

POLICY:  <b>Harassment Policy</b>		POLICY NUMBER: <b>AM-007-A2</b>
		PREVIOUS/REPLACES: <b>Updated October 13, 2021</b>
APPROVED BY: <b>Executive Committee</b>	EFFECTIVE DATE AS OF: <b>November 1, 2021</b>	PRIOR VERSIONS: <b>July 9, 2021</b>

## 1. Policy Statement

Herzing College is committed to providing and maintaining a working and academic environment where all individuals are treated with respect and dignity. All members of the Herzing College community have the right to live, work, and study in an environment that is free from discrimination, harassment, sexual harassment, stalking or sexual assaults. Herzing College will not tolerate or condone such behaviour.

Harassment is prohibited in any form in the classroom, the workplace, academic setting, and all College affiliated events or work placements.

All reported incidents of harassment will be investigated in a manner that ensures due process as outlined in this Policy. Herzing College will take appropriate action using a victim-centred approach. Herzing College will strive to make individuals feel comfortable coming forward to report incidents of harassment they have experienced or observed.

This Policy is not intended to prevent or discourage any member of the Herzing College community from exercising their rights under any other law, including the right to file an application under the applicable provincial human rights legislation or to pursue criminal charges under the Criminal Code of Canada.

## 2. Scope

1. This Policy applies to all members of the Herzing College community, including employees, students, Governing Board Members, volunteers, contractors, suppliers and visitors.
2. This Policy applies to harassment perpetrated or experienced by a member of the Herzing College community:
  - a. Occurring, in whole or in part, on physical Herzing College campuses or sites.
  - b. Occurring, in whole or in part, online through social media or other electronic environments, such as text messages or emails, where such behaviour could have an adverse impact on the reputation of, or experience of, the working or learning environment of Herzing College.
  - c. Occurring, in whole or in part, in the course of employment or studies with Herzing College, including without limitation in the course of work experience as part of a Herzing College program.

- d. Occurring, in whole or in part, in the course of participation in Herzing College-sponsored activities or programs.
  - e. Occurring wholly outside of Herzing College property, where such behaviour could have an adverse impact on the reputation of, or experience of, the working or learning environment of Herzing College.
3. The procedures of this Policy address how Herzing College will respond to a disclosure and/or report of harassment.
4. Where it appears that information received with respect to harassment falls outside of the application of this Policy or could be more appropriately dealt with under another policy, legislation or procedure, Herzing College reserves the right to determine the approach or policy that will be used, or to refer the individual to an appropriate forum.

### 3. Policy Content

#### 1. Responsibility to Report an Offence

- a. Herzing College has an obligation to investigate any violations of this Policy, and if necessary, to report the incident to the appropriate authorities.
- b. All employees of Herzing College who are notified or are aware of any violation of this Policy must report such situation to the Chief Operations Officer (COO) or the VP of Finance immediately.

#### 2. Making a Complaint

- a. A complaint under this Policy should be made in writing detailing what happened, the name of the accused, when it happened, where it happened, how often it happened and who else was present (if applicable) together with any relevant documents or other evidence.
- b. Complaints should be made as soon as possible after the date of the alleged incident to allow for a proper investigation while the events are still fresh in the minds of witnesses.
- c. Students are encouraged to make a complaint to the Academic Dean if the alleged violation was committed by a student or to the Campus President if the alleged violation was committed by an employee. A complaint can also be made to any member of the Herzing College community who will forward it on to the Campus President.
- d. Any Herzing College staff member who wishes to make a complaint should contact the Campus President and Human Resources. If the complaint is against the Campus President, the complaint should be made to the COO. When a staff member discloses a situation that could be considered harassment to another Herzing College staff member, the information should be forwarded to the Campus President and Human Resources.

- e. Where practical, the complainant shall be made aware of the option of an informal resolution of the complaint. Most cases of harassment may be resolved by Herzing College, but students and employees should be aware that some of the prohibited behaviours above may result in a report to the local police.

### 3. Investigation

- a. If the complaint is not resolved informally or such resolution is not appropriate, Herzing College will appoint an investigator to conduct a fact-finding investigation. The investigation may be conducted internally, or Herzing College may elect to hire an external investigation service, including where the seriousness and/or nature of the complaint requires third-party intervention.
- b. The investigation must be completed in a timely manner, taking into consideration the specific circumstances of the particular matter including its complexity and the requirements of fairness and due process.
- c. The investigator will provide the accused with a reasonable opportunity to respond to the allegations.
- d. The investigation shall include at a minimum interviewing the complainant, the accused, any relevant witnesses and reviewing any other records or evidence.
- e. The investigator will complete a written report once the investigation has been concluded. The report will include a description of the complaint, the response of the accused, a summary of information learned from the witnesses (if applicable) and other documentary evidence, and a conclusion as to whether harassment has occurred.
- f. The report will be provided to the Campus President and Human Resources who may seek advice from legal counsel if required. The Campus President and Human Resources will work collaboratively to determine the appropriate corrective action to be taken by Herzing College against the accused, which could include no action, a warning, probation, termination of enrolment, or expulsion for an accused student (See AM-005-A2 Student Discipline Policy) or no action, a warning, suspension, or termination of employment for an accused employee. If the accused is a Governing Board Member, the discipline will be implemented in accordance with the by-laws of the Board. If the accused is a volunteer, contractor, supplier and/or visitor and the complaint is substantiated, they may no longer be granted access to Herzing College.
- g. In all cases, the outcome of the investigation, including the findings and any disciplinary action taken, will be communicated to both the complainant and the accused. However, the report will not be shared with the complainant or the accused.
- h. An investigation will usually be completed within sixty (60) working days from when the initial complaint was filed, where possible. The timeframe may be extended in instances where additional information is required.

#### 4. College's actions pending results of the investigation.

- a. To the extent possible Herzing College will attempt to keep the complainant and the accused separated while the investigation is conducted.
- b. In the event of student involvement, this could result in changing classes, or an accused student being barred from being on campus.
- c. In the event of an employee being accused, the employee may be put on paid administrative leave where such separation is needed.

#### 5. Protection from Reprisals, Retaliations or Threats

- a. Herzing College's ability to provide a safe and respectful learning environment depends on all members of the Herzing College community feeling comfortable enough to come forward to report incidents of harassment.
- b. It is prohibited for any student or employee to engage in any form of threat, reprisal or retaliation against an individual who has filed a complaint or participated in an investigation under this Policy.
- c. If an individual experiences or believes that they have experienced a reprisal or retaliation as a result of filing a complaint or participating in an investigation under this Policy, they should immediately inform the Campus President and the COO.
- d. All allegations of reprisal will be investigated, and if justified, appropriate corrective steps will be taken. Any person engaging in acts of reprisal or retaliation will be subject to disciplinary action up to and including termination of employment if an employee, or expulsion if a student.

#### 6. Bad Faith Disclosures

- a. Any person found to have made a disclosure in bad faith or in breach of this Policy will be subject to appropriate disciplinary action and possible legal action.

#### 7. Confidentiality

- a. All parties involved in the resolution or investigation of a complaint, including the complainant, the accused, and witnesses, are expected to facilitate the process, co-operate and respect confidentiality.
- b. All privacy legislation and Herzing College's policy on Privacy and Access to Information shall be strictly adhered to.
- c. All persons involved in the investigation of a complaint must strive to keep the nature of the investigation confidential and any information obtained as a result of the investigation confidential. Sharing information internally within Herzing College is to be restricted to the fewest number of individuals as possible who have a need to know. Any person breaching confidentiality may be subject to disciplinary action, up to and including termination of employment or expulsion if a student.

- d. However, in the following limited circumstances confidentiality cannot be assured:
- i. Where it is deemed an individual is at imminent risk of danger or self-harm.
  - ii. The information is necessary to prevent or lessen a serious and immediate threat to public safety or public health.
  - iii. Reporting is required by law.
  - iv. It is necessary to ensure procedural fairness in an investigation or other response to a report.
  - v. To obtain confidential professional advice.
  - vi. The person the information is about has provided written consent to the release of the personal information.
- e. If any information about the complaint is required to be disclosed in accordance with this Policy, the disclosure shall be the minimum amount required to accomplish the purpose for which the disclosure is required.

## 5. Administration:

The Campus President and Vice President of Academics will oversee the administration and enforcement of this Policy.

## 6. Definitions

For the purpose of this Policy, the following words shall be defined as follows:

**Harassment** consists of repeated unwanted remarks, behaviour, and/or physical conduct that offends, demeans or humiliates another individual. In some instances, harassment can be a form of discrimination on basis of a prohibited ground under the applicable human rights legislation, which varies by jurisdiction but can include, without limitation, race, colour, sex, pregnancy, sexual orientation, age, religion/creed, language, ethnic origin, social condition, physical or mental disability, family/marital status, parental status, or gender identity. Generally, harassment is a behaviour that persists over time. Serious one-time incidents can also be considered harassment. Conduct is considered harassment when:

- It is sufficiently severe, persistent, or pervasive that it affects a student's ability to participate or benefit from an educational or extracurricular program or activity or creates an intimidating, threatening, or abusive educational or extracurricular experience, performance, or environment; or
- It creates an intimidating, humiliating, threatening, or abusive work environment for an employee.

Harassment can include:

- threatening, intimidating or isolating someone.

- unwelcome jokes, comments or innuendos.
- offensive or intimidating phone calls, text messages, or emails.
- bullying, cyber harassment or sexual harassment.

Harassment does not include reasonable action taken by Herzing College relating to the management and direction of workers or the workplace even if there are unpleasant consequences for the employee, such as:

- Changes in work assignments or scheduling.
- Job assessment and evaluation.
- Workplace inspections.
- Implementation of dress codes.
- Disciplinary action.

Harassment also does not include:

- Differences of opinion or minor disagreements.
- Consensual banter which is mutually acceptable and not offensive to others.
- Consensual relationships (i.e., relationships that are voluntary, mutually acceptable, and where there is no power imbalance between the parties to the relationship).

**Sexual Harassment** includes unwelcome conduct, comments, gestures or contact of a sexual nature. It includes but is not limited to a sexual invitation or advance, or a threat of punishment for the rejection of a sexual advance, made by a person in a position of authority. The unwanted behaviours may be physical or verbal, and may include one or more of the following:

- Unnecessary physical contact, such as touching, patting, or pinching.
- Demands for sexual favours in return for a promise of a reward or a threat of reprisal.
- Unwelcome sexual remarks or jokes that put down one's gender.
- Displaying insulting, demeaning, or sexually explicit materials, such as pictures, cartoons, or printed matter.
- Offensive or humiliating behaviour based on a person's sex or gender.
- Behaviour of a sexual nature that creates an intimidating, hostile, or poisoned work environment.
- Behaviour that could be reasonably thought to put sexual conditions on a person's job or academic opportunities.

- Questions and discussions about a person's sexual life.
- Persisting in asking for a date after having been refused.
- Writing sexually suggestive letters/notes or emailing sexual jokes.
- Displaying sexually oriented materials in view of others.
- Making inappropriate comments about another individual's body or clothing.
- Recording consensual sexual or sexualized acts, such as photographing or recording (video/audio) an individual in a sexual activity or state of undress, with or without their knowledge, or disseminating pictures/recordings without consent.

**Stalking** is the common term used for criminal harassment and it will not be tolerated at Herzing College. Stalking is a criminal offence under the Criminal Code of Canada and is defined as conduct "that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them." Specific stalking behaviours outlined in the Criminal Code include:

- Repeatedly following from place to place the other person or anyone known to them.
- Repeatedly communicating with, either directly or indirectly, the other person or anyone known to them.
- Besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business, or happens to be.
- Engaging in threatening conduct directed at the other person or any member of their family.

Herzing College also includes the following unacceptable behaviours in the definition of stalking. This includes but is not limited to:

- Repeated phone calls, texts, emails, or instant messages.
- Posting harassing, abusive, or inappropriate messages online regarding another person.
- Sending unwanted gifts.
- Arriving uninvited to another person's school, work, home or otherwise attempting to initiate unwanted meetings.
- Following, watching, or tracking another person or attempting to monitor the whereabouts of another person.
- Threats of harm to the person being stalked, or to their family, friends, pets, or property.
- Contacting or harassing the other person's employer, colleagues, friends, or family.
- Acts of vandalism toward the other person's property.

**Sexual Assault** is any sexual act or activity without a person's Consent and/or with threat of force. A sexual assault can range from unwanted sexual touching to forced sexual intercourse. Sexual assault is characterized by a broad

range of behaviours that involve the use of force, threats, or control toward a person, which makes that person feel uncomfortable, distressed, frightened, or threatened.

**Consent** is the voluntary agreement of an individual to engage in a sexual act. It is the act of willingly agreeing to engage in specific sexual behaviour and requires that person is able to freely choose between two options: yes and no. Consent is never assumed or implied. Consent is not obtained where a person is incapable of consenting, for example, due to intoxication, or where a person is induced to engage in the activity by someone abusing a position of trust, power or authority.

## 7. Review

This Policy will be monitored for effectiveness and reviewed on an annual basis or more frequently as required by Executive Committee.

## 8. Reference

- Applicable provincial human rights legislation, occupational health and safety legislation, personal health information legislation and freedom of information and protection of privacy legislation
- Criminal Code of Canada
- Privacy and Access to Information Policy
- AM-005-A2 Student Discipline Policy.docx