

Meadows College

Policy Manual



Title IX Sexual Misconduct

Policy 9798

A. Statement of Commitment

Meadows College is committed to creating and maintaining a community dedicated to the advancement and transmission of knowledge, and creative endeavors through academic excellence, where all individuals who participate in College programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that Meadows College prohibits sexual harassment.

B. Prohibited Conduct

Meadows College prohibits Sexual Harassment. The definition of Sexual Harassment, for purposes of this policy, is found in Section F., below.

Alleged sexual harassment is only covered under this Policy if the alleged conduct occurred within the College's "education program or activity." For purposes of this Policy, "education program or activity" means locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurred.

If the alleged conduct occurs off-campus, and does not occur within the College's education program or activity, the conduct cannot be investigated and addressed under this Policy. If a complaint is accepted under this Policy, and over the course of the investigation or hearing, it is determined that the alleged conduct did not occur within the College's education program or activity, the complaint process under this Policy will be terminated.

Under some limited circumstances, off-campus conduct may be covered under this Policy. For off-campus conduct to be covered under this Policy, one of the three following conditions must be met:

- The incident occurred as part of the College's "operations";
- The College exercised substantial control over the Respondent and the context of the alleged sexual harassment; or,
- The incident occurred at an off-campus building owned or controlled by an officially recognized Meadows College student organization.

Conduct that occurs outside of the United States, including conduct taking place within a Meadows College-sanctioned study abroad program, cannot be investigated under this Policy.

Please note conduct that does not qualify as Sexual Harassment, as defined by this Policy, may still be addressed through other policies and processes, such as those under the College's Code of Conduct, Civil Rights Policy, and/or any other applicable policy adopted by the College.

C. Advisor/Support Person

The Complainant and Respondent may each have an Advisor of their choosing present with them at all meetings and any hearing associated with a sexual misconduct complaint. The Advisor may be, but is not required to be, an attorney. The Advisor can include a current member of the faculty as staff, so long as the individual is not also a witness in the matter.

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D. Investigation Process

The College will promptly investigate the complaint. At the onset of the investigation, the Title IX Coordinator will provide both Complainant and Respondent a Notice of Investigation. The Notice of Investigation will include:

1. The identities of the Parties (if known);
2. A summary of the alleged conduct, including the date(s), time(s), and location(s) of incident(s) (if known);
3. The sections of this policy alleged to be violated by the conduct;
4. A description of the investigation, hearing, and resolution procedure;
5. A statement the Respondent is presumed not responsible until a determination of responsibility is made following the investigation, hearing, and resolution procedure;
6. A notice of whether interviews will be recorded, and that only the Investigator is permitted to record;
7. A description of the Parties' opportunities to present, inspect, and review evidence;
8. A statement that findings will be based on a Preponderance of the Evidence Standard;
9. The estimated timeline for completion of the investigation; and
10. Information about the Parties' rights to an Advisor, who may be an attorney, and a Support Person.

If additional allegations are identified during the course of an investigation, the Notice of Investigation will be amended and provided to the Parties.

Gathering Evidence. Both Parties will be provided equal opportunity to meet with the Investigator, submit evidence, and identify relevant witnesses. The investigator will take reasonable steps to gather relevant evidence. The investigator will document the steps taken to gather evidence, even when those efforts are not successful.

Report of Evidence. Prior to issuing a final Investigative Report, the investigator will assemble a Report of Evidence. This Report of Evidence will include all relevant information gathered over the course of the investigation. It shall include: the allegations; the material facts; and the evidence presented and considered.

The investigator shall distribute the Report of Evidence to both Parties via electronic transmission. The Parties have five (5) business days to review and respond to the Report of Evidence. Extensions can be granted for good cause at the discretion of the Title IX Coordinator. Any extension must be provided to both Parties.

In responding to the Report of Evidence, the Parties may identify additional documentary evidence, witnesses, and may request the investigator ask specific questions of the other Party and witnesses.

The investigator has the discretion to determine if the proposed evidence, witnesses, and questions are relevant to the matters under investigation. The investigator shall document what evidence they considered and their rationale for not pursuing and/or considering additional evidence suggested by the Parties.

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Final Investigative Report. The Final Investigative Report will include all of the information included in the Report of Evidence, as well as additional relevant information received and gathered during the Evidence Review period.

The Final Investigative Report will also include a description of all material disputed and undisputed facts.

Distribution Process. Upon completion of the Final Investigative Report, the Title IX Coordinator shall provide a copy of the Report and distribute a written notice to the Parties. The written notice will include:

1. An explanation of any interim measures that will remain in place;
2. A statement that the Complainant and/or Respondent may submit a statement in response to the Final Investigative Report;
3. A statement that the Hearing Coordinator will initiate contact to schedule a hearing. Notice of the Parties' rights to request a hearing; and
4. A reminder to review the Sexual Misconduct and Dating Violence policy for an understanding of next steps.

E. Hearing

Upon receipt of the Final Investigative Report, the Title IX Coordinator shall assign a Hearing Officer and a Hearing Coordinator.

Hearing Coordinator. The Hearing Coordinator's duties include: scheduling the Hearing, corresponding with Parties before and after the Hearing, providing the Hearing Officer with all relevant documentation, distributing Hearing Packets to all Parties, and securing a location for the Hearing. The Hearing Coordinator will act as liaison between the Parties and the Hearing Officer on procedural matters.

Hearing Officer. The Hearing Officer shall be properly trained in the College's Title IX Sexual Misconduct Policy and will have received yearly training on trauma-informed forensic interviewing. Any objections to an appointed Hearing Officer will be made in writing to the Hearing Coordinator within three (3) business days after notice of the identity of the Hearing Officer has been provided. The objection must be based on an actual conflict of interest or bias. The College's Vice President of Student Conduct will determine if a conflict of interest exists.

The Hearing Officer is responsible for:

1. Determining the scope of the Hearing;
2. Deciding any procedural issues for the Hearing;
3. Identifying witnesses who should provide testimony at the Hearing;
4. Excluding information and/or witness testimony that is irrelevant in light of the Hearing scope, not in dispute, or unduly repetitive; and
5. Make any other determinations necessary to ensure an orderly, productive, and procedurally proper hearing.

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Pre-Hearing Procedures. Prior to the Hearing, both Parties shall be provided an opportunity to meet with the Hearing Coordinator and Hearing Officer for a Pre-Hearing Conference. The purpose of the Pre-Hearing Conference is to discuss logistics of the Hearing. No substantive matters may be discussed at the Pre-Hearing Conference. Parties will be given an opportunity to ask questions about the hearing process.

At least ten (10) business days before the hearing, each Party shall provide the following information to the Hearing Coordinator:

1. The name and contact information for the Party's Advisor and/or Support Person (if any);
2. A proposed witness list, including names and contact information, an explanation of the relevance of the proposed witnesses' testimony, and the disputed issues to which the witnesses' testimony relates; and
3. Any documents the Party wants the Hearing Officer to consider. The Parties should not submit documents already attached to the Final Investigative Report. Parties must also include an explanation of the relevance of the proposed documents.

The Hearing Officer will make all determinations regarding pre-hearing matters, including witness participation and questions.

At least five (5) business days before the Hearing, the Hearing Coordinator will:

1. Notify each witness of the date, time, and location of the Hearing; and
2. Distribute the Hearing Packet to the Parties and the Hearing Officer. The packet shall be approved by the Hearing Officer prior to distribution and shall include the following:
 - a. The Final Investigative Report with attachments (this should include any written complaints and Investigation Notices);
 - b. Response Statements submitted by the Parties (if submitted);
 - c. Notice of Hearing;
 - d. List of witnesses requested to provide testimony at the Hearing; and
 - e. Any additional document proposed by the Parties that have been accepted by the Hearing Officer.

The Hearing Coordinator will request student witnesses attend the Hearing, provided that such witnesses are timely identified by the Parties and approved by the Hearing Officer. Student witnesses are not required to participate in the Hearing; however, their participation is strongly encouraged.

Hearing Process. The Hearing will commence with an overview of the Hearing process given by the Hearing Officer. The Hearing Officer will determine the order of witness testimony. Generally, the Hearing will proceed as follows:

1. Investigator testimony
2. Complainant testimony
3. Respondent testimony
4. Additional witness testimony

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No opening or closing statements are permitted. Aside from their role during questioning, Advisors are not permitted to speak during the Hearing. The entire Hearing shall be audio recorded.

The Hearing Officer may allow the Complainant, Respondent, and/or witnesses to be physically separated during the Hearing. This may include, but is not limited to, a separate physical location, videoconference, and/or any other appropriate technology. To assess credibility, the Hearing Officer must be able to have sufficient access to the Complainant, Respondent, and any witness presenting information.

The Complainant and Respondent have the right to be present to hear testimony of all individuals who testify at the Hearing. They have the right to see an individual as that individual provides testimony. Further, the Parties have the right to have their Advisor ask questions of all individuals who testify at the Hearing. At no time may a Party directly question any individual providing testimony.

The Hearing Officer will determine the order of questions. The Hearing Officer may ask questions at any time of any Party providing testimony during the Hearing. The Hearing Officer will permit a Party's Advisor to pose questions for the other Party(ies) and witnesses. The Hearing Officer will evaluate each question asked. The Hearing Officer will direct a Party/witness not to answer questions that are unduly repetitive, not relevant, unduly time consuming, argumentative or harassing. The Parties are not permitted to ask questions of other Parties or witnesses directly.

If a Party does not have an Advisor at the commencement of the Hearing, the College will provide the Party with an Advisor, for the purpose of assisting the Party with questioning during the Hearing. If Parties know they will not have their own Advisor at the Hearing, they are encouraged to notify the Hearing Coordinator of this fact as soon as possible.

The Hearing will be audio recorded. The recording is the property of the College. No other recording of the Hearing is permitted.

Formal rules of evidence will not apply.

If either Party fails to appear at the Hearing without good cause, the Hearing will proceed. Whether good cause exists is determined by the Hearing Officer. If good cause exists, the Hearing Officer may reschedule the Hearing.

Abusive or otherwise disorderly behavior that causes a material disruption is not tolerated. The Hearing Officer may eject or exclude anyone whose behavior causes a material disruption.

Hearing Decision. The Hearing Officer will deliberate in private and reach a decision based on a preponderance of the evidence standard. The Hearing Officer shall take into account the record developed by the investigator and the evidence presented at the Hearing. The Hearing Officer shall make findings and credibility determinations based on all the evidence presented. The Hearing Officer shall not rely on prior statements made by the Parties or witnesses during the investigation whose credibility is central to the determination unless those Parties or witnesses make themselves available for questioning by the Hearing Officer.

The Hearing Officer will summarize their decision in a written report including the following:

1. A statement of the Hearing scope;
2. A summary of the Hearing process;
3. A summary of the information considered by the Hearing Officer;

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4. The decision of the Hearing Officer and the rationale for the decision, including any credibility determinations; and
5. If a policy violation is found, any aggravating or mitigating circumstances that may impact the sanctions issued.

Sanctions. Sanctions shall be determined by the Vice President of Student Conduct. Any violation of this policy can result in serious sanctions, up to and including dismissal from Meadows College.

Written Appeal. Any Complainant or Respondent not satisfied with the hearing outcome may file an appeal with the President of Student Conduct no later than fifteen (15) business days after the decision letter. The appeal will be in writing and will be based only on one or more of the following:

1. The outcome is not reasonable based on the evidence available to the Hearing Officer;
2. Procedural errors impacted the outcome;
3. New material evidence that was unknown and unavailable at the time of the Hearing is now available and should be considered; or
4. The sanction(s) imposed are an abuse of discretion based on the substantiated conduct.

The President of Student Conduct will evaluate and respond to any written appeal. After the President's decision is issued, there are no further appeal rights available to either Party.

F. Definitions

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- a) An employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (also known as *quid pro quo sexual harassment*).
 - o Note: Complainant's statement that they found the conduct to be unwelcome is sufficient to constitute "unwelcome conduct."
- b) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity.
 - o Note: "Unwelcome conduct" depends on a variety of factors and must be evaluated in light of the known circumstances.
 - o Note: "Severe, pervasive, and objective" must be evaluated in light of the known circumstances, and is dependent on the facts in each situation. However, this element must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.
- c) Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
 - o Note: A single instance of any conduct as defined below is sufficient to constitute sexual harassment. Any instance of any of the conduct defined below does not need to

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demonstrate severity, pervasiveness, objective offensiveness, or denial of equal access to education or employment, because denial of equal access is assumed.

Sexual Assault. As defined in the Clery Act (20 USC 1092(f)(6)(A)(v)), Sexual Assault is: an offense that meets the definition of rape, fondling, incest, or statutory rape, as used in the FBI's Uniform Crime Reporting (UCR) Program. The relevant FBI UCR definitions are as follows:

Rape. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

Fondling. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or permanent mental incapacity.

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 California, the statutory age of consent is 18.

Dating Violence. As defined in VAWA (34 USC 12291(a)(10)), Dating Violence is: violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and,
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and,
 - The frequency of interactions between the persons involved in the relationship.

Domestic Violence. As defined in VAWA (34 USC 12291(a)(8)), Domestic Violence is: acts that include felony or misdemeanor crimes of violence committed by one of the following:

- a current or former spouse or intimate partner of the Complainant;
- a person with whom the Complainant shares a child in common;
- a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California; or,
- Any other person whose acts on an adult or youth Complainant is protected from under the domestic or family violence laws of the state of California.

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Stalking. As defined in VAWA 34 USC 12291(a)(30), Stalking is: engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others; or,
- Suffer substantial emotional distress.

Affirmative Consent: Affirmative, conscious, and voluntary agreement to engage in sexual activity. Affirmative consent to sexual activity requires of both persons an affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion.

- It is the responsibility of each person involved in the sexual activity to ensure that s/he has the Affirmative Consent of the other participant(s) to engage in the sexual activity.
- Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be voluntary, and given without coercion, force, threats or intimidation.
- The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent. A request for someone to use a condom or birth control does not, in and of itself, constitute Affirmative Consent.
- Affirmative Consent cannot be given by a person who is incapacitated.
- It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was incapacitated.
- It shall not be a valid excuse that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:
 - The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.

Incapacitation: A person is unable to consent to sexual activity because of incapacitation, if:

- The person was asleep or unconscious;
- The person was incapacitated due to the influence of drugs, alcohol, or medication so that the person could not understand the fact, nature, or extent of the sexual activity.

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Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making ability, awareness of consequences, and ability to make informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.