

SEXUAL MISCONDUCT POLICY	
WAS SEXUAL MISCONDUCT POLICY	Implementation Date 1/1/21
Student Code of Conduct and Dismissal Policy	
Senior Education Administrator	1/1/21
Position(s) Responsible for Administering this Policy	Date of Last Revision

## INTRODUCTION

1. This policy prohibits Sexual Misconduct as defined as: Sexual Misconduct incorporates a broad range of behaviour. It means: a sexual act or an act targeting a person's sexuality, gender identity or gender expression that is committed, threatened, or attempted against a person without the person's Consent. Such behaviour may or may not involve physical contact.

Sexual Misconduct varies in severity and takes many forms. The list in Section 2 provides examples of Sexual Misconduct. It is intended to help Associates of the WAS Community understand the kinds of acts that constitute Sexual Misconduct. It is not an exhaustive list and Associates of the WAS Community should be aware that other acts may still be considered Sexual Misconduct under this policy even if they are not listed here.

Sexual Misconduct includes but is not limited to: sexual assault, sexual exploitation, sexual harassment, stalking, indecent exposure, voyeurism, and the distribution of sexually explicit photographs or videos of a person without their Consent.

Whistler Adventure School has a profound commitment to equity, to fairness and to every person's value, dignity, and potential.

Whistler Adventure School is committed to providing and maintaining a positive and safer learning, working, and living environment where Sexual Misconduct is not tolerated and is treated with the seriousness it deserves.

Every Associate of the WAS Community has, and is expected and required to recognize in others, the right to be free from all forms of Sexual Misconduct in connection with their participation in the activities of the WAS Community.

Whistler Adventure School recognizes that Sexual Misconduct may be experienced by individuals of all gender identities, gender expressions and sexual orientations and that acts of Sexual Misconduct may also be acts of sexism, racism, ableism, homophobia and/or transphobia.

Whistler Adventure School also recognizes that each person will be differently affected by Sexual Misconduct.

With this policy, Whistler Adventure School commits to:

- Provide education for student Associates of the WAS Community about consensual sexual practices and relationships as needed.
- Implement and actively promote education, awareness, prevention, and training programs for student and employee Associates of the WAS Community that are designed to reduce and prevent Sexual Misconduct and offer information and training on how to effectively respond to Disclosures and Reports of Sexual Misconduct when it occurs.
- Make reasonable efforts to inform Associates of the WAS Community about this policy and the internal and external services, resources, and options available for those who are affected by Sexual Misconduct.
- Provide accessible, timely and confidential assistance and support, referrals, and information to Associates of the WAS Community who Disclose or Report Sexual Misconduct.
- Provide accessible, timely and confidential assistance and support, referrals, and information to Associates of the WAS Community who have had allegations of Sexual Misconduct made against them.
- Provide reasonable and appropriate Accommodation (as defined in part 1), where warranted, for Associates of the WAS Community who are affected by Sexual Misconduct.
- Fulfill its duty of procedural fairness when responding to and addressing allegations Sexual Misconduct made against an Associate of the WAS Community and, if found to have committed Sexual Misconduct, to impose remedial or disciplinary measures against that Associate.
- Fulfill its duty to respect the privacy of Associates of the WAS Community, recognizing that unauthorized disclosures of personal information may cause harm to those who have Disclosed or Reported Sexual Misconduct and to those who participate in a WAS process that responds to or addresses allegations of Sexual Misconduct.
- Systematically collect data concerning incidents of Sexual Misconduct within the WAS Community.

## **2. DEFINITIONS**

#### A. Accommodation

Defined as a reasonable and appropriate academic, workplace or other measure provided by Whistler Adventure School:

- To an Associate of the WAS Community who has been affected by Sexual Misconduct.
- Designed to meet that person's needs resulting from an incident of Sexual Misconduct; and that does not infringe on the rights of others.
- Examples of academic accommodation in teaching or evaluation procedures may include changing a project group, class schedule changes, providing an extension on an assignment, deferring an exam, authorizing withdrawal from a class without penalty. An example of workplace or other accommodation may include alternative work or activity scheduling and student residence relocation.

#### B. Complainant

Defined as an Associate of the WAS Community who identifies as someone who has experienced Sexual Misconduct and who makes a Report to Whistler Adventure School.

#### C. Consent

Defined as the voluntary agreement to engage in the sexual activity as stated and to continue to engage in the activity as stated. Consent is informed, freely given, and communicated by words or conduct, objectively assessed. Consent can be revoked at any point. For clarity, consent:

- is a freely given "yes".
- cannot be given by someone who is incapable of giving consent, for example, by a person who is asleep, intoxicated, or unconscious.
- can never be obtained through threats, coercion, or other pressure tactics.
- cannot be obtained if someone abuses a position of trust, power, or authority; and
- cannot be assumed from previous consent to similar activities.

#### D. Disclose or Disclosure

Occurs when an Associate tells another Associate that they have experienced Sexual Misconduct. This is not the same as making a Report under section 3. A Disclosure does not normally initiate a process. In this policy, an Associate who Discloses or makes a Disclosure is called the Discloser.

#### E. Interim Measures

A temporary measure taken by Whistler Adventure School to protect the health or safety of an Associate of the WAS Community, to reduce or eliminate points of potential contact or conflict or both between the Complainant and the Respondent, or to protect the integrity of an investigation or disciplinary process. Examples of interim measures include: no contact directives; restricting or removing an individual's access to all or part of campus; placing an employee on leave with or without pay; and restricting an individual from specified activities or other WAS activities.

#### F. Associate of the WAS Community

Defined as every student at, every employee of, internal contractor, volunteer, and Visitor to WAS, collectively “WAS Community”.

#### G. Responsible Officer

Defined as the person designated to receive Reports under section 3 of this policy and designated to act pursuant to the procedures for this policy.

#### F. Report

Defined as an Associate of the WAS Community providing to the designated Responsible Officer a written statement of allegations about an incident of Sexual Misconduct with the intention of initiating a process under this policy which could result in remedial or disciplinary action being taken against the Respondent. This is not the same as a Disclosure, under section 2, which does not normally initiate a process.

#### G. Respondent

Defined as an Associate or Associates of the WAS Community against whom a Report of Sexual Misconduct has been made pursuant to this policy.

#### H. Retaliation

Defined as any adverse action or threatened action, taken, or made through any form including through social or other electronic media against an Associate of the WAS Community and includes threatening, intimidating, or harassing conduct that could discourage the Associate from Disclosing or Reporting, seeking support or other services, or participating in an investigation or other process related to this policy.

### 3. Sexual Misconduct

Is defined as an umbrella term that encompasses a broad range of behaviour. It means: a sexual act or an act targeting a person’s sexuality, gender identity or gender expression that is committed, threatened, or attempted against a person without the person’s Consent. Such behaviour may or may not involve physical contact.

Sexual Misconduct varies in severity and takes many forms. The list below provides examples of Sexual Misconduct. It is intended to help Associates of the WAS Community understand the kinds of acts that constitute Sexual Misconduct. It is not an exhaustive list and Associates of the WAS Community should be aware that other acts may still be considered Sexual Misconduct under this policy even if they are not listed here.

Sexual Misconduct includes but is not limited to: sexual assault, sexual exploitation, sexual harassment, stalking, indecent exposure, voyeurism, and the distribution of sexually explicit photographs or videos of a person without their Consent.

#### I. Student

includes: students who are actively enrolled in classes and studying at WAS; students who are on academic leave (for example, individuals who are on an exchange or an experiential learning term); and students who are on non-academic leave for up to one year.

## II. Visitor

Defined as individuals who are officially affiliated with Whistler Adventure School and who have been formally invited by Whistler Adventure School to participate in the activities of the WAS Community such as a visiting, exchange or audit student who has been formally admitted to WAS for the purposes of taking courses or to take part in an approved research term, visiting faculty, and visiting lecturers. Other individuals who may visit WAS from time to time, such as alumni, or the parents or friends of students, are not Visitors for the purposes of this policy.

## 4. PROHIBITED CONDUCT

Sexual Misconduct by an Associate of the WAS Community against another Associate that falls within the scope of section 4 of this policy is prohibited and may result in remedial or disciplinary measures.

- Retaliation of any kind, direct or indirect,
- against an Associate of the WAS Community who Discloses or Reports Sexual Misconduct,
- against a Respondent, or
- against anyone who participates in a WAS process related to allegations of Sexual Misconduct,
- is prohibited by this policy and may result in remedial or disciplinary measures.

## 5. APPLICATION OF POLICY

This policy applies to Sexual Misconduct by an Associate of the WAS Community against another Associate without regard to the location of the interactions, always provided that the Sexual Misconduct in question takes place:

- on property controlled by Whistler Adventure School and used for a WAS purpose; or
- when the Respondent was in a position of power or influence over the academic or employment status of the Discloser or Complainant at Whistler Adventure School when the Sexual Misconduct occurred; or

- within the context of an event or activity that would reasonably be regarded as linked to the participants' status as Associates of the WAS Community, which includes but is not limited to:
  - athletic events
  - field courses
  - academic or professional conferences
  - volunteer activities
  - academic or research field work and co-curricular events and programs.

Whistler Adventure School has jurisdiction to address Reports made against an Associate of the WAS Community that meet the criteria in section 5 and it can act to the extent of its relationship to that Associate.

If the reported conduct does not meet the criteria in section 5, Whistler Adventure School may still be able to take steps to mitigate the impact of the incident on Whistler Adventure School's learning, living, or working environment.

## 6. DISCLOSURES AND REPORTS

Whistler Adventure School encourages, but does not require, Disclosers, Complainants and other individuals affected by Sexual Misconduct to seek assistance as soon as they feel able to do so. This may be important to ensure physical safety, to obtain appropriate medical assistance or emotional support, and to preserve evidence.

### 1. Timing of Disclosures and Reports

Whistler Adventure School recognizes that an Associate may not be ready to Disclose or Report an incident of Sexual Misconduct immediately after it occurs. There is no time limit to an Associate making a Disclosure or Report about their experience. There is no time limit to an Associate seeking access to support under this policy. Whistler Adventure School may, however, not have jurisdiction to investigate an incident if one or more of the parties are no longer affiliated with Whistler Adventure School or where it is not feasible to investigate due to the lapse of time between the incident and the Report.

### 2. Disclosing Sexual Misconduct to Whistler Adventure School

An Associate may choose to Disclose Sexual Misconduct to another Associate of the WAS Community without making a Report under section 3 of this policy. A Disclosure is not the same as a Report because it does not normally initiate an investigation or other process. A Discloser who wishes to initiate an investigation must make a Report to the designated Responsible Officer.

Whistler Adventure School can provide the Discloser with:

- Information about and referrals to off-campus support services including counselling services for students (or the WAS Employee Assistance Program for employees).
- Information about and assistance with safety planning.
- Reasonable Accommodation, as appropriate to the circumstances, which may include changes to the Discloser's class schedule or academic accommodations such as an extension on an assignment or deferring an exam, or alternative work or activity scheduling.
- Whistler Adventure School recognizes that most first disclosures of Sexual Misconduct are made to someone the Discloser already knows and trusts. Whistler Adventure School encourages all Associates of the WAS Community to be knowledgeable about how to appropriately receive and respond to a Disclosure.

A student Associate of the WAS Community who receives a Disclosure should:

- Treat the Discloser with compassion, dignity, and respect.
- Encourage the Discloser to seek medical or other assistance, as appropriate.
- Inform the Discloser of the existence of this policy and the right to make a Report under this policy; and inform the Discloser of Whistler Adventure School offices that are available to provide the Associate with confidential assistance and support, as well as referrals and information.

An employee of Whistler Adventure School, including a student employee acting in the course of their duties, or an Associate of the Board of Governors who receives a Disclosure:

- Should treat the Discloser with compassion, dignity, and respect as well as encourage the Discloser to seek medical or other assistance, as appropriate.
- Must inform the Discloser of the existence of this policy and the right to make a Report under this policy.
- Must inform the Discloser of Whistler Adventure School offices that are available to provide the Discloser with confidential assistance and support, as well as referrals and information; and if the Discloser is a student, offer to inform the designated Responsible Officer of the allegations in the Disclosure on behalf of the Discloser and with the Discloser's permission.

An Associate of the WAS Community who receives a Disclosure will normally be required to share the allegations with the designated Responsible Officer if any of the following circumstances apply:

- A person is at risk of self-harm or of harming others.
- There is an imminent risk of harm to the WAS Community and/or the broader community.
- The disclosure involves sexual harassment in the workplace.
- A person under the age of 19 is endangered or the disclosure is otherwise required by law.

An Associate of the WAS Community who receives a Disclosure should inform the appropriate Responsible Officer that an incident of Sexual Misconduct has been disclosed, to enable the Responsible Officer to assess whether there is a pattern of behavior that requires further action and for the purposes of data collection and reporting obligations under sections 1 and 5 of this policy.

### 3. Reporting Sexual Misconduct to Whistler Adventure School

An Associate of the WAS Community who has experienced Sexual Misconduct by another Associate can make a Report under this policy, provided that the Sexual Misconduct falls within the scope of this policy as outlined in section 5. A person who makes a Report is called a Complainant.

Reports must be in writing and submitted to the designated Responsible Officer who will address them in accordance with the procedures under this policy.

A Complainant may make a Report against a student Associate of the WAS Community regardless of the enrollment status of the Respondent student, but an investigation of the Report may need to be postponed until the student is actively enrolled at WAS or is otherwise on campus. A Complainant who Reports to a designated Responsible Officer that they have experienced Sexual Misconduct can expect:

- Be treated with compassion, dignity, and respect.
- Receive timely, ongoing, and confidential support, regardless of the outcome of the Report.
- Obtain timely assistance to create a safety plan.



- Obtain reasonable and appropriate academic, workplace or other Accommodation.
- Provided with information about on- and off-campus services and resources.
- Access to a clear explanation of the processes and options available to them, and potential outcomes.
- Be provided with information about the options and procedures for initiating internal and external processes to address an incident of Sexual Misconduct.
- Provided with information to allow them to make autonomous and informed decisions about which services will be the most beneficial and to choose the services they feel will be most beneficial.
- Provided with information to allow them to make autonomous and informed decisions about whether to initiate a process external to Whistler Adventure School such as filing a complaint with the police or commencing a civil claim; and
- A fair and unbiased process, where an internal process is initiated.

Whistler Adventure School reserves the right to initiate an internal investigation and/or to inform the relevant law enforcement agency or child protection authorities without the consent of the Complainant if it has a reasonable belief that the safety of an Associate of Whistler Adventure School Community is at risk. In such cases, and where practical, Whistler Adventure School will inform the Complainant of its decision, normally in advance.

## 7. RESPONDENTS

A Respondent who has been accused of Sexual Misconduct can expect to:

- Be treated with compassion, dignity, and respect.
- Receive timely, ongoing, and confidential support, regardless of the outcome of the Report.
- Be provided with information about on- and off-campus services and resources.
- Have a clear explanation of the processes and options available to them, and potential outcomes.
- Have a fair and unbiased process, where an internal process is initiated and an opportunity to engage in community accountability processes where suitable, as outlined in the procedures to this policy.

## 8. PROCEDURAL FAIRNESS

Whistler Adventure School will, pursuant to the procedures under this policy:

- Promptly respond to Reports of Sexual Misconduct in a fair, unbiased, and expeditious manner.
- Inform a Complainant who makes a Report and a Respondent against whom a Report is made about the procedures that will apply, including the right to be accompanied by a support person of their choice.
- Inform a Respondent of the identity of the person who made the Report and the allegation made in it and provide the Respondent with an opportunity to respond to the Report.
- Provide the Complainant and the Respondent with a copy of the investigation report made pursuant to the procedures under this policy, subject to the removal of personal information where required under the Personal Information Protection Act
- Test and weigh the evidence provided by a Complainant and a Respondent, to make its findings based on a balance of probabilities.

## 9. CONSEQUENCES AND OUTCOMES

A Respondent who is a WAS student and who is found to have engaged in conduct prohibited by this policy will be held accountable by Whistler Adventure School and may be subject to remedial or disciplinary action up to and including expulsion from Whistler Adventure School. Examples of other remedial or disciplinary measures include no contact provisions, mandatory education, or counselling, changing a Respondent's class schedule, probation, or suspension.

A Respondent who is a WAS employee and who is found to have engaged in conduct prohibited by this policy will be held accountable by Whistler Adventure School and may be subject to remedial or disciplinary action up to and including termination of employment.

A Respondent who falls within neither of the above two categories, such as a visitor or volunteer, and who is found to have engaged in conduct prohibited by this policy will be held accountable by Whistler Adventure School and may be subject to remedial or disciplinary action up to and including termination of their status at Whistler Adventure School.

## 10. EXERCISE OF LEGAL RIGHTS

Nothing in this policy is intended to or should be construed as preventing or interfering with an Associate's right to: file a complaint with the relevant law enforcement agency; file a complaint under the Human Rights Code, start a civil claim; file a claim or complaint under the Workers Compensation Act; or initiate other legal proceedings.

An Associate's decision to start any form of legal proceedings which relate wholly or in part to the matters giving rise to a Disclosure or Report under this policy will stay all further proceedings under this policy.

## 11. AWARENESS, EDUCATION AND TRAINING

The SEA will ensure Whistler Adventure School has designated the Operations Manager (or designee) who will be responsible for developing and overseeing the delivery of a proactive, sustained and prevention- focused educational plan for student and employee Associates of the WAS Community.

The educational plan may include a combination of campaigns, on-line and in-person training sessions, workshops, print and on-line resources and other events.

The educational plan will be designed to educate Associates about current best practices for reducing and preventing Sexual Misconduct. Additionally, effectively responding to and supporting Associates of the WAS Community who have been affected by Sexual Misconduct.

## 12. RESPONSIBILITIES

All Associates of the WAS Community are expected to contribute to the prevention of, intervention in, and effective response to Sexual Misconduct. All Associates of the WAS Community have a role in creating a safer and respectful educational environment by:

- Participating in WAS-sponsored educational programs, training, and campaigns to learn about Sexual Misconduct.
- Modelling respectful behaviour in their relationships and interactions with others.
- Speaking out against behaviour that enables or encourages Sexual Misconduct such as sexism, racism, homophobia, and transphobia.
- Speaking out against behaviour that discourages disclosure or reporting, such as sexism, victim-blaming, and joking about sexual misconduct and gender inequality.
- Learning about the on- and off-campus resources and support services available for individuals affected by Sexual Misconduct.

- Developing the skills necessary to effectively receive Disclosures.
- Intervening in situations that could lead to Sexual Misconduct and intervening to prevent Sexual Misconduct when it is safe to do so.

### 13. CONFIDENTIALITY and PRIVACY

Confidentiality is an important part of fostering an environment where individuals feel safe disclosing incidents of Sexual Misconduct and seeking support. Unauthorized release of confidential information may:

violate British Columbia's Personal Information Protection Act (PIPA).

violate Whistler Adventure School's Personal Information Protection Policy.

deter others who have been subjected to Sexual Misconduct from coming forward; and

may prevent Whistler Adventure School from conducting a fair process if a Report is made.

All employees of Whistler Adventure School who receive a Disclosure or Report of Sexual Misconduct or who are involved in addressing or investigating it must:

make every reasonable effort to protect the information and maintain confidentiality.

collect no more than the minimum information about individuals that relates directly to and is necessary to respond to a Disclosure or Report, which is considered to be supplied in confidence.

use the information about an identifiable individual only for the purposes of, or those consistent with, addressing the situation, investigating, or taking remedial and/or disciplinary action.

disclose the information to another WAS employee, contractor, or volunteer, only if necessary for the performance of that individual's duties and refrain from otherwise disclosing the information unless they are expressly authorized by the affected individual.

authorized by Whistler Adventure School, in circumstances where it is necessary to protect health or safety; or disclosure is authorized or required by law.

Notwithstanding section 13, in order to ensure that the Reporting process under section 5 of this policy and in the procedures for this policy is conducted fairly, the following principles will apply:

- The Respondent has the right to know the identity of the person who made the Report and the allegations made against them.

- A Complainant who alleges they were the subject of Sexual Misconduct has the right to know the outcome of the investigation but does not have the right to know whether Whistler Adventure School has taken any disciplinary action against the Respondent because the disclosure of such information is contrary to privacy law. However, if necessary for health or safety reasons, Whistler Adventure School will inform a Complainant of any relevant restrictions that may have been imposed upon the Respondent's movements or activities; and
- Other persons do not have the right to know any confidential Information except to the extent required to conduct or participate in an investigation.
- Individuals, including the Complainant and the Respondent, who have obtained information about an identifiable individual through their participation in an investigation under the procedures to this policy must not disclose that information to anyone except their own personal advisors or representatives, or as required by law. This section does not prevent:
  - Any participants in the investigation from disclosing information about themselves, or information that they obtained outside the investigation.
  - WAS employees, contractors, or volunteers from disclosing investigation-related information provided they do so in compliance with section 13 or complainants and Respondents from disclosing information that they have received, and are authorized to disclose, pursuant to the procedures under this policy.

A Complainant or Respondent who discloses information is responsible for the consequences of their decision and should be aware that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim).

#### 14. APPEALS

A Complainant may appeal a designated Responsible Officer's decision not to proceed with a Report.

1. A Respondent may appeal a discipline decision.
2. The grounds for appeal are set out in the procedures to this policy.
3. The processes for appeal are set out in the procedures to this policy.
4. RELATED WAS POLICIES AND PROCESSES

5. The other WAS policies, handbooks, guides, Codes and contracts and agreements that may bear on the administration of this policy include but are not limited to:

- Student Honour Principle and Protocol.
- Human Rights Policy and procedures.
- Personal Information Protection Policy; and
- Community Living Guide and occupancy agreement.

## 15. POLICY REVIEW

Whistler Adventure School will monitor and evaluate this policy and its associated procedures and practices to ensure they are responsive to evolving needs. This includes reviewing this policy at least once every three years, in consultation with students and other Associates of the WAS Community.

Whistler Adventure School will conduct its initial review at the end of the third full fiscal year which falls after the fiscal year after adoption. WAS will implement such revisions as seem necessary or appropriate.

Should any aspect of this policy provide at any time, to be inadequate to its intended purpose, Whistler Adventure School may review and revise the policy immediately for the purpose of addressing that inadequacy.