a resolution process involving an Elder Advisor (prior to the investigation), no information shall be provided to the investigator other than a notation that the parties participated in the earlier resolution process.

Individuals involved in facilitating the resolution process shall not be a witness in any proceeding related to the subject matter of the complaint, unless required by law.

10.3 Investigation process

The Director of Academics shall appoint an individual external to SKG who has appropriate qualifications and experience to conduct an investigation and recommend a resolution.

- The investigator shall have had training in the sensitive issues surrounding sexual harassment and violence, in trauma-informed procedures leading to fair resolution, and in consequences or measures that may be appropriate to an incident of sexual harassment and violence and which act as deterrents to further occurrence of sexual harassment and violence.
- The investigator shall have no relationship to the complaint(s) or respondent and shall have no other conflict of interest.

The investigator shall receive a copy of the complaint, the response from the respondent (if the respondent has provided a written response), and any other relevant documents.

The investigator shall interview the complainant(s), respondent and any applicable witnesses or individuals with knowledge of the events being investigated. The respondent shall be given the opportunity to respond to the specific allegations raised by the complainant.

Where relevant, the investigator shall, to the extent possible, ensure that the process of investigation mitigates power imbalances or inequities among participants in the investigation.

Students involved in an investigation may be accompanied by another person during all investigation and decision-making processes.

- Other persons may include a colleague or support person of their choosing. A support person's role is not to act or speak on behalf of the student, but to be available for assistance and support. A support person may not act as a witness.
- Other persons may include a legal or other representative. Participation of legal or other representatives shall be at the student's expense.

A complainant shall not be asked irrelevant questions, including irrelevant questions relating to the student's sexual expression or past sexual history, during the investigation process by SKG employees or the investigator.

Interim measures may be put in place during the investigation process (see the subsection below addressing interim measures).

The investigator shall:

- Gather all relevant information from the appropriate parties (complainant, respondent, witnesses);
- Prepare and submit a written report summarizing the facts and findings;

- Conclude whether there is sufficient evidence to substantiate a finding of a violation of SKG's policy or law; and
- Recommend actions or sanctions relating to the issues in the complaint (having regard to the provisions of this procedure set out below concerning outcomes of an investigation).

As appropriate, the report may also make recommendations addressing general issues of SKG's learning environment.

10.4 Decision by Director of Academics

If the investigator finds that the policy has been violated, the Director of Academics shall determine the appropriate consequences for the respondent.

In determining the appropriate consequences, the Director of Academics shall take into account:

- The findings and recommendations of the investigator; and
- The nature of the violation of the policy, its severity, and whether the individual has previously violated the policy.

The investigator's recommendation and the consequences determined by the Director of Academics may include more than one of the outcomes set out in the section of this procedure headed "Outcomes of a resolution process or investigation".

The complaint and the respondent shall be informed in writing of the results of the investigation, including why the complaint was affirmed or denied.

While a complaint will be advised of the outcome of an investigation, they will not generally be advised of the details of any sanction and/or remedial action against the respondent.

10.5 Appeal

Either the complainant or the respondent in an investigation may appeal the Director of Academics' decision and/or sanctions only if the person seeking the appeal demonstrates that:

- There has been a fundamental procedural error in the making of the final decision and that such error has caused or will cause actual prejudice to the person seeking the appeal;
- The investigator has a conflict of interest; or
- There are new facts relevant to the final decision that were not available and could not have been provided to the investigator.

Students may appeal the Director of Academics' decision and/or sanctions using the process set out in SKG's policy ACAD 10 Student Appeals, and the appeal shall be conducted according to that policy, with the following adaptations of that policy:

- The appeal shall be considered by a committee of the Academic Advisory Circle in camera, and

- Prior to considering the appeal, the committee shall receive training in the sensitive issues surrounding sexual harassment and violence, in procedures leading to fair resolution, and in consequences or measures that may be appropriate to an incident of sexual harassment and violence and which act as deterrents to further occurrence of sexual harassment and violence.

The resolution of the student's appeal may:

- Confirm or reverse the Director of Academic's decision;
- Confirm a sanction (or interim measure, as applicable); or
- Assess a different sanction (or interim measure).

10.6 SKG's investigation and criminal or civil proceedings

If a complaint has also resulted in criminal or civil proceedings, the Director of Academics may choose to defer investigation and/or resolution of the complaint, or to continue SKG's investigation.

A complainant or respondent may request the Director of Academics in writing that the university postpone the investigation process until completion of the criminal or civil proceedings.

The Director of Academics shall provide a decision, with reasons, to a complainant's or respondent's request prior to the start of an investigation or further steps in the complaint resolution process.

During this time, SKG may institute and maintain interim measures as appropriate.

10.7 SKG may investigate without involvement of a survivor/complainant

The Director of Academics may decide to investigate an incidence or alleged incidence of sexual harassment or violence, despite a choice of a survivor/complainant not to request an investigation.

The Director of Academics may decide to investigate where SKG has information that suggests an incident or a pattern of behaviour that poses a clear and ongoing threat to the survivor/complainant or others, or to meet SKG's legal obligations.

A survivor/complainant has the right not to participate in any investigation; however, where SKG determines that an investigation is required, it may proceed to conduct an investigation without the survivor/complainant's participation.

10.8 Where a respondent leaves SKG

If the respondent is no longer enrolled at SKG before a complaint and investigation process has been completed, the process may be suspended.

If a respondent withdraws voluntarily from SKG before a complaint and investigation process has been completed, SKG may add a notation to the students' transcript.

If the respondent seeks to return and once again become a member of SKG's community, SKG may require that they complete a readmission process, and/or resume the formal complaint process, and/or implement sanctions resulting from the investigation at that point.

11.0 Outcomes of a resolution process or investigation

The investigator's recommendations and the outcomes of the investigation, and the recommended outcomes of a complaint resolution process involving an Elder Advisor, may include:

- Dismissal of the complaint if the complaint is not substantiated
- An apology
 - The investigator or Elder Advisor, as applicable, shall not recommend an apology unless the respondent and, if applicable, other affected members of SKG community involved in the process have agreed to abide by the recommendation.
- Counselling
- Steps to be taken in restoration, as agreed to by the respondent and complainant
 - The investigator or Elder Advisor, as applicable, shall not recommend an agreement for restorative steps unless the respondent and, if applicable, other affected members of SKG community involved in the process have agreed to abide by the recommendation(s).
- Educational programs or assignments
- A behavioural contract
 - A behavioural contract shall specify behavioural expectations, terms and conditions that are developed with and signed by the respondent; it shall clearly outline consequences of breach of the contract resulting in more serious sanctions including suspension or expulsion from SKG.
- Suspension
 - Removal of the respondent from SKG for a specified period of time after which the respondent is eligible to return. Conditions for readmission may be specified. Suspensions are noted on the student's transcript for the duration of the suspension.
- Expulsion
 - Permanent separation of the respondent from SKG. Expulsions are noted on the student's transcript. The decision to expel a student may only be made by SKG President and Vice-Chancellor.

The recommendations of the investigator or Elder Advisor, as applicable, and the consequences determined by the Director of Academics may include more than one of the outcomes listed above.

A decision to suspend or expel a student shall be taken only after consultation with the Academic Advisory Circle, or a committee of the Academic Advisory Circle as applicable.

12.0 Confidentiality and records

The integrity and efficacy of processes to address sexual harassment or violence require that all individuals involved in the process consider their actions and obligations under SKG policies and procedures, including privacy and confidentiality.

12.1 Limits to confidentiality

The complainant, respondent, and SKG employees who are privy to information or in possession of documentation pertaining to a disclosure or complaint shall hold such information in confidence.

SKG will respect a survivor's privacy and honour requests for confidentiality to the greatest extent possible.

There may be limits to confidentiality, however, including when:

- There is reasonable basis to believe someone is at imminent risk, risk of self-harm, or risk of harming another;
- Reporting is legally required by the Child and Family Services Act because an incident involves a child 16 years of age or younger;
- SKG employees require information for the purposes of implementing this policy (including providing academic considerations and interim measures and investigative and decision-making processes);
- A complaint process has been initiated and the respondent must be informed of the details of the complaint;
- An SKG employee is legally obligated to hand over case notes or other documentation in relation to a criminal or civil proceeding; or
- A member of SKG community becomes aware of workplace violence or the threat of violence or harassment which they must report immediately under SKG's policies concerning Safe and Healthy Workplace and Prevention of Harassment and Discrimination.

Instances of limits to confidentiality have been listed above; however, survivors should be aware that there are other instances where information may be shared among SKG employees in order to facilitate requests for academic considerations, support, and/or complaints.

12.2 Management of records

The Director of Academics shall ensure that documentation related to complaints, investigations, and resolution is collected and preserved.

Documentation to be preserved includes complaints, respondents' responses, witness interviews, notes of meetings, evidence gathered, any investigation report, and documentation on the outcome of the investigation or resolution process (as applicable).

This documentation shall be securely kept apart from other student records (with the exception of outcomes to be noted on students' academic records and transcripts).

13.0 Delegation of responsibilities

The Director of Academics may delegate any of the responsibilities assigned to the Director of Academics in this procedure to an employee or employees of SKG (except as follows).

The Director of Academics may **not** delegate:

- A decision about whether to initiate a resolution process involving an Elder Advisor, nor
- A decision concerning the outcome of an investigation.

Where a delegation of responsibilities is made, the Director of Academics shall ensure that students have information concerning whom to contact in SKG for the purposes of this policy.

14.0 Related Policies, Procedures & Documents

ACAD 07 Sexual Harassment and Violence Involving Students

HR 07 Conflict Resolution

SKG's policies and procedures may be found on its website.

15.0 Responsible Officer

Director of Academics

16.0 Version history

Board's approval pending recommendation of Academic Advisory Circle: December 2023

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SKG gratefully acknowledges that parts of this procedure are patterned on those of Wilfrid Laurier University, and the University of Guelph.