



**Title: Procedures for Addressing Student Non-Academic Misconduct**

Approved by: President and Vice-Chancellor

Effective: September 15, 2016

Revisions: March 23, 2018, October 26, 2018

**1 Preamble**

1.1 The objectives and purposes of the University of Windsor are:

- (a) The advancement of learning and the dissemination of knowledge; and
- (b) The intellectual, spiritual, moral, social and physical development of its members and students and the betterment of society. (University of Windsor Act (1962-63, amended 1969))

The pursuit of these objectives, in a safe and mutually respectful environment, requires that all members of the University community act responsibly and with honesty, trust, respect and fairness at all times. As members of the University community, students are therefore expected to conduct themselves with integrity as illustrated by the Student Code of Conduct, the codes of conduct established by their professional discipline and any other applicable policy or procedures. Any student who commits an act of Non-Academic Misconduct, as defined in these procedures may be disciplined in the interest of safeguarding and upholding these objectives. It is the purpose of these procedures to set out a fair and equitable process by which these standards are upheld.

1.2 These procedures apply to all current registered students. These procedures also apply to students registered in the Schulich School of Medicine and Dentistry as agreed to by the University of Windsor and Western University. Faculty and staff discipline is covered under the respective collective agreements and personnel policies and practices.

1.3 For the purpose of these procedures, all communications (including signatures, notices, memos, invitations, decisions, etc.) may be electronic.

**2 Related Bylaws and Policies include:**

- Acceptable Use Policy
- Behavioural Intervention Plan
- Bylaw 33: Student Rights and Freedoms
- Sexual Misconduct Policy
- Student Code of Conduct
- Residence Handbook
- Any and all other bylaws, policies, or procedures governing student conduct

**3 Definitions**

*In these procedures:*

***Academic Integrity and Student Conduct Officer*** (or designate) may provide information on Non-Academic Misconduct matters and may investigate complaints where requested by the Associate Vice-President, Student Experience.

***Adjudicator*** means the Provost (or designate) who has final and binding jurisdiction over appeals of Decisions of the Associate Vice-President, Student Experience (or designate), with the exception of suspension orders, under section 9, and exclusion from campus orders, and expulsions, which require the approval of the President to be final and binding.

**Advisor** means family member, friend, advocate, or other Member of the University Community.

**Associate Vice-President, Student Experience** (or designate) will normally act to investigate and adjudicate Non-Academic Misconduct matters. Where the Associate Vice-President, Student Experience is reporting the Non-Academic Misconduct or in the event of the absence or inability to act of the Associate Vice-President, Student Experience, the President shall designate someone (other than the Provost) to act in the Associate Vice-President, Student Experience's place under these procedures on that particular matter.

**Complainant** means individual who filed the formal complaint.

**Decision(s)** means finding of misconduct and sanction, or dismissal.

**Legal counsel** means a lawyer licensed by the Law Society of Upper Canada, including an individual working under the auspices of a lawyer such as Community Legal Aid student.

**Member of the University Community** includes Campus Police and any and all faculty members, staff members, and students.

**Non-Academic Misconduct** means all actions that breach the University's bylaws and policies and that are not academic misconduct.

**Parties** means the Complainant and/or the University as represented by the Associate Vice-President, Student Experience (or designate), and the Student.

**Party** means either the Complainant and/or the University as represented by the Associate Vice-President, Student Experience (or designate), or the Student.

**Restorative Justice** is an approach to justice which seeks to repair the harm caused by giving the individuals involved an opportunity to acknowledge responsibility, communicate about the issues and propose their own solutions. This approach seeks reparation and reintegration through collaboration. Restorative justice will take the form of a voluntary confidential mediation that is non-prejudicial to the other procedures set out herein.

**Sexual Misconduct Response and Prevention Officer** provides confidential support, referrals and assistance to individuals related to experiences of sexual misconduct (within the limits outlined by the Policy on Sexual Misconduct). The Sexual Misconduct Response and Prevention Officer will assist individuals to make informed choices and to navigate relevant institutional and community processes, but will not undertake investigations of incidents of sexual misconduct.

**Student** means individual who is subject to the Non-Academic Misconduct complaint.

**Subject Matter Expert** means an individual appointed by the President who is an authority in a particular area or topic, and who will receive and review evidence related to an appeal for the sole purpose of providing professional advice to the Adjudicator, as needed.

**Teachable Moment** means a learning opportunity for the Student. In the context of Non-Academic Misconduct complaints, teachable moments sometimes can be a more appropriate and effective way of reaching and educating the Student, and mitigating repeat breaches, than the pursuit of a complaint and/or the imposition of any sanction. It is understood that the Associate Vice-President, Student Experience and the Adjudicator may incorporate teachable moments in the review and adjudication of all complaints.

#### **4 Non-Academic Misconduct Complaints**

Non-Academic Misconduct complaints may be filed by any Member of the University Community. Such complaints are to be submitted in writing to the Associate Vice-President, Student Experience, including all relevant documentation and evidence in its original form, where possible. Copies of submitted materials should be kept as the University will not return submitted materials. In matters under the University of Windsor Policy on Sexual Misconduct, a survivor, as defined in the Policy, may choose not to request an investigation by the University, and has the right not to participate in any investigation by the University that may occur.

#### **5 Procedures in Cases of Non-Academic Misconduct**

##### **5.1 Step 1 – Review and Decision by Associate Vice-President, Student Experience**

5.1.1 Where a complaint is submitted to the Associate Vice-President, Student Experience, s/he shall investigate the complaint. As part of the investigation, the Associate Vice-President, Student Experience (or designated investigator) shall request a meeting with the Student to review the evidence in support of the complaint, and shall inform the Student of the purpose of the meeting and that s/he has the right to have an Advisor present at this meeting. The Student shall, in advance of being questioned on any aspects of the complaint, be provided with a copy of the complaint. In cases where the Student does not respond to the request for a meeting or chooses not to meet with the Associate Vice-President, Student Experience (or designated investigator), the Student shall be informed in writing that the Associate Vice-President, Student Experience will be required to make a decision without the Student's input. No finding of misconduct or disciplinary penalty shall be imposed based solely upon the failure of the Student to meet with the Associate Vice-President, Student Experience (or designated investigator).

Where the investigation has been assigned to an investigator, the Associate Vice-President, Student Experience, following receipt of the investigator's report, also may ask any questions of the investigator, the complainant, the Student, and/or any witnesses separately. The Associate Vice-President, Student Experience shall make a record of any new evidence presented during this stage and shall append the information to the investigator's report. The Complainant and the Student will be given the opportunity to respond to, or question any new information before the decision is rendered.

In the case of sexual misconduct matters, the Associate Vice-President, Student Experience, if s/he does not have specific training in this area or wishes assistance, will identify an investigator who is specifically trained in dealing with cases of sexual misconduct to conduct the investigation. The investigator shall follow the procedures under this paragraph and 5.1.2 and submit his/her report to the Associate Vice-President, Student Experience.

The investigation shall normally be completed within 28 calendar days of having received the complaint.

5.1.2 Throughout the investigation stage, the merits of potential misconduct cases should be assessed with careful consideration of whether misconduct occurred, to determine:

a) whether the complaint should be dismissed

and/or

b) the advisability of a Teachable Moment, in cases where the act is determined to be the result of a lack of understanding of expectations on the part of the Student. In such cases, a Teachable Moment might be considered in lieu of a sanction.

and/or

c) the advisability of restorative justice if the Student substantially agrees with the contents of the

complaint and accepts responsibility for his or her actions. A restorative mediation might be considered in lieu of a sanction.

and/or

d) the need for a disciplinary response, taking into account the nature and scope of the possible misconduct, whether there was intent, the context in which it occurred, the Student's educational and cultural background and other relevant circumstances. Specific illustrations include (this list is not exhaustive):

- Whether the Student accepts responsibility for his/her action and is amenable to educative remedies
- Extenuating circumstances that may help explain the action taken by the Student
- Any other aggravating or mitigating factors (health, personal issues, *etc.*)
- The severity of the breach, including its impact on others (within and outside the university community)

5.1.3 Having completed the investigation, the Associate Vice-President, Student Experience shall either:

- a) dismiss the complaint; or
- b) determine that Non-Academic Misconduct occurred, and impose a sanction (see Appendix A for list of sanctions); or
- c) attempt to mediate, with the consent of the Complainant and the Student (and his/her Advisor), a settlement of the dispute. If a mediated settlement is not reached, the Associate Vice-President, Student Experience shall decide between (a) or (b) above; or
- d) attempt a restorative mediation if the Student substantially agrees with the contents of the complaint and accepts responsibility for his or her action and the Complainant and the Student consent. The focus of a restorative mediation is on identifying and repairing any harm caused to individuals, relationships, and property, and on helping the Student to make better future choices. If at any time the Student is unwilling to accept responsibility or either party does not want to continue with the process, the restorative mediation will cease. Whether a restorative mediation occurs does not preclude the Associate Vice-President, Student Experience from also deciding between (a), (b) or (c).

In the case of either (a), (b), (c) or (d) above, the Associate Vice-President, Student Experience may offer a Teachable Moment, as appropriate.

Upon a finding of Non-Academic Misconduct and when imposing a sanction, the Associate Vice-President, Student Experience shall take into consideration the nature and scope of the Non-Academic Misconduct, whether there was intent, the context in which it occurred, the Student's educational and cultural background, whether this was a first breach (see 8.1), and other relevant circumstances (see 5.1.2).

5.1.4 The Associate Vice-President, Student Experience shall inform the Complainant and the Student of the Decision and their respective right of appeal to the Adjudicator and the process to be followed. This shall normally be done within 35 calendar days after having received the complaint.

## 5.2 Step 2 – Appeal

5.2.1 A Student or Complainant may appeal a Decision of the Associate Vice-President, Student Experience. The Student or Complainant shall submit the request for appeal within 14 calendar days of having received the Decision of the Associate Vice-President, Student Experience. The Decision shall be deemed to have been received by the Student and Complainant three calendar days after it has been sent by the Associate Vice-President, Student Experience to the Student's and the Complainant's UWin email address. The Adjudicator has the power to extend this deadline when the interests of justice warrant or where no substantial prejudice would result.

Requests for appeals must be based on one or more of the following grounds:

- a) There was serious procedural error in the processing of the complaint which was prejudicial to the appellant.
- b) There is new evidence, not available at the time of the earlier decision, which casts doubt on the correctness of the decision.
- c) The Associate Vice-President, Student Experience's decision is clearly unreasonable or unsupportable on the evidence.

5.2.2 In the case of suspension or exclusion from campus orders under section 9, and exclusion from campus facilities orders and expulsion orders, an appeal to the Adjudicator shall not operate as a stay on the Decision of the Associate Vice-President, Student Experience. In all other cases, an appeal to the Adjudicator shall operate as a stay on the Decision of the Associate Vice-President, Student Experience, unless otherwise decided by the Adjudicator.

5.2.3 The Adjudicator's decision on whether to allow the appeal shall be issued no later than 10 calendar days after receiving the appeal request, and is final and binding. Where the Adjudicator grants the request, the appeal normally shall be completed and a Decision rendered by the Adjudicator no later than 60 days from the date of the granting of the appeal.

## **6 Appeal Procedures**

6.1 Appeals may proceed by written submissions or oral hearing at the discretion of the Adjudicator, with the exception that in the cases of alleged sexual misconduct, appeals normally will be heard by written submission, with oral hearings proceeding only in exceptional circumstances as determined by the Adjudicator. In cases of oral hearings, proceedings shall be arranged so that the Complainant and the Student do not meet face-to-face unless all parties agree to do so. Appeal proceedings shall observe the principles of natural justice.

6.2 The Parties shall have the right to Legal Counsel or an Advisor, at their own costs. The Parties shall have the right to respond to arguments presented by the other party(ies). The Parties shall present to the Adjudicator all evidence relevant to the matter under appeal, including the original Decision, and any other relevant documents or information.

6.3 The Appellant's appeal submission under 5.2.1 shall be submitted to the other Party(ies) who shall be provided with 14 calendar days to respond in writing. Any subsequent written submissions and their timelines for submission shall be at the discretion of the Adjudicator.

6.4 Order of Proceedings:

- 1) The Appellant's request for appeal which sets out in reasonable detail the grounds for appeal, and includes the Decision of the Associate Vice-President, Student Experience, and any other relevant documents or information previously submitted to the Adjudicator will be submitted to the other Party(ies).
- 2) The other Party(ies) response to the Appellant's arguments, including any other relevant documents or information, will be submitted to the Appellant and Adjudicator.
- 3) Where there is new evidence or information provided in the submissions, the Parties shall be given the opportunity to respond. Responses shall be submitted to the other Party(ies) and the Adjudicator.
- 4) The Adjudicator may limit the number of submissions where further evidence shall be repetitive or irrelevant.
- 5) The Adjudicator may ask any questions and seek clarification of the investigator, the Parties, witnesses, or any other individual s/he deems appropriate. The Adjudicator shall make a record of any new evidence presented. The Parties shall be given the opportunity to respond to, or question any new evidence arising from information sought by the Adjudicator. Any responses shall be submitted to both the Adjudicator and the other Party(ies).

- 6.5 In the case of oral appeal hearings, the Parties will be notified at least 14 calendar days before the hearing, of the date, time, and place of the hearing. This notice period may be waived by the Parties in writing.
- 6.6 If a Party, who has been notified of an appeal, is unresponsive or is absent without contacting the Adjudicator with a satisfactory explanation, the appeal may proceed in his/her absence.
- 6.7 No disciplinary penalties shall be imposed based solely upon the failure of the Student to respond to the complaint, or participate in the appeal, or testify. In any such case, the evidence in support of the appeal shall be presented and considered.
- 6.8 The Parties will disclose to each other the names of witnesses they may call to give evidence; however, the Associate Vice-President, Student Experience may decline to disclose the names of one or more witnesses if s/he determines, in his/her discretion, that disclosure of the name(s) in advance may pose a risk to the safety of any witness. The Adjudicator may order the disclosure of name(s), where s/he deems it appropriate.
- 6.9 The Adjudicator will have control over his/her own procedures and may set additional procedures as necessary provided they are not inconsistent with these procedures and provided they are in accordance with the principles of fairness and natural justice. The Adjudicator will have the power to waive or modify deadlines when the interests of justice warrant or where no substantial prejudice would result.
- 6.10 The Adjudicator may consult with a Subject Matter Expert, who will receive and review information, which shall be free from any identifying information, for the sole purpose of providing professional advice to the Adjudicator. Any professional advice provided to the Adjudicator by the Subject Matter Expert shall be reported to the Parties who shall be given the opportunity to respond. No identifying information will be submitted to the Subject Matter Expert without the prior consent of the Parties. The Subject Matter Expert may attend an oral hearing with the consent of the Parties.
- 6.11 The Adjudicator is not bound by the rules of evidence applicable to judicial proceedings but will be guided by the principles of fairness and natural justice, and will adhere to the rules of privilege and privacy.
- 6.12 Hearings will be closed. At the discretion of the Adjudicator, others may be permitted to attend the proceedings for training purposes, or other reasonable considerations. The obligation to maintain the confidentiality of the proceedings will be extended to them.
- 6.13 The standard of proof will be on a balance of probabilities.
- 6.14 The Parties will bear their own costs of the proceedings, including the costs associated with retaining legal counsel or an advisor, producing written submissions and/or witnesses, and requesting additional copies of materials already provided. No orders as to costs will be made.
- 6.15 The Adjudicator will inform the Parties in writing of his/her Decision, within seven calendar days of receiving the last submissions or within seven calendar days of an oral hearing. Decisions of the Adjudicator shall be final and binding, with the exception of suspension orders and/or exclusion from campus orders under section 9, and expulsions, which require the approval of the President to be final and binding.
- 6.16 Where, in the opinion of the Adjudicator, or at the request of either Party, the matters that will be discussed will involve intimate, financial, personal, or other sensitive matters, the Adjudicator may order that the final Decision be confidential.

## **7 Non-Academic Misconduct and Student Status**

Transcripts normally shall not be issued directly to a Student charged with Non-Academic Misconduct while there is a complaint pending. Exceptions to this will be at the discretion of the Associate Vice-President, Student Experience. However, transcripts may be sent directly to institutions, employers and potential employers, upon

the request of the Student. If the Student is found to have committed an act of Non-Academic Misconduct and a sanction of suspension and expulsion is imposed which involves a transcript notation, those institutions, employers and potential employers provided with a copy of the Student's transcript shall be sent a revised transcript by the Office of the Registrar.

## **8 Records of Non-Academic Misconduct**

- 8.1 At the conclusion of a matter, and with the exception of complaints that have been dismissed, the Associate Vice-President, Student Experience or the Adjudicator (as the case may be) shall submit a record containing the Student's name, Student's number, the nature of the complaint, the finding of Non-Academic Misconduct and the sanction to a central database. The record shall be kept indefinitely. The record shall be used for statistical information purposes and to determine, after a finding of Non-Academic Misconduct and before a sanction is imposed, whether there has been a previous breach. Access to the records in the database shall be restricted to the University Secretariat. Confirmation of first or subsequent breaches shall be provided upon request to the Associate Vice-President, Student Experience and the Adjudicator by the University Secretariat if and when there has been a finding of Non-Academic Misconduct as determined by these persons/bodies.
- 8.2 The length of time for maintaining notations on transcripts, as they relate to sanctions, shall comply with Appendix A.
- 8.3 Where there has been a finding of Non-Academic Misconduct, the file, other than that listed under 8.1, shall be destroyed upon the expiration of the sanction, provided that the file shall be kept for a minimum of two years beyond its last use.
- 8.4 In the event that the complaint is dismissed, the Student's discipline file relating to the case, which shall include all records collected for the case, shall be retained for a period of two years and the records shall be destroyed thereafter. No personal identifying information shall be retained following this period. A record containing the nature of the complaint and the dismissal of the complaint shall be kept indefinitely for statistical purposes only.

## **9 Extraordinary Power of Suspension and Exclusion from Campus**

- 9.1 Cases of Non-Academic Misconduct that present a reasonable apprehension of a risk to persons or property should be brought to the immediate attention of the Associate Vice-President, Student Experience. The complaint shall take the form of a verbal, written or email report, sent by the complainant, including all relevant documentation and reference to all material evidence that is available at that time, and shall be submitted to the Associate Vice-President, Student Experience. The Associate Vice-President, Student Experience shall notify the President immediately upon receipt of such a complaint.
- 9.2 In cases where the Associate Vice-President, Student Experience considers that the Non-Academic Misconduct presents a reasonable apprehension of risk to persons or property, the Associate Vice-President, Student Experience shall have the right to issue an interim suspension order and/or exclusion from campus order to the Student.
- 9.3 Immediately following the issuance of the order under 9.2 and following the procedures under section 5, the Associate Vice-President, Student Experience shall complete his/her investigation, confirm or amend his/her Decision, and inform the Student of the Decision and his/her right of appeal to the Adjudicator and the process to be followed. This shall be done within seven calendar days of having received the complaint under 9.1.
- 9.4 The Student has an automatic right of appeal to the Adjudicator. If the Student wishes to exercise his/her right to appeal a finding of Non-Academic Misconduct and/or sanction imposed by the Associate Vice-President, Student Experience under 9.3, the Student shall initiate the appeal process within fourteen calendar days of having received the Decision of the Associate Vice-President, Student Experience. The Decision shall be deemed

to have been received by the Student three calendar days after it has been sent by the Associate Vice-President, Student Experience to the Student's UWin email address.

9.5 Appeal procedures are set out in section 6.

9.6 A Student who has been issued a suspension order and/or an exclusion from campus order under the provisions in this section 9 and is appealing the order to the Adjudicator may be permitted to complete and submit for evaluation through the Office of the Registrar any course work for assessment (including mid-term or final examinations, essays, *etc.*) which falls due while the review of the order is pending, subject to prescriptions or conditions set out by the Registrar (or designate).

9.7 Decisions of the Adjudicator under this section require the approval of the President (or designate). Once approved by the President (or designate), Decisions are final and binding.

**10 Report to President**

The President shall be notified of all Non-Academic Misconduct complaints and their dispositions.

## APPENDIX A

### I Determining the Sanction(s) to Impose<sup>1</sup>

- a) Where there is a finding of Non-Academic Misconduct, as defined in these procedures, one or more of the sanctions listed below may be imposed by the Associate Vice-President, Student Experience and the Adjudicator (with the exception of #8 and #9, which require approval of the President as set out under section 9, and #10 which always requires the approval of the President), taking into account the nature and scope of the Non-Academic Misconduct, whether there was intent, the context in which it occurred, the Student's educational and cultural background and other relevant circumstances. Specific illustrations include (this list is not exhaustive):
- Whether the Student accepts responsibility for his/her action and is amenable to educative remedies
  - Extenuating circumstances that may help explain the action taken by the Student
  - Any other aggravating or mitigating factors (health or personal issues)
  - The severity of the breach, including its impact on others (within and outside the university community)
  - Any record of previous breaches
- b) Disciplinary actions are an opportunity to educate and should, where appropriate, also incorporate a Teachable Moment.

### II List of Sanctions

1. **Admonition:** A notice to the Student, orally or in writing, that s/he has violated a rule of conduct and that continuation or repetition of the conduct found wrongful may be cause for more severe disciplinary action. There shall be no transcript notation related to this sanction.
2. **Letter of Apology/or Reflection:** A short reflective paper describing the Non-Academic Misconduct and acknowledging wrong-doing. There shall be no transcript notation related to this sanction.
3. **Educational Session:** A requirement that the Student attend an educational session, if available, addressing the Non-Academic Misconduct. (The educational session may be offered by an individual (*e.g.*, Associate Vice-President, Student Experience) or through a formal workshop offered through an appropriate University office or other organization.) There shall be no transcript notation related to this sanction.
4. **Censure:** A reprimand for violation of a specified University regulation, including the possibility of more severe disciplinary sanction in the event of conviction for the violation of any University regulation within a period of time stated in the reprimand. There shall be no transcript notation related to this sanction.
5. **Denial of Registration:** A decision to deny the Student permission to register in a course or a program, or to cancel the Student's registration in a course or a program. There shall be no transcript notation related to this sanction.
6. **Restitution:** Reimbursement for damage or misappropriation of property. Reimbursement may take the form of appropriate service to repair or otherwise compensate for damages. There shall be no transcript notation related to this sanction.
7. **Exclusion from Campus Facilities:** Exclusion from facilities including, among others, revocation of computing privileges, as set forth in the notice of exclusion from specific campus facilities for a specified period of time. There shall be no transcript notation related to this sanction.
8. **Exclusion from Campus:** Denial of access to the campus for Non-Academic Misconduct. This may involve other conditions for removing the ban, which shall be included in the exclusion order. Exclusion from campus

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<sup>1</sup> University of Waterloo Policy 71, Student Discipline, section 4 Penalties

orders issued by the Adjudicator under section 9 require the approval of the President. There shall be no transcript notation related to this sanction.

9. **Suspension:** Exclusion from classes and other privileges or activities as set forth in the notice of suspension for a specified period of time. Suspension orders issued by the Adjudicator under section 9 require the approval of the President. This sanction shall result in a transcript notation for a specified period of time.
10. **Expulsion:** Termination of student status for an indefinite period. The conditions of readmission, if any is permitted, shall be stated in the order of expulsion. Expulsion orders require the approval of the President. A notation shall be placed on the Student's transcript for an indefinite period of time. A Student may apply to the Associate Vice-President, Student Experience or the Adjudicator, as the case may be, to request to have the notation of expulsion removed from his/her transcript three years after the imposition of the sanction. Decisions to remove the transcript notation must be approved by the President.

### III Transcript Notations

Sanction notations shall be automatically removed from the Student's transcript upon the expiration of the sanction. With the exception of #10, in cases where placement of a sanction on the transcript will have an adverse impact on employment or on applications to graduate programs, or other post-secondary programs, the Student may appeal to the Adjudicator to have the notation period shortened or the notation removed.