

Behavioural Requirements and Probation Agreements

This guideline relates to sections 71-80 and 90-96 of the Code of Student Conduct.

What are behavioural requirements?

Behavioural requirements are non-punitive. They do not involve a finding that there has been an offence. There is no investigation into the underlying allegations that lead to the imposition of behavioural requirements. They are a tool to provide a student who is alleged to have behaved contrary to the Code with clear behavioural requirements to follow going forward.

If a student subject to behavioural requirements does not comply with the requirements, the Vice-Provost, Students may initiate a new Code process against the student as a respondent, based on the failure to comply. The respondent will face sanctions if there is a finding that they failed to comply with the requirements. The list of sanctions available under the Code is set out in the Code itself: see sections 46-47 and 88. The respondent will be sanctioned for their failure to comply with the behavioural requirements, not for the original behaviour that led to the requirements being imposed.

Behavioural requirements must be:

- Clear and specific about what behaviour is required or not permitted, so that students subject to behaviour requirements understand what they must and must not do.
- Connected and proportionate to the underlying allegations being addressed.
- Practical to monitor and enforce, because a breach of behavioural requirements is an offence under the Code.

Behavioural requirements must not seriously impede a student's ability to engage with University life and must not include total prohibitions on access to University premises or services.

Who can impose behavioural requirements?

A college principal or dean, the Vice-Provost, Students, or a staff member designated by them (such as a college registrar or staff in the Office of the Vice-Provost, Students), can impose behavioural requirements, without a respondent's agreement.

How long can behavioural requirements be imposed for?

The Code says that behavioural requirements can be in place for no longer than 12 months.

What are some examples of behavioural requirements?

- No-contact provisions with a particular individual, e.g. “You are not to have any contact or communication directly or indirectly with [name], which includes by phone, email, instant messages, social media or through mutual colleagues/friends. You must not initiate, encourage, or facilitate contact with [name] through any third party.”
- Restrictions on attendance at certain University services or spaces, e.g.
 - You may visit staff in your College Registrar’s office only with scheduled appointments, not for drop-ins.
 - You may only schedule virtual meetings with staff in your College Registrar’s office and are not to attend the office in person.
 - You must not attend [name of library] without seeking and receiving prior permission from [name of designated staff person].
 - You may only be on campus between the hours of 7 am and 9 pm unless you have sought and received prior permission from [name of designated staff person].
- Directions about frequency or type of email correspondence, e.g.
 - Use your @mail.utoronto.ca email account for email correspondence with employees of the University.
 - After emailing someone at the University, you must wait until you receive a response for at least three business days before sending the same individual another email, whether on the same or a different topic.
- Restrictions on who at the University a student may email, e.g.
 - For all academic advising and OSAP-related matters you must email [name of designated staff person], and not other members of your college’s academic advising team or the general inbox.
- Directions about classroom behaviour, e.g.
 - You must not interrupt lectures, discussions, presentations, or examinations.
 - You must comply with any instruction from the instructor to cease disruptive behaviour.
 - You must leave the classroom if directed to do so by the instructor, a TA, or Campus Safety.
- Directions to interact civilly and respectfully with members of the University community, e.g.

- You must communicate with members of the University community in a respectful and appropriate manner, without harassing, abusive, derogatory or profane language or conduct.
- You must not shout, insult or belittle members of the University community you are interacting with, whether in person or online, or engage in other similar behaviour.

Probation Agreements

A **probation agreement** requires the respondent to take responsibility for the behaviour that they are alleged to have engaged in, and to agree to conditions for their behaviour going forward. If they comply with the conditions for the duration of the probationary period, there will be no permanent record of their having committed an offence. If they do not comply with the probation conditions, they may then face sanctions for both the original behaviour and the breach of the conditions.

Probation agreements must be agreed to by both the respondent and the Vice-Provost, Students, or a staff member designated by the Vice-Provost, Students, like staff in the Office of the Vice-Provost, Students. They can include a wide range of conditions that both parties agree to.

A probation agreement must:

- identify an alleged offence or offences for which the respondent accepts responsibility;
- set out conditions with which the respondent must comply;
- state the period of probation, which shall not exceed 24 months;
- describe the consequences of successful completion;
- describe the consequences of breach; and
- be agreed to by the respondent and the Vice-Provost, Students or their designate (e.g. staff in the Office of the Vice-Provost, Students).

If a respondent who agreed to a probation agreement does not comply with the requirements, the Vice-Provost, Students may initiate a new Code process against the student as a respondent, based on the failure to comply. The respondent will face sanctions if there is a finding that they failed to comply with a probation term. The list of sanctions available under the Code is set out in the Code itself: see section 46-47 and 88. The respondent will be sanctioned for their failure to comply with the probation term, and

they may also be sanctioned for the original behaviour that led to the requirements being imposed (which they took responsibility for in the probation agreement).

What are some terms that might be in a probation agreement?

Probation agreements can include the same types of terms as could be imposed as behavioural requirements. They can also include:

- Commitments to seek healthcare or attend healthcare appointments.
- Requirements to check-in at set intervals with a University staff member, such as someone in Student Life or an academic advisor.
- Educational requirements, like completing a course on anger management or emotional regulation.
- Restorative or reparative measures, like paying for damage done to property.
- Restrictions on specified privileges, access, activities, or participation, like not using University fitness facilities at all during the probationary period, or not participating in the extracurricular activity where the original behaviour of concern occurred.

The parties can agree to any probation conditions that are acceptable to both the respondent and the Vice-Provost, Students or the staff member designated to work on the matter. They also agree on the length of the probationary period.

What is the difference between a behavioural requirement and probation agreement?

Behavioural requirements	Probation agreements
No finding of an offence before they are imposed	Respondent must take responsibility for having committed an offence
Imposed by the University (e.g. a college principal) on the respondent	Agreed to by both the University (e.g. the Vice-Provost, Students) and the respondent
Can last up to 12 months	Can last up to 24 months
No offence listed on student's record of prior offences if completed successfully	No offence listed on student's record of prior offences if completed successfully
Must not seriously impede a student's ability to engage with University life and must not include total prohibitions on access to University premises or services	Can include any terms that the University and the respondent agree to include
If breached, can lead to finding of failure to comply with behavioural requirement & sanction for failure to comply	If breached, can lead to finding of failure to comply with term of probation & sanction for

	both failure to comply and the original offence
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When are behavioural requirements used and when are probation agreements used?

The answer to this is set out in the Guideline on Pathway Determination.

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Guideline on Investigations

This guideline relates to sections 84-86 of the Code of Student Conduct.

What is the purpose of an investigation?

An investigation is a fact-finding process.

The purpose of an investigation is to gather relevant information in order to assess the credibility of those involved in the investigation and make factual findings about the allegations against a respondent.

The purpose of an investigation is not to decide whether the respondent committed an offence under the Code or what consequences or sanctions, if any, should follow. The decision about what happens after an investigation is made by the Vice-Provost, Students.

What principles guide investigations?

Every investigation is different. The investigator will decide how to conduct the investigation based on the circumstances, while following these general principles:

1. Investigations are impartial, which means that:
 - a. the investigator should approach the allegations with an open mind; and
 - b. the investigator should not assume at the outset any basic facts or that the allegations are true or untrue.
2. Investigations are procedurally fair, which means that:
 - a. respondents to an investigation have the right to know the allegations against them and have a meaningful opportunity to respond; and
 - b. participants should have a reasonable opportunity to provide relevant information to the investigator, including identifying documents, communications, witnesses, or other sources of information.
3. Investigations are driven by the investigator, which means that:
 - a. the investigator determines what process for the investigation is proportionate in the circumstances; and
 - b. the investigator determines what steps are reasonably necessary, including, for example, who ought to be interviewed and what material ought to be reviewed
4. Investigation findings are determined on a balance of probabilities, which means that the investigator decides whether an allegation is more likely than not to be true.

Who is the investigator?

The Vice-Provost, Students assigns an investigator who has training and experience in conducting investigations. The investigator may be an employee of the University or they may be someone from outside the University who has been hired to conduct the investigation.

The investigator must not be someone who has a personal interest in the outcome of the investigation or has been involved in the events they are investigating in a way that could affect their ability to conduct a fair and impartial investigation.

What happens during an investigation?

The investigator's job is to gather relevant information and make factual findings about whether the allegations against a respondent are more likely than not to be true.

The first step an investigator takes is to finalize a summary of allegations that they will be investigating. Usually, the key details of the allegations against a respondent are set out in the initial notice letter that the respondent receives from their college principal or dean. Sometimes, the investigator will add to or revise that list when they start their investigation. They will then provide the revised list to the respondent prior to meeting with the respondent.

During an investigation, the investigator may:

- a. interview the respondent;
- b. interview other people with relevant information about the allegations, such as witnesses or the person who made the report about the alleged behaviour;
- c. re-interview the respondent or others about the alleged behaviour, to give them an opportunity to respond to information collected by the investigator since the first interview;
- d. review documents, communications, photographs, recordings, records, or other materials.

The investigator decides what investigative steps are reasonably necessary to make findings about the allegations. This means that an investigator does not necessarily need to interview every person identified by a participant, obtain every potentially available document, or pursue information that is not relevant or would not materially assist them in making their findings. However, they must ensure that the respondent has a meaningful opportunity to respond to information that may form the basis of findings against them.

The investigator will provide participants with reasonable opportunities to provide relevant information. A person may choose not to participate or may choose not to answer

particular questions. If someone does not participate in the investigation, the investigator will normally make findings based on the information that is available to them.

The investigator will also provide each participant with an opportunity to review the investigator's notes from their interview in order to correct any inaccuracies.

Once the investigator has completed their interviews and review of other materials, they will draft an investigation report for the Vice Provost, Students. Based on all of the information that the investigator has collected, the investigator will make factual and credibility findings on a balance of probabilities. This means they will decide whether each of the allegations against the respondent is more likely than not to be true, and explain why they have reached those findings based on the information that they collected.

The investigator does **not** decide whether the respondent committed a Code offence or what consequences or sanctions, if any, should be imposed.

How does an investigator decide what to believe?

Sometimes, the information collected during an investigation will be inconsistent or people will have different recollections of what happened. When this happens, the investigator will assess the credibility and reliability of the information they have collected.

Credibility usually means whether the investigator believes that a person is being truthful. Reliability usually means whether the investigator believes that the information provided by a person is accurate. The assessment of credibility and reliability are independent but related. For example, a person may be telling the truth as they remember it, meaning they are credible, but their recollection may still be inaccurate or incomplete, meaning that they are not reliable.

When assessing credibility and reliability, an investigator may consider a number of factors. For example, they may consider whether a person's account is internally consistent, whether it has changed over time, whether it is consistent with other information collected during the investigation, and whether there are reasons why the person may have difficulty accurately remembering what happened. The investigator may also consider whether there is other information that supports or contradicts a person's account.

An investigator should not decide whether someone is credible or reliable based on assumptions about how a person would be expected to behave in the circumstances. People may perceive, remember, communicate about, or respond to the same experience differently. The investigator's assessment should be based on the information available in the investigation.

Other records, like text messages, photos or recordings, can also help an investigator decide what happened. For example, text messages exchanged around the time of an incident may help confirm when something happened or what the people involved understood at the time. The investigator will consider this information together with the information provided during interviews and will decide how much weight to give each piece of information based on the circumstances.

An investigator does not need to determine with certainty what happened. They make their findings on a balance of probabilities. This means deciding whether, based on all of the information collected during the investigation, an allegation is more likely than not to be true.

Can advisors, supporters, or counsel attend investigation interviews?

A respondent or person invited to an interview with an investigator may bring a support person, like a parent or close friend, with them to the interview. They may bring a lawyer if they have one. However, the person being interviewed is the one who is expected to answer the investigator's questions.

Are investigations confidential?

Both the Code of Student Conduct and the *Freedom of Information and Protection of Privacy Act* ensure that information collected during an investigation is not shared beyond those who need to know the information.

However, an investigator cannot keep information provided by a participant confidential from everyone else involved in the process. The investigator may need to share relevant information in order to investigate the allegations, give another participant a fair opportunity to respond, or explain their findings. In some cases, this may mean that the investigator will share the source of information (e.g. the name of a participant) with the respondent or other participants.

What happens to the investigation report when it is done? What information does a respondent get at the end of the investigation?

Once the investigation report is complete, the investigator will provide it to the Vice-Provost, Students or the staff member in their office who is responsible for the decision-making that happens after an investigation. The report will also be shared with other University employees who need the report in order to do their jobs.

The Vice-Provost, Students or a staff member in their office will send the respondent a summary of the investigator's factual findings, including any key reasoning that they need

to understand those findings. The respondent will not receive the full investigation report at the end of the investigation, nor will any other participants in the investigation.

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Guidance on pathway determination

This guideline relates to sections 52-58 of the Code of Student Conduct.

When might the University not proceed with a Code process?

In some cases, the Vice-Provost, Students or their delegate may decide not to proceed with a Code process in relation to particular behaviour. This decision is the University's choice, and it must make this choice in good faith. Some of the factors that the Vice-Provost, Students or their delegate might consider in making this decision include:

- the alleged conduct does not fall within the scope of the Code
- the report is better addressed under another University policy or process;
- there is insufficient information to proceed;
- the matter has already been appropriately addressed;
- another process, including a criminal, civil, regulatory, employment, academic, residence, professional standards, or other University process, is ongoing or more appropriate; or
- proceeding would not serve the purposes of the Code.

What are the pathways a Code matter can take?

- Imposition of behavioural requirements: a dean or college principal, or a member of their staff (e.g. a dean of students or college registrar), meets with a student and imposes behavioural requirements on the student following that meeting. There is no investigation and the requirements are not considered sanctions – they are meant to help the student understand and follow appropriate behaviour for participating in University life. There may also be cases where no action is taken following the meeting.
- Probation Agreement: the Vice-Provost, Students or their delegate meets with a student to discuss the allegations and then assigns an investigator. If, during that meeting or after, the student wants to take responsibility for their behaviour and agree to conditions for their behaviour in future, the University and the student can enter into a probation agreement with terms that they both agree on. In this pathway, the original offence will only go on the student's disciplinary record if the student breaches the probation agreement.
- Vice-Provostial adjudication: the Vice-Provost, Students or their delegate meets with a student to discuss the allegations and then assigns an investigator. After the investigation, the Vice-Provost, Students or staff member decides whether an

offence occurred and, if it did, imposes sanctions. In this pathway, suspension and expulsion are not available sanctions.

- **Hearing:** the Vice-Provost, Students or their delegate meets with a student to discuss the allegations and then assigns an investigator. After the investigation, the Vice-Provost, Students or their staff member refers the matter for a hearing before a Hearing Officer, who decides whether an offence occurred and, if it did, imposes sanctions. In this pathway, the Vice-Provost, Students will normally ask the Hearing Officer to impose suspension or expulsion among the sanctions.

In addition to choosing a pathway under the Code, the Vice-Provost, Students or their delegate can impose immediate measures. These are interim restrictions on a respondent imposed while the rest of the Code process is pending. Immediate measures are described in sections 61-70 of the Code.

How does the University decide which pathway a matter should take?

There are several factors the University might consider in deciding what the appropriate resolution pathway is:

- the nature of the alleged conduct;
- the seriousness of any harm alleged or reasonably anticipated;
- whether the alleged harm is physical, emotional, psychological, property-related, communal, institutional, or related to safety or security;
- whether the alleged conduct caused or threatened significant disruption to the learning, living, working, or University environment;
- whether there appears to be an ongoing risk to any person or to the University community;
- whether the alleged conduct appears to form part of a pattern of behaviour;
- the respondent's prior offence history, if any;
- any apparent aggravating or mitigating circumstances;
- whether the respondent has complied with prior directions, immediate measures, behavioural expectations, sanctions, or other requirements under this Code; and
- any other circumstances the University considers relevant.

Where the University believes that a student's mental health or similar health-related concerns are contributing to the student's conduct, the University's first approach will be to resolve the matter via imposition of behavioural requirements or a Probation Agreement. If the student is unable or unwilling to engage with those options, the matter will proceed via Vice-Provostial Adjudication or a Hearing, subject to consideration of whether reliance on the University's *Supportive Leaves Policy* is appropriate.

A matter may be escalated to a more formal pathway during the Code process. This might happen if:

- new information indicates that the alleged conduct is more serious than initially understood;
- the respondent's conduct continues or escalates;
- the respondent fails to comply with behavioural requirements, interim measures, sanctions, or other requirements under this Code;
- the respondent interferes with a process under this Code;
- the respondent intimidates, threatens, retaliates against, or attempts to influence a complainant, witness, decision-maker, investigator, or other participant in the process;
- the respondent provides false or misleading information

A matter may also be moved to a less formal resolution pathway where the University determines, based on the information available, that the seriousness of the matter or the available sanctions no longer require the pathway originally selected.

What kind of harm will lead to which pathways?

Each case is assessed individually. However, the University considers harm as a significant factor in deciding what pathway will be selected. Here is some guidance:

Level of Harm	Emotional / Communal Harm	Physical / Property Harm	Disturbance / Safety / Security	Typical Pathway
Minimal	Minimal or no emotional or communal harm	No physical injury or property damage	No or minimal disturbance or safety concerns	Meeting with college principal or dean (no further action) / Behaviour Requirements
Low	Limited emotional or communal harm	Minor property damage or minor physical harm	Limited disruption or safety concerns	Meeting with college principal or dean (no further action) /

				Behaviour Requirements / Vice-Provostial Adjudication
Moderate	Moderate emotional or communal harm	Moderate physical harm or property damage	Significant disruption or safety concerns	Vice-Provostial Adjudication or Probation Agreement
High	Significant emotional or communal harm	Serious physical harm or major property damage	Major disruption or ongoing safety concerns	Vice-Provostial Adjudication / Probation Agreement/ Hearing
Severe	Severe or lasting emotional or communal harm	Severe or permanent physical harm or catastrophic property damage	Severe disruption or immediate danger to the University community	Hearing

In addition to the Code pathways, in cases of peer-to-peer conflict, the Vice-Provost, Students, may consider whether to refer the parties to an alternative resolution process, where such a process is available and appropriate. Should the alternative resolution process not succeed, or the parties decline to participate, the procedures in the Code will be used

How does having a prior offence or misconduct during the Code process impact the pathway determination?

The University usually assigns or moves a matter to a more formal resolution pathway where the respondent has previously engaged in similar misconduct, or where the respondent has failed to comply with behavioural requirements, a probation agreement, immediate measures, or a sanction. Misconduct during a Code process, such as sending harassing emails to staff, also often results in a more formal pathway being used.

Guideline on reporting or complaining about conduct

This guideline relates to section 51 of the Code of Student Conduct.

Where should someone bring a report under the Code?

Students can make a report against another student by completing a complaint form posted on the Office of the Vice-Provost, Students website. If they cannot complete the complaint form or want to speak with someone about the details of their complaint, they can make an appointment to meet with a staff member in the Office of the Vice-Provost, Students to share their concerns.

Staff, faculty and librarians can make a report against a student by completing a complaint form posted on the Office of the Vice-Provost, Students website. They are welcome to notify their department chair or dean's office that they have made a report. If they cannot complete the complaint form or want to speak with someone about the details of their complaint, they may make an appointment to meet with a staff member in the Office of the Vice-Provost, Students to share their concerns.

Campus Safety can initiate a report under the Code by sharing an occurrence report with the Vice-Provost, Students for consideration.

If a report relates to an allegation of sexual violence, it should be brought under the processes in the *Policy on Sexual Violence and Sexual Harassment*.

If a report relates to an allegation of *Human Rights Code* discrimination or harassment, it should be brought under the processes in the *Policy on Human Rights Code Discrimination and Harassment*.

What should a report under the Code usually include?

A report should include:

- a. the name of the respondent;
- b. a description of the alleged conduct;
- c. the date, time, and location of the alleged conduct; and
- d. the names of any persons affected by or who witnessed the alleged conduct

Any documents, communications, photographs, recordings, or other information relevant to the report should be attached when the complaint form is submitted to the Vice-Provost, Students.

**If someone makes a report, will they be updated on the Code process as it proceeds?
Do they have the opportunity to participate in the process or hear about the outcome?**

Someone who makes a report will be informed of (a) whether there was a finding of or an admission to an offence, (b) if so, whether any sanctions were imposed, and (c) any restrictions (whether via behavioural requirement, probation agreement, immediate measure or otherwise) that the respondent is subject to that relate to the reporter's ability to participate in campus life.

If there is an investigation, the person who has made a report may be asked to participate in an investigation or be a witness at a hearing. They may request to attend the hearing, if they wish to.

If the report was initiated as a Report as defined in the *Policy on Sexual Violence and Sexual Harassment* or a Complaint as defined in the *Policy on Human Rights Code Discrimination and Harassment*, any provisions about updates and participation from those policies about participation and updates will also be followed.

Can reports be made anonymously?

Reports may not be filed anonymously (i.e., without the Vice-Provost, Students being informed of the identity of the person wishing to file the Complaint).

Any anonymous information submitted will be reviewed by the Vice-Provost, Students. In exceptional circumstances, the Vice-Provost, Students may treat an anonymous submission as the basis for initiating a process under the Code.