

Macalester College

Nondiscrimination Policy

Macalester College does not tolerate unlawful discrimination or discriminatory harassment in any form. It is detrimental to the learning environment and violates community standards. The goal of College policies and procedures is to create a community free of any form of unlawful discrimination or discriminatory harassment. The College will take immediate and appropriate corrective action when it determines discrimination or discriminatory harassment has occurred.

Macalester College values the right to free speech and the open exchange of ideas and views in our learning and working environment. We, as a community, are committed to embracing multiculturalism, internationalism, anti-racism, social justice and a celebration of all forms of diversity. Macalester College is dedicated to assuring dignity for all and desires to be welcoming to every member of the campus community. Members of the College community have the right to be free from all forms of unlawful discrimination and discriminatory harassment. Any individual who harasses or abuses another based on a protected class status is subject to the disciplinary procedures of the College. The College expects its members will educate themselves about such behavior and be vigilant in protecting the right to an environment free of discrimination and discriminatory harassment.

I. 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.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972. 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 on discrimination on the basis of sex. Sexual misconduct, including sexual harassment, will be resolved accordance with the College's [Title IX and Sexual Misconduct Policy](#).

Inquiries or complaints related to the Notice of Nondiscrimination or Title IX may be directed to the College's Title IX Coordinator and Nondiscrimination Officer:

Title IX Coordinator and Nondiscrimination Officer

Laura Creech

Humanities 115E

Telephone: 651-696-6258

Email: titleixcoordinator@macalester.edu

1600 Grand Avenue

Saint Paul, MN 55105-1899

II. SCOPE

This policy applies to all Macalester College students and employees, including faculty, administrators, staff, and temporary employees. Other community members, including volunteers, vendors (including employees of vendors), independent contractors, trustees, visitors, and individuals engaging in or conducting activities or business at or with the College or on College property, are also required to comply with the provisions of this policy.

This policy applies to all education programs and activities, as well as 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. This policy applies to conduct occurring on College property or at College-sanctioned events or programs that take place off campus, including study away and internships. This policy also applies to off-campus conduct that may cause an unacceptable disruption at the College or which may interfere with an individual's right to a non-discriminatory educational or work environment.

This policy applies to all forms of discrimination and discriminatory harassment, except sexual misconduct. Incidents of sexual misconduct, which encompasses sexual harassment, sexual assault, domestic violence, dating violence, stalking, and sexual exploitation, should be reported in accordance with the [Title IX and Sexual Misconduct Policy](#) which establishes separate procedures for reporting and resolving allegations of sexual misconduct. Allegations of sex discrimination that do not involve sexual misconduct will be handled in accordance with this policy. If you have questions about which policy and procedures apply to your concerns, please contact the Title IX Coordinator and Nondiscrimination Officer (hereinafter Nondiscrimination Officer).

The Nondiscrimination Officer may appoint a designee to fulfill the functions of the Officer under this policy. When this policy refers to actions of the Nondiscrimination Officer, these actions may be fulfilled by the Nondiscrimination Officer or the Nondiscrimination Officer's designee.

III. PROHIBITED CONDUCT

The following forms of conduct are prohibited by this policy.

A. Discrimination

Discrimination is inequitable or unfair treatment of an individual or group when based upon legally protected characteristics, including race, color, national origin, age, religion, creed, disability, sex, gender identity, marital status, familial status, pregnancy, membership or activity in a local human rights commission, genetic information, veteran status, sexual orientation, and status with regard to public assistance. Discrimination is conduct based upon an individual's protected class status that excludes an individual from participation, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a program or activity.

Examples of discrimination include, but are not limited to:

- Consideration of an applicant's protected characteristic as a factor in deciding whether to offer the applicant a job interview.
- Giving consideration to an individual's protected characteristic in deciding what grade to assign a student or whether to offer an employee a promotion.
- Requiring that members of protected classes meet higher standards for advancement or promotion than employees who are not in protected classes.
- Denying a student the opportunity to participate in an educational activity because of their protected characteristic.

B. Discriminatory Harassment

Discriminatory Harassment is verbal, nonverbal, or physical conduct or communication based upon a person's protected status, including race, color, national origin, age, religion, creed, disability, sex, gender identity, marital status, familial status, pregnancy, membership or activity in a local human rights commission, genetic information, veteran status, sexual orientation, and status with regard to public assistance, or other status protected by applicable law, when:

- submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's educational experience or employment, or the individual's submission or rejection of such conduct is used as the basis for an employment, academic, or other educational decision); or
- such conduct has the purpose or effect of substantially and unreasonably interfering with an individual's employment or education, or of creating an intimidating, hostile, or offensive employment or educational environment ("hostile environment" harassment).

Hostile environment harassment exists when the conduct is sufficiently severe, pervasive/persistent, and clearly/objectively offensive that it alters the conditions of education or employment.

The criteria for determining whether an environment is "hostile" include:

- 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 mental or emotional state of the person subject to the conduct.
- Whether the conduct was directed at more than one person.
- Whether the conduct arose in the context of other discriminatory conduct.
- Whether the conduct unreasonably interfered with the educational or work performance of the person subject to the conduct.
- Whether the statement was merely a discourteous, rude, or insensitive statement.
- Whether the speech or conduct deserves the protections of academic freedom.

Examples of harassment include, but are not limited to:

- Verbal abuse, offensive language, derogatory words, slurs, or epithets based upon or motivated by the person's protected class status.
- Threats or intimidation based upon or motivated by the person's protected class status.
- Negative stereotyping based upon or motivated by the person's protected class status.
- Jokes and comments directed at a protected class status.
- Gossip about someone's protected class status.
- Obscene gestures or leering based upon or motivated by the person's protected class status.
- Written or graphic materials or objects, pictures, or other media placed on or circulated within College premises (walls, bulletin boards, computer terminals, vehicles, email, text messages, etc.) that are offensive, insulting, or demeaning or show hostility or aversion toward an individual or group based on or motivated by a person's protected class status.
- Cyber or electronic harassment based on or motivated by a person's protected class status.

The College recognizes the complexity of defining language and actions that are not acceptable in a community which values freedom of expression. Freedom of expression does not include the right to intentionally and maliciously aggravate, intimidate, ridicule or humiliate another person.

C. 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 law 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 discrimination or discriminatory harassment are unsubstantiated.

IV. DUTY TO REPORT PROHIBITED CONDUCT

The College encourages anyone who has been experienced prohibited conduct to report the incident to the College. In addition, all employees who have observed others experiencing what they believe to be incidents of discrimination or discriminatory harassment shall to report such conduct to the Nondiscrimination Officer promptly. All community members are responsible for being fully familiar with the Nondiscrimination Policy.

Reports of alleged prohibited conduct should be made online using the [Bias, Discrimination, and Harassment Report Form](#).

Title IX Coordinator and Nondiscrimination Officer

titleixcoordinator@macalester.edu

651-696-6258

For incidents involving an emergency situation where there exists an immediate threat of physical harm to any person or property or medical attention is required, community members should call 911 and the Department of Public Safety (651-696-6555) immediately. In addition, if you believe a crime has occurred, avoid touching objects or areas where the incident or crime has occurred. For example, Department of Public Safety staff will photograph vandalism and graffiti for future record.

Individuals are encouraged to make a report as soon as possible following an alleged incident. There is no time limit 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 respondent(s) may no longer be affiliated with the College. If a complaint is brought forward more than five (5) years after an alleged incident, the College may decline to process the complaint but, reserves the right to take other administrative action as appropriate. If the individual accused of misconduct is still a member of the College community as a student or employee, the complaint generally will be processed under the procedures below.

V. GENERAL PROVISIONS

In this policy, references to the “complainant” refer to the individual who is alleged to have experienced the prohibited conduct and references to the “respondent” refer to the individual who is accused of the alleged prohibited conduct.

A. Treatment of the Parties

The complainant and respondent are entitled to be treated with respect, sensitivity, and dignity. The College will strive to provide support and assistance to students, faculty, and staff who are engaged in the complaint resolution process and will refer them to available resources.

B. Advisors

The complainant and the respondent have the right to be accompanied to meetings by an advisor. 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. Witnesses may not serve as advisors. An individual has the right to decline a request to serve as an advisor in the College’s complaint resolution process.

Advisors may attend meetings and interviews and confer with the party, but are not allowed to participate in or address the official(s) conducting the meeting. Meetings are scheduled based on party availability only, parties should consider the advisor’s ability to attend interviews and meetings when selecting an advisor. Parties should inform the Nondiscrimination Officer at least one business day prior to the meeting or interview if they plan to bring an advisor.

C. Supportive Measures

When the College receives a report of alleged prohibited conduct, it will assess the allegations to determine whether supportive measures pending resolution of the matter are appropriate. The Nondiscrimination Officer may initiate supportive actions, accommodations, or protective measures as necessary to protect the parties and the broader Macalester community. Such supportive actions, accommodations, and protective measures are available to the complainant, respondent, and others adversely impacted by the complaint resolution process, if requested and reasonably available.

The College determines which measures are appropriate on a case-by-case basis. Such measures are based on the particular facts and circumstances of each case. To request a supportive measure, individuals should contact the Nondiscrimination Officer.

The College retains the right to place an employee respondent on administrative leave or take other interim action necessary for the safety of the campus community during the pendency of the complaint resolution process.

D. Obligation to Act in Good Faith

Reports of alleged prohibited conduct should be made only in good faith. Reports that are not made in good faith may be a form of retaliation under this policy and/or may violate other College policies. All parties and witnesses have an obligation to be truthful in the process.

E. Confidentiality and Privacy

The College strives to protect the privacy interests of all parties involved in a report of prohibited conduct. Allegations of prohibited conduct are considered private and generally will only be shared with other College employees on a need to know basis. However, because of the need to investigate and respond to reports of alleged prohibited conduct, the College cannot guarantee strict confidentiality in most cases. Individuals with concerns regarding confidentiality may speak with the Nondiscrimination Officer about the complaint resolution process.

F. Conflicts of Interest

If a complainant or respondent is concerned an official acting under this policy has a conflict of interest or bias, such concern should immediately be reported in writing to the Nondiscrimination Officer within two (2) business days after receiving notice of the person's involvement in the process. The Nondiscrimination Officer will review the concerns and take appropriate steps to resolve conflicts of interest related to a complaint under this policy.

Any concern of a conflict of interest or bias regarding the Nondiscrimination Officer must be submitted in writing to the President of the College at president@macalester.edu. If the Nondiscrimination Officer has a conflict of interest with respect to a complaint, the President shall appoint an alternate person to oversee the complaint at issue.

VI. PROCEDURES FOR RESPONDING TO COMPLAINTS OF PROHIBITED CONDUCT

All harassment complaints, except against the College President, will be received and processed by the Nondiscrimination Officer. Official complaints against the President will be processed by the Macalester Board of Trustees or their Designee.

If a complainant wants to file a complaint, they may use any of the above reporting options and indicate that they want to file a complaint. The Nondiscrimination Officer or designee will contact the person directly.

A. Initial Review and Evaluation of Complaint

The Nondiscrimination Officer will conduct an initial review and assessment of the complaint and determine next steps. The Nondiscrimination Officer assumes responsibilities for coordinating the process and appointing trained individuals to be involved as appropriate throughout the process.

The Nondiscrimination Officer will determine the appropriate course of action that could include:

1. No Action
2. Informal Resolution
3. Formal Resolution

In evaluating a case to determine the appropriate course of action, the Nondiscrimination Officer may consider previous violations of this policy by the respondent. Appropriate notice will be given of the Nondiscrimination Officer's determination regarding the appropriate course of action.

B. No Action

Following initial review and evaluation of the complaint, the Nondiscrimination Officer may conclude that no further investigation or action is warranted, because the allegations do not raise a potential violation of this Policy. The Nondiscrimination Officer has discretion to dismiss the matter or refer the matter to other applicable College policies or procedures. If the Nondiscrimination Officer determines that the report or complaint, even if substantiated, would not be a violation of this policy, they may dismiss the matter or refer it to another applicable procedure. Notification of this determination will be provided and the complainant will be informed of other procedures for resolving the complaint and of other resources that may be available to the complainant.

C. Informal Resolution

When the College receives a report of prohibited conduct, one option available to the College and the parties is informal resolution. Informal resolution is a voluntary dispute resolution process.

The Nondiscrimination Officer will evaluate the complaint to determine whether informal resolution may be appropriate. If informal resolution may be appropriate, the Nondiscrimination Officer will explain the process to the parties. If the College and both parties agree to participate in informal resolution, a trained facilitator will be provided to aid in the resolution of the matter in a non-adversarial manner. The facilitator will not be an advocate for either the complainant or the respondent in the informal resolution process. Under the informal process, the College will only conduct such fact-finding as is useful and necessary to reach resolution.

The College will not compel 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 at any time and request a formal investigation. If at any point during the informal resolution process, the complainant, the respondent, or the College wishes to cease the informal resolution process and to proceed through the formal resolution process, the informal resolution process will stop and the formal resolution process outlined below will be invoked.

Any informal resolution must adequately address the concerns of the complainant, the rights of the respondent and satisfy the College's obligation to stop, remedy, and prevent policy violations. Informal resolution may involve the imposition of individual and community remedies designed to maximize the complainant's access to the educational, employment, and extracurricular activities of the College. The recommended resolution may also include other institutional responses, requirements, or sanctions imposed on the respondent.

The informal resolution process ends when a resolution has been reached or when the complainant, the respondent, or the College terminates the process. If the matter is resolved informally to the satisfaction of all parties, the Nondiscrimination Officer document the resolution in writing and shall maintain a record of the complaint and its resolution.

D. Formal Resolution

Generally, the process described below will be used for the formal processing of reports of prohibited conduct. The procedures set forth here reflect the College's desire to respond in good faith and in a manner that promotes fairness to all parties. Each case is unique and circumstances may require flexibility in responding to a particular case. Thus, the College reserves the right to modify the procedures or to take other administrative action as appropriate under the circumstances.

The College will strive to complete the complaint resolution process within 75 days. However, this time frame may be extended depending on the circumstances of each case.

When a 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.

1. Investigation

The Nondiscrimination Officer will designate an investigator to investigate the complaint.

The investigator will conduct the investigation in a manner appropriate to the circumstances of the case; investigations may include interviews with the complainant, the respondent, and appropriate witnesses, and gathering any relevant and available evidence. The complainant and respondent will be given an opportunity to inform the investigator of any witnesses they believe should be interviewed, and other evidence they believe should be reviewed by the investigator. The investigator has discretion to assess the relevancy of the proposed witnesses and/or evidence and determine the scope of the investigation.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair. All individuals will be treated with appropriate sensitivity and respect.

The investigation generally will be concluded within 35 days from the assignment of the investigator, but this time frame may be extended depending on the circumstances of each case.

2. Preliminary Findings Report and Decision

The investigator will complete a fact-finding report with preliminary findings. This report will be shared with the complainant and respondent. Note that reports may be partially redacted for reasons of confidentiality.

Both the complainant and respondent have the opportunity to submit a response (not to exceed 2000 words) within five (5) business days.

The Nondiscrimination Officer reviews the report and responses. If no further investigation is required, the Nondiscrimination Officer will make a final decision as to a violation of policy. The determination generally will be made within ten (10) business days following the due date for response from the parties, but this time frame may be extended depending on the circumstances of each case. The Nondiscrimination Officer will apply the preponderance of evidence standard to determine whether it is more likely than not that the respondent violated College policy.

3. Sanctions

When the Nondiscrimination Officer determines the policy was violated, they will impose sanctions and/or remedies. The Nondiscrimination Officer may consult relevant College officials in determining appropriate sanctions (e.g., the Office of Student Affairs regarding previous student conduct concerns).

- Sanctions for employees may include education, training, counseling, warnings, reprimands, transfer, demotion, or termination of employment, depending on the severity of the incident and taking into account any previous employment concerns.
- Sanctions for students may include education, training, counseling, warnings, probation, suspension, or 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, specifically termination for cause of a tenure appointment or dismissal for cause, a hearing must be held and conducted according to the Macalester College Faculty Handbook, Section 2.II.C.4.

The Nondiscrimination Officer will issue a decision to both parties in writing that outlines any policy violations and other relevant information. The respondent's written Notice of Outcome will include the decision and sanctions.

4. Appeals

The parties may appeal the outcome on one or more of the following bases:

- 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 affected the outcome of the matter;
- The decision violated academic freedom.

Appeals may be submitted to the Nondiscrimination Officer within two (2) business days of the date the written decision was sent to the parties. Appeals must be submitted in writing (not to exceed 2000 words) and should outline the basis for the appeal. Failure to file a timely appeal constitutes a waiver of any right to an appeal.

Sanctions generally will take effect immediately, notwithstanding an appeal. A request may be made to the Nondiscrimination Officer to defer the effective date of sanctions in exigent circumstances. In cases where an appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the individual to their prior status.

The Nondiscrimination Officer will designate two trained College officials to review the written appeal to determine whether the appeal states a permissible ground for appeal (as set forth above), such that the appeal will be considered. If the designated reviewers determine that the appeal states a permissible ground for appeal and will be considered, the non-appealing party will be notified of the appeal and provided an opportunity to submit a written response to the appeal. The non-appealing party's written response to the appeal (not to exceed 2000 words) must be submitted to the Nondiscrimination Officer within two (2) business days of receiving notice of the appeal.

The College will designate an appeal officer to consider the appeal. Generally, the appeal officer will be as follows: When the respondent is a student, the appeal officer is the Dean of Students or designee; when the respondent is a faculty member, the appeal officer is the Provost or designee; when the respondent is a member of the staff, the appeal officer is the Director of Employment Services or designee; and when the respondent is the President of the College, the appeal officer is the Chair of the Board of Trustees or designee. However, the College reserves the right to appoint any trained appeal officer.

The appeal officer will review the appeal and consider whether it is more likely than not that the above-listed grounds for appeal have been satisfied. If the appeal officer determines that it is more likely than not that one of the above grounds for appeal is satisfied, generally, the matter will be remanded for further investigation and/or deliberations, as determined by the appeal officer. The appeal officer will determine whether the matter should be remanded to the Nondiscrimination Officer or whether a new reviewer(s) should be assigned to the matter. If the reasons for remand relate to the investigation or warrant additional investigation, the appeal officers will determine whether the matter should be remanded to the previous investigator or whether a new investigator should be appointed. If the appeal officers determine that the appealing party has not demonstrated that it is more likely than not that one or more grounds for appeal have been satisfied, the appeal officers will dismiss the appeal. This dismissal decision is final and is not appealable.

The College will seek to complete the appeal process within ten (10) business days following the appeal officers' receipt of the appeal; however, in some cases, more time may be required.

VII. 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, or sanctions should be reported promptly to the Nondiscrimination Officer. 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, or sanctions.

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, or sanctions, the Nondiscrimination Officer may exercise discretion to determine an appropriate responsive process based on the facts and circumstances. At the Nondiscrimination Officer's discretion, options for resolution include, but are not limited to, informal discussions and resolution facilitated by the Nondiscrimination Officer, investigation and/or determination by the Nondiscrimination Officer, 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 VI: Procedures for Responding to Complaints of Prohibited Conduct. The Nondiscrimination Officer 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.

VIII. RECORDS

The Nondiscrimination Officer is responsible for maintaining the official College records of reports, informal resolutions, and formal complaints. Records related to reports, informal resolutions, 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. 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 Nondiscrimination Officer, who will maintain such records in accordance with the College's record retention requirements and applicable law. Complaints against faculty, staff, or students that result in a personnel or disciplinary action will also be a part of the respondent's personnel or disciplinary record.

IX. EFFECTIVE DATE AND RESPONSIBLE OFFICIAL

This Policy is effective July 1, 2021. This Policy amended and supersedes policies in the Student Handbook, Faculty Handbook, and Employee Handbook.

This Policy 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 discrimination or discriminatory harassment.

Responsible Official: Title IX Coordinator & Nondiscrimination Officer