

4.8.10 Investigations

POLICY

This policy sets out the principles of natural justice, procedural fairness, privacy and confidentiality, when conducting investigations under College policies.

PURPOSE

The College is committed to upholding the principles of natural justice and procedural fairness while also protecting the privacy of all participants of an investigation.

To uphold these commitments, the purpose of this policy is to provide direction on procedural fairness, privacy and confidentiality to those who will conduct an investigation of situations or incidents at the College.

SCOPE

This policy applies to all College of the Rockies policies involving investigations, that may result in discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights or obligations.

This policy does not supersede regulations or procedures outlined by collective agreements, legislation, the Claims Department at UCIPP/Risk Management Branch and IT Services regarding threat protection.

This policy does not cover actions prior to an investigation, which are intended to determine whether to commence an investigation. Including the gathering of documents, materials, potentially relevant policy, hearing the complaint and any other information gathered for the purpose of a deciding whether to conduct an investigation, also known as a preliminary review.

When it has been determined that an investigation will occur, an investigator will be selected under the direction of the Office of the Vice President Academic and Applied Research (for situations or incidents involving students) and the Office of the Executive Director Human Resources & Payroll (for situations or incidents involving employees).

The investigator will perform their investigation in accordance with the principles of natural justice and confidentiality requirements as set out in this policy. The Investigator will also refer to the non-binding supporting documentation titled ***Investigations Procedures***.

DEFINITIONS

Allegation: a conduct, comment, and/or event alleged in the complaint.

Complainant: the person making a complaint.

Findings: the Investigator's determinations, including whether or not specific allegations are substantiated, as a result of the investigation.

Investigation: process undertaken by the College to ascertain whether a Respondent is in breach of policy or engaging in conduct that warrants discipline, restrictions on movements or activities, or any other limitation of the Respondent's privileges, entitlements, rights or obligations.

Investigator: individual appointed to conduct an investigation, which may include a College official in an excluded position or external third-party.

Participants: students, staff, management, public, legal representative or advisor involved in an investigation.

Personal Information: information about an identifiable individual (as defined in FIPPA).

Preliminary Review: process of gathering information and review, to determine the need for an investigation.

Reasonable Apprehension of Bias: legal standard to determine bias - where an informed person, acting reasonably and in view of all relevant context, would consider it more likely than not that a decision maker was subject to bias and/or unable to make a fair and impartial decision.

Report: written document based on an investigation.

Representative/Advisor: union, professional association, legal counsel, student's person of choice (i.e. friend, parent) or other as approved by the Office of the Vice President Academic and Applied Research or the Office of the Executive Director Human Resources & Payroll.

Respondent: an individual who is the subject of a complaint/allegations being investigated.

Third Party Agencies: agencies, organizations including but not limited to RCMP, Tri-Council agencies (NSERC, SSHRC, CIHR).

GUIDELINES

PRINCIPLES OF NATURAL JUSTICE

Procedural Fairness: Investigations must be conducted in accordance with procedural fairness. Elements of procedural fairness include right to know the nature of the allegations; opportunity to respond; right to a fair and impartial decision maker; processing without undue delay; right to reasons for decision that impacts their privileges, entitlements, rights or obligations.

Freedom from Bias: The decision maker must be fair, impartial and free of bias. Bias or perception of bias may occur when a reasonable person could conclude that the decision maker was prejudiced; judged the matter before obtaining and reviewing evidence; had or has an existing relationship and/or connection with either the Complainant or Respondent, which could give rise to a conflict of interest and potential for bias.

Timeliness: Investigations must begin and conclude in a timely manner without undue delay. Contributing to the principle of timeliness, the Office of the Vice President Academic & Applied Research (for situations or incidents involving students) and the Office of the Executive Director Human Resources & Payroll (for situations or incidents involving employees) are responsible for the timely pre-investigation notification of incidents or claims to the UCIPP/Risk Management Branch. Ideally, 24 hours of the incident/injury/threat of or taken legal action. They could provide assistance and guidance with the investigation, retain an independent adjuster, or legal counsel.

CONFIDENTIALITY and PRIVACY

- A. Investigations are confidential, and personal information must only be collected, used or disclosed as set out in this policy and in compliance with privacy law and collective agreements when applicable.
- B. In order to protect the integrity, fairness, and effectiveness of investigations and to ensure compliance with the Freedom of Information and Protection of Privacy Act (FIPPA), all participants in an investigation must act in accordance with the requirements set out below.
- C. Individuals, including the Complainant and Respondent, who have obtained personal information through their participation in an investigation must not disclose this information to anyone except their own representative/advisor and/or as required by law.
- D. The College will only disclose personal information related to an investigation to the degree necessitated, in the following circumstances. Such as, when:
 - expressly authorized by the affected individual;
 - necessary for the performance of an employee, contractor, or volunteer's duties;
 - to a Complainant, Respondent, witness or other participant in the investigation, when necessary in order to conduct the investigation;
 - to the Complainant and/or Respondent in accordance with this section and section E below, pursuant to legislation and any relevant collective agreements;

- authorized by the Office of the Vice President Academic and Applied Research, or the Office of the Executive Director Human Resources & Payroll:
 - for compelling health or safety reasons;
 - to correct misleading or inaccurate information, if necessary to protect the integrity of the investigation or the College's investigatory process;
 - when authorized or required under law (i.e. tribunal, board, etc);
 - when required by third party agencies (i.e. RCMP, Tri-Council agencies (NSERC, SSHRC, CIHR), etc).
- E. At the conclusion of the investigation process, the College will communicate verbally or in writing, the final result of the investigation and summary reason to the Respondent. Other College policies will specify when this information is extended to the Complainant.
- F. Pursuant to FIPPA, the College may be required to withhold personal information regarding the findings. This includes personal information that is irrelevant to the investigation findings, or that identifies witnesses. If there are multiple Complainants or multiple Respondents, they will only receive the information that is relevant to them.
- G. Complainants or Respondents must not disclose the results/findings and related investigation materials to anyone except their own representation/advisor and/or as required by law. Those who choose to disclose such information should keep in mind 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) and may wish to seek advice before doing so.
- H. The College may disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the Office of the Vice President Academic and Applied Research (for situations or incidents involving students) and the Office of the Executive Director Human Resources & Payroll (for situations or incidents involving employees), including for:
- compelling health or safety reasons;
 - situations authorized or required under law (i.e. tribunal, board etc.);
 - situations required by third party agencies (i.e. RCMP, Tri-Council agencies (NSERC, SSHRC, CIHR) etc).

For example, the College may inform a Complainant of restrictions that may have been imposed upon the Respondent's movements or activities for a compelling health or safety reason.

RESPONSIBILITY

Executive Director Human Resources & Payroll

ADDITIONAL INFORMATION

Related policies:

Any College policy related to or requiring an investigation.

Related documents:

Investigations Procedures

Student Housing Handbook and Licensing Agreement

Homestay Agreement

Risk Management - Incident Report

Risk Management – Reporting Table for incidents and injuries regarding students and the public

FPSE Common Agreement

CORFA Collective Agreement

CUPE Collective Agreement

References:

[BC Freedom of Information and Protection of Privacy Act](#)