
Sexual and Gender-Based Violence

Policy Number:	1308
Key Process Area:	Student Services
Owner:	VP AISA
Current Approved Date:	May 26, 2022

POLICY STATEMENT

Sexual and Gender-Based Violence is unacceptable and will not be tolerated by New Brunswick Community College (NBCC). Everyone at NBCC should be able to work, teach, and learn in an environment free from harassment, discrimination, and violence. The College is committed to combating sexual and gender-based violence in all forms through education to promote awareness of the impacts on the individual and community. NBCC is committed to the values of equity, diversity, and inclusion in all aspects of its operations and activities. These efforts include appropriate responses to sexual and gender-based violence.

NBCC is committed to fostering an environment free from sexual, gender-based violence and misconduct and will respond promptly and effectively when incidents occur.

PURPOSE

The purpose of this policy is to address sexual and gender-based violence in our College community and to identify ways to recognize and prevent sexual and gender-based violence through education, awareness, and response. NBCC strives to raise awareness of the impacts of sexual and gender-based violence and prevention strategies, and to provide a timely, coordinated, consistent and fair response to disclosures and reports of sexualized violence. NBCC is a diverse community, and we recognize that any response would need to reflect an intersectional lens if gender-based violence is compounded by other potential vulnerabilities, including sexual orientation, gender identity, gender expression, indigeneity race/ethnicity, religion, disability, or age. NBCC recognizes that each situation might look different based on lived experiences, and we are committed to working within a trauma-informed approach.

SCOPE AND LIMITATIONS

This policy applies to all members of the College community, including employees, governors, students, contractors, suppliers of services, volunteers, visitors, and individuals who are directly connected to any College initiatives.

This policy applies to actions, interactions, conduct, and behaviors that take place:

- On College premises.
- Off College premises but involved in the business of the College or activities sanctioned by or representing the College (including but not limited to work-integrated learning, academic or professional conferences, volunteer activities, academic or research fieldwork).

- Off College premises where such actions, interactions, or behaviors have an impact on another member of the College community or have the potential to have an impact on the reputation of the College.
- Contracted employees working on NBCC property or on behalf of NBCC and visitors or guests of the NBCC community.

NBCC recognizes that students and employees are entitled to decide whether they wish to access available resources on-site and/or in the community concerning their own incidents of sexual violence and whether to report the incident to police or College authorities.

1.0 DEFINITIONS

Coercion - In the context of sexual violence, coercion is unreasonable and persistent pressure for sexual activity. Coercion is the use of emotional manipulation, blackmail, threats to family or friends, or the promise of rewards or special treatment to persuade someone to do something they do not wish to do, such as being sexual or performing particular sexual acts.

Complainant - Someone who has experienced sexual violence. The individual may choose to identify as a survivor, although individuals might be more familiar with the term “victim.” NBCC uses the term complainant as it is the prerogative of the person who has experienced these circumstances to determine how they wish to identify.

Complaint - A formal report that is made to authorities either within NBCC and/or externally, such as with the police. Within NBCC, complaints will be sent to the Head of Counselling Services, who will work with others as necessary to ensure the complaint is dealt with properly.

Confidential Disclosure - The provision of information by an individual who has experienced, or is witness to, an alleged sexual assault to a Counsellor. NBCC recognizes that such communications originate in confidence and that the complainant has an expectation that such communications will remain confidential. NBCC recognizes that confidentiality is essential in order for complainants to come forward and discuss incidents of sexual assault. Such information will be held in strict confidence by these individuals except as directed by the complainant or within the limits of confidentiality.

Consent - Voluntary agreement to engage in the sexual activity in question (defined according to the *Criminal Code of Canada* and as such will change with changes in legislation and interpretation by the courts). Silence or non-communication must never be interpreted as consent, and a person in a state of diminished judgment cannot consent.

Confidentiality - Refraining from disclosing personal information to others. Every effort will be made to respect the wishes of persons experiencing sexual violence and to protect the privacy and anonymity of any person who discloses any incident of sexual violence. Prior to disclosure of any information reported relating to the incident(s) of sexual violence, the expressed consent of the individual who made the report of sexual violence will be required, except in certain circumstances. See limits to confidentiality in this policy.

Disclosure - For the purposes of this document, a disclosure involves a student or employee choosing to tell anyone about their experience of sexual violence (different from a complaint).

Interim Measures -Temporary measures imposed on the Respondent designed to protect the safety of the Complainant and/or other individuals involved in a disclosure or complaint. These interim measures can be instituted by the Head of Counselling Services (or designate) at any point following the disclosure or reporting of an incident of sexual violence and prior to any finding or determination being made under this policy. Interim measures are arranged by the Head of Counselling Services and take into consideration the severity of the allegations and the Complainant's desire to restrict access to the disclosed information. Examples of interim measures include, without limitation, a no-contact order, trespass or restricted access, suspension from classes, exclusion from social or other extra-curricular activities, limiting access to services or facilities, or other safety measures.

Intersectional -Refers to an approach that acknowledges the integrative nature of social identities and social oppressions, including various forms of violence. An intersectional approach to sexualized violence considers the fact that the impact of sexualized violence can overlap and interact with experiences of sexism, homophobia, transphobia, racism, colonialism, classism, and ableism.

Natural Justice -The right to procedural fairness, including the absence of bias; the right to be heard; the right to know the reasons for any decision; and the duty of any decision-maker to act fairly. All processes must be conducted in a fair and unbiased manner and must protect the rights of all parties involved.

Gender-Based and Sexual Violence - Any sexual act or act targeting a person's sexuality, gender identity, and gender expression, whether the act is physical or psychological in nature, that is committed, threatened, or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, cyber harassment, and sexual exploitation.

Rape Culture - An environment in which sexual violence against women is normalized and excused in the media and popular culture. Rape culture is perpetuated through such things as the use of misogynistic language, the objectification of women's bodies, and the glamorization of sexual violence, thereby creating a society that disregards women's rights and safety. Includes jokes, TV, music, advertising, legal jargon, laws, words, and imagery that make violence against women and sexual coercion seem so normal that people believe rape is inevitable. It promotes victim-blaming through prevention efforts of 'don't get raped vs. don't rape.'

Respondent - An individual against whom a written complaint of sexual violence has been made.

Sexual Abuse - Unwanted sexual activity, with perpetrators using force, making threats, or taking advantage of victims not able to give consent. Most victims and perpetrators know each other.

Sexual Assault - Any type of unwanted sexual act done by one person to another that violates the sexual integrity of the victim and involves a range of behaviors from any unwanted touching to penetration. Sexual assault is characterized by a broad range of behaviors that involve the use of force, threats, or control towards a person, which makes that person feel uncomfortable, distressed, frightened, threatened, or is carried out in circumstances in which the person has not freely agreed, consented, or is incapable of consenting. Sexual assault is a criminal offense under the *Criminal Code of Canada*.

Sexual Cyber Harassment/Cyber Stalking - Often used interchangeably, cyber harassment and cyberstalking are defined as repeated, unsolicited, threatening behavior of a sexual nature by a person or group using a cell phone or internet technology to bully, harass, and intimate others. Such harassment can take place in any electronic environment where communication with others is possible, such as on social networking sites, on message boards, in chat rooms, through text messages, and email, to name a few examples.

Sexual Harassment - Conduct of a sexual nature such as, but not limited to, verbal abuse or threats of a sexual nature, unwelcome sexual invitations or requests, demands for sexual favors, or repeated innuendos or taunting about a person's body, appearance, sexual orientation, or gender identity. Behavior conducted in whole or in part through electronic means (such as e-mail, web postings, text messaging, and other forms of electronic behavior) shall be included in this definition.

Sexual Violence - A broad term that describes any violence, physical or psychological, carried out through sexual means or by targeting sexuality. This violence takes different forms, including but not limited to sexual assault, sexual harassment, sexual abuse, stalking, indecent or sexualized exposure, degrading sexual imagery, voyeurism, cyber-harassment, and sexual exploitation.

Student - For the purposes of this policy, means an individual enrolled or registered in a course at NBCC at the time the incident of sexual violence is alleged to have occurred.

Substance-Facilitated Sexual Assault -Refers to the use of alcohol and/or drugs to intentionally sedate or incapacitate another individual for the purpose of committing a sexual assault.

Trauma-Informed -An approach that takes into consideration the profound and complex physical, psychological, and social impacts of trauma on an individual. Trauma-Informed realizes the widespread impacts of trauma, recognizes the signs and symptoms of trauma and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively avoid re-traumatization.

Visitors - Refers to persons who are not members of the NBCC community who are engaged in activities on New Brunswick Community College's (NBCC) property or with members of the NBCC community and includes, but is not limited to, contractors, agents, vendors, alumni, and donors.

2.0 IMPLEMENTATION

The *Sexual Violence Policy* is subject to all local, municipal, provincial, and federal laws in addition to NBCC policies. Professional organizations and associations may have their own code of ethics, which students and employees shall comply. This policy applies to all, regardless of cultural background.

NBCC strongly discourages sexual relationships between individuals in positions of authority (such as employees, managers, or supervisors) and students or employees whose performance they are responsible for grading, supervising, or evaluating. NBCC urges timely disclosure of such relationships to their manager or Human Resources. See *Policy 4129 Employee Code of Conduct*.

2.1 Consent

No consent is obtained under, but is not limited to, the following conditions:

- The Complainant is incapable of consenting to the activity.
- The Accused counsels or incites the Complainant to engage in the activity by abusing a position of trust, power, or authority.
- The Complainant expresses, by words or conduct, a lack of agreement to engage in the activity.
- The Complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.
Criminal Code - R.S.C., 1985, c. C-46 (Section 153.1).

Currently, the age of consent for sexual activity in Canada is 16 years, except where the sexual activity exploits the young person, including relationships of authority and trust (e.g., teacher, coach), in which case the age is 18. The Department of Justice provides further explanation and interpretation at the following website. <http://www.justice.gc.ca/eng/rp-pr/otherautre/clp/faq.html>

It is imperative that everyone understands the following:

- Silence or non-communication must never be interpreted as consent, and a person in a state of diminished judgment cannot consent.
- Consent cannot be obtained if the respondent abuses a position of trust, power, or authority.
- Consent cannot be assumed from previous consent to similar activities.
- A person is incapable of giving consent if they are asleep, unconscious, or otherwise unable to communicate.
- A person who has been threatened or coerced (i.e., is not agreeing voluntarily) into engaging in sexual activity is not consenting to it.
- A person who is drugged is unable to consent.
- A person is usually unable to give consent when they are under the influence of alcohol.
- A person may be unable to give consent if they have a mental disability.
- The fact that consent was given in the past to a sexual or dating relationship does not mean that consent is deemed to exist for all future sexual activity.
- A person can withdraw consent at any time during the course of a sexual encounter.

It is the responsibility of the Initiator of sexual activity to obtain clear and affirmative responses at all stages of sexual engagement.

2.2 Disclosure/Confidential Disclosure

Any person who has experienced a sexual assault is encouraged to seek help and support as soon as possible after the incident. NBCC recognizes that an individual who has experienced a sexual assault will often require time and reflection before making the decision as to whether they wish to make a disclosure, confidential disclosure, or formal complaint under this policy. Individuals who have experienced sexual assault are encouraged to come forward to disclose it as soon as they are able to do so.

Members of the NBCC community are expected to inform the Head of Counselling Services of any sexual assaults or allegations of sexual assault that are brought to their attention. Such information may be based on witnessing or having knowledge of a sexual assault or having reason to believe that sexual assault has occurred or may occur. If there is an immediate threat, they should contact Campus Security or call 911. Appendix A provides information on how to respond to a disclosure.

A person may choose to disclose an incident of sexual violence without making a report. Consequently, within the limits of confidentiality, disclosure does not result in a report being made and does not initiate a process to address the sexual violence. The decisions to disclose and the decision to report are separate decisions, and NBCC will respect each person's decisions. When disclosures of sexual assault are made, the safety, security, and well-being of the survivor are fundamental considerations. All disclosures are kept confidential to the extent possible in order to take necessary action.

2.3 College Response

Where NBCC becomes aware of an assault or allegation of sexual assault by a member of the NBCC community or against a member of the campus community which occurs on or off NBCC property and that poses a risk to the safety of members of the NBCC community, NBCC will take all reasonable steps to ensure the safety of the campus community.

NBCC may also have an obligation to take steps to ensure that the matter is dealt with in order to comply with New Brunswick Community College's (NBCC) legal obligation and/or its policies to investigate such allegations even if no formal complaint is filed. In doing so, NBCC will take steps to ensure that confidentiality is respected for both the Complainant and the Respondent, except as indicated in the limitations to confidentiality.

Upon receipt of a disclosure, interim measures may be imposed to ensure a sense of security and safety for the victim. In some cases, these measures may resolve the matter to the satisfaction of the person who made the disclosure. Examples of interim measures include but are not limited to no-contact order or restricted access order, suspension from social or extracurricular activities, limiting access to services or facilities, or other safety measures.

NBCC will compile an annual statistical report and other reports as requested by the Director, Student Services.

2.4 Limits of Confidentiality

Confidentiality is a key principle in creating an environment where survivors feel safe to disclose and seek support and accommodation. The following circumstances may require the College to take immediate action in relation to a disclosure of sexual violence; including, but not limited to the College directly contacting law enforcement authorities:

- A student or employee is at imminent risk of severe or life-threatening self-harm.
- A student or employee is at imminent risk of harming another person.
- There are reasonable grounds to believe that others in the College community may be at significant risk of harm based on the information provided.
- There is an agreement in writing to share information to act under this policy.
- Legislation requires reporting or action.
- Evidence of sexual violence is available in the public realm (e.g., video shared publicly on social media).
- An individual involved is under 16 years of age, and /or there is a legal duty to report (Under the *Family Services Act*).

2.5 Formal Complaint Process

2.5.1 Choice of Process

Individuals who disclose an experience of sexual assault are entitled to determine which process best meets their own situation and circumstance, including, but not limited to, contacting the police or filing a formal complaint under the College's policies or regulations. **The Head of Counselling Services can provide information to the Complainant regarding the options available.**

2.5.2 Filing a Formal Internal Complaint

A disclosure or confidential disclosure is not a formal complaint and will not trigger an investigation. A formal complaint of sexual assault must be filed with the Head of Counselling Services in order for an investigation to ensue. In some instances, an external investigator may be consulted. If disclosed by the local police, a formal criminal complaint may become a formal complaint. **The Complainant may approach the Head of Counselling Services for support and assistance in filing a formal complaint.** Alternatively, the College may file a formal complaint when required to comply with legal obligations and / or its policies or when presented with allegations that may put the College community at risk.

2.6 Site Supports

2.6.1 Communicating with Individuals who have Experienced Sexual Violence

Sensitive and timely communication with individuals who have experienced sexual violence and their family members (when an individual consents to this communication) is a central part of the College's first response to sexual violence. To facilitate communication, the College will:

- Ensure that designated staff members are knowledgeable about sexual violence.
- Ensure designated staff members respond in a prompt, compassionate, and personalized fashion.
- Ensure that the victim is provided with reasonable updates about the status of the College's investigation of the incident when such investigations are undertaken.

Note: Appendix A provides guidelines concerning how to respond when a student or employee discloses an incident of sexual violence to a member of the College community. The guideline helps with how to respond in a way that supports individual dignity and demonstrates compassion and respect.

2.6.2 Fairness

NBCC will seek to achieve fairness in dealing with all formal complaints. The College's primary emphasis is to protect the safety of the Complainant and the rights of both the Complainant and the Respondent. Respondents will be given reasonable notice, provided with sufficient information to enable them to answer the formal complaint, and provided with an opportunity to answer the allegations made against them prior to disciplinary action being taken. As such, no sanction or and/or disciplinary action will be taken by the College against a person or group without their knowledge that there is an alleged breach of this policy. Individuals accused of sexual assault under this policy should seek appropriate advice and assistance. Students may consult with the Counsellor. Staff may wish to consult with union representatives or Human Resources personnel. Anyone involved in actions under this policy may seek legal counsel at any time.

Where a disclosure, confidential disclosure, or formal complaint is brought forward in which the individual named as the respondent is a person in a position identified in this policy as being responsible for the implementation of part or all of this policy or its related procedures, the College shall take all reasonable steps to ensure that the matter is addressed by qualified, appropriately resourced independent third parties acceptable to the Complainant.

2.6.3 Counsellor(s)

NBCC has a Counsellor(s) that has/have been trained to receive such disclosures of sexual violence. Additional employees and community resources may have received training to receive such disclosures of sexual violence and can be consulted to provide information and support, accessing, and coordinating support services, information about reporting options, and assistance with the reporting process if the person chooses to make a formal complaint. It is each site's responsibility to identify site supporters.

2.7 Right to Withdraw a Complaint

A Complainant has the right to withdraw a complaint at any stage of the process. However, the College may pursue the issue identified in the complaint in order to comply with its obligation under this policy. Additionally, professional organizations and associations may have their own code of ethics, with which students and staff shall comply. The College may also track complaints about statistical purposes in a de-identified manner.

2.8 Unsubstantiated or Vexatious Complaints

If a person, in good faith, discloses or files a sexual violence complaint that is not supported by evidence gathered internally or externally, or a combination thereof, that complaint will be dismissed, and no record of it will be placed in the Respondent or Complainant's file.

However, if following an investigation of a complaint, it is found to have been made to purposely embarrass or harm the Respondent or made in bad faith, sanctions may be made against the Complainant, or and/or discipline may be given. See *policy 1112 Student Code of Conduct*, *policy 4129 Employee Code of Conduct*, and *policy 4202 Maintaining a Respectful Workplace*.

3.0 OTHER RELATED DOCUMENTS

Student Code of Conduct (1112)

Student Issues and Complaints (1313)

Formal Complaint Form (1313.4625)

Access to Accessibility Services (1305)

Maintaining a Respectful Workplace (4202)

Emergency Management Planning (2605)

Public Relations and Media Communications (3115)

Employee Code of Conduct (4129)

Violence Prevention (2602)

APPENDIX A

Response to Disclosure

When a person discloses an incident of sexual violence or misconduct to a member of the College community, respond in a way that supports individual dignity and demonstrates compassion and respect.

- Listen empathically and without judgment or interruption.
- Validate the individual's experience or reactions.
- Help the person identify safe individuals within their existing support system.
- Reassure the individual that they are not responsible for the actions of the other person.
- Review the current safety of the individual.
- Provide information about on-campus and off-campus resources, including counseling and medical support services.
- Inform the individual of their complaint or reporting options, including contact information for on-campus reporting of the incident(s).
- Encourage the individual to seek medical attention and counseling support while respecting the individual's right to choose the services they believe will be of most benefit, including any decision to notify the police.
- Avoid giving personal advice.
- Do not conduct an investigation.
- Do not call the police unless you are specifically asked to do so.
- Ask the individual what you can do to be supportive.

If an individual receiving the disclosure feels unable to assist the student, ask the student if they would like you to escort them to the Counselling Department for assistance.