

Sexual Assault Policy

STATEMENT ON SEXUAL ASSAULT

Sexual assault is not tolerated by Macalester College under any circumstances. Any individual who sexually assaults another is subject to the disciplinary procedures of the College and such civil and criminal laws as may pertain. The College expects its members will educate themselves about such behavior and be vigilant in protecting the right to an environment free of sexual harassment and assault. Anyone who is the victim of sexual assault is encouraged to seek immediate medical and emotional support. The College strongly encourages students who believe they have been sexually assaulted to report the incident to campus security even if they do not plan to take any further action. If uncertain about a specific situation, students are encouraged to contact a member of the [Sexual Assault Response Team](#). Sexual assault resource guides for students, survivors, faculty and staff can be found on the Sexual Assault Prevention and Support [website](#)

Allegations of any act that has the purpose or effect of unreasonably or substantially interfering with an individual's safety, security, or educational opportunities, will be investigated. If a respondent is found responsible for acts of sexual misconduct or violence, serious sanctions will be used to ensure that such actions are not repeated.

RELATIONSHIPS BETWEEN STUDENTS AND FACULTY OR CAMPUS EMPLOYERS

Relationships between a faculty member and a student, a student and a professional staff member or between a supervisor and employee should be considered ones of professional and client in which the initiation of sexual relationships is inappropriate and unethical. 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. The same is true with respect to a supervisor and employee. Codes of ethics for most professional associations forbid the initiation of sexual relationships where professional/client, teacher/student, or supervisor/employee relationships exist.

SEXUAL ASSAULT OFFENSES

The requirements of this Sexual Assault policy apply regardless of sexual orientation, gender identity, gender expression, age, race, nationality, class status, ability, religion or physical appearance. It includes both non-consensual sexual contact and non-consensual sexual intercourse.

Sexual Assault is a criminal act under Minnesota state law. Links to Minnesota Statutes concerning sexual violence can be found at http://www.mncasa.org/svji_legal_links.html

DEFINITIONS

Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is

- Any sexual intercourse or penetration (anal, oral, or vaginal)
- However slight,
- With any object,
- By any person, regardless of sexual orientation or gender expression or identity, upon any other person, regardless of sexual orientation or gender expression or identity
- Without consent*

Non-Consensual Sexual Contact

Non-consensual sexual contact is

- Any intentional sexual touching
- However slight,
- With any object
- By any person, regardless of sexual orientation or gender expression or identity, upon any other person, regardless of sexual orientation or gender expression or identity
- Without consent*

***Consent** is informed, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words and actions create mutually understandable permission regarding the conditions of sexual activity.

- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Previous relationships or consent cannot imply consent to future sexual acts.
- Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. **Coercion** is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- In order to give consent one must be of legal age.
- Sexual activity with someone known to be—or should be known to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), you do not have consent and you are in violation of this policy. **Incapacitation** is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction. This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the influence of

any substance administered by another person for the purpose of inducing incapacity.

- Use of alcohol or other drugs will never function to excuse behavior that violates this policy.

Sexual Contact includes intentional contact with the breasts, buttock, groin, genitals, (or the clothing covering these areas) or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner.

and/or

Sexual Intercourse involves vaginal, oral, or anal penetration by a penis, object, tongue, or finger.

CONFIDENTIALITY

Different people on campus have different legal reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the college.

On campus, some individuals may be able to maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you want them to. Other resources are primarily there for you to report policy violations, and they will take action when you report sexual assault to them. Most resources fall in the middle of these two extremes. Neither the college nor the law requires employees to divulge private information that you share with them, except in extremely rare circumstances, described below. You may seek assistance from them without a requirement to file a complaint or violation of your privacy.

Legally Confidential Resources

If you desire that details of the incident be kept confidential, you should speak with one of the following resources:

- Macalester College Center for Religious and Spiritual Life chaplains (or off-campus clergy and chaplains)
- Health and Wellness Center Counselors, physician, Registered Nurse or Nurse Practitioner
- Sexual Offense Services of Ramsey County Victims Advocates (or other state certified trained victims advocates)

Campus Private Resources

You can seek advice and support from the following campus resources who will not tell anyone your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct such as

- Members of the Macalester Sexual Assault Support Teams
- Faculty members,

- Advisors to student organizations,
- Student Affairs staff such as Hall Directors, Career Development Center, International Student Programs, Campus Life, Department of Multicultural Life (not including the Office of Student Affairs staff)

If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them.

Non-Confidential Reporting Resources

You are encouraged to make a formal complaint of incidents that will be investigated by the Macalester College Harassment Committee (MCHC). You have the right and can expect to have incidents of sexual assault be taken seriously by the college when formally reported, and to have those incidents investigated and properly resolved through the MCHC process. Formal reporting does not mean that your report won't be kept as private as possible, but it does mean that people who need to know will be told, and information will be shared as necessary with investigators, witnesses, and the accused. The circle of people will be kept as tight as possible, to preserve your rights and privacy. Deans, Vice Presidents, or other administrators with supervisory responsibilities, campus security, and employment services are legally mandated to follow up on any report of harassment or sexual misconduct.

Complainants and Respondents Responsibility to Confidentiality

The **complainant** is the person who is the victim of sexual assault who has chosen to make a complaint. The **respondant** is the person who is accused of sexually assaulting another person and is responding to the complaint. Both complainants and respondents are expected to observe community standards of responsibility and confidentiality. During the course of an investigation, the investigators may impose restrictions on the parties and other participants for the purpose of maintaining the confidentiality of those involved in the investigation and minimizing the potential disruptiveness that the investigation may have on the College community. Anyone involved in an investigation that violates such restrictions will be subject to appropriate sanctions.

REPORTING SEXUAL ASSAULT

The College encourages anyone who has been sexually assaulted to report the situation and seek appropriate emotional/medical support and to consider filing a formal complaint. Sometimes students choose to make a **report**, a written account of the harassment that has occurred, to a confidential or private resource while the information is fresh in their minds and determine later if they want to file a formal complaint. Reports may also be filed anonymously with campus security or using the online reporting [form](#) without requesting further action from the MCHC. Reports and formal complaints noting offenses occurring within campus boundaries are represented in the annual crime statistics published by the college.

A **complaint** is an official written statement, given by the victim of sexual assault (or on his/her behalf), that is used as the basis for initiating and supporting an investigation by the MCHC. In most cases, complaints are only pursued upon the request of the victim. The

College reserves the right to pursue a complaint of harassment if information is given that suggests there is a risk to members of the community. Victims should be aware of confidentiality and mandatory reporting (as discussed above) in order to make informed choices concerning reporting.

Reporting Options

- Call 911 immediately if you are in physical danger or in need of medical attention
- Avoid touching the objects or area where an incident or a crime has occurred. Call **Campus Security** staff (651-696-6555) who will photograph vandalism and graffiti for future record. Campus Security will also contact a professional staff member trained to deal with crisis situations to assist with further follow-up and reporting.
- Contact a member of the [Sexual Assault Support Team](#). Members of this team are prepared to provide initial emotional support, assist in writing a report, discuss options, attend meetings with students, and provide campus and community resources. More information about the SAST team and Sexual Assault Support can be found on the [website](#).
- **Contact the Dean or Associate Dean of Students**, located in the Office of Student Affairs, 119 Weyerhaeuser Hall (651-696-6220), or any other member of the [MCHC](#). They can discuss complaints of sexual assault and can assist the victim(s) in identifying support resources and options. Community members may also use the MCHC as a resource regarding questions or concerns about an incident or situation without registering a complaint. Please note: Sharing names of students accused of sexual assault to a MCHC members will likely initiate an investigation and potential response from the College.
- Report confidentially or anonymously via an online reporting form on the Sexual Assault Prevention [website](#). The College is limited in the ability to follow up on these reports unless the victim chooses to identify him/herself but the choice is the victim's.
- Talk with a trusted member of the Macalester staff or faculty who could support you and assist you as you make decisions about how you'd like to proceed

The person who receives a report from a victim will offer support services to the individual and determine whether a report must be made to the police (the law requires reporting in certain instances). Regardless of whether a report to the police is made, the support person will follow established Macalester procedures independent from any police involvement and is specifically prohibited from engaging in any information outside of established college procedures except as the law requires.

FILING A SEXUAL ASSAULT COMPLAINT

If a victim wants to file a complaint he/she can use any of the above reporting options and indicate that she/he wants to file a complaint. A member of the Macalester College Harassment Committee (MCHC) will contact the person directly.

Macalester College Harassment Committee

All sexual assault complaints, except against the College President, will be received and processed by the Macalester College Harassment Committee (MCHC). Official complaints against the President will be promptly heard and dealt with by the Macalester Board of Trustees. For additional information on the MCHC please see the section MCHC General Policies on the committees [website](#). There is no parallel process whereby anyone other than a MCHC member may attempt to resolve the suspected sexual assault.

Three members of the MCHC will be selected to participate in complaint resolution (the Review Team), with one person designated as chair. The chair assumes responsibilities for coordinating the review team throughout the process. A fourth member of the MCHC will be informed that an investigation is occurring but will not receive information specific to the complaint. This fourth individual will serve as part of the appeal process if necessary.

Jurisdiction

The College is able to respond formally to situations:

- that occurred on campus, or
- were part of official College programs (regardless of location)
- where the complainant (victim) and the respondent (accused) are members of the campus community.

In situations where a member of the MCHC, Senior level administrators or Campus Security becomes aware of pattern of behavior by a single perpetrator, the MCHC may take action without a specific individual complainant being named

Even if the perpetrator is unknown or is not a member of the college community College staff will assist victims in identifying appropriate campus or civil authorities and making a report.

Timeframe

The College does not limit the time frame for a report of sexual assault. Reports may be taken at any time after an offense has occurred, although the College's ability to take action may be limited if significant time has passed.

Evaluation of Complaint

The MCHC Review Team receiving the complaint will begin with an investigation that may lead to:

1. Formal Action or
2. Informal Resolution

Investigation. Sexual Assault complaints are always investigated formally. In cases involving a third party bringing forward a concern, the MCHC member receiving the information will consult with the individual who reportedly committed the assault. Persons

named as respondents in the complaint will also be promptly notified of the complaint and informed of procedures and options available to them.

The Review Team, and when possible the appropriate Vice President, will meet with the complainant, the respondent, and all named parties involved in the complaint. The investigation will be completed as soon as possible.

Rights of the Complainant

- To have their complaint taken seriously
- To receive assistance in formulating a complaint
- To receive information on campus and community services.
- To have a meeting/interview that includes:
 - An opportunity to review all information included in the case
 - An explanation of all the options open to the MCHC
 - Clear information on procedures to be followed
 - An explanation of the time table involved
 - Identity of MCHC members involved in the case
 - To present information on their own behalf, including written and oral statements and physical exhibits
 - To know all information of the case
 - To have a member of the faculty, staff, or student body serve as an advisor throughout the process
 - To present witnesses who are familiar with information pertinent to the case.
 - To receive a timely written decision
 - To have confidentiality as provided by the Family Educational Rights and Privacy Act.
 - To appeal the decision.

Rights of the Respondent

- To receive assistance in formulating a response.
- To receive information on campus and community services.
- To have a meeting/interview with a member of the MCHC that includes:
 - An explanation of specific charges
 - An opportunity to review all information to be considered in the case
 - An explanation of all the options considered in the case
 - Identity of MCHC members involved in the case
 - An explanation of the time table involved
 - To decline to make self-incriminating statements or to answer questions with the understanding that to do so shall not be interpreted as evidence of guilt.
 - To present information on their own behalf, including written and oral statements and physical exhibits.
 - To know all information presented against them.
 - To have a member of the faculty, staff or student body serve as an advisor throughout the process.
 - To present witnesses who are familiar with information pertinent to case.
 - To receive a timely written decision.

- To have confidentiality as provided by the Family Educational Rights and Privacy Act.
- To appeal the original decision.

Upon completion of the investigation, the MCHC Review Team may

- close the case without action and file a report summarizing the case and the reason for the conclusion;
- move to a formal action or
- recommend informal resolution, (both parties must agree to participate in an informal resolution)

1. Formal Action. A formal action becomes part of a student's permanent record with an official College sanction provided by the relevant authority. Normally, in resolving formal cases whereby the respondent is a student, the Vice President for Student Affairs will be the relevant authority. In cases involving a faculty member as the respondent, the Provost will be the relevant authority, and in cases involving a staff member, the member of the President's Senior Staff to whom the individual ultimately reports is the relevant authority. If the specifics of a case require one of the above named authorities to recuse himself/herself from a case, one of the other authorities will take the case.

The relevant College authority will prepare a written "Case Determination" that describes the decision and sanctions in detail. This document must indicate whether any record is to be placed in the respondent's personnel file and if so, the precise statement is to be attached to the document and will be included in the case file kept by the MCHC. The College authority will then meet with the respondent to inform her or him of the decision and provide a copy of the Case Determination and any attachment. In most cases, the complainant will be made aware of the outcome of the case. Records are kept in accordance with policies outlined under the section Macalester College Harassment Committee, General Procedures.

Sanctions

At the completion of a formal process the chair of the MCHC Review Team and the relevant College authority will meet and make a determination regarding the case including any sanctions that are warranted. Past records will normally be reviewed only at the sanctioning phase of the investigation.

The College reserves the right to take whatever measures deemed necessary in response to an allegation of sexual assault in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a MCHC meeting, and reporting to the local police. Not all forms of sexual assault will be deemed to be equally serious offenses, and the College reserves the right to impose differing sanctions. A member of the College community found responsible for knowingly, intentionally and willfully violating the policy on sexual assault will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct violations. The College will consider the concerns and rights of complainants and respondents in determining sanctions. Other information on sanctioning:

- Sanctions for staff may range from reprimands or training to immediate termination of employment, depending on the severity of the incident and taking into account any previous employment concerns.
- Sanctions for students may range from warning to expulsion, depending on the severity of the incident and taking into account any previous campus conduct violations.
- In the case of sanctions against a member of any collective bargaining unit, contractual grievance and arbitration procedures will remain available to the employee.
- When a severe sanction against a faculty member is recommended, a hearing must first be held and conducted according to the rules stipulated by the American Association of University Professors (AAUP). A hearing will take place before the Faculty Personnel Committee. Members who find it necessary to recuse themselves will be replaced by available former members of the Committee with preference given to those having served most recently.
- Sanctions take effect at the time in which they are determined, unless otherwise specifically noted. Should a respondent provide an intention to appeal, the implementation of sanctions will be delayed until the outcome of the appeal is determined.
- The respondent will be notified about the decision/sanction in writing.
- The complainant will be notified in writing about the appropriate relevant information of the decision/sanction.

Appeals

Appeals of decisions made by the MCHC may be submitted by either party within ten working days of the date of the letter notifying the parties of the decision. Appeals will be submitted in writing and outline the basis for the appeal. Appeals are accepted on the basis of procedural errors that may have impacted the final decision.

Appeals will be heard by the fourth member of the MCHC designated at the beginning of the process and the Associate Dean of Student Services. If the respondent is a student then the student member of the Conduct Hearing Board who observed the process will be a part of the appeal review. The appeal review team may overturn the decision determined through formal action or request that the Vice President reconsider the case. Decisions of the appeal review team are final.

*The procedures described in this policy are intended as guidelines describing how harassment complaints will typically be handled. The College reserves the right to vary from these procedures based upon its evaluation of the circumstances of each matter.

2. Informal Resolution. In some cases, where requested by the complainant, an informal resolution may be pursued with the support of the MCHC Review Team. Informal resolution will take place if the respondent agrees to the terms requested by the complainant. The informal resolution could take many forms, including:

- a message communicated from the complainant to the respondent through the

facilitator

- the respondent agreeing to terms set by the complainant which specify future changes in behavior
- other forms of resolution that are agreeable to the complainant

At any time during this process one or both parties may decline to participate in the informal resolution. If an attempted informal resolution is not successful, the MCHC Review Team, in conjunction with the complainant will determine the next course of action. Options include reopening the investigation, referring the case for formal action or determining that no further action would be taken at that time. The members of the MCHC Review Team must agree that the terms of any informal resolution are appropriate. A final copy of the terms will be provided in written form to both the complainant and respondent.

Violations of an informal agreement by the respondent will be treated as violations of formal College decisions and referred for formal action as outlined above. Notice of charges and decisions will then be placed in the respondent's official College file.