



HIGHER HEALTH

Higher Education and Training
Health, Wellness and Development Centre

Implementation Procedural Guidelines on Sexual and Gender Related Misconduct in Post Schooling Education and Training (PSET) Sector

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Section A: Introduction

1. Preamble

- 1.1. These sexual and gender related misconduct implementation guidelines have been prepared in a context where sexual harassment and gender-based violence (SGBV) is a global problem, occurring in all settings, including online. Furthermore, it is a profound and widespread problem in South Africa, impacting on almost every aspect of life.
- 1.2. The guidelines recognise that SGBV serves to reinforce and legitimise social, political and economic inequalities and power relations in society, affecting the most vulnerable in society.
- 1.3. When SGBV is prevalent on campuses it disrupts the normal functions of academic learning and work and brings significant danger or risk. It is widely known that students entering academic institutions bear the unwarranted cost of the threat and reality of being raped, sexually assaulted, harassed and stalked.
- 1.4. These guidelines have been prepared in a context where many institutions do not have adequate and appropriate procedures for handling SGBV.
- 1.5. Without clear procedures for dealing with sexual and gender related misconduct at an institutional level, institutions are in danger of not demonstrating the required duty of care to the student community and the staff they employ. This could have a severe impact on academic learning and work, with the potential for legal liability and grave reputational harm.

2. PSET Institution Statement of Intent

- 2.1. **INSTITUTION NAME HERE** commits itself to provide a safe institutional environment where all may learn, work and go about their duties and activities free from sexual harassment, sexual violence, gender harassment, gender bullying, sexual assault, relationship violence, other forms of gender related misconduct and associated claims of retaliation.
- 2.2. Sexual and gender-related misconduct undermines the dignity and autonomy of those victimised and erodes mutual trust and respect, which are essential to personal, academic and professional wellbeing. Sexual and gender related misconduct constitute a serious disciplinary offence, both in terms of these guidelines and the law, and will not be permitted, condoned or tolerated at **INSTITUTION NAME HERE**. Disciplinary action, including summary dismissal or academic exclusion may result after following due process.
- 2.3. **INSTITUTION NAME HERE** has a zero-tolerance approach to sexual and gender related misconduct. It recognises that it has an obligation to put in place reasonable measures to ensure, as far as possible, the safety and wellbeing of all students and staff as part of its institutional and academic duty of care.
- 2.4. These guidelines focus on **INSTITUTION NAME HERE** commitment to preventing sexual and gender related misconduct. They should be read in the context of other institutional guidelines, policies and protocols, the South African Constitution and Bill of Rights which provide for the right to equality, dignity, freedom and security of person; the National Strategic Plan on GBV and Femicide; the Department of Higher Education and Training Policy Framework to Address Gender-Based Violence in the Post-School Education and Training System, as well as specific laws governing labour practice, and sexual offences.

- 2.5. To ensure fairness to both complainants and respondents in situations of sexual and gender related misconduct, and in line with recognised best practice, the disciplinary procedures proposed in these guidelines are separate and different from the general disciplinary rules of the institution which tend to be extremely alienating for complainants of sexual and gender related misconduct. The approach of this document is designed to provide for specialised, prompt, thorough and equitable investigation and resolution of complaints that involve sexual and gender related misconduct.
- 2.6. Nothing in these guidelines prevents complainants from or requires them to report any violations that constitute criminal offences to the relevant authorities. Where complainants have opened criminal cases, the institution will share only such evidence with the criminal justice authorities as authorised by the parties.

3. Guidelines Purpose

- 3.1. The purpose of these guidelines is to guide GBV responses at PSET institutions and ensure that:
 - (a) A common understanding of what constitutes sexual and gender related misconduct at institutions is reached.
 - (b) All staff and students receive appropriate information about sexual and gender related misconduct and are aware of the procedures which should be followed if sexual and gender related misconduct occurs.
 - (c) An environment is created where complainants feel safe, comfortable and willing to report sexual and gender related misconduct without fear of recrimination or victimisation.
 - (d) Any student or staff member who experiences sexual and gender related misconduct is offered appropriate support in a timely and sensitive manner.
 - (e) What is required to create a safe, zero tolerance campus environment, both physical or virtual, which is free of sexual and gender-related misconduct is understood by everyone on a campus.
 - (f) Clear lines of accountability for the implementation and management of SGBV is achieved.

4. Principles and values

The following specific principles and values must be followed to provide a safe campus community and to prevent sexual and gender related misconduct from taking place. In line with the DHET Framework, **INSTITUTION NAME HERE** adopts the following principles:

- 4.1. **A rights-based approach to handling complaints of sexual and gender related misconduct.** This approach is based on the values and rights contained in the Constitution (Act No 108 of 1996) and will underpin all processes and procedures. These actively seek to give concrete expression to the rights to equality, dignity, freedom and security of a person; as well as protect bodily and psychological integrity.
- 4.2. **Leadership.** Student and staff leadership are obliged to play a leadership role in creating a campus environment free from sexual and gender related misconduct and the institution has a duty of care to ensure that all complaints are resolved in accordance with clear procedures, and to take all claims seriously.
- 4.3. **Fairness.** All complaints will be investigated thoroughly and handled through a fair process that is consistently and transparently applied.
- 4.4. **A complainant-centred approach.** This will require supporting and encouraging a complainant's sense of personal control, which includes respecting the complainant's informed decision at every stage of the process. All processes will be handled in a manner which is non-judgmental, appropriate, clear and sensitive to the complainant in terms of language, culture, disability, gender and sexuality.

- 4.5. **A comprehensive and multi-faceted approach to the prevention of sexual and gender related misconduct.** The institutional response will include integrated and comprehensive prevention, education and information about policies, guidelines and quality programming including social mobilisation activities and campaigns intended to promote safety on and off campus and in the prevention of sexual and gender related misconduct.
- 4.6. **Specialisation.** Responding to sexual and gender related misconduct requires specialised knowledge and skills, including having a gendered consciousness, gender-sensitivity, receiving ongoing training and support and working in accordance with these guidelines and any related policies and codes. In so doing institutional responses reject ideologies and practices that perpetuate gender stereotyping or cultural beliefs, excuse or justify sexual and gender related misconduct, protect perpetrators, or blame complainants.
- 4.7. **Confidentiality.** All responses to sexual and gender related misconduct will maintain the confidentiality and privacy of the complainant whose trust, safety, physical and psychological needs must be prioritised. This involves creating spaces where complainants feel able and willing to speak out about their abuse, free from abusers, free from judgment, and empowering them to become actors in their own protection without further discrimination or shame.
- 4.8. **Freedom from fear.** No person must experience fear for their protection and safety. Also, the environment in which sexual and gender related misconduct complaints are reported and handled should be motivating and safe.

5. Code of ethics

- 5.1. All campus community members are required to sign onto and adhere to an agreed upon institutional code of ethics. This could be at the point of student admissions, student election into leadership structures within the institution or in the case of staff at the time of employment or contracting. (See Annexure A hereto, being the code of ethics.)
- 5.2. The code of ethics constitutes a set of standards for appropriate behaviour. It also gives guidance on how to avoid situations that increase chances of behaviour that may be classified as inappropriate. The code of ethics should be interpreted in a spirit of common sense, with the best interests of the most vulnerable members of the campus community being the primary consideration.

6. Definitions

- 6.1. **“Academic concessions”** include, but are not limited to, allowing a student complainant to change classes, to change courses, preventing a lecturer or tutor who is an alleged perpetrator from grading or evaluating the student complainant’s academic work, or allowing and arranging deferred examinations or extensions of deadlines for academic work.
- 6.2. **“Allegation”** is an assertion that someone has done something illegal or harmful, which one intends to prove, on a balance of probabilities, through an investigation procedure and disciplinary hearing.
- 6.3. **“Alleged perpetrator”** is a person who has been accused of committing any form of sexual and/or gender misconduct by a complainant.
- 6.4. **“Appellant”** is a complainant and/or respondent who submits an appeal following the outcome of a disciplinary hearing.
- 6.5. **“Campus”** means the physical space of the institution, and also includes the cyber space that has been utilised by the campus community since the onset of COVID, and online campuses.

- 6.6. **“Campus community”** includes all students (full time, part time, remote learners), support and academic staff across all grades, members of institutional governance bodies, external partners and consultants, external service providers, contractors and others who may be required for short term or longer-term engagements with the campus community.
- 6.7. **“Complainant”** is a person that alleges that sexual and/or gender misconduct took place and was experienced by them and is a victim of the alleged misconduct.
- 6.8. **“Confidentiality”** means ensuring that information is accessible only to those who are authorised to have access to it.
- 6.9. **“Consent”** means free and informed agreement as more fully described in clause 9 of these guidelines.
- 6.10. **“DHET Framework”** means the Department of Higher Education and Training Policy Framework to Address Gender-Based Violence in the Post-School Education and Training System, published in July 2020.
- 6.11. **“Employee”** means any person, including students in employment, or any other person who works for an institution and is entitled to receive remuneration and any other benefits.
- 6.12. **“Evidence”** refers to the available body of information to support whether a belief or proposition on sexual and gender related misconduct is valid, purely on a balance of probabilities.
- 6.13. **“Institution”** refers to a post school education and training institution.
- 6.14. **“Investigator”** is a person appointed by the institution to conduct a prompt, thorough, and equitable investigation into a complaint involving allegations of sexual and gender related misconduct.
- 6.15. **“Parties”** are the complainant and the alleged perpetrator/respondent in any matter involving sexual and/or gender related misconduct.
- 6.16. **“Perpetrator”** is a person found guilty of sexual and/or gender related misconduct.
- 6.17. **“Protective measure”** is a measure that the institution puts in place to secure the safety of the complainant or to guard against potential harm to the complainant or to the campus community more broadly, as more fully described in clause 19.
- 6.18. **“Psychosocial support”** means professional support for the psychological and social consequences of trauma.
- 6.19. **“Rape”** refers to non-consensual penetration, however slight, of the vagina, anus or mouth by a penis or any other body part or object. Rape is defined in terms of Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 to mean an unlawful and intentional act of sexual penetration of any part of another person with any body part or object, without their consent.
- 6.20. **“Respondent”** is member of the campus community against whom a complaint of sexual or gender related misconduct has been made once formal proceedings have been initiated against them.
- 6.21. **“Responsible Office”** is either a specialised office, or an existing office at the institution, or a specially selected person or persons, responsible for the implementation of the institution’s response to sexual and gender related misconduct.

- 6.22. **“Sexual and gender related misconduct”** refers to any conduct of a sexual or gender related nature that constitute an impairment of the dignity of a member of the campus community and includes, though not exclusively, sexual and gender harassment, sexual violence and assault, gender bullying, relationship violence, acts of bullying, discrimination, harassment or victimisation as more fully described in clause 8 of these guidelines.
- 6.23. **“Staff”** means the collective group of employees of the institution and can include students who are employed.
- 6.24. **“Student”** means a registered (full-time or part-time) student of the institution who has agreed to be bound by the rules and policies of the institution relating to students and includes visiting students.
- 6.25. **“SAPS”** means the South African Police Services.
- 6.26. **“Victim”** means a survivor of sexual and gender related misconduct, being a person against whom an act of sexual and gender related misconduct has allegedly been perpetrated.
- 6.27. **“Whistleblowing”** is the act of informing institutional authorities and/or senior management that another party/third party is in violation these guidelines.

7. Jurisdiction

- 7.1. These implementation guidelines provide guidance and outline procedures for the entire campus community to follow.
- 7.2. Anyone can be a victim of sexual and gender related misconduct, regardless of their sex and of the sex of the accused. The institution implicitly recognises that sexual and gender related misconduct may also occur between people of the same sex.
- 7.3. Sexual and gender related misconduct can occur on campus, off campus (e.g., on field schools, conferences or international travel, or while studying abroad) or online.
- 7.4. Sexual and gender related misconduct may be perpetrated against a current student or staff member by another student or staff member or by a former staff member or student, including visiting staff or students, provided that the respondent is a member of the campus community.
- 7.5. Alleged perpetrators, or respondents might be a student, staff member from all levels, an applicant for employment, manager, director, senate or council member, intern, fellow, postdoctoral student, tutor, contractor and their employee, visiting academic, or an employee or board member of a separate organisation that carries the institutional logo or ‘brand’ of the institution and whose staff are employed by the institution.
- 7.6. An institution does not have jurisdiction where a respondent does not fall into any of the categories listed above. In such circumstances, the institution neither has authority nor bears any obligation to take action in respect of the respondent but will provide support to members of the campus community who are impacted by the sexual or gender related misconduct perpetrated against them by such respondents.
- 7.7. Should the institution become aware that a member of the campus community is being subjected to sexual and gender related misconduct by a person who does not fall within the jurisdiction of this policy, the institution will report the matter to the relevant authority, whether the person’s employer, family members or SAPS.

- 7.8. Everyone within the scope of these guidelines should be fully aware of the reporting and responding procedures and the necessary steps to take to respect, protect and safeguard the campus community from all forms of sexual and gender related misconduct.

Section B: Identifying and defining sexual and gender related misconduct

8. Behaviour constituting sexual and gender related misconduct

- 8.1. Sexual misconduct is unwelcome, unwanted conduct of a sexual nature which causes a person to feel discomfort, offended, humiliated, embarrassed and/or intimidated and could create an environment that is hostile, threatening or demeaning for the recipient.
- 8.2. Sexual and gender related misconduct includes same-sex harassment and misconduct, and harassment by non-gender conforming persons.
- 8.3. Not all harassment is of a sexualised nature. An individual can be harassed because they are a woman, and/or are gender non-conforming, and/or because they identify as lesbian, gay, bisexual, transgender, intersex or queer. Gender misconduct is meant to permit redress where a person is harassed based on their gender, but the conduct is not sexual or does not take place in a sexual context.
- 8.4. Sexual and gender related misconduct includes physical, verbal or non-verbal conduct, taking account of, but not limited to, the following factors:
- (a) Whether the conduct is on the grounds of the sex and/or gender and/or gender performance, and/or sexual orientation (self-identified or perceived) of the complainant.
 - (b) Whether the conduct, either formal or informal, abuses a position of power by the alleged perpetrator over the complainant.
 - (c) The short- and long-term impact of the conduct on the complainant.
 - (d) The nature and extent of the conduct.
 - (e) Whether the conduct constitutes a breach of the relationship between staff and students.
- 8.5. Sexual and gender related misconduct, which includes sexual harassment, may be characterised by the following:
- (a) Verbal harassment which is unwelcome, unwanted and inappropriate verbal conduct such as advances, inferences, propositions or pressure for sexual activity or offensive flirtations; requests for sex; etc.
 - (b) Non-verbal harassment being conduct such as the inappropriate display or transmission of gender-degrading material, stalking, flashing, pornography or sexually suggestive pictures including male and female pin-ups, offensive objects or written materials inter alia by text message, email, or through social media. It also includes open or covert hostility on the grounds of gender or sexual orientation.
 - (c) Physical abuse which is actual or potential unwanted physical contact perpetrated by another person, ranging from touching to sexual/physical assault, and includes but is not limited to patting or pinching, fondling and strip searches.
 - (d) Sexual assault which can take many different forms. It refers to sexual contact or behaviour that occurs without the explicit consent of the victim. Some forms of sexual assault include attempted rape, fondling or unwanted sexual touching and forcing a victim to perform sexual acts. Rape is a form of sexual assault, but not all sexual assault is rape.

- (e) Rape being among the most violent acts of misconduct, references an unlawful and intentional act of sexual penetration of any part of another person with any body part or object, without their consent. It includes “date rape”, the reference to acquaintance rape.
- (f) Sexual exploitation which is a form of sexual abuse that involves a member of the campus community in sexual activity in exchange for money, gifts, food, accommodation, affection, status, admission (if it is a student), higher grades or promotion, or anything else that they or their family and/or loved ones need.
- (g) Sexual favouritism exists when a person who is in a position of authority rewards only those who respond to their sexual advances, whilst other deserving persons who do not submit themselves to any sexual advances are denied promotions, merit ratings, marks, bursaries, tutorial opportunities, salary incentives, or other work-related opportunities as the case may be.
- (h) Sexual victimisation which occurs when a person is victimised or intimidated for refusing to submit to sexual advances or other any other form of sexual request.
- (i) Intimate partner violence and domestic abuse being when an incident or pattern of incidents of controlling, coercive, threatening, degrading and violent behaviour takes place, including sexual violence, in most cases by a partner or ex-partner, but also by a family member or caregiver. It includes psychological, physical, sexual, financial, emotional abuse, verbal abuse and humiliation and so called ‘honour’ based violence.
- (j) Cyber revenge being posting or re-posting revealing images of a former partner or another person.
- (k) Discriminatory abuse is motivated by discriminatory and oppressive attitudes towards people on the grounds of disability, gender and gender identity and reassignment, age, race, religion or belief, sexual orientation, and political beliefs. It includes verbal abuse and racist, sexist, homophobic, transphobic, ableist or ageist comments, or jokes or any other form of harassment.
- (l) Trafficking / kidnapping which takes place when a member of the campus community is delivered, recruited, transported, transferred, harboured, sold, exchanged or leased to another person for the purposes of exploitation. It may be done through threatening harm, use of force or coercion, abuse of vulnerability, fraud, deception, abduction, kidnapping and abuse of power. It invariably results in the receipt of payment or other material advantage to the trafficker or kidnapper.
- (m) Abuse of power or quid pro quo harassment that covers a wide range of behaviour related to the power dynamics in the campus community, workplace or home. Examples of abuse of power can include a member of the campus community using their position to gain sexual favours by coercing or attempting to coerce an individual to engage in unwelcome sexual conduct and rewarding only those who respond to their sexual advances. This could apply in attempting to influence a person’s employment circumstances or in influencing or attempting to influence the admission or access to opportunities or through the more commonly known ‘sex for marks’ where the grading, evaluation or professional advancement of a student is dependent on them engaging in unwelcome sexual conduct (See Annexure B on staff student relationships).
- (n) Grooming which involves an action or series of actions, which can initially appear to be conducted within the context of the academic project but are taken with the overall aim of befriending and establishing a psychological and/or material connection with a person in order to facilitate subsequent sexual harassment or sexual assault and/or to hinder the reporting of various acts of harassment or assault. This includes ‘online grooming,’ using modern-day technology, such as mobile phones and the internet (See Annexure B on staff student relationships).
- (o) Creation of a hostile work or learning environment occurring where the purpose or effect of the conduct is to interfere with another person’s performance at work or study.

8.6. In determining whether conduct amounts to sexual or gender related misconduct, the following considerations will be taken into account:

- (a) Previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome.

- (b) Sexual and gender harassment may be persistent or may involve only a single incident.
- (c) The assessment of what is unwelcome should be informed by the subjective perception of the complainant and the focus is on how the complainant responds and experiences the conduct or incident rather than on the intent of the respondent.
- (d) That the complainant has indicated that such conduct is considered to be offensive.
- (e) That some forms of sexual and gender misconduct are such that the alleged perpetrator should have known that the behaviour would be unwelcome or inappropriate.

8.7. A complainant that has difficulty indicating to the alleged perpetrator that the conduct is unwelcome may seek the assistance and intervention of another person to make it clear that the behaviour is unwelcome.

8.8. The instances listed in this clause 8 are instructive but not exhaustive. It is important to note that sexual and gender related misconduct can include any conduct of a sexual or gender discriminatory nature which is unwanted and unwelcome by the recipient.

9. Consent

9.1. To create a campus community free from sexual and gender related misconduct, the campus community must have a full and complete understanding as to what constitutes consent.

9.2. In any instance of sexual activity, it is the responsibility of both parties to ascertain whether the other person consents freely and without coercion.

9.3. Consent to one type or instance of sexual activity does not imply consent to other types or instances of sexual activity.

9.4. Past consent to sexual acts or sexual contact does not imply future ongoing consent.

9.5. The fact that two persons are in an ongoing relationship does not preclude the possibility that sexual misconduct might occur within that relationship.

9.6. Silence does not imply consent.

9.7. Consent should be explicit and not implied.

9.8. A verbal “no,” even if it may sound indecisive or insincere, constitutes lack of consent.

9.9. Considerations of whether consent has been given need to take account of unequal power dynamics/relationships and how these relationships weaken the victim’s ability to indicate lack of consent clearly and unambiguously.

9.10. Relenting and submitting does not equate to consent.

9.11. Consent is not implicit in a person’s manner of dress.

9.12. Accepting a social invitation is not consent nor does it imply consent.

9.13. Consent will not be effective when obtained from a person whose capacity to consent is diminished because they are asleep, unconscious or in an altered state of consciousness resulting from the use of alcohol, medicines or drugs to the extent that it adversely affects their judgment.

9.14. Consent is undermined under the following circumstances:

- (a) If the alleged perpetrator uses force or intimidation against the complainant.

- (b) If there is a threat of harm, real or perceived, by the alleged perpetrator against the complainant.
- (c) If an abuse of power or authority occurs, the complainant is inhibited from expressing their resistance or unwillingness to participate in the act.
- (d) If false pretences or fraudulent means are used to induce consent.

Section C: A safe campus community

An institution must commit to considering all complaints lodged, whether the complainant is a member of the campus community or not. In so doing it expresses its duty of care and responsibility to protect its students and staff from all forms of sexual and gender related misconduct. It recognises that this duty is an imperative and non-negotiable and that without adequate standards and mechanisms of protection in place, it is failing in its primary duty of care and therefore indirectly being negligent and enabling an environment where sexual and gender related misconduct is accepted and thrives.

10. Student leadership responsibilities

- 10.1. All students selected for leadership positions must be made aware of these on sexual and gender related misconduct and any SGBV policy in place at their institution.
- 10.2. Every student leader will be required to sign the code of ethics and must be made aware of the consequences of any transgressions.
- 10.3. Students lobbying for election into leadership must be asked to share their views on sexual and gender related misconduct to probe their attitudes, experience and approach to this topic.
- 10.4. No student will be eligible to stand for a leadership position while facing an allegation of sexual and gender related misconduct.
- 10.5. Student leaders are obliged to attend training on these implementation guidelines and other gender related policies applicable to PSET institutions.

11. Staff responsibilities

- 11.1. All institutional staff, both existing and new recruits, must be made aware of these guidelines on sexual and gender related misconduct and any SGBV policy in place at their institution.
- 11.2. All institutional staff will be required to sign the code of ethics and must be made aware of the consequences of any transgressions.
- 11.3. All newly recruited staff must be asked to share their views on sexual and gender related misconduct to probe their attitudes, experience and approach to this topic. Staff recruited into student affairs and residence housing, must be questioned on their ability to handle incidence of sexual and gender related misconduct.
- 11.4. As far as is possible, Human Resources divisions and those responsible for recruiting new staff and/or promoting existing staff need to ensure that current and/or past allegations or convictions on sexual and gender related misconduct are surfaced and are considered in staff employment and promotion decisions.
- 11.5. All staff are obliged to attend training on these implementation guidelines and other gender related policies applicable to PSET institutions.

12. Staff recruitment procedure

- 12.1. All new staff must undergo a screening procedure to check for any criminal record relating to child abuse, sexual assault, domestic violence and related crimes.
- 12.2. Supplementary information for all new jobs should state that institutional guidelines on sexual and gender related misconduct exist and that a screening process is in place.
- 12.3. These guidelines or any SGBV policy in force at the institution, and related code of ethics, will be made available to all shortlisted job applicants when applications are made.
- 12.4. During interviews, the interview panel will identify any gaps in the applicant's employment history and clarify reasons for these to their satisfaction. Interviews must include specific questions on sexual and gender related issues to probe the applicants' attitude and approach to these.
- 12.5. It is essential to verify the qualifications required for the post to assist in the detection of false employment histories or backgrounds and to this end standard questions must be asked when seeking references for recruitment and promotion purposes on whether a staff member has been subject to and or had past allegations or convictions on sexual and gender related misconduct.

13. Working with service providers, contractors, consultants and partners

- 13.1. **INSTITUTION NAME HERE** expects all service providers, contractors, consultants, partners and other critical stakeholders working within the institution to uphold best practice on protection and safeguarding in regard to sexual and gender related misconduct all their activities within the campus community.
- 13.2. All service providers, contractors, consultants and partners working with **INSTITUTION NAME HERE** will be required to accept and commit themselves to the institution's guidelines on sexual and gender related misconduct and code of ethics.
- 13.3. **INSTITUTION NAME HERE** will have a clause in all contracts and/or agreements with service providers, contractors, consultants and partners (where such contracts are required) stating that a failure to abide by the guidelines on sexual and gender related misconduct will constitute a breach of contract. Such contracts will include a clause requiring service providers, contractors, consultants and partners to take appropriate disciplinary action against any person (on their staff or on contract) who has allegedly violated the guidelines once informed that such allegations have been made.

14. Poor safeguarding practice

- 14.1. Poor safeguarding practice (or inadequate campus safety) occurs whenever students, staff or any other person within the campus community fails to provide the standard of care and support expected and directed by policies, guidelines, procedures and training delivered by **INSTITUTION NAME HERE**.
- 14.2. Poor safeguarding practice can occur through non-compliance with policies, guidelines, protocols, and procedures and when students, staff and third parties to whom guidelines and protocols apply ignore the rights and welfare of anyone within the campus community. Continued poor safeguarding practice may cause harm and can become abuse.

14.3. **INSTITUTION NAME HERE** takes poor safeguarding practice seriously and deems it unacceptable. Poor safeguarding practice must be reported. All reported cases of poor safeguarding practice will be dealt with. Examples of poor safeguarding practice include, but are not limited to:

- (a) Insufficient care being taken to prevent abuse and harm.
- (b) Inadequate lighting and security on campus.
- (c) Allowing abusive practices to go unreported.
- (d) Placing students in potentially compromising and uncomfortable; situations, including through the use of technology/social media.
- (e) Ignoring health and safety guidelines and protocols.
- (f) Failing to adhere to the relevant guidelines, protocols and procedures.
- (g) Failing to ensure that service providers, contractors, consultants and partners adhere to guidelines and protocols or engage in practices which could result in risk or harm.

14.4. The instances listed above are instructive but not exhaustive. Annexure C sets out Campus Safety and Security Minimum Standards.

Section D: Procedures for dealing with sexual and gender-based misconduct

15. Responsible office or body

As part of its commitment to (i) implementing the Department of Higher Education and Training's (DHET) Policy Framework to Address Gender-based Violence in the Post-School Education and Training System and (ii) its commitment to the purpose and principles contained in the guidelines, all institutions must establish an office/body/structure/person responsible for implementing this guideline here (**RESPONSIBLE OFFICE**) for the execution of the implementation guidelines on sexual and gender related misconduct. This is in recognition that:

- 15.1. Existing institutional functions in relation to sexual and gender related misconduct are not sufficient in addressing this particular institutional challenge.
- 15.2. Effective mechanisms for reporting, intervention, accountability and prevention require a less fragmented approach.
- 15.3. Complainant-driven interventions, specifically including disciplinary hearings, regardless of whether staff or students are involved require specialist gender expertise and less alienating procedures for complainants of sexual and gender related misconduct.
- 15.4. Safer spaces and procedures are required for the reporting and handling of incidents of sexual and gender related misconduct in order to encourage rather than deter reporting.
- 15.5. Executive seniority and support are required for the effective handling of sexual and gender related misconduct, while not compromising the confidentiality and independence in authority to the **RESPONSIBLE OFFICE** for overseeing sexual and gender related misconduct within the campus community.
- 15.6. No deviation from these guidelines is permitted without due consultation with the **RESPONSIBLE OFFICE** and provided there are good reasons to do so.

15.7. In line with these requirements the **RESPONSIBLE OFFICE** is accordingly tasked with all functions related to sexual and gender related misconduct pertaining to staff and students alike.

16. Reporting or initiating a complaint

- 16.1. Persons that are part of the campus community who believe that they have been subjected to sexual or gender related misconduct may report the incident to any person of their choosing or the **RESPONSIBLE OFFICE**.
- 16.2. If the first report is not to the **RESPONSIBLE OFFICE**, the person receiving the complaint must refer it to the **RESPONSIBLE OFFICE** immediately, or as soon as possible after receiving the complaint.
- 16.3. Any person, both from within the campus community or from outside the campus community, may make a report of sexual and gender related misconduct on behalf of another person.
- 16.4. If a complaint of sexual and gender related misconduct is made at a time when the **RESPONSIBLE OFFICE** is closed, the complaint can be made on the next working day. In the case of rape or sexual assault, the complaint must be made immediately to the campus 24-hour reporting line, to campus first responders or to any other person or persons who have the duty of receiving such reports, as more fully described in clause 19.8 and in the rape minimum standards protocol attached hereto as Annexure D.
- 16.5. Reporting of sexual and gender related misconduct is mandatory for all members of the campus community who become aware of such misconduct. A failure to report is a breach of these guidelines. Anyone with a strong suspicion of sexual and gender related misconduct or who has received a disclosure of sexual and gender related misconduct should report the incident to the **RESPONSIBLE OFFICE**, who will investigate the allegations being made.
- 16.6. In the case of a complaint against a member of staff the Human Resources division will not engage directly with the complainant or the alleged perpetrator but will work with the **RESPONSIBLE OFFICE** and/or the alleged perpetrator's representative where necessary.
- 16.7. There is no threshold for reporting a complaint or concern of sexual and gender related misconduct as described in these guidelines. Any concern, however minor, can be reported.
- 16.8. A complaint can also be lodged via a specially protected online platform that will be accessible only to the **RESPONSIBLE OFFICE** and which will specifically enable anonymous reporting. This online platform is to be distinguished from any online 24-hour emergency reporting line that must be utilised if the **RESPONSIBLE OFFICE** is closed and the incident is of a serious nature.
- 16.9. To accept a complaint, the **RESPONSIBLE OFFICE** will consider whether the complaint is one that involves sexual or gender related misconduct and whether the complaint would constitute misconduct as set out in these guidelines.
- 16.10. If these two criteria are met, the **RESPONSIBLE OFFICE** can take forward the complaint, based on the needs and wishes of the complainant and must respond by initiating the steps set out in these guidelines within three (3) days of receipt of the complaint.
- 16.11. The **RESPONSIBLE OFFICE** is required to engage in sensitive and frequent communication with the complainant so that the complainant remains informed of all steps being taken to address the complaint.
- 16.12. The steps to be taken by the **RESPONSIBLE OFFICE** on receipt of a complaint, should include but not be limited to the following:

- (a) Where reasonably practicable, offering the complainant advice, assistance, protective measures and counselling, including during any disciplinary enquiry that may be instituted. Clause 19 of these guidelines sets out the procedure relating to protective measures.
 - (b) Advising the complainant of the informal and formal procedures available to deal with the misconduct.
 - (c) Following the procedures set out in these guidelines, in a manner that is procedurally and substantively fair.
- 16.13. Although it may be advisable to report an incident as soon as possible, the complainant may report regardless of when the incident occurred. A delay in reporting an incident shall not prejudice the complainant in any way and should not detract from the validity or seriousness of their complaint, no matter the reason for the delay.
- 16.14. The complainant may choose to report the matter to SAPS or any other relevant authority as well as, or instead of, to the **RESPONSIBLE OFFICE**.
- 16.15. Under certain circumstances, in the event that a complainant does not wish to pursue action against an alleged perpetrator in terms of these guidelines, and the complaint is judged by the **RESPONSIBLE OFFICE** to be of a serious nature, the **RESPONSIBLE OFFICE** may determine whether the institution should nonetheless pursue the matter. In making this decision, all relevant information will be considered including but not limited to:
- (a) Any risk to the complainant.
 - (b) Any risk or threat to other persons in the campus community, including circumstances that suggest that the alleged perpetrator may commit additional acts of sexual and gender related misconduct.
 - (c) Circumstances that suggest that there is an increased risk of future acts of sexual and gender related misconduct under similar circumstances.
 - (d) Whether the misconduct was perpetrated with a weapon.
 - (e) The severity of the harm that may result from a failure to act.
 - (f) The history of the alleged perpetrator with regard to previous cases and complaints of sexual or gender related misconduct.
- 16.16. An incident report will be compiled by the **RESPONSIBLE OFFICE** to document details of the incident, who will also take responsibility for investigating and taking the incident reported forward to completion.
- 16.17. While all complaints received will be acted upon immediately and in a timeous manner, the gravity of the complaint reported may necessitate extraordinarily prompt and expeditious actions in support of the complainant. These may include the immediate institution of the protective and supportive measures outlined in clause 19, including the provision of psychosocial support if required.
- 16.18. Any intimidating behaviour or secondary harassment by the respondent or facilitated by the respondent towards the complainant will constitute a disciplinary offence.

Annexure E includes a summary of the procedural process in a diagrammatic representation.

17. Confidentiality and anonymity

- 17.1. Complaints related to sexual, and gender related misconduct will be investigated and handled sensitively and promptly. The identities of the persons involved are to be kept confidential in as far as is reasonably possible, and case information is to only be made available to a limited number of authorised people, subject to 17.6 below.

- 17.2. The institution will do all it can to prevent any retaliation from taking place by protecting the complainant and whistleblower anonymity if required.
- 17.3. Allegations of sexual and gender related misconduct are distressing to the complainant as well as to the person accused. The testimonies, whether written or oral, presented by any and all parties during the proceedings, and all related documents, may not be disclosed to anyone other than the representatives of the parties to enable them to prepare.
- 17.4. The institution recognises that a key component of a complainant centred approach is to accommodate and respect the wishes of a complainant, which may include their wish to remain anonymous.
- 17.5. When considering whether they wish to remain anonymous and/or to not pursue a formal complaint, complainants are to be advised that the ability to respond to the alleged behaviour may be limited if the complainant chooses not to participate in the process. Additionally, complainants are advised that the institution strictly forbids retaliatory conduct against those who choose to lodge a complaint and/or participate in an investigation of sexual or gender related misconduct.
- 17.6. The institution retains the right to inform the campus community of any protective measures instituted (if necessary) as well as of the outcomes of any disciplinary hearing. It also retains the right to publicly disclose the name of a perpetrator when found guilty of the offence, and to inform prospective employers of the perpetrator's record when approached for a reference.
- 17.7. The institution will report on an annual basis, via its website and annual report, the number and nature of cases of sexual and gender related misconduct it has dealt with and the outcomes of proceedings.

18. Subsequent withdrawal of the complaint by the complainant

- 18.1. The complainant may, at any time before the day scheduled for the hearing, request in writing to the **RESPONSIBLE OFFICE** that the complaint be withdrawn.
- 18.2. If a hearing panel is already constituted, the chair of the hearing panel, in consultation with the **RESPONSIBLE OFFICE**, will consider whether the request is fully voluntary and whether the interest of the campus community would be better served by continuing with the complaint.
- 18.3. The chair's decision whether to approve or deny the request for withdrawal of the complaint is final.
- 18.4. If the Chair decides to proceed with the complaint despite a request for withdrawal, the complainant will not be required to participate in the subsequent hearing.
- 18.5. If a hearing panel has not been constituted, the **RESPONSIBLE OFFICE** will consider whether the request is fully voluntary and whether the interest of the campus community would be better served by continuing with the complaint.
- 18.6. The **RESPONSIBLE OFFICE** decision on whether to approve or deny the request for withdrawal of the complaint is final.
- 18.7. If the **RESPONSIBLE OFFICE** decides to proceed with the complaint despite a request for withdrawal, the complainant will not be required to participate in the subsequent hearing, in which case the **RESPONSIBLE OFFICE** will have to rely on other evidence. Alternatively, a request can be made that the complainant provides a written affidavit granting permission to use their statement of complaint as part of the proceedings.

19. Supportive and protective measures

- 19.1. If deemed in the complainant's interests, the **RESPONSIBLE OFFICE** can recommend supportive and protective measures that are reasonable to secure the safety of the complainant or to guard against potential harm to the complainant or others within the campus community, provided that any protective measure must be premised on an assessment of the balance of potential harm to both the complainant and the respondent.
- 19.2. Supportive and protective measures can be instituted regardless of whether formal proceedings will be undertaken or not.
- 19.3. Supportive and protective measures may include, but are not limited to:
 - (a) Ongoing psychosocial support throughout the process.
 - (b) Access to free medical services for advice and treatment through the health facility on campus.
 - (c) Additional, paid sick leave in cases of serious sexual or gender related misconduct or trauma, where an employee's sick leave entitlement has been exhausted.
 - (d) No-contact/restriction of activities orders, where appropriate.
 - (e) Change of student residence, where appropriate.
 - (f) Change of academic classes and academic concessions, where appropriate.
 - (g) Suspension or special leave for staff, or leave of absence for students, where appropriate.
 - (h) Additional education and training.
- 19.4. The respondent must be informed by the **RESPONSIBLE OFFICE** of any protective measure affecting them as well as the reasons for proposing the protective measures, providing them an opportunity to respond.
- 19.5. The respondent must be given a fair opportunity, prior to the protective measure that affects them being implemented, to give reasons why the protective measure should not be imposed: provided that the **RESPONSIBLE OFFICE** has an obligation to not expose the victim to further harm and should consider the reasons given by the respondent in accordance with this obligation.
- 19.6. Depending on the facts of the complaint, and particularly in the case of protective measures being taken, the relevant institutional role-player will be informed, e.g., student office, the residence community in the case of students or relevant Dean/Head/Director in the case of staff, or any other relevant role player.
- 19.7. All respondents who have a protective measure against them or whose matter is taken on investigation, will have a note indicating that a protective measure is in force placed against their name. For students this will be done via the Registrar, or similar senior manager, and for staff via the human resources division. This note will be removed if the incident does not proceed or once the protective measure expires.
- 19.8. In addition to the supportive and protective measures outlined above, the following special procedures are applicable to victims of sexual assault and rape. When an incident of rape or sexual assault is reported to any person, the person to whom the rape or sexual assault is reported or any other person responsible for assisting when sexual assault and rape incidents take place on campus must:
 - (a) Inform the victim of the necessity of receiving immediate medical attention, including post-exposure prophylaxis (PEP) for HIV, sexually transmitted infections and pregnancy; and all reasonable efforts must be made promptly to support the victim and to transport the victim to a hospital/clinic in close proximity.
 - (b) Ensure that the victim receives psychosocial support or counselling.
 - (c) Ascertain whether the victim has made a complaint to the SAPS and provide support where they choose to do so.

- (d) In the event that the victim has made a complaint to SAPS and action has not been taken by SAPS to assist the complainant in regard to their medical care, liaise with SAPS and the relevant hospital/clinic to ensure a comprehensive service is provided to the victim, including ensuring proper forensic evidence is captured.
- (e) When a rape occurs on a campus residence it must be reported immediately to the **RESPONSIBLE OFFICE** or, if after hours the appropriate first responder, 24-hour line or security office designated by the institution to take reports on rape. Where an alleged perpetrator is a resident at the same residence, they must immediately be removed and barred from the residence.

See Annexure D on the handling of rape and sexual assault cases.

20. Process in handling a complaint received

- 20.1. The process will, in general, be guided by the needs and wishes of the complainant.
- 20.2. Complainants can choose to deal with the matter either formally or informally. Both the formal and informal processes are outlined below.
- 20.3. A complainant may choose:
 - (a) Not to take any action or to pursue any process.
 - (b) To participate in counselling, mediation or other informal processes.
 - (c) To pursue a formal disciplinary process.
 - (d) To take action outside of the institution in terms of criminal, civil, or labour law.
- 20.4. Upon reporting an incident, the complainant will be informed of their rights; all aspects of confidentiality and anonymity; the options available to them regarding the steps involved; the procedural timelines; and the possible outcomes of both informal and formal processes.
- 20.5. The respondent will be informed, in writing, that a complaint has been filed and the process chosen by the complainant. The respondent will be further informed that the complaint laid is only an allegation and that a process to investigate will follow.
- 20.6. If the complainant elects to follow an informal process, the respondent will be notified of the next steps and if formal they will be informed that the matter will be investigated by the **RESPONSIBLE OFFICE** or by an investigator contracted by the institution.
- 20.7. Any respondent wishing to submit a written response at this stage must do so within five (5) days of being notified of the complaint.

21. Pursuing an informal process

- 21.1. In certain circumstances it may be sufficient for a complaint of sexual or gender-based misconduct to follow an informal process. Such a procedure would involve explaining to the respondent that the behaviour in question is not welcome, that it offends the complainant or makes them uncomfortable, or that it interferes with the complainant's work or study. The informal complaints procedure aims to put an end to the behaviour complained of, and to restore the working relationship between the complainant and the respondent. This may be achieved in different ways.
- 21.2. The **RESPONSIBLE OFFICE** must commence the informal process within five (5) working days of the complainant submitting their statement and informing the office of their election to pursue an informal process and should be completed within a reasonable period.

- 21.3. The decision on whether to undertake an informal process resides with the complainant. The complainant must not be compelled to engage in any type of alternative resolution and/or to directly confront the other party. Participation in an informal process is voluntary and either party can request to pursue a formal process at any stage.
- 21.4. Depending on the process agreed to, the identity of the complainant need not be revealed.
- 21.5. Should an informal process be chosen, the complainant may elect to follow one of the following informal procedures:
- (a) An approach to the respondent: An appropriate person (agreed to by the complainant) may be requested to approach the respondent, with or without revealing the identity of the complainant, and explain to the respondent that their conduct constituted sexual or gender related misconduct, is offensive and unwelcome, and makes the complainant feel uncomfortable and/or interferes with their work.
 - (b) An internal informal discussion/mediation: A discussion or internal mediation between the parties may be pursued. The respondent will be given an opportunity to respond to the complaint; will need to fully understand the complaints mechanism; and be open to a facilitated discussion with the complainant to achieve an informal resolution which is acceptable. A confidential record is kept of what transpires and follow up will need to be done with the complainant after the finalisation of the internal mediation process to ensure that the behaviour has not persisted.
 - (c) External mediation: Resources permitting, the institution can make arrangements for an external mediator to be appointed to resolve the complaint. The mediator will facilitate a dialogue between the parties, either with both parties present, and with both parties separately, with the goal of identifying how the harm(s) alleged by the complainant can be repaired. If the mediation results in a mutually acceptable agreement, copies of the agreement shall be forwarded by the mediator to the **RESPONSIBLE OFFICE** for review and monitoring. Such an agreement may include items such as apology letters, agreement to a no contact order, special supervision, gender sensitisation training and/or any other appropriate remedial action.
- 21.6. The complainant or the institution may propose other reasonable informal means of addressing the complaint. These means must be in sync with the broad principles set out in these guidelines. Any such alternative must be agreed to by the complainant before being embarked upon, and any resulting resolution of the complaint must be agreed to by both the complainant and the respondent.
- 21.7. During an informal process, the respondent should:
- (a) Be informed that their identity will remain confidential as far as is reasonably possible until the matter is resolved.
 - (b) Be given an opportunity to state their case.
 - (c) Be informed that the complainant's request is to have an informal settlement, and that the possible consequences if proven guilty of sexual or gender related misconduct may result in a formal disciplinary hearing.
 - (d) Be informed that approaching or communicating with the complainant regarding the complaint in any form or manner is prohibited.
- 21.8. If any of the informal processes that are attempted fail, and the parties are unwilling to attempt further informal means of resolving the complaint, the formal complaint procedure may be used to resolve the complaint, provided that the complainant must either request or give their consent to such a process being followed.
- 21.9. Choosing an informal process does not preclude the right to pursue formal proceedings.
- 21.10. The institution reserves the right to proceed with formal disciplinary action even if the complainant withdraws the complaint as set out in clause 18 above. In such an instance, there will be no obligation on the complainant to participate in the process.

- 21.11. The informal process described in this clause may never be used for complaints that involve sexual assault, rape or sex for grades. These should be dealt with through a formal process, and the complainant should be assisted in laying a criminal charge with the South African Police Service should they choose to pursue this course of action.

22. Pursuing a formal process

- 22.1. If the matter is not resolved through an informal process, or, if the complainant elects to initiate a formal process, the formal process must be instituted.
- 22.2. The complainant must submit a statement of complaint, either written or narrated, of no more than five (5) pages detailing the allegations. While this statement is not meant to be an exhaustive account of the incident(s), the statement must state the name or clearly identify the alleged perpetrator and describe with reasonable specificity any of the alleged incident(s) requiring address.
- 22.3. A full investigation will only be conducted when a formal process is agreed upon. The investigation must be conducted into the allegations made with an investigation report concluded within thirty (30) days of the beginning the investigation. If further time is required, reasons for such must be provided to both the complainant and respondent.
- 22.4. The investigator will:
- (a) Interview the victim and the respondent separately.
 - (b) Interview other relevant third parties/witnesses separately.
 - (c) Request any additional documentation and/or information they deem relevant to the investigation.
 - (d) Keep a record of all actions taken.
 - (e) Ensure that all records concerning the matter are kept confidential.
 - (f) The investigator must have specific training and expertise in, among other things, the institution's policies, guidelines, protocols and procedures, knowledge of the institutional culture and environment, know how to conduct a fair and equitable investigation, and understand the effects of trauma on parties impacted by sexual and gender misconduct.
- 22.5. Where the institution does not have an investigator appointed for this role, a suitably qualified investigator will be appointed by the **RESPONSIBLE OFFICE** from within the campus community. Where this is not possible, an external investigator will be appointed with the approval of the relevant executive authority.
- 22.6. The complainant and respondent will receive access to the investigation report and may each submit a written response not exceeding five (5) pages to the report within seven (7) working days of receiving the report. Complainants and respondents are not permitted to share the report with any individual(s) other than their representatives.
- 22.7. If recommended by the report, within three (3) days of such recommendation a formal disciplinary hearing must be held. A hearing panel will be appointed to conduct the formal disciplinary hearing.
- 22.8. If the respondent chooses to resign (staff) or de-register (student) prior to the disciplinary hearing taking place, the institution reserves the right not to accept the resignation or de-registration and to proceed with the hearing in the respondent's absence. The decision to proceed must be made within thirty (30) working days of the resignation or de-registration.
- 22.9. Each hearing panel will comprise the following members as recommended by the **RESPONSIBLE OFFICE**:
- (a) A chairperson, who must be a legal professional or legal academic.
 - (b) A gender expert.

- (c) A member of Senate where the respondent is a staff member; or a member of the Student Representatives Council (SRC) or another representative student body where the respondent is a student.
- 22.10. As far as is possible, members of the hearing panel will be constituted from within the campus community. Where suitable panellist cannot be found within the campus community, outside panellists can be called to serve on hearing panels. Any external panel appointments will require the approval of the relevant executive authority.
- 22.11. Hearing panels cannot include anyone who has participated in any prior effort or intervention regarding the complaint. Once appointed, panel members receive copies of the complaint and response (if applicable) at least fifteen (15) days before the scheduled hearing and must withdraw if they are personally or professionally conflicted.
- 22.12. The complainant and the respondent will be informed of the hearing panel composition and are notified of their right to object to the participation of a panel member, as long as such objection is grounded in a direct conflict of interest e.g., a personal acrimonious history. Such objection cannot be on the basis of a perceived but unfounded 'bias' e.g., as a gender expert. Any objection to a hearing panel member/s must be made in writing and must be received within three (3) days of the date of notification of the panel composition, stating the grounds of objection.
- 22.13. The chair of the panel will decide whether an objection to a hearing panel member brought by the complainant or respondent is justified, and their decision is final.
- 22.14. If deemed necessary, at their discretion, the chair may substitute a hearing panel member.

23. The hearing

- 23.1. In order to settle on a mutually acceptable hearing schedule, the chair may communicate with the parties but if no agreement can be reached, the date of the hearing may be decided by the chair at their discretion.
- 23.2. At least fifteen (15) days before the scheduled hearing, the complainant and respondent are notified of the date and location of the hearing, as well as a list of witnesses to be called. Where a hearing cannot be concluded in one sitting, the chair will determine subsequent hearing dates and notice periods.
- 23.3. Once parties have been notified of a hearing, the hearing dates shall not be changed. In the case of a respondent who does not appear, the hearing will continue without the respondent, and they may not join in the course of the hearing, but the panel may still consider any written representations the respondent has submitted in defence or mitigation.
- 23.4. If a respondent wishes to request a postponement, they must do so in writing setting out the reasons for the request made in an application to the chair. A hearing will only be postponed if there are substantive and compelling reasons e.g., being hospitalised, suffering a family emergency/bereavement, or in the case of a direct exam clash. Any decision to postpone is taken by the chair and is final. Where a complainant or respondent requires a letter from their supervisor or lecturer to authorise attendance at the hearing, the **RESPONSIBLE OFFICE** will provide such.
- 23.5. At least ten (10) days before the scheduled hearing, the respondent must provide the **RESPONSIBLE OFFICE** with an outline of the grounds of their defence of no more than ten (10) pages, as well as a list of witnesses they wish to call to the hearing. If the respondent does not provide such information, the chair may in their discretion require a pre-hearing meeting to settle

their defence, evidence and witnesses. If the respondent does not attend such a pre-hearing meeting, during the hearing the chair may use their discretion to prevent irrelevant issues from being raised.

- 23.6. With due notification and at the discretion of the chair, witnesses may appear at the hearing. Except for the purposes of argument in mitigation or support of a recommended course of action, witnesses may not appear for the sole purpose of testifying about a party's character.
- 23.7. Unless there is good reason not to, witnesses will normally include a gender expert.
- 23.8. The complainant and the respondent may each have a support person of their choosing during all aspects of their case preparation up to and throughout the hearing proceedings. The support person is not a legal practitioner, but rather a source of personal and moral support. The support person may not be a witness, may not speak and may not otherwise participate in the proceedings. Timelines and/or deadlines for submission of materials may not be altered to accommodate the schedule of the support person.
- 23.9. In order to maintain a relatively non-legalistic process, in the normal course neither the complainant nor the respondent may have legal representation in the form of a legal practitioner or anyone studying towards or holding a legal qualification. However, if there are substantive and compelling reasons, any party may apply to the chair within five (5) days of being notified about the hearing to be allowed to bring their own legal representative (at their own expense) to the hearing, provided that such decision should be immediate and not be the basis of granting any postponement.
- 23.10. Unless the complainant opts to appear with the respondent, the complainant and respondent do not appear together in the hearing; rather, the panel sits in a meeting room while the complainant and respondent wait in separate rooms, with the complainant (and their witnesses) being called into the meeting room and the discussion being audio-streamed to the respondent, thereafter, the respondent is called into the meeting room.
- 23.11. The hearing is aimed primarily to allow the panel to interview the parties on the basis of the investigation report. Supporting and contextual material such as photos, cell phone and social media records can be accepted unless reasonably disputed by either party, with the chair deciding on the admissibility of such evidence. More generally, the chair decides any question of procedure and any question on the admissibility of evidence, as well as the acceptability and relevance of any witnesses, not being bound by the formal rules of criminal procedure or evidence but rather the dictates of fairness, justice and relevance.
- 23.12. The hearing panel may read through the investigation report and may call on the investigator for any questions of clarity and may decide in consultation with the parties on any areas that are not in dispute, as well as on any narrowing of the arguments and witness lists. Thereafter, the panel will interview the complainant and any witnesses, and then the respondent and any witnesses. The witness being lead or cross-examined, as well as the respondent or complainant as the case may be, may submit questions at any point. The panel retains the discretion to decline to allow any inadmissible questions to be asked. At its discretion the panel may ask for the testimony of further witnesses, any such further testimony will be subjected to the same rules.
- 23.13. Evidence and testimony provided by any party should be limited to first-hand factual or circumstantial knowledge of the matter. The chair may remove and/or redact any evidence that they deem necessary to ensure a fair and equitable process, such as, but not limited to character assessments, prejudicial testimony, irrelevant evidence, and/or duplicative information. Additionally, information from either a privately hired investigator and/or polygraph examination is not permitted.

- 23.14. The hearing panel will determine if a violation occurred on the basis of a balance of probabilities, being a standard that satisfies the panel that the misconduct, more likely than not, occurred based on the evidence submitted.

24. Findings and sanctions

- 24.1. Following the conclusion of the hearing the hearing panel must make a finding.
- 24.2. A finding will be determined by a majority vote of all hearing panel members by secret ballot.
- 24.3. Following the finding of the hearing panel, the **RESPONSIBLE OFFICE** may present its recommended course of action and may also bring to the panel's attention any previous complaints relating to sexual and gender related misconduct against the respondent.
- 24.4. At this point the hearing panel may also hear any arguments by the respondent for leniency and/or mitigation, as well as arguments by the complainant in aggravation.
- 24.5. The hearing panel then deliberates over whether they agree on the recommended course of action or whether they would like to order an alternative course of action.
- 24.6. The hearing panel will write up their findings within ten (10) days of the conclusion of the hearing.
- 24.7. The final finding regarding the misconduct, as well as the decision over the course of action to be taken will be communicated to all relevant parties.
- 24.8. If the hearing panel finds the respondent guilty it may impose an appropriate sanction. In considering the appropriate sanction(s), the panel must take into account several factors, including but not limited to:
 - (a) The nature of the violation.
 - (b) The perpetrators conduct history.
 - (c) Any other aggravating, mitigating, or relevant factors.
25. Any sanction must be decided by a majority of the panel.
26. The panel may recommend, inter alia, the following sanctions for staff:
 - (a) A verbal or written warning.
 - (b) An adverse performance evaluation.
 - (c) Demotion.
 - (d) Suspension.
 - (e) Dismissal.
 - (f) Any other sanction it deems appropriate.
27. The panel may recommend, inter alia, the following sanctions for students:
 - (a) A verbal or written warning.
 - (b) Suspension.
 - (c) Exclusion from the institution.
 - (d) Removal from a residence.
 - (e) Any other sanction it deems appropriate.

28. Appealing a decision

- 28.1. The outcome of a disciplinary hearing may be appealed by the complainant and/or respondent by submitting a statement of appeal to the **RESPONSIBLE OFFICE**.
- 28.2. If the person that wishes to lodge an appeal is a member of the staff, that appeal must be lodged with the Commission for Conciliation, Mediation and Arbitration (CCMA). If the person

wishing to lodge an appeal is a student, the appeal must be lodged in accordance with this clause.

- 28.3. Any course of action ordered by the hearing panel will remain in force until the outcome of the appeal.
- 28.4. An appellant must submit their statement of appeal within seven (7) days of the date of receipt of the finding of the hearing panel. An appellant may not submit more than twenty (20) pages in support of their appeal.
- 28.5. A complainant and/or respondent may request to review the original case file and audio recordings while they prepare their appeal. They will be allowed to do so at the offices of the **RESPONSIBLE OFFICE**.
- 28.6. Complainants and/or respondents may appeal on the following grounds only:
 - (a) Substantial procedural error: A specified procedural error or error in interpretation of policies, guidelines and protocols may have substantially affected the process, such that the complainant and/or respondent was denied a fair process or that caused a material prejudice.
 - (b) New information of a substantive nature: New, significant or relevant information becomes available that could not have been discovered by a properly diligent investigation at the time of the original finding and that may have substantially affected and/or changed the decision of the hearing panel.
 - (c) Substantial disproportionate sanction: The sanction appears to be substantially disproportionately lenient and/or severe based on the facts of the case, as determined by the hearing panel.
- 28.7. After an appeal has been submitted by a complainant and/or respondent, the institution's legal office or any duly appointed legal advisor or organisation will review the statement of appeal to ensure that it follows the established guidelines and procedures. After such review, they will allow the complainant and/or respondent access to the other party's statement of appeal and to any document deemed relevant for the appeal.
- 28.8. Each party may submit to the legal office or any duly appointed legal advisor or organisation a written response to the other party's statement of appeal within five (5) days of receiving access to their appeal. The response must respond to the specific ground(s) for appeal raised in the other party's appeal. The response may not include more than ten (10) pages of materials.
- 28.9. Once all deadlines have passed to submit materials, the institution's legal office or any duly appointed legal advisor or organisation will review all materials to ensure that they comply with the appeal procedure. The legal office or any duly appointed legal advisor or organisation will compile a statement of appeal and insert it, along with any other materials (e.g., the original Case File, the other party's written response) into an official appeal case file.
- 28.10. The burden of proof rests on the person lodging the appeal to establish that the grounds for their appeal exist and are valid.
- 28.11. An Appeals Committee comprising three (3) members of the institutions legal community with experience and knowledge in respect of sexual and gender related misconduct and these guidelines, will be appointed to conduct the appeal. They will review the appeal case file and within ten (10) days of receiving the appeal request, make a decision on whether to grant the appeal. A decision is communicated via a report to the **RESPONSIBLE OFFICE**. The **RESPONSIBLE OFFICE** must then communicate the decision to all the parties.
- 28.12. Appeals will not consist of any live testimony, evidence or interviews.
- 28.13. The following actions may be taken by the Appeals Committee:
 - (a) Affirm the finding and sanction of the hearing panel.

- (b) Affirm the finding and alter the original sanction of the hearing panel.
- (c) Overturn the initial findings and sanctions and return the matter to the **RESPONSIBLE OFFICE** for action consistent with the Appeals Committee's determination.

28.14. In the event the Appeals Committee imposes a higher penalty than the hearing panel, the respondent is not entitled to withdraw the appeal.

28.15. The Appeals Committee's decision is final and binding on all parties and is not subject to further internal review or appeal.

29. Non-retaliation and victimisation

29.1. It is illegal for any individual to engage, whether directly or indirectly, in retaliatory conduct against a person who lodges a complaint of sexual and gender related misconduct or any person who gives testimony during an investigation into such a complaint.

29.2. The institution will consider it a disciplinary offence to victimise or retaliate against a member of the campus community or witnesses who lodge complaints of sexual or gender related misconduct, or to pressurise a complainant to drop a complaint of sexual or gender related misconduct.

29.3. Any member of the campus community who believes that retaliatory actions have been taken against them for having lodged a complaint or provided testimony in an investigation of sexual and gender related misconduct may seek redress through the **RESPONSIBLE OFFICE**.

29.4. The institution will do all it can to prevent any retaliation from taking place and to protect complainant anonymity if required and will place no pressure on victims to report cases of sexual or gender related misconduct

Section E: The status of these Implementation Guidelines

30. Implementation

30.1. Institutions are required to adhere to the DHET Framework and in accordance with this framework adopt GBV policies.

30.2. These Implementation Guidelines contain the required clauses that must be contained in any adopted GBV policy.

30.3. Implementation of the GBV policy will be routinely monitored, reported on and evaluated. Senior managers will be held accountable for effective implementation.

30.4. The GBV policy for the institution and any related guidelines and protocols must be made easily accessible to all students and staff.

30.5. Academic staff should promote an understanding of the GBV policy adopted and these guidelines among their students.

30.6. For these guidelines to be effective, and to enable the campus community to be empowered to fully utilise them, they will be widely disseminated so that GBV policies that incorporate them can be adopted.

- 30.7. The institution's GBV policy incorporating these guidelines must be:
- (a) Available on the institution's website and links to the guidelines will be included in all student and staff handbooks and circulars produced.
 - (b) Included in the institution's human resource manual.
 - (c) Attached as an addendum to all employment, volunteer, tutor or intern contracts as well as to memoranda of understanding between institutions and contracting partners.
 - (d) Attached as an annexure to all contracts with service providers, contractors, consultants and partners and there should be a clause that draws their attention to them.
- 30.8. There must be mandatory training for all new students during annual campus orientation programmes as well as compulsory training for all new members of staff as part of their induction programmes.
- 30.9. The institution must maintain a whistleblowing email address and SMS number on their website where any member of the campus community may report an incident.
- 30.10. The institution must ensure that it prominently displays posters and other visible materials that convey their commitment to preventing sexual and gender related misconduct.
- 30.11. All GBV policies, sexual and gender related misconduct guidelines and minimum standards protocols must be reviewed every three years but can be adjusted before then to reflect global and/or legislative changes and developments.
- 30.12. The **RESPONSIBLE OFFICE** will have the overall responsibility to oversee and ensure the implementation of these guidelines and any GBV policy adopted by an institution.
- 30.13. The **RESPONSIBLE OFFICE** is obliged to keep records of all incidents reported and all cases opened so that the institution has information about prior instances when a gender related misconduct took place, the parties involved etc. owing to the fact that it is common for harassers to target more than one victim and records and data keeping can help the institution understand patterns and taking preventative actions.
- 30.14. Should the **RESPONSIBLE OFFICE** become aware of sexual and gender related misconduct taking place in a particular residence, department, school or cluster, it must initiate an investigation of that residence, department, school or cluster in order to determine the nature of the misconduct and whether action should be taken against alleged perpetrators.

These guidelines set out the critical issues underpinning the approach all institutions should adopt in their understanding of sexual and gender related misconduct. The broad statement, purpose, principles and definitions align with the Department of Higher Education and Training's (DHET) Policy Framework to Address Gender-based Violence in the Post-School Education and Training System.