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| Policy Title: | Harassment and Discrimination Prevention and Response Policy |
| Policy ID: | #3-311 |
| Manual Classification: | Section 3 – Human Resources |
| Approved by: | Board of Governors |
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| Effective Date: | June 1, 2021 |
| Next Policy Review Date: | June 2024 |
| Contacts for Policy Interpretation: | Vice President, Organizational Effectiveness and Human Resources Sr. Consultant, Organizational Development Director, Employee and Labour Relations |

1.0 - Policy Statement

Harassment and discrimination are unacceptable and will not be tolerated. Fleming College is committed to preventing harassment and discrimination and creating a safe space for everyone in our College community. The College is expected to be a safe and positive space where members of the College community feel able to work, learn and express themselves in an environment free from harassment and discrimination.

Programs and initiatives designed to benefit equity-seeking groups as identified by the College within the Equity, Diversity, and Inclusion framework, within the College community do not constitute discrimination.

Consistent with the College's Freedom of Speech policy, the College upholds a fundamental commitment to freedom of expression and association for all community members. In exercising those freedoms, all community members are required to respect the rights and freedoms of others, including the right to freedom from harassment and discrimination.

2.0 - Purpose

This Policy, along with the associated Operating Procedure (#OP 3-311), set the College's policy and response procedure with respect to harassment and discrimination. The objectives of the two policy instruments are:

- to enable proactive education and communication to prevent harassment and/or discrimination;
- to ensure that reports of harassment or discrimination taken seriously and that those who report harassment and/or discrimination have their rights respected and are

- provided with support;
- that the College has an investigation process that protects the rights of individuals;
- that the College holds individuals who have committed an act of harassment and/or discrimination accountable; and
- that the College is in compliance with the *Ontario Human Rights Code* (“the Code”), the *Occupational Health and Safety Act* (“OHSA”), collective agreement provisions, and any other relevant legislation, policies, and procedures.

3.0 - Definitions and Acronyms

All definitions in this Policy include, but are not limited to, the definitions articulated in the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.

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| Accommodation | A special arrangement that the College provides to Community Members who have needs related to a <i>Human Rights Code</i> -ground (see “Protected Grounds”) to ensure that they have the same opportunities and benefits as their peers. |
| Duty to Accommodate | The College has a legal duty to accommodate Code-identified needs up to the point of undue hardship. The process of finding an appropriate accommodation is a shared one (between the College and the person seeking accommodation) that is grounded in respect for the individual’s dignity, recognition of unique needs, and maximization of the individual’s integration and full participation. |
| College Community | Any person who studies, teaches, conducts research at, or works at the College is a member of the College community (“Community Member”). This includes employees, contractors, members of the Board of Governors, volunteers, visitors, and any other person acting on behalf of or at the request of the College. |
| College-Initiated Complaint | In some situations, a College Member may raise concerns about harassment and/or discrimination informally, for example, during a conversation with Human Resources, a Student Rights and Responsibilities employee, or a manager. Where such concerns are raised, it may trigger the College’s legal obligations to initiate a response under this Policy even where a formal Complaint is not submitted. This is called a “College-Initiated Complaint.” |
| Complainant | An individual who files a Complaint alleging a violation of this Policy. |
| Complaint | A Complaint is a formal verbal or written statement wherein the Complainant alleges that they have experienced, witnessed or are otherwise aware of harassment and/or discrimination (including failure to accommodate (above)) where the behaviour in question would, if substantiated, be in violation of this Policy. |

Disability

This term covers a broad range of conditions. “Disability” includes present and past conditions as well as those which are anticipated and perceived. A “disability” can be “invisible”; it may be temporary, permanent or sporadic. The *Human Rights Code* defines “disability” as follows:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”).

Discrimination

An intentional or unintentional action, decision, or practice that results in an adverse impact on an individual or group based, in whole or in part, on a characteristic protected by the Ontario *Human Rights Code* (i.e. “Protected Ground”).

Discrimination can also result when people make stereotypical assumptions about a person based on a “Protected Ground” instead of individually assessing them based on their unique merits, capacities and circumstances.

Discrimination can take on many different forms.

Discrimination can involve actions, decisions or practices that are discriminatory on their face (“**direct discrimination**”). For example:

- A registrar who is reviewing applications is told to screen out applicants who have Asian-sounding names. This is direct discrimination based on race and related grounds.
- A department adopts a policy of not hiring women who plan to start families. This is direct discrimination based on sex and family status.

Discrimination can also involve actions, decision or practices that appear neutral, but disadvantage certain groups of people based on one or more *Code*-protected grounds (“**constructive discrimination**”). For example:

- A faculty member schedules a major exam for Friday noon. This scheduling may adversely impact Muslim students whose faith requires to attend a congregational prayer at this time. This is “constructive discrimination” based on “creed” (i.e. religion).
- The dorms on campus have a strict “no pets allowed” policy. This policy may adversely impact a student who is blind and who requires a guide dog to assist them in their daily life. This is “constructive discrimination” based on “disability.”

Where an otherwise neutral actions, decision or practice has the potential to adversely impact someone with a *Code*-related need, this need should be accommodated to the point of undue hardship. For example, the exam in the example above should be rescheduled to a different day or time. In the latter example, an exception to the policy should be made for students who require service animals for disability-related needs.

Discrimination can also occur when patterns of behaviour, policies or practices become part of the social or administrative structure of an organization and create a position of relative disadvantage for people identified by Protected Grounds (“**systemic discrimination**”). For example:

- A particular department prefers to hire new staff through word-of-mouth rather than formal postings. The department is largely comprised of White males whose professional circles and connections tend to also be White male-dominant. This means that new hires tend to be from this demographic group as well.
- Because of deeply but unconsciously-held stereotypes, the career counseling office tends to steer Black students into non-academic programs.

Discrimination may take obvious forms, or it may happen in very subtle ways. A *Code*-protected ground needs only to be a factor in an action, decision or practice for it to be discriminatory – it does not have to be the main or only factor. For example:

A security guards stops a Black student in the campus store whom he suspects has stolen a textbook. The student’s race need only be a factor in the security guard’s decision to stop them – it does not need to be the only factor – for it to be considered discrimination.

Harassment and failure to accommodate a *Code*-related need are also types of “discrimination” under this Policy and the Ontario *Human Rights Code*.

Harassment

A course of vexatious (i.e. offensive, embarrassing, humiliating or demeaning) comment or conduct that is known, or ought reasonably to be known, to be unwelcome. As the term “course” implies, harassment typically involves as series of incidents but, in some

cases, a single incident that is serious enough may be found to constitute harassment under this Policy.

Behaviour can constitute harassment under this Policy, the *Ontario Human Rights Code* and the *Occupational Health and Safety Act* even if a person does not explicitly object to it or, in some cases, appears to be going along with it.

Harassment can be related to a particular *Human Rights Code*-protected ground (e.g. racial harassment, age-based harassment, etc.) or not. Where the harassment is unrelated to a *Code* identity it is sometimes called “workplace harassment” (employment context only), “psychological harassment” or “personal harassment.” Examples of harassment include:

- Making remarks, jokes or innuendos that demean, ridicule, intimidate, or offend by spoken word or email, or gestures.
- Bullying behaviours.
- Displaying or circulating offensive pictures or materials in print or electronic form.
- Repeated offensive or intimidating phone calls or e-mails.
- Spreading malicious rumours, gossip, or innuendo.
- Excluding or isolating someone socially.
- Intruding on a person's privacy by pestering, spying or stalking.
- Yelling or using profanity.
- Criticizing a person persistently or constantly.
- Belittling a person's opinions.
- Tampering with a person's personal belongings or work equipment.

Harassment is not a reasonable action taken by an employer, supervisor or faculty member relating to the instruction, management and direction of employees or students.

Sexual Harassment

“Sexual Harassment” is harassment that is related to sex, sexual orientation, gender identity and/or gender expression (sometimes called “gender-based harassment.”) Sexual harassment also includes 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 person being solicited and the person making the solicitation knows or ought reasonably to know that the solicitation or advance is unwelcome.

Examples include:

- Gender-related comments about a person’s physical characteristics, mannerisms or conforming to sex-role stereotypes
- Paternalism based on gender which a person feels undermines their self-respect or position of responsibility
- Unwelcome physical contact
- Suggestive or offensive remarks or innuendoes about members of a specific gender
- Propositions of physical intimacy
- Gender-related verbal abuse, threats, or taunting
- Leering or inappropriate staring
- Bragging about sexual prowess or questions or discussions about sexual activities
- Offensive jokes or comments of a sexual nature
- Rough and vulgar humour or language related to gender
- Display of sexually offensive pictures, graffiti or other materials including through electronic means
- Demands for hugs, dates or sexual favours
- Invading personal space
- Verbally abusing, threatening or taunting someone based on gender or sexual orientation

In some cases, there may be overlap between “Sexual Harassment” and “Sexual Violence.” For more information, please consult the “Sexual Violence Policy” and Sexual Violence Support Services at <https://department.flemingcollege.ca/sexual-assault/>

Poisoned Environment

A hostile, threatening or intimidating environment due to harassing and/or discriminatory comments or conduct that tend to demean a person or group, even if not directed at a specific individual. In some cases, a poisoned environment may result from a serious single incident, comment or action.

Protected Grounds

The Ontario *Human Rights Code* (and this Policy) prohibits discrimination and harassment based on the following personal characteristics (i.e. grounds), or any combination thereof:

- Age
- Creed (religion)
- Sex (including pregnancy and breastfeeding)
- Sexual orientation
- Gender identity
- Gender expression
- Family status (such as being in a parent-child relationship)

- Marital status (including married, single, widowed, divorced, separated or living in a conjugal relationship outside of marriage, whether in a same-sex or opposite-sex relationship)
- Disability (including mental, physical, developmental or learning disabilities)
- Race
- Ancestry
- Place of origin
- Ethnic origin
- Citizenship
- Colour
- Record of offences (criminal conviction for a provincial offence, or for an offence for which a pardon has been received)

This Policy also prohibits harassment or discrimination on the basis of association or relationship with a person identified by one of the above grounds and based on a perception that one or more of the above grounds applies. For the complete definition of each ground, visit: <http://www.ohrc.on.ca/en/ontario-human-rights-code>

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| Respondent | An individual about whom a Complaint pertaining to one or multiple allegation(s) of harassment and/or discrimination have been initiated (i.e. an individual who is alleged to have engaged in harassment and/or discrimination). |
| Student Conduct and Accountability Specialist | An individual responsible for enforcement of the Student Rights and Responsibilities Policy (SR&R) and Sexual Violence Prevention Policy (SVP), as well as to investigate formal complaints involving students that may potentially breach or violate the Harassment and Discrimination policy. |
| Supervisor | An individual who is formally responsible for a workplace and/or an employee. |

4.0 - Scope

It is the responsibility of all members of the College community to uphold the principles of this Policy.

This Policy and related Operating Procedure will apply in cases concerning students, employees, contractors and third-party service providers as well as governors, volunteers, visitors of Fleming College or others:

1. occurring within or affecting people or property within the physical boundaries of the College;

2. occurring on or affecting all College owned or controlled property;
3. occurring using computer and telephone systems, and College and private vehicles being used for College business or for travelling between work and study locations;
4. occurring at College-sponsored events, including while on placement, co-op or College-related trips;
5. occurring with respect to secondary school students involved in dual credit programs and/or attendees of summer camps and similar programs for children and young people;
6. occurring in cyberspace, off-campus or outside normal school and/or working hours which are likely to have an impact on the working, living and/or learning environment at the College.

This Policy and its accompanying Operating Procedure also apply to incidents brought forward under the Student Rights & Responsibilities Policy (#5-506) and/or the Sexual Violence Prevention Policy (#3-343) when the Respondent (that is, the subject of a Complaint) is an employee of the College. Students who wish to make reports regarding inappropriate behaviour by students other than on the basis of any prohibited ground under the Ontario Human Rights Code are referred to College Policy #5-506, *Student Rights and Responsibilities*. Issues related to other violent or threatening behaviour are addressed through College Policy #4-420, *Violence Prevention*.

Where more than one policy applies due to the mixed nature of the incidents brought forward, the incident should be referred to humanrights@flemingcollege.ca for triage.

5.0 - General Principles

5.1 - College Commitments

The College is committed to:

- a) Creating an environment in which those who disclose an experience of harassment and/or discrimination are heard, their report is taken seriously, and their right to dignity and respect is protected throughout the process of disclosure and response;
- b) Educating the College community about harassment and discrimination, including effectively providing appropriate information and training about the applicable policies and procedures, responding to disclosures, dealing with accommodation requests effectively, and other matters, as appropriate;
- c) Conducting investigations of that are “appropriate in the circumstances” and done in accordance with College Policies, standards and applicable collective agreements, and that promote sensitivity and procedural fairness;
- d) Ensuring that parties have access to an appeals process which is administered in accordance with College Policies, standards and applicable collective agreements, and that promote sensitivity and

procedural fairness;

- e) Contributing to the creation of a campus atmosphere in which harassment and discrimination are not tolerated;
- f) Preventing and removing barriers to inclusion on any protected ground under the Ontario Human Rights Code and providing accommodation for needs relating to protected grounds unless to do so would cause undue hardship as defined by the Ontario Human Rights Code; and
- g) Monitoring and periodically updating College policies and procedures to ensure that they remain effective and in line with other existing policies and best practices.

5.2 - Reporting and Responding to Harassment and/or Discrimination

- a) Members of the College community who have experienced, witnessed or are otherwise aware of harassment and/or discrimination are encouraged to come forward to report as soon as they are able to do so. Reports of incidents more than twelve months following the most recent incident will be dealt with as a complaint only after the College assesses whether the passage of time negatively impacts procedural fairness.
- b) Any employee at Fleming College who becomes aware of, or witnesses, an incident of harassment or discrimination has a responsibility to report that behaviour to their Supervisor or to a Human Resources representative.

Other members of the College community are strongly encouraged to report incidents they witness or of which they have knowledge.

When reporting an incident, the individual's name will be kept anonymous to the extent that this is possible. That said, disclosure of the individual's identity or of information which may reveal their identity may be necessary so that the College can fulfill its obligations under law. These individuals will be referred to as "witnesses" throughout the proceedings and not Complainants.

- c) Members of the College community are expected to cooperate fully with this Policy and the Operating Procedure, including participating fully and honestly in any investigation on a matter of which they have relevant knowledge.
- d) Where the College becomes aware of incidents of harassment and/or discrimination that may contravene this Policy in the absence of a specific complaint, the College will take appropriate measures, including investigation, to determine what action may be necessary.

- e) The College may use trained, impartial internal personnel to conduct a fact-finding or investigation or may choose to use an impartial, external third-party in the event of a conflict of interest, lack of sufficient internal resources, a complaint which if substantiated is likely to result in the most severe consequences for the Respondent(s), a systemic discrimination complaint, or a complaint involving a Vice President, the President, or a member of the Board of Governors.
- f) The College may implement temporary measures or steps to ensure all individuals involved in a complaint feel safe. Introducing temporary measures does not mean a finding has been made. Temporary measures can include things like temporary changes in reporting relationships, restrictions on direct and/or indirect contact between individuals, restrictions on attendance at meetings and other events, or administrative leave pending the outcome of the investigation.

5.3 - Procedural Fairness

- a) The College will promote procedural fairness in dealing with all internal Complaints. Respondents will be given the opportunity to respond to a Complaint with reasonable notice, with full details of the Complaint, and provided with an opportunity to answer to the Complaint(s) made against them before any sanction or disciplinary action is imposed.
- b) Investigations will be completed in the shortest time-frame practically possible and within which procedural fairness can be upheld.

5.4 - Right to Withdraw a Complaint

A Complainant has the right to withdraw a Complaint any stage of the process. However, the College may continue to act on the issue(s) identified in the Complaint in order to comply with its obligations under this Policy and/or its other legal obligations.

5.5 - Protection from Reprisals, Retaliation or Threats

It is a breach of this Policy, subject to sanctions/disciplinary measures, for anyone to retaliate, engage in reprisals, or threaten to retaliate against a Complainant or other individuals for:

- a) having pursued their rights under this Policy;
- b) having participated or co-operated in an investigation process under this Policy; or
- c) having been associated with someone who has pursued rights under this Policy.

The College takes reasonable steps to protect persons from reprisals, retaliation and threats. This may entail, for example, advising individuals in writing of their duty to refrain from committing a reprisal and sanctioning individuals for a breach

of this duty. The College may also address the potential for reprisals by putting temporary measures into effect appropriate to the circumstances.

5.6 - Multiple Proceedings

This policy does not preclude a Complainant from initiating an alternative reporting or resolution procedure such as a complaint to the Human Rights Tribunal of Ontario or the Ministry of Labour, or a grievance if available under a collective agreement.

Where alternate proceedings are commenced and there is a formal complaint of harassment and/or discrimination, the College will normally conduct its own independent investigation into the complaint and make its own determination in accordance with this Policy and its related Operating Procedure. Where there is an external investigation in process, the College will cooperate with the investigation. This may involve the College pausing its process to allow the third party to do their investigation. The College will resume its process at the earliest time available.

5.7 - Rights of the Complainant and the Respondent

The Complainant and Respondent have the right to provide supporting documents, identify witnesses, and be notified about the outcome of any determination or appeal decision. A person who reports an incident of harassment and/or discrimination but does not pursue the matter as a Complainant will have the same entitlements as other witnesses and will not be notified of the process outcome or appeal decision.

Complainants, Respondents and other people interviewed as part of the investigation process may attend meetings with a (non-participating) support person and/or with a union representative if applicable and if they choose. The College will consider requests to attend meetings with additional support persons and with legal or other representation on a case-by-case basis, with a view to promoting a fair and expeditious process. The College will still question and expect direct answers from the interviewees.

5.8 - Burden of Proof

A report of harassment and/or discrimination must be substantiated based on the standard of “balance of probabilities”, which means that it must be more likely than not that incident(s) alleged occurred.

5.9 - Substantiated Complaints

Where an investigation process results in an allegation of harassment and/or discrimination being substantiated and a breach of this Policy found to have taken place, the College will determine the appropriate measures to undertake based on the individual circumstances of the case. Appropriate measures can range from education/training, revision of policies, procedures, and/or processes, through a range of proportional disciplinary measures or possible

sanctions up to and including restorative justice practices, suspension, expulsion, or termination for cause.

5.10 - Unsubstantiated, Vexatious or Bad Faith Reports

Disclosures or reports that are found, as a result of an investigation to be vexatious or in bad faith - that is, they are made purposely to annoy, embarrass, harass or harm the Respondent - may result in sanctions and/or discipline against the Complainant.

5.11 - College Community Restoration

The College recognizes that individuals who have experienced harassment and/or discrimination, or are part of a group where it has occurred, may experience emotional, mental health, work, learning, or other difficulties. The College will make support available to these individuals.

The College also acknowledges that when a Complaint of harassment and/or discrimination is made, and there is an investigation process, an entire group may be impacted. The College will make an appropriate restoration process available to a group that has been adversely impacted by harassment, discrimination, and/or by the complaint process. The intent of a restoration process is to rebuild trust and effective relationships where the people in the group wish to participate in such a process.

5.12 - Record Keeping

All records resulting from harassment and/or discrimination reports will be kept in a secure central registry and will not be a part of the academic or employment record of the persons involved. Keeping these records will be the responsibility of the Administrator of the Harassment and Discrimination Prevention and Response Policy, under the direction of the Vice President, Organizational Effectiveness and Human Resources. Access to these records will be restricted to authorized College employees in accordance with the College's access to information and protection of privacy policies and procedures, the *Freedom of Information and Protection of Privacy Act*, or as may be required by law. All records will be kept according to College Policy #6-603, *Data Record Retention and Disposition*.

Where sanctions or a disciplinary action are imposed as a result of an investigation, a letter regarding the same will be placed in the employment file or student file of the individual subject to sanctions or disciplinary action.

Statistical information on the number, nature and type of reports will be kept and reports will be filed annually by the Administrator of the Harassment and Discrimination Prevention and Response Policy.

5.13 - Confidentiality

Confidentiality is important to those who have disclosed harassment and/or discrimination. The confidentiality of all persons involved in a report of

harassment and/or discrimination must be strictly maintained, and the College will respect the confidentiality of all persons, including the Complainant, Respondent, and witnesses. The College will do this by restricting access to information for individuals without a need for such access, and by providing education and training to those who are regularly involved in the administration of reports and complaints to ensure they understand their obligation to respect confidentiality.

However, confidentiality cannot be assured in the following circumstances:

- a) An individual is at imminent risk of self-harm;
- b) An individual is at imminent risk of harming another;
- c) There is a concern about the safety or welfare of a child or vulnerable person;
- d) There are reasonable grounds to believe that others in the College or wider community may be at risk of harm;
- e) Disclosure is required to comply with a specific legal obligation to make a report to a third party or otherwise required by law.

5.14 - Education and Training

The College will ensure awareness of this policy by:

- a) Requiring all new hires to review the Policy as part of the onboarding process, along with appropriate training/orientation.
- b) Making the Policy readily available, including posting the full document on the Fleming internal and external websites.
- c) Providing training to all employees, and ensuring those persons with managing, supervising, and leadership responsibilities are aware of their obligations under the Policy and are able to implement its requirements.
- d) Providing training to employees and student groups on the process for responding and addressing incidents of harassment and discrimination, including specifics on bystander intervention.
- e) Publishing guides and other tools to assist members of the College community in meeting their obligations under this Policy, as well as periodic reminder communications.
- f) Identifying and training specific individuals who can provide advice to Community members seeking counsel on Human Rights issues or questions, separate from the reporting/complaints process.

6.0 - Related Documents

- Administrative Operating Procedure #OP 3-311, *Harassment and Discrimination Prevention*
- *Ontario Human Rights Code*, R.S.O. 1990 and related Ontario Human Rights Commission Policies and Guidelines

- *Ontario Occupational Health and Safety Act*, R.S.O. 1990
- *The Accessibility for Ontarians with Disabilities Act*, 2005 and its related Standards and Regulations
- *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31
- College Policy #1-110, *Honouring the Rights of Indigenous Peoples*
- College Policy #3-343, *Sexual Violence Prevention & Operating Procedure*
- College Policy #5-506, *Student Rights and Responsibilities & Operating Procedure*
- College Policy #6-603, *College Data Record Retention and Disposition*
- Academic Employees Collective Agreement
- Support Staff Collective Agreement
- Part-time Support Staff Collective Agreement

7.0 – History of Amendments & Reviews

Approved by Board of Governors February 4, 1998

Revised to reflect changes in legislation, approved by Board of Governors March 25, 2009

Full review, new title, approved by Board of Governors June 23, 2010

Full review, approved by Board of Governors June 26, 2013

Full review, new format, approved by Board of Governors June 24, 2015

Revisions approved by Board of Governors December 14, 2016

Revisions approved by Board of Governors May 26, 2021