

LEARNER CODE OF CONDUCT PROCEDURE

Parent Policy

Learner Code of Conduct Policy and Sexual Violence Policy

Purpose

This document provides the detailed procedure to put the Learner Code of Conduct Policy, the Sexual Violence Policy and the Sexual Violence Procedure for learners into practice.

Scope

This Procedure applies to the conduct of Bow Valley College learners regardless of location or modality, which is determined to have a real and substantial link to the College.

Compliance

Members of the College community must know, understand, and comply with College policies, procedures, and associated materials that relate to their position, employment, enrolment or other relationship with the College.

Non-compliance may create risk for the College and will be addressed accordingly through applicable College policies, procedures and contracts.

Procedure

1. General

- 1.1 Where there is a Learner Code of Conduct Policy or Procedure contravention, employees and learners are encouraged to take steps to intervene, while at the same time, ensuring their own safety. If conduct constitutes substantial risk to any person's safety, employees and learners must notify security or the nearest supervisor, at the earliest possible time and must make a formal report under section 4.
- 1.2 It is expected that interventions will comply with the Learner Code of Conduct Policy and Procedure including appropriate College response, documentation and follow-up.
- 1.3 Any learner or employee with a Learner Code of Conduct concern who is unsure of the steps to take to address such concern, is encouraged to seek advice from Learner Success Services.
- 1.4 Judgment and discretion should be used by learners and employees regarding the need to request a formal response under section 4 versus addressing the conduct with an informal response under section 3.
- 1.5 Allegations of inappropriate conduct on the part of a learner that fall within the parameters of other College policies or procedures may also be referred to the responsible officers of such policies or procedures. If a learner is found to be in violation of other Bow Valley

College policies or procedures, the learner may be subject to, and sanctioned by, any or all applicable policies or procedures.

- 1.6 In the event that a conduct allegation involves a learner and an employee, the Human Resources designate and the responsible officer will consult and determine the appropriate jurisdiction and procedure. Escalation to the executive level may be required depending on the nature, severity, or sensitivity of the situation.
- 1.7 Where criminal or civil proceedings are commenced in respect to conduct under the Learner Code of Conduct policy or procedure, the College reserves the right to conduct its own independent investigation into such conduct and make its own findings in accordance with College policy and procedure.
- 1.8 Where there is an ongoing criminal investigation with respect to conduct under the Learner Code of Conduct Policy or Procedure, the College will cooperate with law enforcement authorities in conducting their investigations, to the extent permitted by law, but need not suspend or cease its internal investigation pending the criminal investigation and prosecution process.

2. Education

- 2.1 The College will support and engage in ongoing education initiatives to raise awareness of and compliance with the Policy and Procedure.
- 2.2 The College will support and engage in ongoing initiatives to promote learner mental and physical wellness, will undertake education initiatives to raise awareness of the interconnectedness between learners' overall wellness and conduct, and will provide resources and interventions to mitigate the potential for misconduct.

3. Informal and Immediate Responses

- 3.1 An informal response may be appropriate when misconduct:
 - 3.1.1 is minor;
 - 3.1.2 is not a risk to safety;
 - 3.1.3 has not persisted following previous informal responses; and
 - 3.1.4 does not give rise to other concerning conduct.
- 3.2 Learners or employees may contact Learner Success Services to consult and receive support on informal responses to address conflict or concerning behaviours under the Policy. Learner Success Services may outline options for informal response including, but not limited to:
 - 3.2.1 strategies for complainants to address respondents directly; and
 - 3.2.2 strategies for employees to support learners in addressing conflict or concerning behaviours that occur between learners.

- 3.3 A verbal warning or request that the conduct stop may be used as an informal or immediate response.
- 3.4 As part of an informal response, employees are encouraged to identify and discuss supports with the learners involved as a way of being proactive in preventing future breaches of policies and procedures.
- 3.5 In instances where a learner's conduct poses an imminent risk to safety or impedes another learner's fitness to learn/participate, the immediate response by an employee may include dismissing a learner from a class or from a facility for a period of up to one working day. In such instances, a formal report under section 4 is required and further interim measures under section 4 may be imposed.
- 3.6 Taking and maintaining an informal written record of isolated incidents is recommended to demonstrate an observable pattern of conduct when making a request for a formal response.

4. Formal Responses

4.1 Reporting

- 4.1.1 Members of the College community can request a formal response by the College by submitting a formal report to Learner Success Services. A formal report should include, where possible,
 - 4.1.1.1 the nature and particulars of the allegation, including the name of the respondent, if known;
 - 4.1.1.2 name of the complainant and contact information, unless the complainant wishes to remain anonymous;
 - 4.1.1.3 names of potential witnesses; and
 - 4.1.1.4 relevant evidence and supporting documentation.
- 4.1.2 A formal response is appropriate when the alleged misconduct
 - 4.1.2.1 is significant;
 - 4.1.2.2 poses a risk to safety;
 - 4.1.2.3 persists following previous informal responses; or
 - 4.1.2.4 gives rise to other concerning conduct.
- 4.1.3 Formal response, resulting from the submission of a formal report, shall be dealt with expeditiously (considering the nature of the alleged conduct) in accordance with the outlined procedures.

- 4.1.4 Formal reports may be submitted anonymously, but complainants should be aware that this may limit the ability of the College to investigate, review and resolve the formal report.
- 4.1.5 Upon receipt, a Learner Success Services designate will evaluate the formal report to determine if:
 - 4.1.5.1 the allegation should be addressed with an informal response under section 3 or if a formal response will proceed under this section 4, in which case Learner Success Services will designate an investigator, and
 - 4.1.5.2 interim measures under section 4.2.3 are warranted.
- 4.1.6 The Responsible Officer may designate one or more persons to act as: decision maker; investigator; coordinator; or one or more of such roles.
- 4.1.7 A Learner Success Services designate (the “coordinator”) will manage and implement interim measures and formal response.

4.2 Interim Measures

- 4.2.1 Respondents, complainants and other people may be afforded or subject to one or more interim measures, as determined by the decision maker, while the allegation is being investigated or decided as reasonably necessary to maintain the health and safety of the College community and learners’ fitness to learn/participate.
- 4.2.2 Any person may request interim measures prior to a decision.
- 4.2.3 Interim measures may include, but are not limited to:
 - 4.2.3.1 *Change in class schedule or delivery modality;*
 - 4.2.3.2 *Amended Access to Services:* A change in access to auxiliary services, apart from classroom/instructional activities, including but not limited to, food services, registrarial services, Learner Success Services, library services, parking services and bookstore services;
 - 4.2.3.3 *No Contact:* A learner may be required to have no contact with specified persons;
 - 4.2.3.4 *Amended Access to Campus Locations:* A respondent may be restricted from any or all campus location(s).
- 4.2.4 Interim measures will be clearly outlined in writing to relevant members of the College community. Relevant members of the College community must comply with interim measures.

- 4.2.5 Learners will be provided with information and referrals to support resources if appropriate.

4.3 Investigation

- 4.3.1 The investigator will provide reasonable information about the investigation process to all parties involved in an investigation, including to complainants and respondents.
- 4.3.2 The investigator will give the respondent reasonable notice of the investigation, reasonable details of the allegations and relevant evidence, including supporting documentation, against the respondent, an opportunity to respond to the allegations and evidence and an opportunity to make submissions as to the factors to be considered under section 4.5.2.
- 4.3.3 The investigator:
- 4.3.3.1 will reasonably gather and review relevant information;
 - 4.3.3.2 may conduct interviews with complainants, employees, learners, and other relevant persons; and
 - 4.3.3.3 may consult with other employees who are knowledgeable in a specific area of the College or in a topic related to the alleged breach to provide contextual information.
- 4.3.4 The investigator may make recommendations to the decision maker as to appropriate interim measures or the appointment of a committee.
- 4.3.5 Upon completion of the investigation, the investigator will prepare an investigator's report detailing the information obtained, the source of such information, a decision as to whether the alleged breach or breaches were established on a balance of probabilities including reasons for such decision, the severity of the breach, aggravating or mitigating circumstances, the respondent's acknowledgements and commitments with respect to the breach if applicable, and, in the case where the investigator is not the responsible officer, a non-binding recommendation for an informal response under section 3, a warning or sanction under section 5, or neither.
- 4.3.6 A respondent who withdraws from studies at the College or cancels their application to the College or who refuses to participate in the investigation, will continue to be subject to the process of investigation, decision and sanction(s).
- 4.3.7 It is prohibited to make a formal report without reasonable justification, vexatiously or maliciously.

- 4.3.8 If it appears to the investigator that the formal report is made without reasonable justification or is vexatious or malicious, the investigator will report that to the coordinator, who may coordinate disciplinary action where such reports are shown to be made malicious, fraudulent or vexatious.
- 4.3.9 It is prohibited to threaten or retaliate against a complainant or any other individual for:
- 4.3.9.1 complying with the obligations under any policy or procedure;
 - 4.3.9.2 pursuing rights under any policy or procedure, including but not limited to, making, intending to make or supporting a disclosure or formal report, or pursuing other legal remedies, including through the *Alberta Human Rights Act*, the *Criminal Code of Canada* or civil litigation;
 - 4.3.9.3 participating or cooperating in an investigation under any policy or procedure; or
 - 4.3.9.4 associating with someone who has done one of the above.

4.4 Decision Making

- 4.4.1 The decision maker or the committee (as referenced in section 4.4.2 below), will review the investigator's report and may:
- 4.4.1.1 rely on the evidence in the investigator's report;
 - 4.4.1.2 conduct their/its own investigation, in which case the provisions of section 4.3 shall apply to such investigation, with appropriate modifications; or
 - 4.4.1.3 both,
- and may:
- 4.4.1.4 rely on the investigator's decision that there was or was not a breach established on a balance of probabilities; or
 - 4.4.1.5 substitute their/its own decision if the investigator's decision is not supported by the evidence.
 - 4.4.1.6 provide an opportunity for the respondent to make a final direct representation.
- 4.4.2 The responsible officer may refer the matter to a committee for any reason, including:
- 4.4.2.1 the allegation is of a severe breach of policy or procedure;

4.4.2.2 the allegation may potentially have a severe effect on the respondent, including the possibility of a severe sanction under College policies or procedures; or

4.4.2.3 the decision is likely to have a significant policy-making effect.

A committee will be selected by the responsible officer or delegate and must include the responsible officer or delegate as Chair (or other person designated by the accountable officer in the event that the report involves the responsible officer), a learner, and two other Director/Manager/Dean/Associate Dean level personnel who are not involved with the alleged breach. If the formal report involves a respondent who is in the process of applying to a College program or course and has not yet been registered, the Director, Enrolment Services and Registrar will serve as one of the committee members. The responsible officer or delegate will provide the committee applicable conduct reports, the investigator's report (if any), supporting documentation, and any other relevant and material information or records to the committee.

4.5 Investigative Outcomes

4.5.1 **Insufficient Evidence.** If a breach of the Policy or Procedure is not established on a balance of probabilities, the formal report will be dismissed, the respondent will not be subject to warnings or sanctions, and any interim measures under section 4 will be immediately terminated. Reasonable accommodations for respondents, complainants and other persons may be considered by the College upon request.

4.5.2 **Sufficient Evidence.** If a breach of the Policy or Procedure is established on a balance of probabilities, the decision maker or committee, with consideration to all relevant circumstances, including any investigator's non-binding recommendations, and considering:

4.5.2.1 the safety of the College community;

4.5.2.2 any identified support needs of complainants and respondents;

4.5.2.3 restorative justice principles, where appropriate;

4.5.2.4 interim measures which have been applied to the learner prior to responses;

4.5.2.5 the severity of the breach;

4.5.2.6 aggravating or mitigating circumstances; and

4.5.2.7 the respondent's acknowledgement and commitments with respect to the breach,

shall impose one or more of the following:

- 4.5.2.8 an informal response under section 3 to be administered by a Learner Success Services delegate;
 - 4.5.2.9 an appropriate warning under section 4.5.3;
 - 4.5.2.10 an appropriate sanction or sanctions under section 4.5.3, not including a ban;
 - 4.5.2.11 a recommendation to the responsible officer to ban the respondent from any or all College campuses or locations. In the event the responsible officer refuses the recommendation, the matter shall be referred-back to determine a substitute sanction or sanctions;
 - 4.5.2.12 alternative measures under section 4.5.3; or
 - 4.5.2.13 any two or more of the above.
- 4.5.3 Warnings or Sanctions.
- 4.5.3.1 **Warnings.** A written warning regarding compliance with the applicable Policy and Procedure including a statement outlining the conduct that is in violation of the Policy, a demand that the conduct cease and a warning that future violations may result in more serious consequences.
 - 4.5.3.2 **Sanctions.** Sanctions may include, one or more of those listed below:
 - 4.5.3.2.1 **Suspension:** Suspension for a specified period of time from a course or courses, a program, a School, or the College, in which case the respondent will be withdrawn or denied admission/registration, as appropriate.
 - 4.5.3.2.2 **Expulsion:** Permanent expulsion from a specific program, a School, or the College with no right to apply for readmission in which case the respondent will be withdrawn and/or denied admission/registration as appropriate.
 - 4.5.3.2.3 **Service Refusal:** A temporary restriction of or denial of access to auxiliary services, apart from classroom/instructional activities, including but not limited to food services, registrarial services, Learner Success Services, library services, parking services, and bookstore services.
 - 4.5.3.2.4 **Payment of fine/restitution:** A financial penalty or monetary reimbursement for loss, damage or destruction, to be paid by a specified date. If the penalty is not paid on time, a suspension or service refusal may be imposed, pending payment in full.

4.5.3.2.5 *Application Refusal:* In the case where the respondent is an applicant, their active application may be closed and they may be denied the opportunity to apply or register for a specified period of time, or permanently, from courses, programs, Schools, or the College.

4.5.3.2.6 *Campus Restriction/Ban:* When a respondent has demonstrated conduct that is seen to be a safety risk, the respondent may be restricted or banned from any or all College campuses or locations. Respondents may only be restricted or banned from a campus or location by the responsible officer or higher.

4.5.3.3 *Alternative Measures.*

4.5.3.3.1 With the consent of the decision maker or committee, as the case may be; the respondent; and any person directly and substantially affected by a breach or breaches, a sanction may consist of or include alternative measures.

4.5.3.3.2 Any of the parties mentioned above may withdraw consent at any time.

4.5.3.3.3 Alternative measures may incorporate principles of restorative justice including a written or oral apology; community service; an educational assignment such as a reflective essay, or participation in a College program, a workshop, or webinar. Alternative measures may also include Indigenous cultural elements including Elders, knowledge keepers, ceremony or a healing circle.

4.5.3.3.4 The decision maker, committee or respondent may propose alternative measures including details of the proposed process, timing and parties involved.

4.5.3.3.5 Alternative measures are complete if, following the process, the decision maker or committee, as the case may be, determines the process was successful; and all parties involved communicate to the decision maker or committee, as the case may be, that the process was successful.

4.5.3.3.6 If any party withdraws consent or if alternative measures are not completed, the matter shall be referred-back to the decision maker or committee to determine a substitute sanction or sanctions.

4.6 **Communication**

4.6.1 The respondent shall be provided written notice of the decision as to whether a breach occurred; any informal response, warning or sanction which is

imposed; a statement indicating that decisions may be appealed through the Learner Appeal Policy, subject to section 5, and a copy of that policy must also be included in the notice.

- 4.6.2 Subject to section 4.6.1, only the information required for the designated personnel to perform sanctions will be communicated, including to:
 - 4.6.2.1 the relevant Academic Dean/Associate Dean;
 - 4.6.2.2 the Director of Enrolment Services and Registrar for relevant withdrawals and suspension of registration privileges and annotation on the permanent academic record in accordance with applicable policy;
 - 4.6.2.3 College security in the case of a, restriction or ban and, where necessary to facilitate security system changes, a withdrawal or suspension; and
 - 4.6.2.4 the Students' Association of Bow Valley College in the case of a suspension, withdrawal or restriction that directly impacts the operations of the Students Association.
- 4.6.3 The complainant(s) will be provided with information about the investigation process, if applicable, including the name of the investigator assigned, a summary of the allegations to be investigated, a summary of the steps taken by the investigator, and the dates the investigation started and ended; and
- 4.6.4 With respect to only the complainant(s) under the Sexual Violence Policy; or the Learner Code of Conduct Policy, in cases where the complainant was directly and substantially affected by the alleged conduct the complaint will be provided:
 - 4.6.4.1 information about whether the investigator determined that the claim had sufficient or insufficient evidence; and
 - 4.6.4.2 a description of any restriction, ban or "no contact" order or other final or interim corrective measure that directly affects the complainant.
- 4.6.5 Formal communications of decision will be monitored by the responsible officer/delegate to review clarity, consistency and adherence to Policy and Procedure.

4.7 Documentation

- 4.7.1 All formal reports, supporting documentation and written communications will be maintained in a secure learner conduct record separate from the permanent academic record.
- 4.7.2 While detailed documentation and/or reports will be maintained separately, the permanent academic record will have a notation that indicates the existence of such a learner conduct record.

- 4.7.3 Respondents who have been suspended, withdrawn, banned or had application/registration privileges refused under 4.5.3 for disciplinary reasons will have this documented on their academic transcript or other academic records and the relevant learner conduct record will be added to the permanent academic record.
- 4.7.4 Reports and documentation will be kept confidential to the degree permitted by law and in accordance with College policies.

5. Appeals

- 5.1 Learners may appeal decisions related to the Policy through the Learner Appeal Policy.

Definitions

Balance of probabilities: the standard applied wherein the evidence as a whole shows that the allegation is more likely to be true than not.

Board of Governors: Members of the governing body of the College who have been appointed by an Order in Council of the Province of Alberta or by Ministerial Order by the Minister responsible for Post-Secondary Education, in accordance with the Alberta Post-Secondary Learning Act.

Complainant: Any person who has reason to believe a learner has breached the Policy and Procedure, and who initiates any response under this Procedure.

College community: all learners, employees, elders, independent contractors, suppliers, volunteers, visitors and members of the Board of Governors of the College while they are either on or using College property, participating in College programs and activities or involved in the business or affairs of the College, on or off College premises.

Fit to learn/participate: Ability to safely and appropriately engage in College sanctioned activities.

Formal report: a written or verbal statement regarding an allegation of a breach of the Learner Code of Conduct Policy or associated Procedure or Sexual Violence Policy or associated Procedure by a complainant seeking recourse in accordance with the relevant policy or procedure.

Interim measures: Non-disciplinary conditions that the College may reasonably impose when a learner is alleged to have breached the Learner Code of Conduct or Sexual Violence Policy/Procedure.

Learner: A person who is currently registered as a learner at the College whether or not for credit. For the purposes of this document, “learner” shall be used synonymously for applicants and, learners, unless otherwise noted.

Learner conduct record: Learner Code of Conduct Policy and Procedure reports and other documentation including emails outlining violations of the Policy that are held, securely, by Learner Success Services, and separate from the permanent academic record. Only in cases where a sanction involves suspension, expulsion, or campus banning may the two records be joined. In all other cases, academic and disciplinary records are held separately.

Permanent academic record: The perpetual record of a learner's academic program and performance at the College. Such records are the source of transcripts generated at a learner's request.

Respondent: The person alleged to have breached the Learner Code of Conduct Policy or Procedure or Sexual Violence Policy or Procedure.

Safety: Circumstances in which all persons are free from violence and otherwise not likely to suffer physical, emotional or psychological trauma or injury.

Sanctions: The penalties that act to ensure compliance or conformity with the Learner Code of Conduct Policy or Procedure or Sexual Violence Policy or Procedure where there is sufficient evidence to support an allegation.

Violence: Attempted, threatened or actual conduct of a person that is intended to cause, causes, or is likely to cause, physical, emotional or physiological trauma or injury.

DATA SHEET

Responsible Officer

Director responsible for student support services

Relevant Dates

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| Approved | May 28, 2014 |
| Effective | May 28, 2014 |
| Next Review | May, 2025 |
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| Modification History | August, 2017 – admin. Changes November 24, 2020 Update approved at Executive |

Related Policy

Learner Code of Conduct Policy #500-1-1

Associated Policies, Procedures, and Guidelines

- Code of Conduct Policy of Bow Valley College #200-1-13
- Code of Conduct Protected Disclosure Procedure #200-1-13
- Respectful Workplace Policy #200-1-11
- Respectful Workplace Procedure #200-1-11
- Learner Appeals Policy #500-1-12
- Learner Records & Information - Collection, Access & Waivers #500-1-16

Related Legislation

Including but not limited to:

- Alberta Human Rights Act*
- Criminal Code of Canada*
- Occupational Health and Safety Act*
- Freedom of Information and Privacy Protection Act*