



# Title IX and Sexual Misconduct Policy

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This Policy is effective August 14, 2020 and was revised September 2020 and September 2021. This Policy amended and supersedes policies in the Student Handbook, Faculty Handbook, and Employee Handbook.

*Nothing in this Policy is intended to create a contract between Macalester College and any student, employee, independent contractor, vendor, or other individual or entity.*

This Policy outlines Macalester College's community expectations to ensure a campus free from Sexual Misconduct, the steps for recourse for those individuals who have been subject to Sexual Misconduct, and the procedures for determining whether a violation of College policy has occurred. This Policy discusses "Sexual Misconduct," which refers collectively to the following forms of sex discrimination: Title IX Sexual Harassment, non-Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Exploitation, as those terms are defined below.

Macalester College seeks to create an environment in which the greatest academic potential of students and professional potential of employees may be realized. In order to create and maintain such an environment, all who work and learn at the College are responsible for ensuring that the community is free from discrimination and Sexual Misconduct. These behaviors threaten our learning, living, and work environments and will not be tolerated.

## I. Scope

This Policy applies to all Macalester College community members, including students, employees, faculty, administrators, staff, trustees, applicants for admission or employment, volunteers, vendors, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, interacting with a member or members of the Macalester community, or having any official capacity with the College or on College property. This Policy applies regardless of the sexual orientation or gender identity of any of the parties. All Macalester College community members are required to follow this Policy.

This Policy applies to Sexual Misconduct committed by or against a College community member that:

- occurs on campus or Macalester College property;
- occurs at College-sponsored events or programs that take place off campus, such as study abroad and internships;
- occurs off campus and outside the context of a College-sponsored event or program, but that the College determines may (i) have continuing adverse effects on campus, College property, or in a College program or activity, (ii) substantially and unreasonably interfere with a community member's employment, education, or environment on campus, College property, or in a College program or activity, or (iii) create a hostile environment for community members on campus, College property, or in a College program or activity.

This Policy applies to Sexual Misconduct within the scope of Title IX, as well as Sexual Misconduct committed by or against a College community member that does not fall within the scope of Title IX. More information about what Sexual Misconduct falls within the scope of Title IX is provided in Section IV: Prohibited Conduct of the Policy below and more information about the process applicable to different types of Sexual Misconduct is provided in Section IX: Procedures for Formal Complaints below.

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## II. Notice of Nondiscrimination

In complying with the letter and spirit of applicable state and federal laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, The Age Discrimination in Employment Act, and The Americans with Disabilities Act and ADA Amendments, and in pursuing Macalester College's own goals of diversity and inclusion, the College does not discriminate on the grounds of sex, gender identity, race, color, national origin, age, religion, creed, disability, marital status, familial status, pregnancy, genetic information, membership or activity in a local human rights commission, veteran status, sexual orientation, status with regard to public assistance, or other categories protected by law, in employment policies and practices, education, and all other areas of the College. This non-discrimination policy applies to all employment practices

and terms and conditions of employment, including but not limited to promotions, transfers, compensation, terminations, training and participation in College sponsored benefits or programs.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” The College is required by Title IX and its regulations not to engage in sex discrimination in its education program or activity, including admissions and employment. Sex discrimination is conduct based upon an individual’s sex that excludes an individual from participation in, denies the individual the benefits of, or treats the individual differently, in the education program or activity. Sexual harassment is a form of sex discrimination. In accordance with Title IX and its regulations, this Policy addresses the College’s prohibition of the following forms of sex discrimination: Title IX Sexual Harassment, non-Title IX Sexual Harassment, Sex Discrimination, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Exploitation. Macalester College does not discriminate on the basis of sex or gender in its educational, extracurricular, athletic, or other programs or in the context of admissions or employment.

Macalester College will not tolerate Sexual Misconduct in any form. The College will promptly and equitably respond to all reports of Sexual Misconduct in order to take steps to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community.

Questions or concerns about Title IX, sex discrimination, sexual harassment, or other forms of Sexual Misconduct may be directed to the College’s Title IX Coordinator:

**Title IX Coordinator and Nondiscrimination Officer**

Laura Creech

Telephone: 651-696-6258

Email: [titleixcoordinator@macalester.edu](mailto:titleixcoordinator@macalester.edu)

1600 Grand Avenue

Saint Paul, MN 55105-1899

Questions or concerns may also be directed to the U.S. Department of Education’s Office for Civil Rights:

The Office of Civil Rights

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: (800) 421-3481

Facsimile: (202) 453-6012 TDD#: (800) 877-8339

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

<http://www.ed.gov/ocr>

Nothing in this Policy is intended to interfere with the right of any individual to pursue other avenues of recourse, including filing a complaint with the United States Department of Education's Office for Civil Rights (OCR).

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### III. Definitions

**Complainant** refers to an individual who is alleged to be the victim of conduct that could violate this Policy.

**Respondent** refers to an individual who has been reported to be the perpetrator of conduct that could constitute a violation of this Policy.

A **report** is an account of the Sexual Misconduct that has allegedly occurred that has been provided to the College by the complainant, a third party, or an anonymous source.

A **formal complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging a violation of this Policy and requesting that Macalester investigate the allegation of the Policy violation. A formal complaint begins the complaint resolution process as set forth in Section IX: Procedures for Formal Complaints below.

**Consent** is informed, knowing, and voluntary. Specifically, words or overt actions that clearly communicate a freely given agreement to participate in sexual activity at the time of the activity. Words or overt actions clearly communicate consent when a reasonable person in the circumstance would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.

The definition of consent is subject to the following:

- Consent can only be given if one is of legal age. In Minnesota, the legal age of consent is 16 years old.
- Consent to one form of sexual activity does not constitute consent to other forms of sexual activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Consent is active, not passive. Silence or the absence of resistance or saying "no" cannot be interpreted as consent.

- Previous or existing sexual, romantic, or marital relationship does not constitute consent. Previous consent or sexual activity does not constitute consent to future sexual acts. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- Whether an individual actively and willingly participates in conduct may be a factor in determining whether there was consent.
- Explicit consent to protected sexual contact does not constitute consent to unprotected sexual contact. If protection is removed during sexual contact, it is the responsibility of the person removing protection to obtain consent to the unprotected sexual contact.
- Consent cannot be obtained, explicitly or implicitly, by use of intimidation, physical force, or the threat thereof, or **coercion**, as defined below.
- An individual known to be—or who should be known to be—**incapacitated**, as defined below, cannot consent to sexual activity initiated by another individual.

**Coercion** is intimidation or conduct that would compel an individual to do something against their will by (1) the use of physical force or confinement or, (2) expressed or implied threats of physical, emotional, property, or reputational harm, or (3) pressure that would cause a reasonable person to fear such harm. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. In assessing whether coercion was used, the frequency, duration, and intensity of the pressure applied will be taken into consideration.

**Incapacitation** means the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation is a temporary or permanent state in which an individual is unable to give consent to sexual contact due to mental, developmental, or physical impairment, or from the influence of alcohol or drugs. States of incapacitation include but are not limited to: sleep, unconsciousness, intermittent consciousness, involuntary physical restraint, or any other state where an individual is unaware that sexual contact is occurring. With respect to incapacitation due to the influence of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and/or other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the accused or a reasonable sober person in the accused's position. Use of drugs or alcohol by the accused is not a defense against allegations of Sexual Misconduct.

**Sexual Misconduct:** As used in this Policy, Sexual Misconduct means the following forms of sex discrimination and other misconduct: Title IX Sexual Harassment, non-Title IX Sexual Harassment, Sex Discrimination, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Exploitation, as each of those terms is defined below. Some instances of Dating Violence, Domestic Violence, and Stalking may not be sexual in nature. For purposes of this Policy, the term "Sexual Misconduct" encompasses all instances of Dating Violence, Domestic Violence, and Stalking (as those terms are defined in this Policy), regardless of whether there is a sexual component to the behavior.

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## IV. Prohibited Conduct

The College prohibits the following forms of Sexual Misconduct: Title IX Sexual Harassment, Non-Title IX Sexual Harassment, Sex Discrimination, Sexual Exploitation, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, as each term is defined below. Aiding others in acts of Sexual Misconduct also violates this Policy. The College also prohibits Retaliation and Interference with Process, as defined below.

### A. Title IX Sexual Harassment

As used in this Policy, Title IX Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the College's education program or activity and (2) against a person in the United States.

1. Title IX Quid Pro Quo Harassment: Title IX Quid Pro Quo Harassment occurs when an employee of the College, including a student-employee, conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct. Such unwelcome sexual conduct could include, but is not limited to, sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature.
2. Title IX Hostile Environment Harassment: Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity. For the purposes of the definition of Title IX Hostile Environment Harassment, reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident. Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment:
  - Unwelcome sexual flirtations, attention, advances, or propositions;
  - Requests for sexual favors;
  - Punishing or threatening to punish a refusal to comply with a sexual-based request;
  - Offering a benefit (such as a grade, promotion, or athletic participation) in exchange for sexual favors or other verbal or physical conduct of a sexual nature;
  - Verbal abuse of a sexual nature or obscene language or slurs;
  - Jokes and comments of a sexual nature;
  - Verbal commentary about an individual's body, sexual innuendo, or suggestive commentary about a person's clothing and appearance;

- Displaying derogatory or sexually suggestive pictures or other objects in an office, in a residence hall, or on a computer monitor;
- Visual conduct such as leering or making gestures;
- Unwelcome kissing;
- Unwelcome touching of a sexual nature such a patting, pinching, or brushing against another's body;
- Gossip about sexual relations; and
- Cyber or electronic harassment of a sexual nature.

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

3. Sexual Assault, Domestic Violence, Dating Violence, and Stalking, as those terms are defined below (when such conduct occurs (1) in the College's education program or activity and (2) against a person in the United States). *Unwelcome Conduct*

For the purposes of the Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite and regarded it as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident. *Education Program or Activity*

At a minimum, the College's education program or activity includes all of the operations of the College, including (1) locations on campus or otherwise owned or controlled by the College, (2) locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the alleged Sexual Misconduct occurred, and (3) any building owned or controlled by a student organization that is officially recognized by the College. Whether alleged conduct occurred in the College's education program or activity is a fact specific analysis.

## **B. Non-Title IX Sexual Harassment**

While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the College also prohibits unwelcome conduct of a sexual nature or based on sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the College's education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the College or interfere with an individual's right to a non-discriminatory educational or work environment, or (3) occurs outside of the United States.

As used in this Policy, Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature when:

- Submission to or rejection of that conduct or communication is made a term or condition, either explicitly or implicitly, of an individual's educational experience or employment; [i.e. Quid Pro Quo];
- Submission to or rejection of that conduct or communication is used as the basis for an educational program decision or employment decision affecting that individual; [i.e. Quid Pro Quo]; or
- That conduct or communication has the purpose or effect of substantially and unreasonably interfering with an individual's employment or education or creating an intimidating, hostile, or offensive employment or educational environment. [i.e. Hostile Environment].

Examples of non-Title IX Hostile Environment Harassment may include the same type of conduct listed above for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; (2) does not occur in the College's education program or activity; or (3) occurs outside of the United States.

For the purposes of the Non-Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite it and regarded the conduct as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that they welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Non-Title IX Sexual Harassment does not include conduct covered under the definition of Title IX Sexual Harassment.

### **C. Sex Discrimination**

Sex discrimination is defined and addressed in Macalester College's Nondiscrimination Policy.

Sex Discrimination does not include conduct covered under the definition of Title IX Sexual Harassment.

### **D. Sexual Exploitation**

Sexual exploitation occurs when a person takes sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, without that person's consent. Examples of Sexual Exploitation include, but are not limited to:

- Prostituting another person;
- Non-consensual video- or audio-recording or photographing of sexual activity, sexually explicit content, or intimate body parts, including sharing or posting such materials without the consent of those depicted;
- Engaging in voyeurism (e.g. viewing or permitting someone else to view/hear another's sexual activity or intimate body parts, in a place where that person would have a reasonable expectation of privacy, without consent);
- Intentional removal or attempted removal of clothing covering an individual's intimate body parts or exposing an individual's undergarments, or that is otherwise sexual in nature, without consent;
- Intentional and repeated invasion of sexual privacy (e.g., walking into another person's room or private space);
- Indecent exposure (such as exposing one's genitals or breasts to others without consent);
- Ejaculating on another person without consent;
- Knowingly transmitting a sexually transmitted infection ("STI") or Human Immunodeficiency Virus ("HIV") without prior knowledge and consent of the person being exposed;
- Distributing or displaying pornography to another without that individual's consent;
- Possession of child pornography. (Possession of child pornography must be reported immediately in accordance with the Macalester Policy on Reporting Suspected Child Abuse.)

Sexual Exploitation does not include conduct covered under the definition of Title IX Sexual Harassment.

## **E. Dating Violence**

Dating Violence is defined as violence against a person by an intimate partner (romantic, dating, or sexual partner). The existence of such a relationship will be determined with consideration of (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse, such as Sexual Assault, physical harm, bodily injury, or criminal assault; the threat of such abuse; terroristic threats; criminal sexual conduct; or interference with an emergency call. Dating Violence does not include acts covered under the definition of Domestic Violence.

## **F. Domestic Violence**

Domestic Violence is defined as violence committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabitating with or has cohabitated with the person as a spouse or intimate partner, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction in which such conduct occurred, or by any other individual against the person who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction [\[1\]](#) in which such conduct occurred. Domestic Violence includes, but is not limited to, sexual or physical abuse, such as Sexual Assault, physical harm, bodily injury, or criminal assault; the threat of such abuse; terroristic threats; criminal sexual conduct; or interference with an emergency call.

## **G. Stalking**

Stalking is engaging in a course of conduct (i.e. more than one occurrence) directed at a specific person that would cause a reasonable person to fear for their safety, or the safety of others, or to experience substantial emotional distress. Acts that constitute stalking may include, but are not limited to: direct or indirect actions, including actions through a third-party by any method, device, or means to follow, monitor, observe, surveil, threaten, or communicate to or about a person; or that interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking behavior includes, but is not limited to:

- Repeated, unwanted and intrusive communications by phone, mail, text message, email and/or other electronic communications, including social media;
- Repeatedly leaving or sending the victim unwanted items, presents or flowers;
- Following or lying in wait for the victim at places such as home, school, work or recreational facilities;
- Making direct or indirect threats to harm the victim or the victim's children, relatives, friends or pets;
- Damaging or threatening to damage the victim's property;

- Repeated posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth that would cause a person to feel threatened or intimidated.

## **H. Sexual Assault**

Sexual Assault is any actual or attempted sexual contact, including contact with an object, with another person without that person's consent. As used in this Policy, sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to oneself with or on any of these body parts. Sexual Assault includes, but is not limited to, an offense that meets any of the following definitions:

- Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, oral penetration by a sex organ of another person, or oral contact with the sex organ of another person, without consent.
- Fondling: the touching of the private body parts (including the genital area, groin, inner thigh, buttocks, or breast) of another person for the purpose of sexual gratification, without consent.
- Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape: sexual intercourse with a person who is under the statutory age of consent; in Minnesota the age of consent is 16.

## **I. Retaliation and Interference with Process**

Retaliation and Interference with Process is adverse action or threat thereof taken against a person for the purpose of interfering with any right or privilege secured by Title IX, its regulations, or this Policy or for making a report or filing a formal complaint, serving as a witness, assisting, participating, or refusing to participate in any manner in an investigation, proceeding, or hearing under this Policy. Retaliation and Interference with Process includes, but is not limited to, any form of intimidation, threats, coercion, reprisal, discrimination, harassment, or any other adverse action or threat thereof.

Encouraging or assisting others to engage in retaliation or to interfere with the process are also considered Retaliation/Interference with Process and violate this Policy. While the College does not prohibit the parties from discussing the allegations in a formal complaint, acts that could constitute Retaliation and Interference with Process may include, but are not limited to: acts or comments that are intended to discourage a person from engaging in activity protected under this Policy or that would discourage a reasonable person from engaging in activity protected under this Policy; acts or comments that are intended to influence whether someone participates in the complaint resolution process, including the live hearing; acts or comments intended to embarrass the individual; adverse changes in employment status or opportunities; adverse academic action; and adverse changes to academic, educational, and extra-curricular opportunities. Retaliation and Interference with Process may be in person, through social

media, email, text, and other forms of communication, representatives, or any other person. Retaliation and Interference with Process may be present against a person even when the person's allegations of Sexual Misconduct are unsubstantiated.

[1] In addition to the relationships described above, Minnesota law defines domestic violence to include violence committed between parents and children, blood relatives, persons who are presently residing together or who have resided together in the past, persons involved in a significant romantic or sexual relationship; and a man and woman, if the woman is pregnant and the man is alleged to be the father.

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## **V. Consensual Relationship Policy**

Relationships between a faculty member and a student, a student and a staff member, or a supervisor and employee (including student supervisors and student employees) are considered professional, whereby the initiation of a sexual or romantic relationship is against College Policy. Anyone who engages in a sexual or romantic relationship where a degree of power or authority exists must understand that the degree to which such a relationship is truly mutually consensual can be questioned.

The power differential inherent in faculty/student, staff/student, and supervisor/employee relationships compromises the subordinate's ability to freely decide. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, greatly diminish the student's actual freedom of choice should sexual favors be included among the professor's demands or requests. The same is true with respect to a staff member and student, and a supervisor and employee.

Faculty and staff members (including student employees) involved in a pre-existing romantic or sexual relationship with a student or employee for whom the faculty or staff member has a supervisory or academic responsibility or who is otherwise under the direction of the faculty or staff member must promptly report the relationship to their supervisor. Upon receiving notice, the College will make alternative staffing arrangements and such other additional arrangements as are necessary under the circumstances.

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## **VI. Reporting**

### **A. Duty to Report**

In order to enable the College to respond effectively and to prevent future instances of Sexual Misconduct, all College employees who are not confidential resources, who receive information about or witness possible Prohibited Conduct under this Policy, must report that information to the Title IX Coordinator. Reports should be made as soon as possible and should include all relevant details known to the employee. Specifically, to the extent known, the names of those involved, including the complainant and respondent, relevant facts, including the date, time, and location of the

alleged Prohibited Conduct. Employees who receive such reports should not attempt to “investigate” the allegation or require the individual disclosing the incident to provide all of the details surrounding the alleged misconduct. To the extent the individual reporting the incident provides details, that information should be provided to the Title IX Coordinator. Upon receiving a report of alleged or possible Sexual Misconduct, the Title IX Coordinator will evaluate the information received and send outreach regarding supportive measures, resources, and reporting options.

College employees who are not confidential resources and receive a report of Sexual Misconduct should bring the report directly to the Title IX Coordinator and should not share information about the report with any other individual. If the employee is uncertain whether the information should be reported to the Title IX Coordinator, the employee should seek guidance from the Title IX Coordinator before providing the Title IX Coordinator with any identifiable information regarding the report.

Certain student employees (including, but not limited to, student supervisors, building managers, and course preceptors) who receive such information in the course of their work position or duties also must report to the Title IX Coordinator. Given the scope of their role, resident assistants always have a duty to report information they receive about Prohibited Conduct to the Title IX Coordinator, even while not formally on duty. If the student employee is uncertain whether the information should be reported to the Title IX Coordinator, the student employee should seek guidance from the Title IX Coordinator before providing the Title IX Coordinator with any identifiable information regarding the report.

Nothing in this section should be construed to require reporting for disclosures made during a therapeutic or otherwise privileged context. Macalester community members who have a duty to report Prohibited Conduct may be subject to discipline or corrective action for failing to fulfill this obligation.

Any College employee who knows of or suspects the abuse (physical or sexual) or neglect of a minor on campus or in connection with any College event, program, or activity must report it immediately to the Office of Campus Safety and the Title IX Coordinator. If an employee is a mandatory reporter under Minnesota law, such individual must also immediately report the known or suspected abuse or neglect to the local welfare agency or police/sheriff’s department, as required by law. Under Minnesota law, teachers, paraprofessionals, all administration, and support staff in an educational setting are mandatory reporters. See Minnesota Statutes Section 626.556.

## **B. Reports to the College: Designated Officials**

The College encourages anyone who has experienced Sexual Misconduct or who has knowledge about an incident of Sexual Misconduct to report the incident to the College. An individual may provide a report to the College by contacting any of the following:

**Title IX Coordinator and Nondiscrimination Officer** – Laura Creech

Humanities 115E

[titleixcoordinator@macalester.edu](mailto:titleixcoordinator@macalester.edu)

651-696-6258

[www.macalester.edu/title-ix/](http://www.macalester.edu/title-ix/) (online report form)

The Title IX Coordinator is the designated staff member of the College with primary responsibility for the College's Title IX compliance efforts, including the College's efforts to end Sexual Misconduct, prevent its recurrence, and address its effects. The Title IX Coordinator oversees and monitors the College's overall compliance with Title IX-related policies and developments; offering and coordinating effective implementation of supportive measures; the implementation and oversight of complaint resolution processes; and the provision of educational materials and training for the campus community.

The Title IX Coordinator may appoint a designee to fulfill the functions of the Coordinator under this Policy. When this Policy refers to actions of the Title IX Coordinator, these actions may be fulfilled by the Title IX Coordinator or the Title IX Coordinator's designee.

**Department of Public Safety:** 651-696-6555

Title IX Deputies

**Program Manager, Student Employment** – Jaelynn Blenkush

77 Mac 201F

[jblenkus@macalester.edu](mailto:jblenkus@macalester.edu)

651-696-6835

**Planning and Implementation Manger** – Jonathan Cardenas

Weyerhaeuser Hall 121

[jcardena@macalester.edu](mailto:jcardena@macalester.edu)

651-696-6059

**Head Softball Coach** – Jody Gabriel

Leonard Center 90f

[jgabriel@macalester.edu](mailto:jgabriel@macalester.edu)

651-696-6157

**Associate Vice President and Dean of Student** – Javier Gutierrez

Weyerhaeuser Hall 119

[jgutier1@macalester.edu](mailto:jgutier1@macalester.edu)

651-696-6333

**Associate Dean & Co-Director of Community Engagement**– Ruth Janisch

309 Markim Hall

[janisch@macalester.edu](mailto:janisch@macalester.edu)

651-696-6645

**Associate Director of Residential Life, Student Community Support** – Beekah Madia Russell

Weyerhaeuser Hall 112

[rrussel1@macalester.edu](mailto:rrussel1@macalester.edu)

651-696-6104

**Associate Dean of Students** – Angela Walker

Weyerhaeuser Hall 119

[awalker4@macalester.edu](mailto:awalker4@macalester.edu)

651-696-6220

Title IX Deputies may receive reports related to Sexual Misconduct under this Policy. The Deputies may serve as designees acting on behalf of the Title IX Coordinator for the purpose of providing outreach and intake with complainant(s) and respondent(s) and implementing supportive or corrective measures related to Title IX concerns. Deputies may also be assigned to resolve complaints of related misconduct, as discussed below in Section X: Complaints of Related Misconduct.

*How to Make a Report:*

Reports can be made by telephone, mail, email, in person, and online on the [College website](#). Reports may be made at any time, including non-business hours by phone, email, mail, or the College's website. Reports to the College should include as much information as possible, including the names of the complainant, respondent, and other involved individuals, and the date, time, place, and circumstances of the incident, to enable the College to respond appropriately.

The College accepts anonymous reports of Sexual Misconduct. Reports may be made anonymously using the [College website](#). The College will likely be limited in its ability to investigate an anonymous report unless sufficient information is furnished to enable the College to conduct a meaningful investigation. The individual making the report is encouraged to provide as much detailed information as possible to allow the College to investigate the report and respond as appropriate.

**C. Reporting to Law Enforcement**

Some types of Sexual Misconduct prohibited by this Policy are also crimes. Individuals who believe they may have been subjected to criminal Sexual Misconduct are strongly encouraged to notify local law enforcement authorities and will be assisted by campus authorities in notifying law enforcement authorities, if the individual so chooses. The College will provide prompt assistance to any complainant who requests help notifying law enforcement. Individuals may file a criminal complaint with law enforcement and a formal complaint with the College simultaneously. Individuals also have the option to decline to notify such authorities. Reporting to law enforcement is not necessary for the College to proceed with an investigation.

**Macalester Department of Public Safety:** [651-696-6555](tel:651-696-6555)

**Police EMERGENCY:** 911

Non-emergency reporting:

- St. Paul Police: [651-291-1111](tel:651-291-1111); 367 Grove St., St. Paul, MN 55101
  - Family & Sexual Violence Unit: [651-266-5685](tel:651-266-5685)
- Ramsey County Sheriff (24 hours): [651-767-0640](tel:651-767-0640); 425 Grove St., St. Paul, MN 55101

Minnesota law provides individuals who report crimes to law enforcement with certain rights, including the right to assistance from the Crime Victims Reparations Board. Pursuant to state law, victims of crime must be informed of their rights under the Crime Victims Bill of Rights. A summary of crime victims' rights under Minnesota law, as well as links to applicable criminal law definitions, is set forth in Appendix D. For further information, consult Appendix D and Crime Victim Rights, a publication of the Minnesota Department of Public Safety, or Minnesota Statutes Chapter 611A.

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## **VII. Supportive Measures, Confidential Resources, Emergency Removal, and Requests for Confidentiality or Non-Action**

### **A. Supportive Measures**

Upon receiving a report of a potential violation of this Policy the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant, respondent, and others adversely impacted by the complaint resolution process, before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to education programs or

activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties, or the educational environment, or deter Sexual Misconduct.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures provided to the complainant or respondent will be kept confidential to the extent that maintaining confidentiality does not interfere with the ability to provide the supportive measures.

Examples of supportive measures include, but are not limited to:

- Establishing a “no contact directive” prohibiting the parties involved from communicating with each other (see Appendix C for more information).
- Changing on-campus housing, dining, or transportation arrangements.
- Special parking arrangements.
- Changing student or employee status or job responsibilities.
- Changing a work or class schedule.
- Providing academic supports or assistance with academic issues.
- Providing safety escorts.
- Access to counseling and medical services (those preferring off-campus counseling services will be assisted in locating such resources).
- Making available information about orders for protection and harassment restraining orders and providing referrals related to obtaining and enforcing such orders (see Appendix C for more information).
- Assistance in identifying off-campus and community resources for advocacy, support, and services.
- For students who choose to transfer to another institution, at the student’s request, providing information about resources for victims of Sexual Assault at the institution to which the student is transferring.

The College determines which measures are appropriate for a particular individual on a case-by-case basis. Such measures will vary based on the particular facts and circumstances, including but not limited to the specific need expressed by the individual, the age of the individual(s) involved, the severity or pervasiveness of the allegations, any continuing effects on the individual, whether the complainant and respondent share the same residence hall, dining hall, class, transportation, or job location, and whether other judicial measures have been taken to protect the individual. The Title IX Coordinator will be responsible for determining what measures will be put in place.

Additional services are available on-campus and in the community, as described in Appendix A: Resources and on the College's website. In addition, information regarding the confidentiality of supportive measures is in Appendix B: Additional Information Regarding Privacy and Confidentiality.

Any concern about a violation of a supportive measure should be reported to the Title IX Coordinator. Complaints of a violation of a supportive measure will be handled as discussed in Section X: Complaints of Related Misconduct below.

## **B. Confidential Resources**

The College recognizes that some individuals may wish to keep their concerns confidential. Confidential communications are those communications which legally cannot be disclosed to another person, without the reporter's consent, except under very limited circumstances such as allegations involving the physical or sexual abuse of a child (under the age of 18) or vulnerable adult or an imminent threat to the life of any person. Individuals who desire to keep a conversation related to Sexual Misconduct confidential should speak with a medical professional, professional counselor, minister or other pastoral counselor, or trained victims' advocates. These resources include:

### ON-CAMPUS

- [Center for Religious and Spiritual Life: 651-696-6298](#); Multifaith chaplains
- [Health and Wellness Center 651-696-6275](#); counselors, physicians, registered nurses or nurse practitioners

### OFF-CAMPUS

- [SOS Sexual Violence Services of Ramsey County: 651-266-1000](#); trained victims' advocates available 24/7

Individuals who desire semi-confidentiality (but less than absolute confidentiality) may speak with health promotion and sexual respect staff, disability services staff, or administrative staff at the Health and Wellness Center or Macalester Emergency Medical Services student EMTs. It is important to understand that these individuals are available for processing and support or assessing next steps, and are not able to promise absolute confidentiality. These individuals may be required to report non-identifying data regarding the number of incident reports they receive. Semi-confidentiality means that communications with these individuals are not protected by a legal privilege and they may be required to be disclosed in a criminal or civil lawsuit. These resources include:

- [Health and Wellness Center: 651-696-6275](#); disability services staff, health promotion and sexual respect staff, and administrative staff
- Macalester [Emergency Medical Services: 651-696-6555](#); student EMTs, while on call Friday and Saturday nights (9 pm — 2 am)

A person who speaks to a confidential resource should understand that, if the person does not report the concern to the College, the College will be unable to provide certain supportive measures that would require involvement from the College (such as issuing a no-contact directive), or conduct an

investigation into the particular incident, or pursue disciplinary action.

### **C. Emergency Removal and Administrative Leave**

The College retains the right to remove a student respondent, in whole or in part, from the College's education program or activity on an emergency basis, following an individualized safety and risk analysis and determining that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct justifies removal. Removal may include, but it not limited to:

- Prohibiting a respondent from being on Macalester property.
- Prohibiting a respondent from participating in Macalester-sponsored events.
- Prohibiting a respondent from residing in a Macalester residence.

If a student respondent is removed on an emergency basis, the College will provide the student respondent with notice and an opportunity to challenge the decision immediately following the removal. To challenge the decision the respondent should contact the Title IX Coordinator in writing at [titleixcoordinator@macalester.edu](mailto:titleixcoordinator@macalester.edu).

The College retains the right to place a non-student employee respondent on administrative leave during the pendency of the complaint resolution process.

### **D. Requests for Confidentiality and Non-Action**

When the College receives a report of Sexual Misconduct, it has a legal obligation to respond in a timely and appropriate manner. Making a report to the College does not require an individual to begin or participate in the complaint resolution process or to report to local law enforcement. However, based on the information gathered, the College may determine that it has a responsibility to move forward with the complaint resolution process (even without the participation of the complainant). If a complainant requests that their name or other identifiable information not be shared or that no action be taken against the respondent, the Title IX coordinator will evaluate the request based upon several factors, including:

- The seriousness of the alleged misconduct;
- The respective ages and roles of the complainant and the respondent;
- Whether there have been other Sexual Misconduct complaints about the same respondent;
- Whether the respondent has a history of arrests or records from a prior school indicating a history of Sexual Misconduct;
- Whether the respondent allegedly threatened further Sexual Misconduct or other violence against the complainant or others;

- Whether the Sexual Misconduct was committed by multiple respondents;
- Whether the Sexual Misconduct was perpetrated with a weapon;
- Whether the College possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g., security footage, eyewitness, physical evidence);
- Whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and
- The extent of any threat to the College community.

The College will take all reasonable steps to respond to the report consistent with the request for confidentiality or request not to pursue an investigation made by the complainant, however, the scope of the response by the College may be impacted or limited based on the nature of the complainant's request. The College likely will be unable to conduct an investigation into the particular incident or to pursue disciplinary action against the respondent and also maintain confidentiality.

The College will strive to accommodate the complainant's requests for confidentiality or non-action in most cases, to the extent possible consistent with the College's legal obligations. There may be times when, in order to provide a safe, non-discriminatory environment for all students and employees, the College may not be able to honor a complainant's request for confidentiality or non-action. The presence of one or more of the factors above could lead the College to move forward with a complaint resolution process (even without the participation of the complainant). If the Title IX Coordinator determines that the College cannot maintain a complainant's confidentiality or request for no action, the Title IX Coordinator will inform the complainant prior to starting an investigation. In such cases, The Title IX Coordinator may, at the complainant's request, communicate to the respondent that the complainant asked the College not to investigate and that the College determined it needed to do so. A complainant can choose not to participate in any investigation or complaint resolution process.

In instances where the College moves forward with a complaint resolution process without the participation of the complainant, the complainant will have the same rights as provided to a complainant under this Policy, even if the individual did not sign the formal complaint.

Additional information regarding confidentiality and privacy is available in Appendix B.

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## **VIII. Formal Complaints**

### **A. Filing a Formal Complaint**

The filing of a formal complaint typically begins the complaint resolution process under this Policy. Generally, the complainant files a formal (signed, dated) complaint with the Title IX Coordinator. However, in some cases, the College may move forward with a complaint resolution process even if the complainant chooses not to make or move forward with a formal complaint. If the College decides that it has an obligation to move forward with a

complaint resolution process, the Title IX Coordinator will sign the formal complaint and the College will notify the complainant before proceeding. See Section VII.C: Requests for Confidentiality or Non-Action above for more information. The Title IX Coordinator signing the formal complaint does not make the Title IX Coordinator a party to the complaint resolution process or adverse to the respondent.

Formal complaints of Sexual Misconduct should be made through the Title IX Coordinator.

## **B. Consolidation of Formal Complaints**

The College reserves the right to consolidate formal complaints into one complaint resolution process as to allegations of Sexual Misconduct against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Sexual Misconduct arise out of the same facts or circumstances.

## **C. Investigation of Other College Policy Violations**

If a formal complaint of Sexual Misconduct also implicates alleged violations of other College policies, the Title IX Coordinator, in coordination with other appropriate school officials, will evaluate the allegations to determine whether the investigation of the alleged Sexual Misconduct and the other alleged policy violations may be appropriately investigated together without unduly delaying the resolution of the Sexual Misconduct formal complaint. Where the Title IX Coordinator, in coordination with other appropriate school officials, determines that a single investigation is appropriate, the determination of responsibility for each of the alleged policy violations will be evaluated under the applicable policy. The adjudication may be conducted in accordance with this Policy or the adjudication of the other policy violation may be conducted separately from the adjudication of the alleged Sexual Misconduct.

## **D. Time Frames for Resolution**

The College is committed to the prompt and equitable resolution of allegations of Sexual Misconduct. As is discussed in more detail above and below, different procedures apply to cases involving allegations of Title IX Sexual Harassment than to other cases of alleged Sexual Misconduct. The time frames for each phase of the different procedures are as follows:

1. Cases Involving Allegations of Title IX Sexual Harassment Specific time frames for each phase of the complaint resolution process for formal complaints involving allegations of Title IX Sexual Harassment are set forth in Section IX: Procedures for Formal Complaints below. Each phase of the process will generally be as follows:
  - Review of formal complaint and notice of allegations to the parties: ten (10) calendar days
  - Investigation: forty-five (45) calendar days
  - Review of directly-related evidence and investigator consideration of evidence response statements: seventeen (17) calendar days

- Review of investigation report and written response: five (5) calendar days
- Live Hearing and Determination: twenty (20) calendar days
- Appeal: fifteen (15) calendar days

2. Cases Involving Other Allegations of Sexual Misconduct Specific timeframes for each phase of the complaint resolution process for formal complaints involving allegations of any other form of Sexual Misconduct are set forth in Section IX: Procedures for Formal Complaints below. Each phase of the process will generally be as follows:

- Review of formal complaint and notice of allegations to the parties: ten (10) calendar days
- Investigation: forty-five (45) calendar days
- Review of investigation report and written response/rebuttal, if applicable: ten (10) calendar days
- Adjudication: twenty (20) calendar days
- Appeal: fifteen (15) calendar days

In any Sexual Misconduct complaint resolution process, the process may include additional days between these phases as the College transitions from one phase to another. The parties will be notified when each listed phase begins and when it ends. If any transition period will last longer than five (5) calendar days, the parties will be notified of the delay and the reason for it.

Circumstances may arise that require the extension of time frames based on the complexity of the allegations, the number of witnesses involved, the availability of the parties involved, the availability of witnesses, the effect of a concurrent criminal investigation, unsuccessful attempts at informal resolution, any intervening school break, the need for language assistance or accommodation of disabilities, or other unforeseen circumstance.

In cases where an alleged incident has also been reported to law enforcement, the College will not delay its complaint resolution process in order to wait for the conclusion of a criminal investigation or proceeding. The College will, however, comply with valid requests by law enforcement for cooperation in a criminal investigation. As such, the College may need to delay temporarily an investigation under this Policy while law enforcement is in the process of gathering evidence. This process typically takes seven (7) to ten (10) days. Once law enforcement has completed its gathering of evidence, the College will promptly resume and complete its investigation and resolution procedures.

To the extent additional time is needed during any of the phases of the process discussed above or further below, the College will notify all parties of the delay and the reasons for it. When a time frame for a specific phase of the process, as set forth below, is less than five (5) calendar

days, the College may, in its discretion, use business days to calculate the time frame deadline. Efforts will be made to complete the process in a timely manner balancing principles of thoroughness, fundamental fairness, and promptness.

Complainants are encouraged to begin the complaint resolution process as soon as possible following an alleged Sexual Misconduct incident. There is no statute of limitation for reporting prohibited conduct to the College under this Policy; however, the College's ability to respond may diminish over time, as evidence may erode, memories may fade, and respondents may no longer be affiliated with the College. If a formal complaint is brought forward more than five (5) calendar years after an alleged incident, the College, in its discretion, may decline to process a formal complaint under these procedures, but reserves the right to take other administrative action as appropriate depending on the specific circumstances of the formal complaint, and will provide reasonably appropriate supportive measures, assist the complainant in identifying external reporting options, and take reasonable steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. If the respondent is still a member of the College community as a student or employee, the formal complaint generally will be processed under these procedures.

## **E. Rights and Responsibilities**

1. Equitable Rights for the Complainant and Respondent In all Sexual Misconduct complaint resolution processes under this Policy, the complainant and respondent are entitled to:

- Be treated with respect, sensitivity, and dignity;
- Appropriate support from the College;
- Privacy to the extent possible based on applicable law and College policy;
- Information about applicable support and resources;
- Information on the Policy and processes;
- The right to participate or decline to participate in the complaint resolution process, with the acknowledgement that not participating, either entirely or in part, may not prevent the process from proceeding with the information available;
- To be accompanied to any complaint resolution process meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The College will not limit the choice or presence of advisor for either the complainant or respondent in any meeting related to the complaint resolution process. See Section VIII.F: Advisors below for additional information and requirements regarding the conduct of advisors.
- Equitable procedures that provide both parties with a prompt and impartial complaint resolution process conducted by officials who receive annual training on conduct prohibited by the Policy;

- Notice of the allegations and defenses and an opportunity to respond;
- Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings at which the party's participation is invited or expected, with sufficient time for the party to prepare to participate;
- Timely notice of meetings that are part of the complaint resolution process at which the complainant or respondent may be present;
- Equal opportunity to identify relevant witnesses and other evidence and to suggest possible topics to be covered with witnesses during the formal complaint resolution process;
- Be free from retaliation;
- The right to appeal the decision and/or the sanctions in certain circumstances, as discussed in Section IX.D: Appeals below;
- The right to notification, in writing, of the resolution, including the outcome of any appeal;
- The right to the assistance of campus personnel (during and after the complaint resolution process), in cooperation with the appropriate law enforcement authorities, in shielding the complainant or respondent, at their request, from unwanted contact with the complainant or respondent, including but not limited to a College issued no-contact directive, transfer to alternative classes or to alternative College-owned housing (if alternative classes or housing are available and feasible), change in work location or schedule, or reassignment (if available and feasible); and to receive assistance with academic issues;
- The complainant has the right to decide when to repeat a description of an incident of Sexual Assault, Dating Violence, Domestic Violence, or Stalking, and the respondent has the right to decide when to repeat a description of a defense to such allegations;
- The right to the complete and prompt assistance of campus authorities, at the direction of law enforcement authorities, in obtaining, securing, and maintaining evidence in connection with a Sexual Assault incident;
- The right to the assistance of campus authorities in preserving materials relevant to a campus complaint proceeding;
- The right to be provided access to their description of the incident, as it was reported to the College, including if the individual transfers to another post-secondary institution, subject to compliance with FERPA, the Clery Act, Title IX, and other federal or state law. Requests for an individual's description of the incident should be made to the Title IX Coordinator.

In addition, the Title IX Coordinator will ensure both parties receive a written explanation of available resources, and are offered the opportunity to discuss those resources.

2. Additional Rights Regarding Access to Information in Certain Cases In cases involving allegations of Title IX Sexual Harassment, the following rights will be afforded to the complainant and the respondent:

- The parties will be provided an equal opportunity to inspect and review a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, as set forth in Section IX.E.2: Access to Information below.
- The parties will be provided a copy of the investigation report for their review and written response, as set forth in Section IX.E.2: Access to Information below.
- The complaint resolution process will include a live hearing, at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, as set forth in Section IX.E.3.a: Live Hearing below.

In cases involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking, *occurring outside of* the education program or activity or against a person *outside of* the United States, the following rights will be afforded to the complainant and the respondent:

- The complainant and respondent have the right to timely and equal access to information that will be used during informal and formal disciplinary meetings during the adjudication phase of the complaint resolution process, as set forth in Section IX.E.2: Access to Information below.

3. Additional Rights of a Complainant in Cases Involving Allegations of Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking A complainant who alleges (i) Title IX Sexual Harassment or (ii) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside of* the education program or activity or against a person *outside of* the United States, has the following rights:

- To be informed by the College of options to notify proper law enforcement authorities of a Sexual Assault, Dating Violence, Domestic Violence, or Stalking incident, and the right to report to law enforcement at any time or to decline to notify such authorities;
- Not to be questioned or have evidence considered regarding the complainant's prior sexual conduct with anyone other than the respondent, unless such questions or evidence are to prove that someone other than the respondent committed the alleged Sexual Misconduct;
- Not to be treated by campus authorities in a manner that suggests that they are at fault for the Sexual Misconduct or that they should have acted in a different manner to avoid the Sexual Misconduct;
- To the complete and prompt assistance of campus authorities, at the complainant's request, in notifying the appropriate law enforcement officials and College officials of a Sexual Assault Dating Violence, Domestic Violence, or Stalking incident and filing criminal charges with local law enforcement officials in Sexual Assault, Dating Violence, Domestic Violence, or Stalking cases;
- To be offered fair and respectful health care, counseling services, or referrals to such services and notice of the availability of campus or local programs providing Sexual Assault advocacy, Dating Violence, Domestic Violence, or Stalking services;
- To be offered assistance from the Crime Victim Reparations Board and the Commissioner of Public Safety.

- For students who choose to transfer to another post-secondary institution, at the student's request, the right to receive information about resources for victims of Sexual Assault, Dating Violence, Domestic Violence, or Stalking at the institution to which the victim is transferring.

4. Right to Presumption of Non-Responsibility The presumption is that the respondent is not responsible for a Policy violation. The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the complaint resolution process. The respondent will be deemed responsible for a Policy violation only if the appointed Title IX Hearing Panel/adjudicators conclude that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent more likely than not engaged in Sexual Misconduct.
5. Rights Regarding Non-Participation and Silence Either party may decline, at any time, to provide information or participate further in the complaint resolution process. If, at any time during the complaint resolution process, a party decides not to participate, the College may still proceed with the complaint resolution process. If at any time the complainant declines to participate in the process, the College's ability to meaningfully investigate and adjudicate a formal complaint may be limited. In such cases, the College will proceed with the complaint resolution process, if possible to do so without the complainant's participation, and will make a determination based upon the information available. The respondent also has the right to decline to participate in the complaint resolution process. In such cases, the College will proceed with the complaint resolution process and will make a determination based upon the information available. A respondent's silence in response to a complainant's allegation will not necessarily be viewed as an admission of the allegation, but may leave the complainant's allegations undisputed. Similarly, a complainant's silence in response to a respondent's denials or defenses will not necessarily be viewed as an admission of the denials or defenses, but may leave the respondent's denials or defenses undisputed. Even if a party decides not to participate or chooses to stop participating at a phase of the process, the party will still be given the option to participate during additional phases of the process. In cases involving allegations of Title IX Sexual Harassment, if a party or witness declines to attend the hearing or to answer relevant questions from either party's advisor, the Title IX Hearing Panel may still consider statements or evidence provided by this person if it is deemed reliable and relevant. The Title IX Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions. For more information, see Section IX.E.3.a: Live Hearings below.
6. Right to Report Concerns of Conflict of Interest or Bias If a complainant or respondent has any concern that any individual acting for the College under this Policy has a conflict of interest or bias, for or against complainants or respondents generally or for or against the individual complainant or respondent, such concern should be reported in writing to the Title IX Coordinator. Any concern regarding a conflict of interest or bias must be submitted within two (2) calendar days after receiving notice of the person's involvement in the process. The Title IX Coordinator will review the concerns and take appropriate steps to ensure that no conflicts of interest or bias exist on the part of anyone investigating or adjudicating a formal complaint under this Policy. If complainant or respondent has any concern that the Title IX Coordinator has a conflict of interest or bias, such concern should be reported in writing to College's President. If the Title IX Coordinator has a conflict of interest with respect to a formal complaint, the President will appoint another person to oversee adherence to the Sexual Misconduct Policy with respect to the formal complaint at issue. The parties should be mindful that the College has a small and close-knit campus community. That a party simply

knows an individual acting for the College under this Policy or has had some limited interaction with such individual generally will not be deemed a disqualifying conflict of interest or bias in most instances. However, the College encourages the parties to bring any concern of conflict of interest or bias to the Title IX Coordinator's attention for consideration.

7. Responsibilities of Complainants, Respondents, and Others Involved in the Complaint Resolution Process Responsibility to Act in Good Faith: Reports and formal complaints of alleged Sexual Misconduct should be made only in good faith. Formal complaints that are not made in good faith may be a form of retaliation under this Policy and/or may violate other College policies. An allegation that a person has violated the obligation to act in good faith will be handled through the procedures identified in Section X: Complaints of Related Misconduct below. Responsibility to be Truthful: All parties and witnesses have an obligation to be truthful in this process. Engaging in dishonesty may be a form of retaliation under this Policy and/or violate other College policies. Comments or actions intended to influence other individuals to not be truthful in the complaint resolution process may also violate this Policy and/or other College policies. An allegation that a person has violated the obligation to be truthful will be handled through the procedures identified in Section X: Complaints of Related Misconduct below.

## **F. Advisors**

The complainant and the respondent have the right to be accompanied to meetings by an advisor of their choice, who may be, but is not required to be, an attorney. Generally, the advisor selected by the complainant or respondent should be free of conflicts of interest in the complaint resolution process and, if a member of the College community, the advisor should be free of conflicts in their position in the community. An individual has the right to decline a request to serve as an advisor in the College's complaint resolution process.

Guidelines for advisors are:

- The purpose of the advisor is to support an individual during the complaint resolution process. An advisor is permitted to accompany the individual to interviews or other meetings or proceedings during the complaint resolution process. In selecting an advisor, each party should consider the potential advisor's availability to attend interviews and meetings that may occur in-person. As a general matter, the College will not delay its processes to accommodate the schedules of advisors.
- Advisors may confer with their advisee, but, with the exception of live hearings for cases involving allegations of Title IX Sexual Harassment (discussed below), advisors may not actively participate in the complaint resolution process. The advisor may accompany the complainant or respondent to all meetings relating to the complaint resolution process. The advisor may not appear in lieu of the complainant or respondent or speak on their behalf in either in-person or written communications to the College. The advisor may not communicate directly with the investigator, Title IX Hearing Panel/adjudicators, appeal officers, Title IX Coordinator, or any other school official involved in the complaint resolution process and may not interrupt or otherwise delay the complaint resolution process.
- In complaint resolution processes involving allegations of Title IX Sexual Harassment:

- At the live hearing, advisors will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions. Additional information about an advisor's role at the live hearing is included in Section IX.E.3.a: Live Hearing below.
- Advisors will receive a copy of all directly-related evidence and the investigation report, as set forth in Section IX.E.2: Access to Information below.
- In complaint resolution processes involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside of the College's* education program or activity or against a person *outside of* the United States:
  - Advisors may have access to information as is described further below in Section IX.E.2: Access to Information below.
- If a party selects an attorney as an advisor, the advisor's participation in the complaint resolution process is in the role of an advisor and not as an attorney representing a party. The advisor will have access to highly confidential information and is prohibited from sharing information obtained as an advisor during the complaint resolution process with anyone, including other individuals who may be part of an attorney-client relationship with the party.
- Parties must notify the Title IX Coordinator who they have selected as their advisor. The College will notify a party to a complaint resolution process if another party involved in the complaint resolution process has obtained an advisor. The notice will indicate if the other party's advisor is an attorney.
- Advisors will be required to sign an Advisor Agreement acknowledging receipt and understanding of these requirements. Failure to comply with these requirements, including violations of confidentiality, or other forms of interference with the complaint resolution process by the advisor may result in disqualification of an advisor. The College reserves the right to dismiss an advisor.

## **G. Accommodations**

Individuals who need a reasonable accommodation should contact the Title IX Coordinator. The College will consider requests for reasonable accommodations submitted to the Title IX Coordinator on a case-by-case basis. Accommodations the College may provide include:

- Providing reasonable accommodations as required by law to an individual with a disability who requests an accommodation necessary to participate in the complaint resolution process.
- Providing an interpreter for individuals who are limited English-language proficient.

The Director of Disability Services may provide consultation and guidance to the Title IX Coordinator regarding reasonable accommodations.

## **H. Amnesty for Alcohol and Drug Violations**

The College strongly encourages reporting instances of Sexual Misconduct. The College recognizes that, at times, complainants or witnesses may be hesitant to report to College officials or to participate in a complaint resolution process because they fear that they themselves may be accused of policy violations, such as relating to alcohol or drug consumption, at the time of the incident. Consequently, individuals who, in good faith, report such information to the College, respond to allegations of a violation of this Policy, or participate as a witness in an investigation into allegations of violations of this Policy, will not be disciplined by the College for any violation of its drug and alcohol policies in which they might have engaged in connection with the reported incident, except as outlined in this section. The College may still require the individual to participate in training or educational programming. The amnesty provided under this section is separate from and in addition to the amnesty provided under the College's Community of Care Provision to individuals who seek immediate medical or security assistance for students whose health and well-being may be at risk due to the overconsumption of alcohol and/or drugs. The College may still pursue disciplinary action for the alleged violation of other College policies in instances where any individual is harmed by the conduct constituting a violation of the other College policies.

### **I. Application of Policy**

When the College receives a formal complaint of a violation of this Policy, the College generally will apply the complaint resolution procedures from the policy that is in effect at the time that the report or formal complaint is made and generally will apply the Sexual Misconduct definitions from the policy that was in effect at the time of the alleged misconduct occurred. For cases involving allegations of Title IX Sexual Harassment, the College will apply the definitions from the policy that is in effect at the time the formal complaint is made to determine what procedures apply and the definitions from the policy that was in effect at the time the alleged misconduct occurred to determine whether a policy violation occurred.

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## **IX. Procedures for Formal Complaints**

The College will use the procedures outlined below to investigate and adjudicate, in a prompt and equitable process, formal complaints of Sexual Misconduct brought to the Title IX Coordinator. Different procedures apply to the complaint resolution process depending on the particular circumstances of a case, including the type of Sexual Misconduct that is alleged.

Upon receiving a formal complaint, the Title IX Coordinator will make a preliminary determination of the procedures that will apply to the complaint resolution process. The procedures in the formal process for all cases of Sexual Misconduct are the same through the investigation phase. Prior to providing access to information at the end of the investigation phase, the Title IX Coordinator will make a final determination as to the procedures that will apply to the access to information phase and the adjudication phase.

If a formal complaint includes both an allegation of Title IX Sexual Harassment and an allegation of Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment, the College reserves the right to process the allegations in the same complaint resolution process or to separate the allegations into separate complaint resolution processes.

## **A. General Provisions**

### 1. Fair and Impartial Process

The College will provide a fair and impartial complaint resolution process. A fair process is one that treats the parties equitably, provides complainant an opportunity to file a formal complaint alleging a violation of the Policy and an opportunity to present evidence of the allegations prior to a decision on responsibility, provides respondent notice of the allegations and an opportunity to respond to and present evidence related to those allegations prior to a decision on responsibility, and provides both parties an opportunity to challenge the credibility of the other party and any witnesses prior to a decision on responsibility. In cases involving allegations of Sexual Misconduct that is not Title IX Sexual Harassment, the ability to challenge credibility is accomplished through the parties' ability to suggest questions to be asked of the other party and witnesses during the investigation, through the Written Response Statements in response to the investigation report, and through the Written Rebuttal Statements in response to the other party's Written Response Statement as discussed in section E. Formal Resolution below.

### 2. Trained Officials

Each complaint resolution process will be conducted by individuals, including coordinators, investigators, Title IX Hearing Panel members/adjudicators, and any person who facilitates an informal resolution process, who do not have a conflict of interest or bias for or against complainants or respondents generally or for or against the individual complainant or respondent. In addition, those individuals will receive annual training as required under state and federal laws. For a description of the training content, see Appendix E.

### 3. Reservation of Flexibility

The procedures set forth in this Policy reflect the College's desire to respond to formal complaints in good faith and in compliance with legal requirements. The College recognizes that each case is unique and that circumstances may arise which require that it reserve some flexibility in responding to the particular circumstances of the matter. The College reserves the right to modify the procedures or to take other administrative action as appropriate under the circumstances.

In instances where a formal complaint is made against an individual who is not a student or employee of the College, the College reserves discretion to use a process or procedures other than those outlined below, as appropriate under the circumstances.

## **B. Initial Meeting between Complainant and Title IX Coordinator**

In most cases, the first step of the complaint resolution process is a meeting between the complainant and the Title IX Coordinator. The purpose of the meeting is to allow the Title IX Coordinator to gain a basic understanding of the nature and circumstances of the report or formal complaint; it is not intended to be a full investigation interview.

As part of the initial meeting with the complainant, the Title IX Coordinator will:

1. Assess the nature and circumstances of the allegation;
2. Address immediate physical safety and emotional well-being of the complainant and the campus, in consultation with appropriate campus officials;
3. Notify the complainant of the right to contact law enforcement and seek medical treatment;
4. Notify the complainant of the importance of preservation of evidence;
5. Provide the complainant with information about on- and off-campus resources;
6. Notify the complainant of the range of supportive measures with or without filing a formal complaint;
7. Provide the complainant with an explanation of the procedural options, including how to file a formal complaint, if not already filed, and the complaint resolution process;
8. Advise the complainant of the right to have an advisor of choice;
9. Discuss the complainant's expressed preference for the manner of resolution and any barriers to proceeding; and
10. Explain the College's policy prohibiting retaliation.

All reports and formal complaints of Sexual Misconduct will be reviewed by the Title IX Coordinator to determine the risk of harm to individuals or to the campus community. Steps will be taken to address these risks in consultation with members of the College's Campus Security.

If the Title IX Coordinator determines that the report or formal complaint, even if substantiated, would not be a violation of this Policy, they may dismiss the matter or refer it to another applicable disciplinary procedure. The parties will be notified of that determination and the complainant will be informed of other procedures for resolving the formal complaint and of other resources that may be available to the complainant.

### **C. Notice of Allegations**

When the Title IX Coordinator has received a formal complaint, the Title IX Coordinator will assess the formal complaint to determine if it states any allegations of Sexual Misconduct. If the formal complaint alleges Sexual Misconduct, the Title IX Coordinator will provide a written notice of allegations to the parties who are known. The written notice will include:

1. Notice of the College's complaint resolution process, including the informal resolution process;

2. Notice of the allegations, including the identities of the parties involved in the incident(s), if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known;
3. A statement that the respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the complaint resolution process;
4. Notice that the parties have the right to an advisor of choice, who may be, but is not required to be, an attorney;
5. Notice that the parties have the right to inspect and review evidence, as applicable under this Policy; and
6. Notice of policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the complaint resolution process, including Section VIII.E.7: Responsibilities of Complainants, Respondents, and Others Involved in the Complaint Resolution Process above.

If the College decides to investigate allegations about the complainant or respondent that are not included in the notice provided, the notice will be updated to provide notice of the additional allegations to the parties whose identities are known.

In addition, upon receiving a formal complaint, the Title IX Coordinator will make a preliminary determination of the procedures that will apply to the complaint resolution process.

When the Title IX Coordinator has received a formal complaint of Sexual Misconduct, the Title IX Coordinator will also meet with the respondent and will:

1. Notify the respondent of the formal complaint and alleged policy violations;
2. Provide the respondent an explanation of the complaint resolution process, including the informal resolution process;
3. Notify the respondent of the importance of preservation of evidence;
4. Notify the respondent of any supportive measures that have been put in place that directly relate to the respondent (i.e., no-contact directive);
5. Notify the respondent of available supportive measures;
6. Provide the respondent with information about on- and off-campus resources;
7. Advise the respondent of the right to have an advisor of choice; and
8. Explain the College's policy prohibiting retaliation.

Meetings between the Title IX Coordinator and complainant and between the Title IX Coordinator and respondent may take place in person, via Skype, or by phone depending on the circumstances.

The stage of initial review of the formal complaint by the Title IX Coordinator and initial notice of the allegations to the parties generally will take no more than ten (10) calendar days. In some cases, more time may be required.

#### **D. Informal Resolution**

Following a formal complaint, at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process. In cases involving allegations of Sexual Assault or more serious Sexual Misconduct, informal resolutions may not be appropriate. In addition, in cases involving allegations that an employee engaged in Title IX Sexual Harassment against a student, informal resolution is not appropriate.

If the complainant, the respondent, and the College all agree to pursue an informal resolution, the Title IX Coordinator will attempt to facilitate a resolution that is agreeable to all parties. The Title IX Coordinator will not be an advocate for either the complainant or the respondent in the informal resolution process, but rather will aid in the resolution of formal complaints in a non-adversarial manner. Under the informal process, the College will only conduct such fact-gathering as is useful to resolve the formal complaint and as is necessary to protect the interests of the parties, the College, and the College community.

The College will not require a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of informal resolution. Participation in informal resolution is voluntary, and the complainant and respondent have the option to discontinue the informal process and request a formal complaint resolution process at any time prior to reaching an agreed upon resolution. In addition, the College also always has the discretion to discontinue the informal process and move forward with a formal complaint resolution process. If at any point during the informal resolution process prior to reaching an agreed upon resolution, the complainant or respondent or the College wishes to end the informal resolution process and proceed with the formal resolution process, the informal resolution process will stop and the formal resolution process outlined below will begin.

Prior to engaging in an informal resolution process, the College will provide the parties with a written notice disclosing: the allegations, the requirements of the informal resolution process, including the circumstances under which the informal resolution process precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. In addition, the College will obtain the parties' voluntary, written consent to the informal resolution process.

Informal resolution may involve the imposition of individual and community remedies designed to maximize the complainant's access to the educational and extracurricular activities of the College. Examples of potential remedies are provided in Section VII.A: Supportive Measures. The recommended resolution may also include other institutional responses, requirements, or sanctions imposed on the respondent. Any informal resolution must adequately address the concerns of the complainant, as well as the rights of the respondent, and the overall intent of the College to stop, remedy, and prevent policy violations.

The informal resolution process ends when a resolution has been reached or when the complainant, the respondent, or the College terminates the process. A successful informal resolution results in a binding agreement between the parties. If the parties to the formal complaint and the College agree in writing to the terms and conditions of a recommended resolution, which will include a description of the information relied upon in the informal process, within five (5) calendar days of the Title IX Coordinator presenting the recommended resolution to the parties, the case will be resolved without further process under this procedure. If all parties to the formal complaint and the College do not agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days of the Title IX Coordinator presenting the recommended resolution to the parties, the formal complaint will be referred to the Formal Resolution process.

Appeals are not allowed in cases where the parties have agreed to a voluntary alternative resolution of the matter.

The informal resolution process generally will take no more than fifteen (15) calendar days. In some cases, more time may be required.

## **E. Formal Resolution**

If the formal complaint is not processed or resolved through the Informal Resolution process discussed above, the formal complaint will be processed according to the formal resolution process outlined below.

### 1. Investigation

The Title IX Coordinator will appoint one or more investigators. The parties will receive written notice of the appointed investigator(s). If any party has a concern that an investigator has a conflict of interest or bias, the party should report the concern in writing to the Title IX Coordinator as indicated in Section VIII.E.6: Right to Report Concerns of Conflict of Interest or Bias above.

The investigation will be prompt and equitable, and all individuals will be treated with appropriate sensitivity and respect. The investigator will conduct the investigation in a manner appropriate to the circumstances of the case, which will typically include audio-recorded interviews with the complainant, the respondent, and any witnesses. The interviews may take place in person, via video, or by phone depending on the circumstances. The complainant and respondent will have the opportunity to advise the investigator of any witnesses they believe should be interviewed, other evidence they believe should be reviewed by the investigator, and questions they would like the investigator to consider asking the other party and any witnesses, including questions challenging credibility. The investigator, in consultation with the Title IX Coordinator, has discretion to assess the relevancy of any proposed witnesses, evidence, and questions, and to determine which interviews to conduct, including the discretion to conduct interviews of individuals not identified by the parties. The investigator may also determine whether to ask some or all of the questions suggested by the parties. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The complainant and respondent will be given equal opportunity to present witnesses they believe should be interviewed, and other inculpatory and exculpatory evidence, as part of the investigation. In cases involving allegations of Title IX Sexual Harassment, any witness that a party wishes to call at a hearing must be suggested as part of the investigation process, prior to the issuing of the investigation report.

Near the end of the investigation, the parties will be informed of a close of evidence date. The parties must submit any and all evidence they would like considered as part of the investigation by the close of evidence date. After the close of evidence date, the parties will not be permitted to submit new or additional evidence that existed prior to the close of evidence date, unless the investigator, in consultation with the Title IX Coordinator, determines otherwise.

At the conclusion of the investigation, the investigator generally will compile an investigation report that fairly summarizes the relevant evidence. The investigation report may consist of any information, documents, data, or other evidence that will be provided to the Title IX Hearing Panel/adjudicators. At the investigator's discretion, such information may include, as applicable: the formal complaint; the notice of allegations; any other evidence obtained during the investigation; and the investigator's report of the investigation. The investigation report will be forwarded to the Title IX Coordinator who will review the investigation report and has the discretion to ask the investigator for clarification, additional investigation, and/or to have information added, removed, or redacted from the investigation report.

The time frame for this phase of the process (from the date the investigator is appointed to Title IX Coordinator review) is typically up to 45 calendar days; however, in some cases more time may be needed. In cases involving allegations of Title IX Sexual Harassment, the College will strive to complete the initial investigation in this 45-day time frame, but the final investigation report will not be completed until after the review of directly related evidence. See Section IX.E.2: Access to Information below for more information.

## 2. Access to Information

The procedures in the formal process for all cases of Sexual Misconduct are the same through the investigation phase. Prior to providing access to information, the Title IX Coordinator will make a final determination as to the procedures that will apply to the access to information phase and the adjudication phase.

### a. Cases Involving Allegations of Title IX Sexual Harassment

#### *Review of Directly Related Evidence*

For formal complaints involving allegations of Title IX Sexual Harassment, the parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source. The Title IX Coordinator or investigator will send such evidence to each party and each party's advisor in electronic format or hard copy. The parties will have a ten (10) calendar day period to review the evidence and prepare a written response to the evidence (the "Evidence Response Statement"). Each party's Evidence Response Statement may not exceed 2,000 words in length. The Evidence Response Statement must be submitted to the Title IX Coordinator within the ten (10) calendar day period described above. The Evidence Response Statement may be used as an opportunity to clarify information contained in the directly related evidence, to present the party's viewpoint about whether the

evidence directly related to the allegations is relevant and therefore whether it should be included in the investigation report, and to identify evidence previously provided to the investigator that was not included in the directly related evidence which the party believes is directly related and relevant. While the parties may be assisted by their advisors in preparation of the Evidence Response Statement, the Evidence Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Evidence Response Statement.

The parties and parties' advisors may use the evidence reviewed at this step only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the evidence with any other individual. Prior to being provided the evidence obtained as part of the investigation that is directly related to the allegations, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Title IX Coordinator will review the parties' Evidence Response Statements and may remove or redact any portions of the parties' Evidence Response Statements that exceed the word limit of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent or information subject to a legal privilege without a waiver).

The investigator will consider the parties' Evidence Response Statements prior to completion of the investigation report.

All the evidence made available for the parties' review will be available during the hearing.

#### *Review of Investigation Report*

For formal complaints involving allegations of Title IX Sexual Harassment, the Title IX Coordinator or investigator will send the investigation report to each party and each party's advisor in electronic format or hard copy at least ten (10) days prior to the live hearing. The parties will have a five (5) calendar day period to review the investigation report and prepare a written response to the report (the "Written Response Statement"). Each party's Written Response Statement may not exceed 2,000 words in length. The Written Response Statement must be submitted to the Title IX Coordinator within the five (5) calendar day period described above. The Written Response Statement may be used as an opportunity to clarify points in the investigation report or identify information previously given to the investigator(s) that is not included in the investigation report which the party believes should have been included, or raise other concerns regarding the evidence. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Response Statement.

The parties and parties' advisors may use the investigation report only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the investigation report with any other individual. Prior to being provided the investigation

report, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Title IX Coordinator will review the parties' Written Response Statements. Based on the statements, the Title IX Coordinator has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information added, removed, or redacted from the investigation report. In addition, the Title IX Coordinator may remove or redact any portions of the parties' Written Response Statements that exceed the word limits of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

b. Cases Involving Allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking *Occurring Outside of* The Education Program or Activity or Against a Person *Outside of* the United States

For formal complaints involving allegations of Sexual Assault, Dating Violence, Domestic Violence, or Stalking, *occurring outside of* the education program or activity or against a person *outside of* the United States, the investigation report will be made available for review by the complainant and respondent. The Title IX Coordinator will provide a five (5) calendar day period for the complainant and respondent to have access to review the investigation report and prepare a response to the investigation report, as discussed below. The parties' access to the investigation report generally will be provided during normal business hours in a designated on-campus location. The investigation report cannot be removed from that location, nor can duplications be made or pictures taken of the report. The investigation report may be made available to the parties electronically depending on the circumstances.

Both parties will have the opportunity to provide a written response to the investigation report (the "Written Response Statement"). To do so, the party must submit a Written Response Statement, which may not exceed 4,500 words in length, to the Title IX Coordinator. The Written Response Statement must be submitted by the conclusion of the 5-day period described above. The Written Response Statement may be used as an opportunity to clarify points in the investigation report, identify information previously given to the investigator that is not included in the investigation report which the party believes should have been included, identify questions a party believes the other party has not yet answered or evidence the other party has not explained, raise other concerns regarding the evidence, and to challenge the credibility of the other party and witnesses. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Response Statement.

The parties will have an opportunity to review the Written Response Statement submitted by the other party and, if desired, may submit a rebuttal statement ("Written Rebuttal Statement") not to exceed 2,500 words. The Title IX Coordinator will provide a two (2) calendar day period for the complainant and respondent to have access to review the other party's Written Response Statement and submit a Written Rebuttal Statement. The parties' access to the Written Response Statement generally will be provided during normal business hours in a designated on-campus location. The Written Response Statement cannot be removed from that location, nor can duplications be made or pictures taken of the contents. The Written

Rebuttal Statement may only be used to respond to arguments made or concerns raised in the other party's Written Response Statement and to challenge the credibility of the other party and any witnesses. While the parties may be assisted by their advisors in preparation of the Written Rebuttal Statement, the Written Rebuttal Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Rebuttal Statement.

The parties will have an opportunity to review the Written Rebuttal Statement submitted by the other party. The Title IX Coordinator will provide a two (2) calendar day period for the complainant and respondent to have access to review the other party's Written Rebuttal Statement. The parties' access to the Written Rebuttal Statement generally will be provided during normal business hours in a designated on-campus location. The Written Rebuttal Statement cannot be removed from that location, nor can duplications be made or pictures taken of the contents. While the parties have the opportunity to review the rebuttal statement of the other party, no further responses are permitted by either party.

The parties and parties' advisors may use the investigation report and written statements of the other party reviewed at this step only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the report and written statements with any other individual. Prior to being provided the report and written statements, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Title IX Coordinator will review the Written Response Statement and Written Rebuttal Statement. Based on the statements, the Title IX Coordinator has the discretion to ask the investigator for clarification, additional investigation, and/or to have information removed or redacted from the investigation report. In addition, the Title IX Coordinator may remove or redact any portions of the parties' written statements that exceed the word limits of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

### 3. Adjudication

Upon completion of the investigation, the Title IX Coordinator will compile the adjudication file, which will be shared with the Title IX Hearing Panel/adjudicators. In cases involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Domestic Violence, Dating Violence, or Stalking occurring outside of the College's education program or activity or against a person outside of the United States, the parties will be given access to any information that is included in the adjudication file to the extent that it includes additional information that the parties did not review as part of the Access to Information step discussed above in Section IX.E.2: Access to Information.

#### a. Cases Involving Allegations of Title IX Sexual Harassment

Upon completion of the investigation in cases involving allegations of Title IX Sexual Harassment, the matter will be submitted to a Title IX Hearing Panel to hold a live hearing and to make a determination regarding responsibility and, if appropriate, sanctions.

The Title IX Hearing Panel will conduct a prompt and equitable live hearing and adjudication.

#### *Appointment of the Title IX Hearing Panel*

The Title IX Coordinator will designate a panel of three adjudicators to serve as the Title IX Hearing Panel. Generally, the Title IX Hearing Panel will be chosen from a pool of trained community members. The College reserves the right to appoint any trained individuals who are without conflict or bias to the Title IX Hearing Panel. The Title IX Hearing Panel will not include the Title IX Coordinator or the investigator from the same matter. If any party has a concern that a member of the Title IX Hearing Panel has a conflict of interest or bias, the party should report the concern in writing as indicated in Section VIII.E.6: Right to Report Concerns of Conflict of Interest or Bias above.

#### *Live Hearings*

At the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questions will be conducted directly, orally, and in real time by the party's advisor and will never be conducted by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question at the hearing, the Title IX Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant in the formal complaint, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness declines to attend the hearing or answer relevant questions from either party's advisor, the Title IX Hearing Panel may consider statements or evidence provided by this person if it is deemed reliable and relevant and is not otherwise subject to exclusion under this policy. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, and social media postings. The Title IX Hearing Panel may give more or less weight to such statements or evidence, as they may with all relevant statements and evidence. The Title IX Hearing Panel will not draw an inference about the determination of responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions.

All evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available at the hearing.

The hearing will generally be held by video-conference with the parties, witnesses, and Title IX Hearing Panel located in separate locations and technology enabling the Title IX Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. The College reserves the right to determine that a hearing will instead be conducted with all participants, including the parties, witnesses, and the Title IX Hearing

Panel physically present in the same location. In the event that the live hearing is held with the participants in the same location, at the request of either party, the College will provide for the parties to be located in separate rooms with technology enabling the Title IX Hearing Panel and parties to simultaneously see and hear the party or witness answering questions.

The College will create an audio or audiovisual recording, or transcript, of any live hearing and, upon request, will make it available to the parties for inspection and review.

#### *College Appointed Advisors*

If a party does not have an advisor present at the live hearing, the College will provide an advisor to the party, without fee or charge to that party, to conduct cross-examination on behalf of that party. If a party will not have an advisor present at the hearing, the party must inform the Title IX Coordinator at least three (3) calendar days prior to the live hearing so that the College may appoint an advisor for the hearing. The appointed advisor's role will be limited to relaying the party's questions to be asked of other parties and witnesses. The appointed advisor shall not perform any function beyond relaying the party's desired questions. The College reserves the right to appoint any individual as the College determines appropriate to act as an advisor at a live hearing. The College's appointment of an advisor is final and a party who refuses to work with an appointed advisor at the live hearing will forfeit their right to conduct cross-examination or other questioning at the hearing.

#### *Live Hearing Procedures*

Additional information about live hearings is available upon request to the Title IX Coordinator.

#### *Decision-Making Process*

The presumption is that the respondent is not responsible for a Policy violation. The respondent will be determined responsible for a Policy violation only if the Title IX Hearing Panel concludes that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent engaged in Sexual Misconduct. If the Title IX Hearing Panel determines that the respondent is responsible for a Policy violation, the Title IX Hearing Panel will then determine what sanctions and remedies are warranted.

As discussed above, the Title IX Hearing Panel is responsible for determining relevance, reliability, and the appropriate weight given to statements and evidence provided during the investigation and live hearing.

When a respondent is found not responsible for a Policy violation, but nevertheless is found to have engaged in inappropriate conduct—for example, inappropriate remarks that do not rise to the level of a violation of this Policy—the College may, in its discretion, require the respondent to receive appropriate education and/or training. The College may also recommend counseling or other support services for the respondent.

#### b. Cases Involving Allegations of Other Sexual Misconduct

Upon completion of an investigation in matters involving allegations of Sexual Misconduct that are not Title IX Sexual Harassment, the Title IX Coordinator will appoint appropriate adjudicators. Typically, a panel of two adjudicators will be appointed to each case. However, the College reserves the right to appoint additional adjudicators to assist in making a determination in any given case. In addition, in any complaint resolution process, the assigned adjudicators may request to have a third adjudicator appointed to the case at any point during the adjudication prior to the issuance of the written notice of determination. Generally, the adjudicators will be chosen from a pool of trained community members. The College reserves the right to appoint any trained adjudicators who are free from conflict of interest or bias. If any party has a concern that the adjudicators have a conflict of interest or bias, the party should report the concern in writing as indicated in Section VIII.E.6: Right to Report Concerns of Conflict of Interest or Bias above.

The adjudicators will review the adjudication file. The adjudicators may, in their discretion, seek additional information from the investigator, the parties, or another individual, or request additional investigation by the investigator. In cases involving allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking (that occurred outside of the education program or activity or against a person outside of the United States), if such information is shared with the adjudicators, the parties will be notified and provided access to that information.

The respondent is presumed to be not responsible for a Policy violation. The adjudicators will use a preponderance of the evidence standard to determine whether there is sufficient evidence to conclude it is more likely than not that the respondent violated the Policy. If the adjudicators determine that the respondent is responsible for a Policy violation, they will then impose remedies and/or sanctions as necessary to end the misconduct, prevent its recurrence, and address its effects.

As part of that determination of sanctions and remedies, the Title IX Coordinator may, in their discretion, provide the adjudicators with information regarding previous violations of the Sexual Misconduct Policy or other College policies by the respondent, if any. In cases involving allegations of Sexual Assault, Domestic Violence, Dating Violence, and Stalking (that occurred outside of the education program or activity or against a person outside of the United States), if such information is shared with the adjudicators, the parties will be notified and provided access to that information.

When a respondent is found not responsible for a Policy violation, but nevertheless is found to have engaged in inappropriate conduct – for example, inappropriate remarks that do not rise to the level of a violation of this Policy – the College may, in its discretion, require the respondent to receive appropriate education and/or training. The College may also recommend counseling or other support services for the respondent.

#### 4. Sanctions and Remedies

The Title IX Hearing Panel/adjudicators will impose sanctions and/or remedies as necessary to end the misconduct, prevent its recurrence, and address its effects. The College reserves the right to take whatever measures determined necessary in response to an allegation of Sexual Misconduct in order to protect the rights and personal safety of the College community. Not all forms of Sexual Misconduct are considered equally serious offenses and, as a result, different remedies or sanctions may be imposed depending on the severity of the offense and any previous conduct violations.

Individuals who are found responsible under this Policy may face sanctions as appropriate for students, employees, visitors, or others, including, but not limited to the following sanctions. Each of these sanctions and other sanctions may be imposed alone or in combination for a respondent found responsible for Sexual Misconduct:

- Assigned disciplinary status:
  - Warning;
  - Probation;
  - Suspension ranging from one day to five years; or
  - Expulsion;
- Temporary or permanent withholding of transcripts or degree;
- Revocation of admission to the College or of a job offer;
- Temporary or permanent restricted access to areas of campus and campus events;
- Temporary or permanent restricted access to or participation in activities, organizations or courses;
- Temporary or permanent removal from class or residential assignment;
- Conditions for presence on campus or at College events;
- No-trespass or no-contact directives;
- Required attendance at educational trainings or meetings;
- Change in living assignment;
- Drug and/or alcohol testing;
- Eviction;
- Behavioral contracts;
- Required assessment or counseling;
- Community service hours;

- Loss of salary or benefit such as sabbatical or research or travel funding, removal or non-renewal of scholarships or honors;
- Suspension of employment from one day to five years;
- Suspension of promotion or salary increase increments;
- Transfer or change of job or responsibilities, revocation of tenure, demotion, or termination of employment;
- Ineligibility for or restrictions on rehire or readmission;
- Payment of restitution or costs incurred.

For any suspension or other temporary restriction, reinstatement may be conditioned upon behavioral contracts, required attendance at educational programs, required assessment, education, or counseling, demonstrated rehabilitation, conditions upon the individual's presence on campus or at College events, and/or any other disciplinary accountability measures outlined by the Student, Employee, or Faculty Handbooks.

Violations of imposed sanctions should be immediately reported to the Title IX Coordinator.

When an investigation reveals that a campus organization (such as a student club, athletic team, campus academic department, or staff/faculty committee) has committed or promoted behavior involving Sexual Misconduct, the organization may be sanctioned. Sanctions to the organization may include, but are not limited to, loss of College privileges (including, but not limited to, prohibition on the organization's participation in certain activities and the use of College facilities), educational requirements for organization members, required additional oversight of organization activities, temporary loss of funding and/or loss of recognition by the College, and permanent loss of organization recognition, in addition to individual members of the organization who are determined responsible for a Policy violation being subject to the sanctions listed above. All campus organizations/departments are responsible for the actions of its members when they are operating on behalf of the organization/department.

Remedies for the complainant are designed to restore or preserve equal access to the College's education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Remedies for the complainant include implementing or extending all or some of the following actions, without limitation:

- A mutual or one-sided no-contact directive;
- Prohibiting an individual involved from being on College property;
- Prohibiting an individual involved from participating in College-sponsored events;
- Changing an individual's on-campus residency, dining, or transportation arrangements, or prohibiting an individual from residing in a College residence;

- Special parking arrangements;
- Assistance in finding alternative housing, including reassignment to a different residence hall or room;
- Changing an individual's student or employee status or job responsibilities;
- Changing an individual's work or class schedule, including transferring to a different section of a course;
- Providing academic accommodations or providing assistance with academic issues, including permission to withdraw from a course without penalty;
- Providing security escorts;
- Access to counseling and medical services;
- Making information about orders for protection, harassment restraining orders, and criminal no-contact orders available to a complainant; and/or
- Assistance identifying an advocate to help secure additional resources or assistance, including off-campus and community advocacy, support, and services.

Remedies designed to address the Macalester community include:

- Increased monitoring, supervision, and/or security at locations or in connection with activities where the prohibited conduct occurred or is likely to reoccur;
- Targeted or broad-based educational programming or training for relevant persons or groups.

In addition, the College may recommend education, training, counseling, or other support services for those involved in the complaint resolution process, including complainants and witnesses, in some instances—for examples, when individuals have engaged in high-risk use of alcohol or drugs.

The Title IX Coordinator is responsible for effective implementation of any remedies.

## 5. Notice of Determination

The complainant and respondent will be simultaneously informed in writing of the determination of any formal complaint resolution process.

Prior to being provided the notice of determination, the parties and parties' advisors will be required to sign a non-disclosure agreement. The parties and parties' advisors are prohibited from disseminating or otherwise sharing the notice of determination with any other individual, except as

permitted in the non-disclosure agreement.

For formal complaints involving (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside of* an education program or activity or against a person *outside* the United States, the written notice will include the allegations potentially constituting Sexual Misconduct, a description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held), findings of fact supporting the determination, conclusions regarding the application of the College's Policy to the facts, the determination regarding responsibility as to each allegation, any imposition of sanctions, whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant, and the rationales for the determination and sanctions (including how the evidence was weighed, how the information supports the result, and the standard of evidence applied). The written notice will also include information about the procedures and permissible bases for appeal, as set forth below, and when the result becomes final. In addition, the written notice will include any other steps the College has taken to eliminate the conduct and prevent its recurrence.

For all other formal complaints of Sexual Misconduct, the written notice will include the determination of the adjudicators.

The College will seek to complete the adjudication process and provide the written notice of determination within twenty (20) calendar days of the hearing or, when no hearing is held, within twenty (20) calendar days of the adjudicators receiving the adjudication file; however, in some cases, more time may be required.

The determination of the adjudicators may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final and the sanctions, if any, will be effective.

#### 6. Dismissal of Formal Complaint Prior to Adjudication

If the allegations in a formal complaint are initially included in the notice of allegations as allegations of Title IX Sexual Harassment, but facts are gathered during the course of the complaint resolution process that indicate that the alleged conduct does not meet the definition of Title IX Sexual Harassment, the College will dismiss the formal complaint as to those allegations. Even if a formal complaint or any allegations of Title IX Sexual Harassment are dismissed, the College reserves the right to move forward with a complaint resolution process using the other Sexual Misconduct definitions and the other procedures in this Policy, as applicable.

In cases involving allegations of any Sexual Misconduct, the College may, at its discretion, dismiss the case prior to adjudication in certain circumstances. Circumstances that may lead to dismissal prior to adjudication, include, but are not limited to: the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by the College, or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If the College dismisses a formal complaint, the College will promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. A dismissal of a formal complaint may be appealed as provided below.

## **D. Appeals**

Either the complainant or respondent may appeal a decision to dismiss a formal complaint or any allegations therein, as discussed above in Section IX.E.6: Dismissal of Formal Complaint Prior to Adjudication. The parties may also appeal the Title IX Hearing Panel's/adjudicators' decision regarding responsibility.

Grounds for appeals are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Hearing Panel/adjudicator(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
- The decision violated academic freedom; and
- The sanction or remedy by Macalester under the formal resolution process was unreasonably severe or inadequate.

### 1. Submitting an Appeal

Either party may request an appeal by submitting a Written Appeal Statement, not to exceed 2,000 words, challenging the outcome of the complaint resolution process. The Written Appeal Statement must explain which of the grounds above the party is citing for the appeal. A Written Appeal Statement must be submitted to the Title IX Coordinator within five (5) calendar days following the date that the Notice of Determination was received by the complainant and the respondent. While the parties may be assisted by their advisors in preparation of the Written Appeal Statement, the Written Appeal Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. Failure to file a timely appeal constitutes a waiver of any right to an appeal.

The Title IX Coordinator will review the Written Appeal Statement to determine whether the appeal states a permissible ground for appeal (as set forth above), such that the appeal will be considered. The Title IX Coordinator may remove or redact any portions of the Written Appeal Statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

If the Title IX Coordinator determines that the appeal states a permissible ground for appeal, the non-appealing party will be notified of the appeal and provided an opportunity to review the Written Appeal Statement and submit a Written Appeal Response Statement in support of the outcome. Any Written Appeal Response Statement from the non-appealing party in support of the outcome must not exceed 2,000 words and must be submitted to the Title IX Coordinator within two (2) calendar days of receiving notice of the appeal. While the party may be assisted by their advisors in preparation of the Written Appeal Response Statement, the Written Appeal Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The Title IX Coordinator will review the Written Appeal Response Statement and may remove or redact any portions of the Written Appeal Response Statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution proceeding (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

The Title IX Coordinator generally will compile an appeal file, which may consist of any information, documents, or other evidence that is provided to the appeal officer. Such information may include the Written Appeal Statement, the Written Appeal Response Statement, the Notice of Determination, the adjudication file in its entirety or in part, any previously undiscovered evidence (if discovery of new evidence is a ground for the appeal), and any other information determined to be necessary for the appeal officer's decision, at the Title IX Coordinator's discretion.

For formal complaints involving allegations of (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside* of the education program or activity or against a person *outside* of the United States, the appeal file will be made available for review by the complainant and respondent. The Title IX Coordinator will provide a two (2) calendar day period for the complainant and respondent to have access to review the appeal file and such access generally will be provided during normal business hours in a designated on-campus location. The appeal file cannot be removed from that location, nor can copies be made or pictures taken of the contents.

In cases where the appeal file is made available for review as discussed above, the parties and parties' advisors may use the appeal file reviewed at this step and any additional information reviewed during the consideration of the appeal (see below), only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the appeal file or additional information with any other individual. Prior to being provided access to the appeal file or any additional information, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

## 2. Consideration of Appeal

Appeals will be considered by an appeal officer appointed by the Title IX Coordinator. Generally, the appeal officer will be as follows: When the respondent is a student, the appeal officer is the Vice President for Student Affairs or designee; when the respondent is a faculty member, the appeal officer is the Provost and Dean of the Faculty or the designee; when the respondent is a member of the staff, the appeal officer is the Director of Employment Services or the designee; and when the respondent is the President of the College, the appeal officer is the Chair of the Board of Trustees or designee. If the appropriate appeal officer is not able to consider the appeal for any reason, the Title IX Coordinator will assign an alternative appeal officer as designee in their place. The College reserves the right to appoint any trained appeal officer, regardless of whether the

respondent is a student, faculty member, or staff member. The appeal officer(s) will not be one of the Title IX Hearing Panel members/adjudicators, the investigator, or the Title IX Coordinator on the same matter. The parties will receive written notice of the appointed appeal officer. If any party has a concern that the appeal officer has a conflict of interest, the party should report the concern in writing to the Title IX Coordinator as indicated in Section VIII.E.6: Right to Report Concerns of Conflict of Interest or Bias above.

The appeal officer will review the appeal file and consider whether it is more likely than not that the above-listed grounds for appeal have been satisfied. The appeal officer may choose to seek additional information from the parties and consider other additional information, in the appeal officer's sole discretion. For cases of (1) Title IX Sexual Harassment or (2) Sexual Assault, Dating Violence, Domestic Violence, or Stalking *occurring outside of* the education program or activity or against a person *outside of* the United States, if the appeal officer receives any additional information, the parties will have an opportunity to review the additional information.

If the appeal officer determines that there is sufficient evidence to conclude that it is more likely than not that one of the above grounds for appeal is satisfied, they will generally remand the matter for further investigation, deliberations by the Title IX Hearing Panel/adjudicators, and/or an additional live hearing, as determined by the appeal officer. If remanded, the appeal officer, in consultation with the Title IX Coordinator, will determine whether the matter should be returned to the previous Title IX Hearing Panel/adjudicators or whether new Title IX Hearing Panel/adjudicators should review the matter, and, if the reasons for remand relate to the investigation or warrant additional investigation, whether the matter should be remanded to the previous investigator or whether a new investigator should be appointed. If the appeal officer grants an appeal finding the imposed sanction to be [unreasonably] severe or inadequate, the appeal officer has the discretion to modify the sanctions determination or to remand the matter to Title IX Hearing Panel/adjudicators for a new sanctions determination. If the appeal officer modifies the sanctions determination, the appeal officer's sanctions decision will be subject to an appeal.

The appeal officer may not change the adjudicators' determination of whether the respondent was responsible or not responsible for a Policy violation. Only the Title IX Hearing Panel/adjudicators reviewing the matter on remand from an appeal may change the determination of the original Title IX Hearing Panel/adjudicators of whether the respondent was responsible or not responsible of a possible violation. Upon return, the investigator and/or Title IX Hearing Panel/adjudicators will utilize the same process as required for all complaint processes under this Policy. If the matter is remanded, the determination made on remand will be appealable under the procedures discussed in this Section.

If the appeal officer determines that there is insufficient evidence to conclude that it is more likely than not that one or more grounds for appeal have been satisfied, the appeal officer will dismiss the appeal. This dismissal decision is final and is not appealable. If the appeal officer dismisses the appeal, the sanctions will be effective on the date the appeal officer's decision is provided to the parties.

The appeal officer will simultaneously issue to the parties a written decision describing the result of the appeal and the appeal officer's rationale for the result. The College seeks to complete the appeal process within fifteen (15) calendar days following the appeal officer's receipt of the appeal file from the Title IX Coordinator; however, in some cases, more time may be required.

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## **X. Complaints of Related Misconduct**

Any complaint relating to retaliation or interference with process in violation of this Policy, violation of the obligation to act in good faith, the obligation to be truthful, supportive measures, sanctions, or a nondisclosure agreement, or violation of the College's consensual relationship policy should be reported promptly to the Title IX Coordinator. The College will provide a prompt and equitable process for the resolution of complaints alleging retaliation or interference with process, violation of the obligation to act in good faith, the obligation to be truthful, supportive measures, sanctions, or a nondisclosure agreement, or violation of the College's consensual relationship policy.

When the College receives a complaint of retaliation or interference with process, violation of the obligation to act in good faith, the obligation to be truthful, supportive measures, sanctions, or a nondisclosure agreement, or violation of the College's consensual relationship policy, the Title IX Coordinator may exercise discretion to determine an appropriate responsive process based on the facts and circumstances. At the Title IX Coordinator's discretion, options for resolution include, but are not limited to, informal discussions and resolution facilitated by the Title IX Coordinator, investigation and/or determination by the Title IX Coordinator, or assignment of a designated individual to investigate the complaint and/or determine an appropriate response. This process will be separate and distinct from Section IX: Procedures for Formal Complaints outlined above for addressing Sexual Misconduct complaints. The Title IX Coordinator will document the complaint received, the process used, and the outcome. In instances where the outcome of the process results in a suspension longer than one year, expulsion, or termination of employment, the impacted individual may appeal the decision in accordance with the appeal rights as set forth in this Policy. The College will notify the parties of the outcome of the complaint.

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## **XI. Records**

The Title IX Coordinator is responsible for maintaining the official College records of Sexual Misconduct reports and formal complaints. When a formal complaint is pending, each official having a role in the response and resolution process is responsible for handling records appropriate to their role. When the process is complete, the official records relating to the formal complaint will be provided to the Title IX Coordinator, who will maintain such records in accordance with the College's record retention requirements and applicable law. Records related to Sexual Misconduct reports and formal complaints will be treated as confidential and shared only on a need-to-know basis, as required by law, or to conduct a complaint resolution process.

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## **XII. Effective Date and Responsible Official**

This Policy is effective September 15, 2021. This Policy amended and supersedes policies in the Student Handbook, Faculty Handbook, and Employee Handbook.

This Policy is distributed annually to all students and employees of the College and is posted in the following locations:

- Office of Student Affairs, Weyerhaeuser Hall, Rm. 119
- Information Desk, Ruth Stricker-Dayton Campus Center
- Online at [macalester.edu/title-ix/sexualmisconductpolicy](https://macalester.edu/title-ix/sexualmisconductpolicy).

This Policy also will be provided by the College to any student, employee, or other individual who reports to the College that they have been a victim of Sexual Misconduct.

Responsible Official: Title IX Coordinator & Nondiscrimination Officer

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## Appendix A: Resources

The College will support any person adversely impacted by Sexual Misconduct. Both the College and the Twin Cities community provide a variety of resources to assist and support individuals who have experienced Sexual Misconduct or are affected by allegations of Sexual Misconduct. These resources, both immediate and ongoing, are available to all persons irrespective of their decision to report to the College or to law enforcement.

Support services that may be available include, but are not limited to, connecting the individual with appropriate, fair, and respectful on-campus and off-campus counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and support services; making changes to academic, living, transportation, and/or working arrangements; assistance in filing a criminal complaint; and providing information about restraining orders and other available protections and services. To receive information about obtaining support services, individuals should contact the Title IX Coordinator or a confidential resource.

The College will provide written notification to affected individuals about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the College and in the community. The College will also provide written notification to affected individuals about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or supportive measures. In addition, when a student or employee reports to the College that

they have been a victim of alleged Sexual Assault, Domestic Violence, Dating Violence, or Stalking, regardless of location, the College will provide a written explanation of available rights, options, and procedures. The College is obligated to comply with a student's reasonable request for a living and/or academic situation change following an alleged incident of Sexual Misconduct. The College will provide appropriate supportive measures with or without a formal complaint, even when a complainant asks to keep a reported violation of this Policy confidential or requests that the College not investigate the matter, and regardless of whether an individual chooses to report to law enforcement.

Emergency numbers and information about health care options, as well as other resources, are listed below and on the College's website. Individuals who believe they have been subjected to any form of Sexual Misconduct are encouraged to seek support from these resources.

### **Immediate Assistance Following an Incident of Sexual Assault**

- Get to a safe place.
- Call 911 if in immediate danger, if you are injured, or the community is in possible danger.
- Consider securing immediate professional support on or off campus to assist you in the crisis.
- Seek a medical evaluation for personal wellness/testing and possible evidence collection, even if you are uncertain you want to press charges or pursue legal action.
- Take steps to preserve evidence, which may be necessary to the proof of criminal sexual violence or in obtaining a protection order. It is very important to preserve evidence. You may not know right now whether you will contact the police. But, in case you later decide to, the evidence available immediately after the assault is crucial. To preserve evidence follow these recommendations: Prior to seeking medical attention, do not shower, bathe, wash your hands, brush your teeth, use the toilet or clean up in any way. Bring another set of clothes to the hospital since clothes will be collected as part of the evidence. If you have changed clothes, bring your soiled clothing with you for evidence collection.
- Even after the immediate crisis has passed, contact confidential on-campus and/or off-campus resources—for emotional support, information, and/or advocacy.
- Report the conduct to the Title IX Coordinator at [651-696-6258](tel:651-696-6258). The Title IX Coordinator can arrange for supportive measures, including no-contact directives. The College will also assist in any needed advocacy for community members who wish to obtain harassment restraining orders or orders for protection from local authorities. Alternatively, you can contact the Court Administration Office located at the Ramsey County Courthouse to obtain harassment restraining orders and orders for protection.
- File criminal charges with the local Police Department, if desired. Designated staff members will help the employee or student in reporting the assault to the police and/or in filing a criminal charge. Designated staff members will also accompany the complainant to the police station upon request.

- The College will assist the employee or student, at the direction of law enforcement authorities, in obtaining, securing, and maintaining evidence in connection with the incident, and in preserving any materials relevant to a College disciplinary proceeding, regardless of whether the employee or student files a formal complaint with the College.

### **Emergency Contacts**

24-Hour Emergency

Local law enforcement: 911

24-Hour Emergency

Department of Public Safety: (651) 696-6555

### **On-Campus Places to Report Sexual Misconduct**

#### **Title IX Coordinator and Nondiscrimination Officer**

Laura Creech

[titleixcoordinator@macalester.edu](mailto:titleixcoordinator@macalester.edu)

651-696-6258

#### **Department of Public Safety:**

651-696-6555

#### **Deputy Title IX Coordinators:**

##### **Program Manager, Student Employment**

Jaelynn Blenkush

77 Mac 201F

[jblenkus@macalester.edu](mailto:jblenkus@macalester.edu)

651-696-6835

##### **Planning and Implementation Manger**

Jonathan Cardenas

Weyerhaeuser Hall 121

[jcardena@macalester.edu](mailto:jcardena@macalester.edu)

651-696-6059

**Head Softball Coach**

Jody Gabriel

Leonard Center 90f

[jgabriel@macalester.edu](mailto:jgabriel@macalester.edu)

651-696-6157

**Associate Vice President and Dean of Student**

Javier Gutierrez

Weyerhaeuser Hall 119

[jgutier1@macalester.edu](mailto:jgutier1@macalester.edu)

651-696-6333

**Associate Dean & Co-Director of Community Engagement**

Ruth Janisch

309 Markim Hall

[janisch@macalester.edu](mailto:janisch@macalester.edu)

651-696-6645

**Associate Director of Residential Life, Student Community Support**

Beekah Madia Russell

Weyerhaeuser Hall 112

[rrussel1@macalester.edu](mailto:rrussel1@macalester.edu)

651-696-6104

**Associate Dean of Students**

Angela Walker

Weyerhaeuser Hall 119

[awalker4@macalester.edu](mailto:awalker4@macalester.edu)

651-696-6220

[Online Report Form](#) (may be filed anonymously)

**On-Campus Confidential Resources and Support**

Macalester College Center for Religious and Spiritual Life

Multifaith chaplains

<https://www.macalester.edu/religiouslife>

651-696-6298

Macalester College Health and Wellness Center

Counselors, physicians, registered nurses or nurse practitioners

<https://www.macalester.edu/healthandwellness/>

651-696-6275

**On-Campus Semi-Confidential Resources and Support**

Macalester College Health and Wellness Center

Disability services staff, health promotion and sexual respect staff, and administrative staff

<https://www.macalester.edu/healthandwellness/>

651-696-6275

Macalester Emergency Medical Services

Student EMTs – while on call Friday and Saturday nights (9pm – 2am)

651-696-6555

**Off-Campus Places to Report Sexual Misconduct**

Police: St. Paul, Minneapolis: 911

Non-emergency reporting:

St. Paul Police: 651-291-1111, Family & Sexual Violence Unit: 651-266-5685

Ramsey County Sheriff (24 hours): 651-767-0640

**Off-Campus Confidential Resources**

SOS Sexual Violence Services of Ramsey County:

24-hr Hotline: (651) 266-1000

Macalester Employee Assistance Program:

(877) 622-4327

www.myCigna.com Employer ID: macalester

[Sexual Violence Center Minneapolis:](#)

(612) 871-5111, 24-hour hotline; free and confidential

[RAINN](#) (Rape, Assault, and Incest National Network)

1(800)-656-HOPE, 24-hour hotline; free and confidential

## **Health Care Options**

Sexual Assault Nurse Examiners (SANEs) available at area hospitals:

- [United Hospital Emergency Room](#), 333 N. Smith Ave., St. Paul, MN, 55102 (651) 241-8755 (direct connection to the Emergency Room)
  - [Sexual Assault Care Services](#)
- [Regions Hospital Emergency Center](#):640 Jackson St., St. Paul, MN 55101 (651) 254-3456
  - [Sexual Assault and Exam Information](#)
- [Hennepin County Medical Center Emergency Room](#):701 Park Ave, Minneapolis, MN, 55415, 612-873-3000
  - [Sexual Assault Resources Service](#):(612) 873-5832

United Hospital and Regions Hospital in St. Paul and Hennepin County Medical Center (HCMC) in Minneapolis provide sexual assault care services assistance to victims of rape and sexual assault 24 hours per day. Sexual Assault Nurse Examiners (SANEs) perform a special exam and collect evidence in a “rape kit.”

In addition to answering any questions, SANEs will carry out a special exam which involves:

- Collecting and saving evidence that will be needed to report sexual assault to law enforcement. Medical evidence can be collected up to 72 hours after the assault or longer, but the sooner the better;
- Evaluating risk for pregnancy and discussing safe prevention options;
- Evaluating risk of contracting a sexually transmitted infection and offering medication to reduce that risk;
- Evaluating and documenting any injuries;

- Providing resources to help during your recovery. This will include advocate services, agencies for medical follow-up, information about reporting this crime to law enforcement, information about the Crime Victims Reparations Fund and many other resources.

Choosing to be seen by a SANE is about your health and safety; you have the right to decline any part of the exam at any time.

You may take a friend or victim advocate with you to the hospital. [SOS Sexual Violence Services of Ramsey County](#) is available 24 hours per day and can provide a trained advocate to accompany you to the hospital.

You do not need to decide if you want to report a sexual assault to law enforcement right away. You can discuss your options for reporting with your SANE, a sexual assault advocate, or your friends and family. If you decide to report after you leave the hospital, the evidence collected during the exam will be saved for at least 30 days. If you have already reported your assault, your SANE will make sure the correct law enforcement agency is made aware that evidence was collected.

The county in which you were assaulted is required by law to pay for your forensic exam. If you have injuries that require medical care, such as stitches or x-rays, your insurance will be billed if that is possible. Any charges beyond this will be covered by the hospital at which you were seen.

For more information about Sexual Assault Nurse Examiners, please visit the links in the list of health care options above.

### **Victim Services and Legal Information and Assistance**

- [Resource List for Victims](#)
- [Domestic Abuse Service Center \(for victims of domestic violence and dating violence\): Hennepin County Government Center](#), Rm. #A-0650 (lower level), 300 S. 6th St., Minneapolis, MN 55487, [\(612\) 348-5073](tel:6123485073)
- [Minnesota Office of Justice, Crime Victim Service Programs](#): Monday – Friday, 8:00 am – 4:30 pm, [\(651\) 201-7300](tel:6512017300) or [\(888\) 622-8799](tel:8886228799). Press ext. 1. for financial help or ext. 3 for information and referral. [\(651-205-4827 TTY\)](tel:6512054827)
- [Ramsey County Victim/Witness Services](#), Ramsey County Attorney's Office: [\(651\) 266-3222](tel:6512663222)
- [Hennepin County Victim Services](#), Hennepin County Attorney's Office: [\(612\) 348-4003](tel:6123484003)
- [LawHelpMN.org](http://LawHelpMN.org): legal information on a variety of sexual assault issues
- [Southern Minnesota Regional Legal Services](#): [1-888-575-2954](tel:18885752954) (Monday-Friday 9:00 am-11:45 am and 1:00 pm-3:00 pm), free legal assistance for qualifying clients, available services include assistance for victims of domestic violence, dating violence, sexual assault, or stalking in obtaining orders for protection and other matters

- [Minnesota Coalition Against Sexual Assault \(MNCASA\)](#): (651) 209-9993, 161 St. Anthony Ave., Ste. 10001, St. Paul, MN 55103, provides sexual assault information and referral service to sexual assault programs in Minnesota
- [U.S. Department of Education, Office for Civil Rights \(OCR\)](#): 400 Maryland Ave. SW, Washington, DC, 20202-1100  
Customer Service Hotline: (800) 421-3481, TDD#: (877) 521-2172, OCR@ed.gov

### **Visa and Immigration Assistance**

- International Student Programs Office: Kagin Commons, 1st Floor, 651-696-6992, [www.macalester.edu/isp](http://www.macalester.edu/isp)
- **Immigrant Law Center of Minnesota**: 1-800-223-1368, 450 North Syndicate St., Suite 200, St. Paul, MN 55104, legal assistance in variety of immigration-related matters including support for survivors of sexual assault, trafficking, domestic abuse, and other crimes
- **Southern Minnesota Regional Legal Services**: 1-888-575-2954 (Monday-Friday 9:00 am-11:45 am and 1:00 pm-3:00 pm), free legal assistance for qualifying clients, available services include immigration assistance

### **Student Financial Aid**

Financial Aid Office: Weyerhaeuser 031, 651-696-6214, [macalester.edu/financial-aid](http://macalester.edu/financial-aid)

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## **Appendix B: Additional Information Regarding Privacy and Confidentiality**

The College is committed to protecting the privacy of all individuals involved in a report of Sexual Misconduct. The College will protect a complainant's confidentiality to the extent possible, regardless of whether the complainant specifically requests confidentiality, and will keep confidential the identity of any individual who has made a report or filed a formal complaint alleging a violation of this Policy, as well as any complainant, respondent, and witness, except as permitted by law or to carry out the complaint resolution process pursuant to this Policy.

The College will strive to protect the privacy of all individuals involved to the extent possible consistent with the College's legal obligations. However, the College may be required to share information with individuals or organizations outside the College under reporting or other obligations under federal and state law, such as reporting of Clery Act crime statistics and mandatory reporting of child abuse and neglect. In addition, if there is a criminal investigation or civil lawsuit related to the alleged misconduct, the College may be subject to a subpoena or court order requiring the College to disclose information to law enforcement and/or the parties to a lawsuit. In these cases, personally identifying information will not be reported to the extent allowed by law and, if reported, affected students will be notified consistent with the College's responsibilities under FERPA, as allowed by law. Except for the reasons described above, the allegations will not be shared with law enforcement without the consent of the individual who has alleged the Sexual Misconduct.

## **Confidentiality of Supportive Measures**

The College will maintain as confidential any supportive measures provided to an individual, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The College will only disclose information necessary to provide the supportive measures in a timely manner to individuals who need to know the information in order to effectively provide the supportive measures. The Title IX Coordinator will determine what information about an individual should be disclosed and to whom this information will be disclosed based on the facts and circumstances of the specific situation and the supportive measure to be provided. The College will inform the individual before sharing personally identifying information that the College believes is necessary to provide supportive measure. The College will tell the individual which information will be shared, with whom it will be shared, and why it will be shared.

## **Statistical Reporting and Clery Act Timely Warning**

Under the federal Clery Act, the College has legal obligations to maintain certain records, report statistical information relating to certain criminal offenses, and to provide the College community with general information regarding incidents of sexual violence and other crimes occurring on campus. These crimes include Sexual Assault, Domestic Violence, Dating Violence, and Stalking. In addition, the College has obligations under Minnesota law to maintain certain records and report statistical information to the state of Minnesota regarding certain reports of Sexual Assault. However, publicly available recordkeeping, including Clery Act reporting and disclosures such as the annual security report and daily crime log, will not include names or other information that may personally identify either party, to the extent permitted by law. As required by state and federal law, the College includes statistics about certain offenses in its annual security reports and provides those statistics to the United States Department of Education and the Minnesota Office of Higher Education in a manner that does not include any personally identifying information about individuals involved in an incident. To ensure that a complainant's personally identifying information will not be included in publicly available recordkeeping, the Title IX Coordinator and/or Director of Public Safety describe the alleged incidents by removing the complainant's and respondent's names and any other identifiers that would enable the public to identify either party in the context of the incident report. In completing this recordkeeping and statistical reporting, the College will protect a complainant's confidentiality to the extent possible even if the complainant does not specifically request confidentiality.

In addition, the Clery Act requires the College to issue a crime alert (timely warning) to the campus community about certain reported offenses which may represent a serious or continuing threat to students and employees. The timely warning may include that an incident has been reported, general information surrounding the incident, and how incidents of a similar nature might be prevented in the future. The timely warning will not include any identifying information about the complainant. In issuing timely warnings, the College will protect a complainant's confidentiality to the extent possible even if the complainant does not specifically request confidentiality.

Minnesota law, Minn. Stat. 135A.15, requires institutions to collect statistics, without inclusion of any personally-identifying information, regarding the number of reports of Sexual Assault received by an institution and the number of types of resolutions. Data collected for purposes of submitting annual reports containing those statistics to the Minnesota Office of Higher Education under Minn. Stat. 135A.15 shall only be disclosed to the

complainant, persons whose work assignments reasonably require access, and, at the complainant's request, police conducting a criminal investigation. Nothing in this paragraph is intended to conflict with or limits the authority of the College to comply with other applicable state or federal laws.

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## **Appendix C: Information Regarding Restraining Orders, Orders for Protection, Domestic Abuse No-Contact Orders, and College No-Contact Directives**

Individuals who would like to avoid contact with another individual have several options available to them, including seeking a harassment restraining order or protective order from a civil court, or requesting a no-contact directive from the College.

Harassment restraining orders and orders for protection are legal orders issued by a state court that forbid someone from harassing and/or making contact with another. A harassment **restraining order** is a civil court order issued against an alleged harasser, regardless of the relationship between the alleged harasser and the alleged victim, which orders the harasser to stop harassing the victim and/or to have no contact with the victim. An **order for protection** is a civil court order that may prohibit one family or household member from committing domestic abuse against, living with, or having contact with another family or household member.

The Minnesota Judicial Branch is responsible for issuing harassment restraining orders or orders for protection, and one can be obtained through making an application to the Ramsey County District Court. Petition forms to apply for harassment restraining orders or to seek an order for protection are available at the Court Administration Office located at the Ramsey County Courthouse or online from the [Minnesota Judicial Branch website](#). Forms must be submitted to the Court Administrator at the Ramsey County Government Center during business hours. Individuals seeking a harassment restraining order or an order for protection may obtain assistance from the Ramsey County Domestic Abuse/Harassment Office, located at the Juvenile and Family Justice Center, 25 W. 7th St. #B122m St. Paul, MN 55102 at [651-266-5130](tel:651-266-5130). Individuals seeking a harassment restraining order or an order for protection may seek assistance over the phone with the MN Courts Self-Help Center at [\(651\) 435-6535](tel:651-435-6535).

**Domestic abuse no-contact orders** are legal orders issued by a court against a defendant in a criminal proceeding for domestic abuse, harassment or stalking of a family or household member, violation of an order for protection, or violation of a prior no-contact order. A domestic abuse no-contact order may be issued before the end of the criminal case or following a conviction.

A **no-contact directive** is a College-issued directive that prohibits one or both parties from communication or contact with another. No-contact directives may be mutual or one-sided. Generally, no-contact directives issued prior to the conclusion of a complaint resolution process will be mutual and serve as notice to both parties that they must not have verbal, electronic, written, or third party communication with one another. To request a no-contact directive from the College, individuals should contact the Title IX Coordinator.

The College is responsible for honoring requests for information about available options for orders for protection, restraining orders, and no-contact directives and has a responsibility to comply with and enforce such orders. To request additional information about available options for orders for protection, restraining orders, and no-contact directives, contact the Title IX Coordinator. An order for protection, harassment restraining order, and/or a domestic abuse no-contact order can be enforced by contacting local law enforcement. A College no-contact directive may be enforced by contacting the Department of Public Safety or Title IX Coordinator. The College will fully cooperate with any harassment restraining order and/or order for protection issued by criminal, civil, or tribal court.

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## **Appendix D: Minnesota Criminal Law Definitions and Crime Victim Bill of Rights**

Some of the conduct prohibited by this Policy may be crimes. Links to relevant Minnesota criminal law definitions are provided below. The Minnesota criminal law citations are provided for informational purposes only. The definitions set forth in Section IV: Prohibited Conduct above will be used for all purposes under this Policy.

### **Sexual Assault:**

See [Minnesota Statutes Section 609.341](#) et seq. for applicable criminal law definitions relating to sexual assault. Minnesota law prohibits criminal sexual conduct in the first through fifth degrees as set forth in Minnesota Statutes Sections [609.342-609.3451](#); criminal sexual conduct includes non-consensual sexual contact and non-consensual sexual penetration as those terms are defined in Minnesota Statutes Section 609.341.

### **Dating Violence:**

See Minnesota Statutes Sections 518B.01; [609.2242](#) for applicable criminal law definitions relating to dating violence. Minnesota law does not specifically define dating violence; however, Minnesota law prohibiting domestic abuse includes physical harm, bodily injury, or assault committed between persons involved in a significant romantic or sexual relationship.

### **Domestic Violence:**

See Minnesota Statutes Sections 518B.01; [609.2242](#) for applicable criminal law definitions relating to domestic violence. Minnesota law prohibits domestic abuse committed against a family or household member by a family or householder member, as those terms are defined in Minnesota Statutes Section 518B.01.

### **Stalking:**

See [Minnesota Statutes Section 609.749](#) for applicable criminal law definitions relating to stalking. Minnesota law prohibits stalking as defined in Minnesota Statutes Section 609.749.

### **Crime Victim Bill of Rights**

When a crime is reported to law enforcement, victims have certain rights as the case moves through the criminal justice system. These rights include the right to be notified of certain court and correctional events, the right to participate in prosecution, the right to protection from harm, and the right to apply for financial assistance. A summary of these rights is provided below.

When a crime is reported to law enforcement:

Victims have the right to:

- Ask the law enforcement agency to keep your identity private in reports available to the public.
- Be notified of certain crime victim rights and information on the nearest crime victim assistance program or resource.
- Apply for reparations (financial compensation) for non-property losses related to a violent crime.
- In cases of violent crime and domestic abuse where an arrest has been made, be provided notice of the release of the offender along with information on the release conditions and supervising agency.

When a case is prosecuted:

Victims have the right to be notified of:

- The prosecution process and your right to participate in it.
- Information on the nearest crime victim assistance program or resource.
- The right to apply for reparations (financial compensation) for non-property losses related to a violent crime.
- A proposed pretrial diversion referral.
- A change in the hearing schedule if subpoenaed or asked to testify.
- The right to request restitution from the offender upon conviction.
- The contents of a proposed plea agreement.
- The outcome of the case.
- After conviction and upon request, the release or escape from custody of the offender from jail or prison or transfer to a lower security facility.
- An appeal and the right to attend the related hearing and to be notified of the result of that appeal.

- In felony or violent crime cases, a proposed modification to the sentence, the related hearing, and the right to provide input.
- A petition for expungement, upon request.

Victims have the right to participate in the process:

- Provide input in a pretrial diversion decision.
- Ask the prosecutor to request a speedy trial.
- Be notified of and attend the plea and sentencing hearings.
- Object to a proposed plea agreement at the plea hearing.
- When a presentence investigation (PSI) is conducted, provide information about the impact of the crime and your position regarding the proposed disposition.
- Give a victim impact statement at the sentencing hearing in writing or orally.

Certain rights address victims' safety, privacy, and protection, including the right to:

- Be notified of and provide input for a bail hearing in cases of violent crime and domestic abuse.
- A secure waiting area or safeguards against the offender and his/her supporters in the courthouse.
- Report witness tampering or violations of no contact or restraining orders.
- Ask that your home and employment addresses, telephone numbers, and birthdate be withheld from the offender and in open court.
- Protection against employer retaliation for you or your family member(s) taking reasonable time off to attend hearings or to testify in cases of violent crime.
- Make a confidential request that the court order an HIV test of the convicted offender in cases of sexual assault and some violent crimes.
- In homicide cases, to seek a court order preventing an offender from disposing of the deceased victim's property. Laws also prevent an offender from financially benefitting from the crime.

To address the financial impact of the crime, victims have the right to:

- Apply for reparations (financial compensation) for non-property losses related to a violent crime.
- Seek restitution from the offender for out-of-pocket expenses directly related to the crime if the offender is convicted.

- Ask the offender's probation officer to schedule a hearing if the offender fails to pay restitution.
- Pursue a civil case against the offender for your losses, whether or not criminal charges have been filed.

Domestic violence, sexual assault, and stalking victims have the right to:

- Be informed by the prosecutor of any decision to decline or dismiss a case along with information about seeking an order for protection or harassment restraining order at no cost.
- Terminate a lease without penalty or payment to escape a violent situation.
- If a domestic violence victim, obtain at no cost a copy of the incident report the responding law enforcement agency is required to write.
- If a sexual assault victim, have a confidential sexual assault examination at no cost and receive notice of rights and resources from the medical facility.
- If a sexual assault victim, refuse a polygraph examination without impacting whether the investigation or prosecution will proceed.

Complete information about crime victims' rights can be found at:

<https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/crime-victims-rights.aspx>. Information about victims' rights also is available from the Title IX Coordinator or from the Minnesota Department of Public Safety, Office of Justice Programs, and in Minnesota Statutes Chapter 611A.

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## **Appendix E: Description of Training for College Officials**

Title IX Coordinators, investigators, Title IX Hearing Panel members/adjudicators, and any person who facilitates an informal resolution process will receive annual training on the definition of Title IX Sexual Harassment; the scope of the College's education program or activity; how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias; issues related to sexual harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking; and how to conduct an investigation and decision-making process that protects the safety of all and promotes accountability. Investigators will receive training on issues of relevance to create an investigator report that fairly summarizes relevant evidence. Title IX Hearing Panel members will receive training on any technology to be used at a live hearing and issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The training is free of bias such as sex stereotypes or generalizations, promotes impartial investigations and adjudications, and includes the following topics, as applicable: relevant evidence and how it should be used, proper techniques for questioning witnesses, basic rules for conducting proceedings, avoiding actual or perceived conflicts of interest, and the College's policies and procedures.

[Conducting a Hearing Under Title IX/VAWA](#) (September 2024)

[Title IX/VAWA Investigator Training Under the 2020 Title IX Regulations](#) (August 2024)

[Annual Training for Advances Title IX Coordinators and Deputy Coordinators Under the 2020 Title IX Regulations](#) (July 2024)

[Title IX/VAWA Investigator Training](#) (August, 2023)

[Annual Training for New Title IX Coordinator & Deputy Coordinators](#) (August 2023)

[Advanced Title IX Coordinators & Deputy Coordinators](#) (August 2023)

[Title IX/VAWA Appeal Officer Training](#) (July 2023)

[Informal Resolution Training](#) (June 2023)

[Title IX/VAWA Hearing Panel Training](#) (2022 & 2023)

[VAWA Adjudicator Training](#) (2022 & 2023)

[Title IX Coordinator & Investigator Training](#) (2022)

[Conducting Trauma-Informed Investigations for Sexual Misconduct Cases](#) (2022)

[The State University of New York – Various Trainings](#) (2022)

[Title IX & Protecting the Rights of the LGBTQ+ Community on your Campus](#) (2022)

[Title IX/VAWA Investigator Training](#) (Aug 4, 2021)

[Advanced Coordinator Training](#) (Aug. 3, 2021)

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