

Policy Name:	Respectful Workplace & Learning Environment		
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Volume	5. Office of Human Resources	Responsible Executives:	Director, Human Resources
Chapter	7. Respectful Workplace & Learning Environment	Responsible Office:	Human Resources
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Policy Statement

NSCAD University is committed to building and maintaining a diverse and inclusive community where our students, staff, faculty, volunteers and visitors can work and learn in an environment that respects the dignity and worth of the members of the NSCAD University Community.

Reason for Policy

The purpose of this policy is to develop and support a work and learning culture that values diversity and inclusion, fosters respect, and does not tolerate prejudice, discrimination, harassment and/or bullying.

Policy Applies to

This Policy and the related procedures apply to all members of the NSCAD University Community and all visitors; therefore, anyone who is an employee or student of the University engaged in duties, programs, operations or activities having a substantial connection to NSCAD University, on or off campus.

Third parties, including but not limited to, contractors, volunteers and visitors to NSCAD University, are expected to conduct themselves in a manner consistent with this Policy. Compliance with this Policy shall be a term of all contracts and agreements with NSCAD University and is a condition of access to NSCAD University.

This Policy is not intended to discourage or prevent individuals from exercising any other legal rights they may have pursuant to any other law, including the right to file a complaint with the Nova Scotia Human Rights Commission. This policy is intended to support and clarify the protection provided by Provincial law, other university policies and regulations or legal documents of NSCAD University.

Who Should Read this Policy

All members of the NSCAD University Community should read and be familiar with this policy.

Contacts

Approval authority: Board of Governors, Governance & Human Resources Committee c/o Governance Office, 902-494-8114, governance@nscad.ca, www.nscad.ca/policy.

Definitions

Administrator: means Senior Management Team, Vice-Presidents, Associate Vice-Presidents, Non-Academic Directors, Dean, Managers and other non-unionized supervisory positions.

Assertive Management Style: means a management style where a manager is fair, firm and direct when needed, recognizes the rights of others, respects and preserves the dignity of others and communicates in a clear and direct manner.

University Community: means any person that has a substantial connection to NSCAD University and may include someone who teaches, conducts research, studies or works at NSCAD University, including but not limited to:

1. Full or part time academic staff
2. Full, part time, continuing, temporary, contract or administrative staff members including senior administration, human resource representatives and Directors and Division Chairs;
3. NSCAD University Board of Governors
4. All students
5. Contractors
6. Volunteers
7. Visitors including visiting artists

Complainant: means a person who initiates a complaint against a person or persons and seeks recourse pursuant to this policy.

Academic Freedom: refers to the right of University Community members to pursue professional and/or scholarly activities without reference to prescribed doctrine or institutional censorship. As further described in this policy, Academic Freedom carries with it the duty to use that freedom in a respectful and otherwise responsible way.

Discrimination: means the differential treatment of an individual or group on the basis of grounds protected by the Nova Scotia *Human Rights Act* and for which there is no legally justifiable reason. The Nova Scotia *Human Rights Act* protects against discrimination on the basis of: age; race, colour, religion, creed, sex, sexual orientation, gender identity, gender expression, physical disability or mental disability, an irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity, or association with another individual or class of individuals having characteristics referred to above.

Harassment: means a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome and may include any unwanted physical or verbal behaviour that offends, intimidates or humiliates another person in the course of employment or in the provision of a service or discriminates against them on the basis of characteristics described in the definition of discrimination in the Nova Scotia *Human Rights Act*. Single acts of sufficient severity may also constitute harassment.

Bullying: means persistent offensive, abusive, intimidating, or insulting behaviour abuse of power and/or unfair punitive sanctions which a reasonable person would consider to be objectionable and which makes the recipient feel upset, threatened, humiliated and/or vulnerable and undermines the recipient's self-confidence and/or reduces the recipient's feelings of self-esteem and self-worth and which may cause the recipient to suffer stress.

Bullying and Harassment do not include:

- good-faith action taken by an employer or supervisor relating to the management or direction of workers or the workplace including:
 - reasonable, legitimate criticism of a faculty member or staff member including conducting evaluations of employee performance which may include negative and/or constructive criticism of

- performance and/or may result in reasonable changes to a person’s job duties or responsibilities as a result of a poor evaluation;
- performance management of a faculty member or staff member including managing attendance and disciplinary actions; and
- good faith action taken by faculty and /or staff members to correct inappropriate student behavior including:
 - actions taken to maintain order in the classroom including the eviction, as necessary, those who cause disruption;
 - legitimate, reasonable criticism of a student’s performance/behavior; and
- legitimate (not discriminatory, arbitrary, or abusive) exercise of freedom of association, Academic Freedom, freedom of conscience, opinion and belief, freedom of thought and inquiry, and expression which may result in respectful disagreements regarding beliefs or principles.

NSCAD University will not condone bullying under the guise of “strong management” nor “Academic Freedom” but, conversely, does regard an Assertive Management Style and legitimate exercise of Academic Freedom as acceptable, provided that faculty, staff and students are treated with respect and dignity.

Respondent: means a person against whom a complaint of harassment or discrimination has been made pursuant to this policy.

Vexatious: means lacking a sufficient ground and only serving to annoy and distress.

The Policy

1. Purpose

This Policy on A Respectful Workplace and Learning Environment which is also NSCAD University’s policy on Discrimination and Harassment (the “Policy”) is intended to:

- 1.1.1. Promote a respectful, diverse and inclusive community where every individual can work and learn in an environment that is supportive of productivity and academic achievement and respects the dignity and worth of all members of the NSCAD University Community;
- 1.1.2. Promote a workplace and learning environment that is free of Discrimination and Harassment;
- 1.1.3. Protect the health, safety and security of the NSCAD University Community;
- 1.1.4. Outline the rights, responsibilities and types of behaviour that fall within the scope of this Policy;
- 1.1.5. Outline procedures for handling and resolving complaints of alleged Discrimination and Harassment;
- 1.1.6. Meet the requirements of the Nova Scotia Occupational Health and Safety Act, 2016 (the “OHS”) and the Nova Scotia Human Rights Act, 2012 (the “HRA”).
- 1.1.7. This Policy, is part of a tetralogy of NSCAD University policies that support learning and working places free from Discrimination, Harassment, violence and sexual violence including:
 - 1.1.7.1. NSCAD University Code of Conduct;
 - 1.1.7.2. NSCAD University Policy on Sexualized Violence Response and Prevention Policy;
 - 1.1.7.3. NSCAD University Safe Disclosure Policy; and
 - 1.1.7.4. NSCAD University Employment Equity at NSCAD: A Policy Statement.

2. Rights and Freedoms

- 2.1. NSCAD University recognizes the importance of certain rights and freedoms at a university dedicated to intellectual inquiry and creative practice. NSCAD University is committed to upholding all fundamental human rights, including freedom of association, freedom of conscience, opinion and belief, and freedom of thought, inquiry, artistic and creative expression. Nothing in this policy is to be interpreted, administered or

applied in a way that infringes upon Academic Freedom or upon legal conduct between individuals that is based on mutual consent. Nothing in this policy is to be understood to prevent any faculty, employee, or student from instructing, evaluating and engaging in fair criticism of another's behaviour or performance.

3. Rights and Responsibilities

3.1. Each individual has the right to participate, learn, and work in an environment that promotes equal opportunities and prohibits all forms of harassment, discrimination and systemic discrimination. NSCAD and all members of the NSCAD University Community share the responsibility of establishing and maintaining a climate of respect within the NSCAD University Community and to address any situations in which respect is lacking.

3.2. All Employees, Students and Volunteers have the right to:

3.2.1. Participate, learn and work in an environment that promotes equal opportunities and prohibits discriminatory practices and harassment;

3.2.2. Make a complaint under this policy without fear of retaliation;

3.2.3. Be informed of complaints made against them and make representations in accordance with the complaint procedures described in this policy;

3.2.4. Be kept informed throughout the process;

3.2.5. A fair review process for both the Respondent and Complainant;

3.2.6. Confidentiality as described in section 3.4 of this policy.

3.3. Scope

3.3.1 This policy applies to all NSCAD University related activities, programs, and operations. It also includes all activities while participating in NSCAD University sponsored or sanctioned events (such as, but not limited to, field trips, events, conferences, and social functions).

3.3.2 This policy is designed to complement other policies and is not intended to interfere with or supersede any other NSCAD University policy or prevailing law.

3.3.3 This policy will not be applied or interpreted in such a way as to detract from the right of those in supervisory roles to manage and discipline employees or students in accordance with normal University practices or from any existing rights or obligations contained within any existing code of student conduct, collective agreement or other approved employee agreement.

3.3.4 This policy is to be interpreted and administered in a manner that is consistent with the principles of Academic Freedom and is not intended to detract from the right to engage in discussions of potentially controversial matters including, but not limited to, age, race, politics, religion, sex, and sexual orientation, provided that such discussion and instructional techniques are conducted in a respectful and non-threatening manner.

3.4 Confidentiality

3.4.1 All parties to whom a disclosure is made or by whom the report of disclosure is received shall keep the matter confidential. NSCAD University will limit sharing of information on a need to know basis for the purposes of implementing this policy. Confidentiality will be maintained to protect the rights of the parties involved, to prevent unjustified invasions of privacy, and to preserve the integrity of any investigation.

3.4.2 Where there exists an obligation to protect the health and safety of members of NSCAD University Community or where NSCAD University is obliged by law to disclose confidential information obtained through this policy, confidentiality will not be maintained.

3.4.3 While NSCAD University will strive to maintain confidentiality, the investigative process is not anonymous. When a complaint is made, the Respondent shall have the right to receive information

about the nature and source of the complaint, as well as to know and respond to any allegation made against them.

4. The Policy

- 4.1. All acts of Discrimination and Harassment are strictly prohibited. All employees, students, contractors, volunteers and visitors shall work and learn in compliance with this Policy.
- 4.2. NSCAD University shall hold employees, students, contractors, volunteers and visitors accountable by imposing discipline and/or other sanctions. In doing so, NSCAD University will act in accordance with the rights and obligations established by collective agreements and NSCAD University policy.
- 4.3. All individuals have a responsibility to ensure the workplace and learning environment is a safe and healthy environment free from Discrimination and Harassment.
 - 4.3.1. NSCAD University has a duty of care under the OHSA, the Nova Scotia Labour Standards Code, the Trade Union Act and the HRA to maintain a harassment and discrimination free workplace. Therefore, no member of the NSCAD Community should ignore unacceptable behaviour. Every member of the NSCAD University Community has a legal obligation to bring to the attention of Administration any unacceptable behaviour they might be subjected to or witness.
 - 4.3.2. Every Administrator shall ensure compliance and, when required, take remedial or corrective measures/disciplinary action against a member of faculty, staff, Administration, or a student, volunteer, visitor, or contractor ensuring this is done fairly and in accordance with the disciplinary measures within relevant collective agreements and NSCAD University policy.

5. Complaints

- 5.1. General: Options are available that offer employees and students an opportunity to choose a course of action that meets their needs in the event an individual believes that they are being discriminated against and/or harassed. Resolution options fall into three (3) broad categories: Personal Resolution, Informal Resolution Process and Formal Resolution Process.
- 5.2. If an individual believes that they have been or are experiencing Discrimination and/or Harassment, they should keep a personal record of the details or incidents. This will help to will clarify what happened when the individual is seeking a resolution process. The information to be kept should include the following:
 - 5.2.1. date and time of incidences;
 - 5.2.2. place incidences took place;
 - 5.2.3. name and status of other individual(s) involved or who may have witnessed the incident;
 - 5.2.4. a specific account of what happened – be as detailed as possible;
 - 5.2.5. the effect of the incident on the individual; and
 - 5.2.6. any action taken including any individual (s) to whom the incident has been reported and any attempts at personal resolution.
 - 5.2.7. Personal Resolution (self-managed or assisted):
 - 5.2.7.1. This involves telling the individual to stop and telling them that such behaviour is unacceptable, inappropriate or unwelcome. Where appropriate, the individual should do so as soon as they are subjected to any unwelcome comments or conduct or shortly thereafter. Although this may be difficult to do, telling an individual that their actions are inappropriate is often enough to stop the behaviour. In a situation where an individual may be too uncomfortable to attempt a Personal Resolution on their own, they may seek third party assistance for support and advice.
 - 5.2.7.2. Where Personal Resolution does not succeed, the behaviour continues, the behaviour becomes more serious in nature, or when Personal Resolution is not appropriate, the individual should

- make a complaint to Human Resources or a University Administrator who will then forward the complaint to Human Resources.
- 5.2.7.3. Attempting Personal Resolution of a complaint is not a pre-requisite for proceeding either through the Informal or Formal Resolution Processes.
- 5.2.8. Informal Resolution Process: This refers to options other than the Formal Resolution Process to resolve complaints and can include mediation, negotiation, facilitation, conflict resolution conferences and other dispute resolution techniques.
- 5.2.8.1. Where a complaint of discrimination, harassment, and/or bullying has been made either orally or in writing to the Office of Human Resources, or the Office of Human Resources becomes aware of a potential violation of this policy, the Office of Human Resources will make contact with the Respondent within two (2) business days to discuss the complaint or potential violation and will make a determination of whether proceeding with the Informal Resolution Process is appropriate.
- 5.2.8.2. If it is found to be appropriate, the Office of Human Resources, in consultation with the Complainant, will explore options for resolving the complaint informally through mediation, negotiation, facilitation, conflict resolution conferences or other dispute resolution techniques.
- 5.2.8.3. If within two (2) weeks (approximately 10 working days), the Informal Resolution Process does not result in a satisfactory resolution to the complaint, then the matter may move to the Formal Resolution Procedure. The Office of Human Resources, at their sole discretion, may refer a complaint directly to the Formal Resolution Process where it is deemed to be appropriate. In addition, the Office of Human Resources may extend the time allowed for resolution under the Informal Resolution Process with the consent of the complainant.
- 5.2.9. Formal Resolution Process: This refers to a formal complaint process where a fact-finding investigation is carried out and a determination is made as to whether the Policy has been breached.
- 5.2.9.1. Failing resolution of the complaint through Personal Resolution or Informal Resolution Process, the Complainant can make a request for formal resolution, to the Office of Human Resources.
- 5.2.9.2. The decision on whether or not to proceed with Formal Resolution Process shall be made by the Office of Human Resources in their sole and absolute discretion. On receiving a formal complaint, the Office of Human Resources will determine if:
- 5.2.9.2.1. NSCAD University has jurisdiction to investigate the complaint;
- 5.2.9.2.2. The allegations fall within the scope of this policy;
- 5.2.9.2.3. The most recent alleged incident occurred within the past twelve (12) months, unless at the sole discretion of NSCAD University it is determined to be appropriate to proceed with the Formal Resolution Process regarding alleged incidents occurring prior to the twelve (12) month limitation period; and
- 5.2.9.2.4. There are any safety risks or health concerns that require immediate action.
- 5.2.9.3. If the Office of Human Resources decides not to proceed, the Complainant shall be informed in writing.
- 5.2.9.4. If the Office of Human Resources decides to proceed, the Respondent shall be notified within two (2) working days of receipt of the formal complaint. The Respondent shall be provided with details of the complaint and advised of the procedure to be followed in the resolution of the complaint.
- 5.2.9.5. The Office of Human Resources will advise both the Complainant and the Respondent of support services available which they may wish to consult.
- 5.2.9.6. Nothing in this procedure precludes administration from invoking an investigation in accordance with these procedures in a situation where NSCAD University reasonably believes that

discrimination, harassment and/or bullying may have occurred, even though no person has complained about a violation of this policy.

5.2.9.7. Informal complaint mechanisms – such as mediation, negotiation, etc. – can still be exercised once the formal process has been initiated, with consent of the parties.

5.3. Interim Measures

5.3.1. After a complaint is made, the Office of Human Resources, in consultation with the appropriate supervisory or academic personnel, will determine if any immediate action or interim measures are required to protect NSCAD University, its community or any of its members, and/or the integrity of the process. These measures may include limiting access to facilities, making arrangements for alternative grading or supervisory relationships, administrative suspensions, or discontinuing contact between the Complainant and the Respondent during the period of the proceedings. Interim measures, if required, are to be implemented by the appropriate University personnel. Both parties shall be notified of any interim measures required. Note that any interim measures are not intended as discipline or a transfer within the meaning of any collective agreement or policy. In addition, where a complaint proceeds to the Formal Resolution Process, interim measures may also be enacted as part of the procedures governing that process.

6. Investigation

- 6.1. To make sure that formal complaints can be dealt with in a fair, equitable and consistent manner, and to ensure that an investigation is conducted that is appropriate in the circumstances, the Office of Human Resources will determine whether an investigation will be conducted by an internal investigator, an internal investigation team, or an external investigator.
- 6.2. In determining whether to appoint an external investigator, the Office of Human Resources will consider the severity of the allegations, the number of parties involved, the severity of the sanctions that may occur in response to the reported allegations, and/or the appearance or reality of bias by the Office of Human Resources or other University staff or employees.
- 6.3. Any party to a formal complaint may challenge the appointment of an internal investigator, an internal investigation team, or an external investigator on the grounds that the individual has a potential conflict of interest or that there is a reasonable apprehension of bias on their part. A party raising a challenge will submit it in writing to the Office of Human Resources no later than two (2) business days after notice of the appointment of an investigator has been given to the Complainant and Respondent. The Office of Human Resources will make a decision with regard to the alleged conflict of interest or bias within two (2) business days of having received the challenge. That decision will be final under this policy.

7. Investigation Process

- 7.1. The investigation team may decide to postpone, suspend or cancel any investigation if its continuance would duplicate or prejudice another proceeding or bring the administration of this policy and procedures into disrepute. In coming to a decision, the investigation team will consider such factors as:
 - 7.1.1. NSCAD University’s responsibility to provide an environment free from harassment and discrimination;
 - 7.1.2. Grievances filed simultaneously with complaints in order to comply with negotiated timelines;
 - 7.1.3. Other legal procedures that may be initiated to protect statutory rights; and
 - 7.1.4. The wishes of the parties.

Should a Complainant under these circumstances elect to grieve a human rights matter under their-collective agreement, or another policy established by NSCAD University, or resolve the matter through an application to the *Human Rights Commission* rather than through this policy and procedures, NSCAD University reserves the right to continue with its own investigation.

- 7.2. Once the investigation team has been appointed, the Office of Human Resources will make all relevant documentation collected about the complaint available to the team.
 - 7.3. During the investigation, efforts will be made to interview the Complainant first and Respondent second. However, this procedure may be changed at the sole discretion of the investigator if it is found to be appropriate. If a party or witness declines to participate in an investigation, the investigation process may proceed to its conclusion and the investigator will prepare a draft report. The investigator will meet with each of the parties to review the findings of fact and to provide the parties with an opportunity to provide clarification or response. Once finalized, the report and any resulting recommendations will be forwarded to the appropriate person(s).
8. Investigation Time Frame
- 8.1. The investigation shall be completed as soon as is reasonably practicable considering all circumstances.
 - 8.2. The results of the investigation shall be summarized in a report to the Office of Human Resources and shall include a determination as to whether this Policy has been breached and recommendations as to sanctions for the Respondent.
 - 8.3. Where the final report finds no breach of this policy, the matter shall be considered resolved and no information shall be placed in the official personnel or student file of the Respondent.
 - 8.4. The final report shall be held in strict confidence, including any information obtained about an incident or complaint (including identifying information), or information about corrective action or disciplinary sanctions, except as may be necessary for the purposes of investigating or taking corrective action, or as otherwise required by law.
 - 8.5. The Complainant and Respondent shall be entitled to be informed only of the findings of the report.
9. Bad Faith Allegations
- 9.1. It is a violation of this policy for any person to:
 - 9.1.1. make a frivolous, vexatious, or malicious allegation,
 - 9.1.2. initiate a procedure under this policy in bad faith, or
 - 9.1.3. influence an ongoing procedure under this policy in bad faith.
 - 9.2. A written complaint that a bad faith allegation or action has been made will be treated as a formal complaint under this policy. A complaint made in bad faith is a violation of the Policy and the Complainant may be subject to corrective measures/disciplinary action up to and including termination or expulsion.
 - 9.2.1. A complaint shall be deemed to be made in bad faith if it is deliberately and maliciously invented. This is not to be confused with a complaint made in good faith that is found to be without merit.
10. Reprisals
- 10.1. It is a violation of this policy for any person to retaliate or take reprisals against individuals because they have made a formal or informal complaint or participated in a process under this policy. NSCAD University considers retaliation or the threat of retaliation at any stage to be a serious offence because it may have a chilling effect on future Complainants or witnesses and prevent them from acting on their concerns. Any employees or students found to have engaged in retaliation will be subject to disciplinary measures, up to and including termination. Written allegations of retaliation or reprisals will be treated as a formal complaint under this policy. If such a complaint is substantiated, it will be subject to the same consequences as complaints of discrimination, harassment and/or bullying and may also be grounds for the use of interim measures as set out in these procedures.

Forms and Tools

N/A

Respectful Workplace & Learning Environment: <http://nscad.ca/site-nscad/media/nscad/5.7RespectfulWorkplace&LearningEnvironmentPolicy.pdf>