

Statement on Consensual Relations between Employees and Students

While consensual relations between employees and students do not necessarily fall into the realm of human rights, when one party's consent to the relationship is in dispute, the relationship could become the foundation for a complaint of sexual harassment. As this issue is a complex one a review of the pertinent policies and relevant legal decisions is provided for the information of employees and students.

Does Vancouver Island University allow sexual relationships between employees and students?

While the answer to this question is complex, there is institutional policy that provides guidance on the issue.

The *Conflict of Interest Related to Employees and Students Policy* states that it is the employee's responsibility to avoid conflicts of interest and to report them when they occur. While this policy does not directly prohibit sexual relationships with a student, sexual relationships are described as a conflict of interest that should be avoided. In addition, any employee involved in a sexual relationship with a student must report the conflict of interest to their Dean or Director if they are in a position to teach, evaluate, provide service, or are in any way involved in making decisions that impact the student.

The *Ethics in Teaching: Principles and Expectations Policy* indicates that dual relationships with students are always problematic. Further, it states that while some kinds of dual relationships (e.g. teaching a son or daughter) can be dealt with by reporting the conflict to a supervisor in order for alternate arrangements to be made, others are "inherently improper", such as "any form of sexual or intimate relationship with a current student ". This policy makes it clear that in the instructional setting the institution does not sanction sexual relationships with current students and would consider such relationships unethical.

Can an employee be disciplined for having a sexual relationship with a student?

Yes, depending on the circumstances. As Arbitrator Lanyon stated, in Okanagon College and Okanagon Faculty Association , 1997,

“Students attend the College to advance themselves intellectually, and to enhance their future careers. The role of College Professor is the most significant vehicle by which this advancement of students takes place. The student/teacher relationship is accurately described as a professional relationship; one that involves a significant issue of trust in regard to both the institution and to the student...The University College’s educational goals are therefore embodied and entrusted to the college instructor. If that is the case, and I think it is self-evident, how does the consensual sexual relations between teacher and student fit within that scheme? I think, clearly, it does not.

In my view, sexual intimacy removes all professional boundaries between teacher and student.”

Arbitrator Lanyon went on to find that the faculty member involved had breached the trust of his employer to act in a professional manner with students and that discipline was warranted. He stated that, “...it will almost certainly be a breach of trust when the same student and professor are in the same classroom, and attempt to keep such a relationship a secret.”

Whenever an employee breaches the trust of their employer to act in ways that are appropriate to their role within the institution or does not comply with institutional policy an employee can be disciplined.

Under what circumstances might a sexual relationship with a student be permissible?

Circumstances where a finding of breach of trust would be less likely to be made include:

- A relationship developed prior to the person becoming a student at the institution;
- A student studying in a discipline or program where there is no possibility of the student being required to depend of the employee for professional or institutional services and the relationship formed outside of the institutional setting;

- A relationship forms between the employee and student outside of the institutional context (e.g. home of a mutual friend), and the employee reports the relationship to his/her Dean or supervisor when there is a conflict of interest.
- A relationship is formed after the student has graduated or left the institution.

Regardless of the circumstances, the onus would always be on the employee to show that there has been no breach of trust.

When could a student/employee sexual relationship be considered sexual harassment?

A finding of sexual harassment would depend on whether or not there was consent, as sexual harassment by definition is behaviour of a sexual nature to which there is no consent. There have been circumstances where students have complained that a sexual relationship with an instructor or other employee was not consensual. When there is an allegation that true consent was not given to sexual behaviour a decision-maker would consider the following issues:

- The power differential between the parties (e.g. institutional status, age, education, life experience);
- Whether or not the relationship was kept secret;
- Any real or implied benefits for consenting;
- Any real or implied threats for not consenting;

- The credibility of the parties and the evidence given on the issue.

Allegations of sexual harassment can be made after the fact, even in circumstances where the employee believed there was consent. It is important to have explicit consent, and for this consent to be given under circumstances where no negative or positive repercussions could result from a student's decision.

Can't a student and faculty member fall in love?

Yes, of course, that can occur. Many of our students are of similar age and experience to our faculty and, except for the circumstance of the employee/student relationship, could be considered very appropriate matches. Often students and employees will share the same interests and the learning environment can encourage close collaboration and interpersonal support. However, the faculty member must remember that it is their responsibility to maintain appropriate boundaries with a student. There is no way to check out whether an attraction is mutual without crossing that professional boundary with a student.

It is recommended that any employee who wishes to initiate a sexual relationship with a student wait until the institutional relationship has ended before taking any steps.

Making a practice of initiating sexual relationships with former students, however, would also be problematic. It could be understandable that a faculty member "falls in love" with a student once. It is not understandable or acceptable for a faculty member to "fall in love" with students and to initiate relationships with former students, on a routine basis. In those circumstances, a decision-maker would question whether the faculty member was exploiting their professional role to enhance their personal and social life.

Conclusion

It is only in those circumstances where the employee has not used their institutional role to further their own personal interest in any way and where a student can consent, or not

consent, without any concerns about the effect on their education at our institution, that an employee may be able to act without risk of breaching employer or ethical constraints.