Student Conduct Procedure

SIMON FRASER UNIVERSITY
Policy and Procedures

Date August 8, 2018 (draft) Number S xx.xx (Procedure)
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Policy Authority: Vice-President, Academic and Provost
Parent Policy: S xx.xx Student Conduct Policy

1.0 PURPOSE
1.1 The purpose of this procedure is to establish the process that will be followed to resolve, informally or formally, a Complaint of Student Misconduct.

2.0 DEFINITIONS
2.1 Complainant
means any member of the University Community who makes a Complaint under the Policy. The University may also be a Complainant.

2.2 Complaint
means a Complaint regarding Student Conduct made to Campus Public Safety or the Student Conduct Office (SCO) by a member of the University Community or a visitor to the University, outlining the behaviour and its circumstances. In the case where the Complaint is from a visitor, the University reserves the right to take on the role of Complainant. The Complaint will set out the allegations made by a Complainant with respect to a Respondent or Respondents.

2.3 Formal Investigation
means a Formal Investigation process, whether conducted by the Student Conduct Office (SCO) or by an internal or external Investigator, to determine what occurred.

2.4 Informal Resolution
means the process whereby the University and Respondent intend to resolve the matter through a written Resolution Agreement.
2.5 **Investigator**

means the person responsible for conducting the Formal Investigation.

2.6 **Investigator’s Report**

means the written report from the Investigator setting out the process that they followed in the Formal Investigation and their findings of fact.

2.7 **Preliminary Review**

means a review of a Complaint of alleged Misconduct as described in Section 3.3.

2.8 **Procedural Fairness**

means that the University shall deal with all alleged Misconduct in a fair, unbiased, and timely manner by ensuring that an impartial and appropriately qualified person will be responsible for the management and/or investigation of Complaints of Misconduct, that Complainants and Respondents will be advised of the procedures and options for support, the Respondent will be informed about the particulars of the allegation and be given the opportunity to respond to the allegations. Procedural Fairness is described in Section 10 of the Policy.

2.9 **Resolution Agreement**

means a written agreement between the Respondent and the University whereby the Respondent agrees to terms and conditions set out in the Resolution Agreement to resolve the matter without recourse to Formal Investigation or discipline. This is considered an Informal Resolution; the agreement is confidential and held in the SCO.

2.10 **Respondent**

means a Student or Students against whom an allegation of Misconduct has been made pursuant to the Policy.

2.11 **Responsible Officer**

means the Vice-Provost and Associate Vice-President, Students and International (VPSI).

2.12 **Student**

includes any of the following: an undergraduate who is enrolled at the University for one (1) or more of the last three (3) terms and is eligible to continue in a program of study; a graduate student who is enrolled at the University in the current term and is eligible to continue; a graduate student who is on leave and eligible to enroll at the University when the approved leave ends; a visiting or exchange student who has been admitted to, or enrolled in, the University for the purposes of taking courses or to take part in an approved research term; a graduate student who is enrolled in courses at the University as a qualifying student; or a person enrolled at the University in a non-credit program or course.

2.13 **Student Conduct Office (SCO)**

means the University administrative office assigned the mandate to carry out the operational procedures under the Policy.
2.14 **University Community**

means all Students and employees of the University and all people who have a status at the University mandated by legislation or other University policies, including research assistants, post-doctoral fellows, members of Senate and the Board of Governors, volunteers, visiting and emeritus faculty, and visiting researchers.

3.0 **PROCEDURES**

3.1 **Role of the Student Conduct Office**

3.1.1 SCO activities include but are not limited to:

a. receiving Complaints of alleged Student Misconduct;

b. advising the Responsible Officer regarding interim measures;

c. undertaking a Preliminary Review and, when appropriate, resolving Complaints informally by means of a Resolution Agreement;

 d. investigating or engaging an internal or external Investigator to provide a report outlining findings of fact for the Responsible Officer to decide if there was a breach of the Policy;

 e. tracking open cases of alleged Student Misconduct;

 f. tracking cases that are resolved with conditions placed on the Respondent;

 g. acting as the office of record for all Student Misconduct records and files; and

 h. preparing the annual report to the Board of Governors regarding Student Misconduct cases.

3.2 **Making a Complaint of Student Misconduct to the University**

3.2.1 Complaints related to safety, security, and other urgent matters should be made to Campus Public Safety, who will respond to ensure the safety and security of members of the University Community as well as visitors, and safeguard the operation of the University and its property. Campus Public Safety will document the incident (i.e. the “Incident Report”), including their observations and any other relevant circumstances. This information will be forwarded to the SCO in a timely manner, normally within 24 hours.

3.2.2 Complaints related to Student Misconduct should be made to the SCO as soon as possible after the alleged Misconduct occurs and, normally, within four (4) months of the incident having occurred. In cases where no Complaint has been brought forward, the University may act as the Complainant within four (4) months of learning about the incident. The SCO will conduct a Preliminary Review of the Complaint.
3.2.3 The SCO may receive Complaints outside of the four-month limitation period but will undertake a Preliminary Review (see Section 3.3) to assess its ability to proceed, which may include considerations relating to the availability of witnesses and evidence.

3.2.4 The SCO may forward a Complaint to Campus Public Safety if there appears to be some threat to safety or security, or if it may be required to safeguard the operation of the University or to protect its property.

3.3 Preliminary Review

3.3.1 The SCO, based on available information, may reject a Complaint on the grounds that:
   a. the Complaint lies outside the scope and jurisdiction of the Policy;
   b. the Complaint is false, vexatious, trivial, or repetitious;
   c. the alleged Misconduct is minor and does not require corrective action; or
   d. an investigation is unlikely to find facts that would result in disciplinary action.

3.3.2 In such circumstances, the SCO will communicate its decision in writing to the Complainant with reasons for the decision.

3.3.3 The Complainant may ask the Responsible Officer to review this decision. The decision of the Responsible Officer is final.

3.3.4 The SCO may refer a Complaint of alleged Misconduct to the Registrar if it appears there are aspects of the Misconduct related to the Policy of Student Academic Integrity (S 10.01). If the SCO is unclear about jurisdiction under the Academic Integrity policy, they may confer with the Academic Integrity Coordinator or the Registrar.

3.3.5 The Complainant will not necessarily be identified to the Respondent during a Preliminary Review.

3.3.6 If the SCO determines through a Preliminary Review that a Complaint should proceed, the SCO will, whenever possible and appropriate, attempt to address the Respondent’s conduct using Informal Resolution (see Section 3.5) and a Resolution Agreement.

3.4 Interim Measures

3.4.1 The Responsible Officer may impose interim measures while an alleged incident of Misconduct is being resolved, investigated, or decided. Such measures will be precautionary and are expressly not disciplinary. Interim measures will be reassessed on a weekly basis and the parties involved will be notified of any changes to interim measures as soon as possible.
3.4.2 Interim measures may include, but are not limited to, the following:

a. the exclusion of the Respondent(s) from all or any part of the University campuses;

b. limiting proximity to, or contact with, specific individuals;

c. limiting participation in campus activities;

d. limiting the use of the University’s information and communications technology; or

e. requiring the Respondent(s) to meet regularly with designated University staff members.

3.4.3 The SCO may add a temporary notation to the Respondent’s file in the Student Information System, limiting the Student’s activity in the system without permission from the Responsible Officer.

3.4.4 If there are active or imminent acts of violence or threats of violence, the matter may be addressed under the University’s Policy on Response to Violence and Threatening Behaviour (GP 25).

3.4.5 If at any time there is concern with the Complainant’s or Respondent’s state of mental health, the SCO will recommend to the Complainant or Respondent that they participate in a mental health assessment to determine if the misconduct/disciplinary process should be suspended so the individual can seek medical or mental health assistance.

In such cases:

a. the SCO or Responsible Officer will determine the nature and qualifications of the professional to provide any assessment;

b. any assessment must be provided to the Responsible Officer before imposing disciplinary measures; and

c. the assessment must be shared with the Responsible Officer or the President of the University in cases involving suspension of the Respondent from the University.

3.5 Informal Resolution

3.5.1 If the SCO believes that Student Misconduct has occurred, the SCO may discuss the matter with the Respondent to determine possible steps the Respondent could take to correct or resolve the issue. The SCO may refer the Respondent to University and/or community-based support services.

3.5.2 A Respondent may be accompanied by a support person of their choice to the Informal Resolution meeting(s).

3.5.3 If the Complaint is not resolved by Informal Resolution, the matter may proceed
3.5.4 If the Respondent agrees to the resolution proposed by the SCO, the SCO will prepare a written Resolution Agreement outlining action to be taken by the Respondent, which the Respondent will sign.

3.5.5 The Resolution Agreement will be revoked if the Respondent breaches the agreement. If the Respondent fails to adhere with any aspect of the Resolution Agreement, the SCO will proceed to Formal Investigation under Section 3.6 of these procedures.

3.5.6 The Student Conduct Office will retain a copy of the signed Resolution Agreement and will monitor the Respondent’s adherence with the Resolution Agreement. Failure to adhere with a signed Resolution Agreement is prohibited under the Policy of Student Conduct (Schedule A, section 2.2.14). In the event the Respondent does not adhere with the conditions of the Resolution Agreement, the University may pursue both the original conduct addressed by the Resolution Agreement and the breach of the Resolution Agreement.

3.5.7 A Resolution Agreement may be entered into at any time prior to the Responsible Officer imposing Disciplinary Measures.

3.6 Formal Investigation

Purpose and Conduct of Investigation

3.6.1 When a Resolution Agreement is deemed not an appropriate course of action, was breached or could not be reached, the SCO may initiate a Formal Investigation. The purpose of the Formal Investigation is to obtain all information necessary in order for the Responsible Officer to decide if there was a breach of the Policy.

3.6.2 The SCO will notify the Complainant and Respondent in writing that a Formal Investigation is being initiated.

3.6.3 The SCO may either conduct the Formal Investigation or select an internal or external Investigator.

3.6.4 Within the following parameters, the Investigator has the discretion to conduct the Formal Investigation in the manner they deem most appropriate in the circumstances, but always in accordance with the principles of Procedural Fairness. In cases involving allegations of sexual violence and misconduct, the Investigator will also have training in trauma-informed investigations.

3.6.5 The Investigator will be provided with, and will adhere to, the terms of reference for the Formal Investigation, protocols for conducting the Formal Investigation, and a timeline for completing the Formal Investigation.

3.6.6 A Complainant or Respondent may be accompanied by a support person of their choice to the Formal Investigation meeting(s).

3.6.7 The Formal Investigation will normally be completed within four (4) weeks from assigning an Investigator to look into the matter.
3.6.8 If criminal, civil, or administrative proceedings are commenced regarding allegations of Misconduct, the University reserves the right to proceed with, defer, or suspend its own processes. Where practical, the University will discuss its intentions with the Complainant before making its decision.

3.6.9 The Investigator will interview whomever the Investigator determines might have relevant information and who is willing to participate in the process. The Investigator may request one or more interviews with the Complainant and Respondent. The Investigator will also consider any evidence they decide is relevant for the Investigation Report.

3.6.10 If the Complainant or Respondent refuses to cooperate with the Formal Investigation, the Investigator may proceed with the Formal Investigation without the Complainant or Respondent.

3.6.11 The Investigator will prepare the Investigator’s Report in a manner that facilitates compliance with the access to information and protection of privacy provisions of British Columbia’s Freedom of Information and Protection of Privacy Act. The SCO will provide the Investigator with the terms of reference, guidelines, notices, and report template they are to use.

Investigator’s Report

3.6.12 Upon conclusion of the Formal Investigation, the Investigator will submit the Investigator’s Report, which will include the findings of facts in the case, disputed and undisputed.

3.6.13 The Investigator will deliver the Investigator’s Report to the Responsible Officer.

Decision, Disciplinary Measures, and Notice of Right to Appeal

3.6.14 The Responsible Officer will:
   a. review the Investigator’s Report;
   b. provide the Respondent with a copy of the Investigator’s Report (redacted if necessary); and
   c. provide the Respondent with the opportunity to meet with the Responsible Officer to discuss the Investigator’s Report and to provide any submissions to the Responsible Officer regarding the Investigator’s Report or about consequences which may be imposed for any breach of the Policy. During the meeting, the Responsible Officer and the Respondent may choose to enter into a Resolution Agreement which would be administered by the Student Conduct Office as described in Section 3.5.6. Resolution Agreements do not constitute Disciplinary Measures.

3.6.15 The Responsible Officer will consider the Investigator’s Report, the discussion and submissions from the meeting with the Respondent, if any, and will decide whether, on a balance of probabilities, there was a breach of the Policy.

3.6.16 If the Responsible Officer decides there was no breach of the Policy, they will dismiss the Complaint and their decision is final.

3.6.17 If the Responsible Officer decides there was a breach of the Policy, they may do
any of the following:

a. impose one or more of the Disciplinary Measures set out in the Policy, except suspension; or

b. recommend that the President suspend the Respondent.

3.6.18 In deciding upon the appropriate University response to a finding of a breach of the Policy, consideration must be given to the Principles in Section 1.0 of the Policy and to the following factors:

a. the extent of the Misconduct;

b. the impact of the Misconduct on members of the University Community;

c. whether the inadvertent or the deliberate nature of the Misconduct;

d. whether the act in question is an isolated incident or part of repeated acts of Misconduct; and

e. any other mitigating or aggravating circumstances.

3.6.19 If the Responsible Officer recommends to the President that the Respondent be suspended, the Respondent will be provided with an opportunity to meet with, or make a written submission to, the President.

3.6.20 The Responsible Officer will communicate in writing to the Respondent, normally within four weeks of receiving the Investigator’s Report:

a. their decision, with reasons, as to whether there was a breach of the Policy;

b. the Disciplinary Measures imposed, if any; and

c. notice that the Respondent has the right to appeal the decision and the Disciplinary Measures, where to direct the appeal, and the time limit and process for bringing an appeal.

3.6.21 The Responsible Officer will, where appropriate, provide the Registrar with a copy of the decision, including any Disciplinary Measures.

3.6.22 The Registrar is responsible for taking any relevant actions in accordance with the decision, including making a notation on a Student’s transcript and placing an academic hold on a Student’s academic status for the duration of a suspension.

3.6.23 The Student Conduct Office will determine if any members of the University Community or academic or administrative departments need to be notified of any relevant actions related to the decision.

3.6.24 Upon request, the Responsible Officer will provide the Complainant with a written decision outlining the outcome of their Complaint.
3.7 **Appeals**

3.7.1 A Respondent may appeal the decision made by the Responsible Officer and any Disciplinary Measures imposed by the Responsible Officer or the President to the Student Misconduct Appeal Committee of Simon Fraser University’s Board of Governors.

3.7.2 Appeals can be submitted on one or more of the following grounds:

a. that a procedural error occurred of sufficient magnitude that it may reasonably be said to have affected the fairness of the process or altered the outcome of the case against the Respondent;

b. that a factual error occurred of sufficient magnitude that it may reasonably be said to have altered the outcome of the case against the Respondent;

c. that the penalty imposed on the Respondent is excessive considering all the circumstances of the case; or

d. that new material evidence is available which, despite the exercise of due diligence by the Respondent wishing to appeal, could not have been made available to the decision-maker at the time of the decision giving rise to the appeal.

3.7.3 The procedure for an appeal to the Student Misconduct Appeal Committee is [specific details to be added]

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4.0 **RELATED LEGAL, POLICY AUTHORITIES, AND AGREEMENTS**

4.1 The legal and other University policy authorities that may bear on the administration of this Procedure, and may be consulted as needed, include, but are not limited to:

4.1.1 *University Act*;

4.1.2 *Sexual Violence and Misconduct Policy Act*;

4.1.3 *Human Rights Code*;

4.1.4 *Freedom of Information and Protection of Privacy Act*;

4.1.5 Student Academic Integrity Policy (S 10.01);

4.1.6 Sexual Violence and Misconduct Prevention, Education, and Support Policy (GP 44);

4.1.7 Residence Handbook and Residence License Agreement;

4.1.8 Human Rights (GP 18);

4.1.9 Response to Violence and Threatening Behaviour (GP 25);

4.1.10 Fair Use of Information and Communications Technology (GP 24); and
4.1.11 The University’s Information Policy Series, which includes:
   a. Access to Information and Protection of Privacy (I 10.04);
   b. Collection of Personal Information (I 10.05); and
   c. Confidentiality Policy (I 10.10).

4.1.12 Student Misconduct Appeal Committee mandate.