

# Endicott College

## Sexual and Interpersonal Misconduct Policy (SIM Policy)

### **1. Glossary**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct by a Respondent and requesting that Endicott College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of information about harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Endicott College is in normal operation.
- *Education program or activity* means locations, events, or circumstances over which Endicott College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by Endicott College.
- *Final Determination*: A conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means a method of formal resolution designated by Endicott College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker/panel* refers to those who have decision-making and sanctioning authority within Endicott College’s Formal Grievance process.
- *Investigator* means the person or persons charged by Endicott College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Endicott College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.<sup>1</sup>

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<sup>1</sup> Not to be confused with individuals mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this policy.

- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of Endicott College explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of Endicott College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Prohibited Conduct* is conduct prohibited by this policy, as defined below.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Endicott College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by Endicott College on a Respondent who is found to have violated this policy.
- *Title IX Coordinator* is at least one official designated by Endicott College to ensure compliance with Title IX and Endicott College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator.

## **2. Rationale for Policy**

Endicott College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from Prohibited Conduct. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Endicott College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in matters that concern alleged conduct that falls within the scope of this policy. Endicott College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of Prohibited Conduct, as defined below. When an alleged violation of this policy is reported, the allegations are subject to resolution using Endicott College's procedures, as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Endicott College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Endicott College community. This community includes, but is not limited to, students,<sup>2</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **4. Title IX Coordinator**

Christy Galatis serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Endicott College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent Prohibited Conduct as defined in this policy.

## **5. Independence and Conflict-of-Interest**

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Endicott College's President:

Bryan Cain, (Interim) President  
Endicott College  
376 Hale Street  
Beverly, MA 01915  
978.232.2000

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<sup>2</sup> For the purpose of this policy, Endicott College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Endicott College.

Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to Endicott College's President (see contact information above) or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to the Title IX Coordinator outlined on Endicott College's Title IX web page.

Endicott College has also classified most employees as Mandated Reporters, who are required by College policy to report to the Title IX Coordinator any information they have that indicates that a member of the College community is experiencing or has experienced sexual harassment and/or retaliation.

The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

For complaints involving employees, inquiries may be made externally to:

Equal Employment Opportunity Commission (EEOC) Equal Opportunity Commission  
JFK Federal Building  
15 New Sudbury Street, Room 475  
Boston, MA 02203-0506  
800.699.4000

## **7. Notice/Complaints of Sexual Harassment and/or Retaliation and Initial Communications**

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the Title IX Coordinator or a Deputy Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed on the College's Title IX web page.

A formal complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Endicott College investigate the allegation(s).

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this

paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Endicott College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

The College encourages the reporting of perceived misconduct and/or allegations that fall within the scope of this policy, regardless of where the offense occurred, so that the College can address the allegations as appropriate under this policy or other College Policies.

#### **a. Information for Complainants**

Complainants will be provided with information on where to receive immediate emergency assistance following an incident of sexual misconduct, which shall include, but not be limited to, information related to preserving evidence and contact information for seeking medical treatment on campus, if available, and off campus.

In this regard, the College will emphasize that it is important to preserve all possible evidence that may assist in proving that misconduct prohibited by this policy may have occurred or is occurring, in case a Complainant decides to submit a formal complaint or decides at some later point to file an internal complaint, make a criminal complaint or seek a protection order. The medical staff at the following off campus medical facilities can provide emergency care for any physical injuries a Complainant may have sustained, can test for sexually transmitted infections and/or pregnancy (if applicable), and/or can provide an examination by a Sexual Assault Nurse Examiner (SANE) (a SANE is a nurse who is specially trained to collect forensic evidence):

MDPH Designated SANE Hospitals:  
Lawrence General  
Lowell General  
Massachusetts General Hospital (MGH)  
Brigham and Women’s Hospital  
Boston Medical Center

If a Complainant wishes to have a SANE exam and the incident occurred within the last 24 hours, they should try if possible to preserve any evidence before their medical exam by not washing or changing clothes, brushing teeth or hair, eating, or taking other actions that might compromise evidence. If clothes have been removed they should be placed in a paper, not plastic, bag and brought to the medical exam.

Even if more time has passed, it may still be possible to collect evidence, and it is certainly possible to receive medical care and testing. Collecting evidence in no way obligates a Complainant to file a complaint with the College or make a report to the police that could lead to criminal prosecution, but preserves this information in the event that the Complainant decides to do either of those things, or seek a protection order, at a later date. The Complainant may contact the Regional SANE Coordinator for Assistance, at 978-478-8138. For more information about rape kits and forensic exams you can call the National Sexual Assault Hotline at 800.656.HOPE (4673).

In addition to trying to preserve any physical evidence, parties should if possible try to preserve all evidence related to an incident including any electronic information, text messages, social media posts, phone records, emails, clothing, or other documentation or materials. Such information could be helpful if needed in connection with a formal complaint, or at a later date.

Complainants will also be informed of resources that provide counseling and health, safety, academic and/or other support services available from the College or through a local community-based rape crisis center or domestic violence program, including, for example, the following resources:

North Shore Rape Crisis Center ~ 800-922-8772

Boston Area Rape Crisis Center ~ 617-492-7273

RAINN ~ 800-656-4673

Complainants will also be informed of their rights to: notify or decline to notify law enforcement, including Endicott College, local and state police, of an alleged incident of misconduct covered by this policy, as applicable; receive assistance from College authorities in making any such notification; (C) obtain a court-issued protective order<sup>3</sup> or an institution-issued no-contact order against an alleged perpetrator of such misconduct, as applicable; and concurrently utilize the College's process for investigating complaints of such misconduct and any external civil or criminal processes available to the Complainant.

## **8. Supportive Measures**

Endicott College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Endicott College's education program or activity, including measures designed to protect the safety of all parties or Endicott College's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator will promptly make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Endicott College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already.

The Title IX Coordinator will work with the Complainant and Respondent to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

Endicott College will maintain the privacy of supportive measures, to the extent that maintaining such privacy does not impair Endicott College's ability to provide the supportive measures. Endicott College will act to ensure as minimal an academic/occupational impact on the parties as possible.

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

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)

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<sup>3</sup> If a Complainant has received a protective order from a federal or state court they should notify the College's Title IX Coordinator and/or the Endicott College Department of Public Safety and Police that the order has been issued. The College will work with the Complainant to promote compliance with the order and take action if the Complainant reports to the College that the order has been or is being violated.

- Altering work arrangements for employees or student-employees
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Otherwise providing options for changing academic, living, campus transportation or working arrangements

Alleged violations of no contact orders and similar measures will be referred to appropriate student or employee conduct processes for resolution.

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

### **Title IX Sexual Harassment Matters**

In matters that involve alleged Title IX Sexual Harassment as defined above, Endicott College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual arising from the alleged Prohibited Conduct justifies removal.

This risk analysis is performed by the College's Department of Public Safety in conjunction with the Office of Title IX and other College officials and/or teams as appropriate.

In all cases in which an emergency removal is imposed, the student/Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. The student/Respondent may be accompanied to such a meeting by an advisor of their choice who is permitted to advise the student/Respondent during the meeting, but is not otherwise permitted to advocate for the student/Respondent or interfere with the meeting. A request for such a meeting should be made within 7 calendar days of when the student/Respondent receives notice of the emergency removal.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

A Complainant and their Advisor (subject to the same scope of participation as applies to student/Respondent advisors, noted above) may be permitted to participate in this meeting and/or be permitted to provide related information to the Title IX Coordinator if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to sexual harassment or retaliation. There is no appeal process for emergency removal decisions. Violation of the terms of an emergency removal under this policy will be referred to student or employee conduct procedures and may be grounds for discipline, which may include expulsion or dismissal.

The College may also take emergency actions short of a complete removal from all student or employment activities, which could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, alternative coursework options, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or

intercollegiate/intramural athletics.

Where the Respondent is an employee, existing provisions for interim action and/or administrative leave are applicable, and nothing in this policy will limit the College's discretion to impose paid or unpaid administrative leaves.

### **Non-Title IX Misconduct Matters**

In matters that involve alleged Non-Title IX Misconduct but not alleged Title IX Sexual Harassment, the College may decide at its discretion to suspend a student respondent on an interim basis, that is, while an investigation and resolution process is pending. The determination of whether to impose an interim suspension will be made by the Title IX Coordinator in consultation with other College officials as appropriate. A respondent may be suspended on an interim basis when the College has received information which indicates that the respondent's continued presence on campus will likely have a serious effect on the physical, mental, or emotional health, safety or well-being of another person, when physical safety is threatened, or when the ability of the College to carry out its operations is threatened or impaired. The College may permit written challenges to such decisions at its discretion, through procedures determined by the College to be appropriate under the circumstances of a particular case.

Where the Respondent is an employee, existing provisions for interim action and/or administrative leave are applicable, and nothing in this policy will limit the College's discretion to impose paid or unpaid administrative leaves.

### **10. Promptness**

All allegations will be acted upon promptly by Endicott College once it has received notice or a formal complaint.

Any time a specified timeframe for resolution outlined in Endicott College procedures will be delayed, Endicott College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **11. Privacy**

Every effort is made by Endicott College to preserve the privacy of reports.<sup>4</sup> Endicott College will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. In other words, the College will not disclose the identity of the Complainant or the Respondent, except as necessary to carry out the applicable disciplinary process or as permitted under state or federal law.

Endicott College reserves the right to determine which Endicott College officials have a legitimate

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<sup>4</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Endicott College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in Endicott College's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in Endicott College's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Endicott College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 26. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is an obligation to make disclosure under applicable Massachusetts law; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-personally-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Information will be shared as necessary with Investigators, Hearing Panel members, Decision-maker(s), witnesses, and the parties. The circle of people with this knowledge will be kept as small as practicable to preserve the parties' rights and privacy, consistent with the College's need to take steps outlined in this policy.

Endicott College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

## **12. Jurisdiction of Endicott College**

This policy applies to the education program and activities of Endicott College, to conduct that takes place on the campus or on property owned or controlled by Endicott College, at Endicott College-sponsored events, or in buildings owned or controlled by Endicott College's recognized student organizations. The respondent must be a member of Endicott College's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to Endicott College's educational program, or to conduct that allegedly occurred off campus and outside a program or activity of the College that involves members of the Endicott College community and falls within the scope of this policy and the definitions of Prohibited Conduct stated below.

If the Respondent is unknown or is not a member of the Endicott College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Endicott College's community, supportive measures, remedies, and resources may be accessible to the Complainant through the Title IX Coordinator, as described above.

In addition, Endicott College may take other actions to protect the Complainant against third parties as appropriate and reasonably available, such as barring individuals from Endicott College property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with appropriate officials at that institution, as it may be possible to address alleged misconduct through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to Endicott College where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Endicott College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When a notice/complaint is affected by significant time delay, Endicott College will apply the policy and misconduct definitions in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint, unless both parties consent to a different approach.

#### **14. Online Sexual Harassment and/or Retaliation**

The policies of Endicott College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Endicott College's education program and activities or use Endicott College networks, technology, or equipment and the allegations, if established through an investigation, would constitute a violation of College policy.

Although Endicott College may not control websites, social media, and/or other venues in which harassing communications are made, when such communications are reported to Endicott College, it will engage in a variety of means intended to address and mitigate the effects of such communications.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, sending unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, engaging in breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Endicott College community.

#### **15. Policy on Nondiscrimination**

In compliance with Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and all other applicable Federal and State nondiscrimination laws, Endicott College does not discriminate on the basis of race, creed, color, religion, sex, sexual orientation, gender identity, gender expression, disability, age, marital status, national origin, ethnicity or veteran status, or on any other basis prohibited by federal or state law, in the employment or in the application, admission, operation, participation, access and treatment of employees and students in any of the College's programs and activities. Specifically regarding Title IX, Title IX and its regulations require the College not to discriminate on the basis of sex in the educational programs and activities that it operates, including but not limited to admissions and employment. Title IX Sexual Harassment and Non-Title IX Sexual Harassment as defined below will be addressed through this policy.

Allegations of disparate treatment discrimination on the basis of sex, pregnancy, sexual orientation, gender identity, gender expression or other protected characteristics referenced immediately above that do not fall within the definitions of Prohibited Conduct stated in this policy will be addressed through Endicott College's Non-Discrimination and Anti-Harassment Policy.

#### **16. Prohibited Conduct Definitions**

Endicott College has adopted the following definitions of Prohibited Conduct.

Acts of Prohibited Conduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender identity and/or gender expression of those involved.

This policy prohibits the following forms of misconduct, collectively referred to throughout the policy as "Prohibited Conduct"<sup>5</sup>:

**Title IX Sexual Harassment** (i.e., *Quid Pro Quo* Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and

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<sup>5</sup> The definitions of dating violence, domestic violence, sexual assault, and stalking used in this policy are consistent with the Jeanne Clery Campus Safety Act ("Clery Act"), and Title IX and the 2020 Title IX regulations. In its primary prevention and awareness programs for incoming students and new employees, as well as in its primary prevention and awareness programs for students and employees, the College will include the definitions of dating violence, domestic violence, sexual assault, and stalking under the criminal law of Massachusetts. However, the College utilizes its own definitions of these prohibited behaviors, which are consistent with the Clery Act and Title IX and the 2020 Title IX regulations as set forth below, for purposes of this policy, and determines responsibility for violations of this policy through its own procedures and standards of proof (i.e. by a preponderance of the evidence standard), not through the procedures or standards of proof employed in the criminal justice system.

sex-based Stalking within the scope of Title IX); and

**Non-Title IX Misconduct** (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking outside the scope of Title IX, Sexual Exploitation as defined below, and Retaliation).

Students: Matters that involve allegations that an Endicott College student committed Title IX Sexual Harassment and/or Non-Title IX Misconduct will be addressed through the procedures specified below.

Employees: Matters that involve allegations that an Endicott College employee committed Title IX Sexual Harassment will be addressed through the procedures specified below, as will matters that involve allegations that an Endicott College employee committed both Title IX Sexual Harassment and Non-Title IX Misconduct in their interactions with or conduct toward a Complainant. By contrast, matters that involve allegations that an Endicott employee or other non-student Respondent committed Non-Title IX Misconduct but not Title IX Misconduct will be referred to Human Resources, and will be addressed by Human Resources through Human Resources policies and procedures, and not by the procedures specified below.

Title IX Sexual Harassment and Non-Title IX Misconduct are defined as follows for purposes of this Policy:

### ***Title IX Sexual Harassment***

“Title IX Sexual Harassment” is a subset of Prohibited Conduct. Under Department of Education regulations (see 34 C.F.R., Part 106) issued in May 2020 (“2020 Title IX regulations”) to implement Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., the College is required to prohibit certain forms of sexual harassment as defined in those regulations. Title IX Sexual Harassment is Prohibited Conduct in the form of Title IX *Quid Pro Quo* Sexual Harassment, Title IX Severe, Persistent and Pervasive Sexual Harassment, Title IX Sexual Assault, Title IX Dating Violence, Title IX Domestic Violence, or Title IX Stalking as defined below, that is committed by or against students and/or employees in an education program or activity of the College, in the United States, on or after August 14, 2020. Further, in order for the College to consider a formal complaint of such misconduct as falling within its Title IX Sexual Harassment policy and procedures, the complainant must be participating in or attempting to participate in a College program or activity at the time the complaint is filed.

Conduct takes place within the College’s “programs and activities” when that conduct occurs: (1) in a location, at an event, or in a circumstance where the College exercises substantial control over both the respondent and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized by the College. Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to have occurred in a program or activity of the College.

A complaint about conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct within the definition of Non-Title IX Misconduct as defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

### ***Title IX Quid Pro Quo Sexual Harassment***

*Quid Pro Quo* Sexual Harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States on or after August 14, 2020, by which an employee of the College conditions the provision of an aid, benefit, or service of the College on a student’s or employee’s participation in unwelcome sexual conduct.

### ***Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment***

Severe, Pervasive and Objectively Offensive Sexual Harassment for purposes of the Title IX Sexual

Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States on or after August 14, 2020, that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to a College education program or activity. Determinations of whether a complainant has been denied equal access will be made by comparing the complainant's access to education to that of a similarly situated person who is not suffering the alleged sexual harassment.

### ***Title IX Sexual Assault***

As required by the 2020 Title IX regulations, the College's Title IX Sexual Assault definition incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program, and therefore defines Title IX Sexual Assault for purposes of this Policy as conduct of the following types committed by or against a College student or employee in an education program or activity of the College in the United States on or after August 14, 2020:

- **Rape:**<sup>6</sup>
  - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be complainants under this definition);
  - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, "private body parts" includes breasts, buttocks, or genitals, whether clothed or unclothed);
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law in the place where the conduct occurred; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent where the conduct occurred (in Massachusetts, the age of consent is 16).

Sexual assault can be committed by any person against any other person, regardless of gender, gender identity, gender expression, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

Any incident falling within this definition of Sexual Assault is a violation of College policy and is prohibited.

### ***Title IX Dating Violence***

Title IX Dating Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States on or after

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<sup>6</sup> Both completed rape and attempted rape are prohibited by this Policy.

August 14, 2020 that constitutes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence. Any incident falling within this definition is a violation of College policy and is prohibited.

### ***Title IX Domestic Violence***

Title IX Domestic Violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States on or after August 14, 2020 that constitutes a felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.<sup>7</sup>

Any incident falling within this definition is a violation of College policy and is prohibited.

### ***Title IX Stalking***

Title IX Stalking for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of the College in the United States on or after August 14, 2020 that constitutes engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

For purposes of this definition—

(A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means,

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<sup>7</sup> Massachusetts G.L. Part II, Title III, Section 209A protects "family and household members" from abuse, and "family and household members is defined simply as individuals who "are or were residing together in the same household." Thus, I noted that the generic ATIXA definition in the policy that Endicott was using (below) excludes roommates who are living together in a non-intimate capacity, but that exclusion is not supported by Massachusetts law. Massachusetts G.L. Part II, Title III, Section 209A protects "family and household members" from abuse, and "family and household members is defined simply as individuals who "are or were residing together in the same household." Thus, in Massachusetts, violence between roommates should be addressed under a Title IX policy and counted as domestic violence in the College's Clery Act reporting.

follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above (i.e., the behaviors or activities would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress): (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome; (2) use of online, electronic or digital technologies, such as posting pictures or text in chat rooms or on websites, sending unwanted or unsolicited e-mail or talk requests, posting private or public messages on Internet sites, social networks, and/or school bulletin boards, installing spyware on a person's computer, or using Global Positioning Systems (GPS) or similar technology to monitor a person; (3) pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person; (4) surveillance or other types of observation, including staring and voyeurism; (5) trespassing; (6) vandalism; (7) non-consensual touching; (8) direct verbal or physical threats against a person or a person's family member, pet or personal property; (9) gathering information about a person from friends, family, or co-workers; (10) accessing private information through unauthorized means; (11) threats to harm self or others; (12) defamation and/or lying to others about the person; and (13) using a third party or parties to accomplish any of the above.

Behaviors or activities that fall within this definition are violations of College policy and are prohibited.

#### ***Non-Title IX Misconduct***

Non-Title IX Misconduct is Prohibited Conduct that falls within the scope of this policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within an education program or activity of the College in the United States on or after August 14, 2020.

Behavior that falls within the definition of Non-Title IX Misconduct violates College policy and is prohibited. Such conduct is defined for purposes of this Policy as:

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

Non-Title IX Sexual Harassment is a form of sex discrimination that includes:

(A) unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that has the purpose or effect of substantially interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, shared living, or educational environment, and

(B) unwelcome conduct that is sufficiently severe or pervasive as to interfere with an individual's equal access to or participation in a College program or activity, on the basis of sex, sexual orientation, gender identity, or gender expression.

The College will determine whether conduct falls within this definition by using both an objective standard (that is, would a reasonable person experience the conduct as intimidating, hostile or offensive as defined here) and a subjective standard (that is, did the person actually perceive the conduct as intimidating, hostile or offensive as defined here).

Examples of sexual harassment include, but are not limited to the following, when such acts or behavior come within the above definition:

(A) touching or grabbing any part of a person's body in a manner that is sexual or offensive on the basis of sex, sexual orientation, gender identity or gender expression (but that does not constitute "fondling", which is a form of Title IX Sexual Assault or Non-Title IX Sexual Assault as defined above and below) after that person has indicated, or it is known or should be known, that such physical contact is unwelcome;

(B) continuing to ask a person to socialize on or off-campus when that person has indicated that they are not interested;

(C) displaying or transmitting sexually suggestive pictures, objects, cartoons, messages, web links or posters if it is known or should be known that the behavior is unwelcome;

(D) continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;

(E) referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;

(F) regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;

(G) communicating derogatory or provoking remarks about or relating to a person's sex, gender identity, gender expression or sexual orientation; or

(H) directing harassing acts or behavior against a person on the basis of their sex, gender identity, gender expression or sexual orientation; or

Sexual Harassment that meets the definition of Title IX Sexual Harassment outlined above will be addressed under the procedures for Title IX Sexual Harassment provided in this Policy.

Endicott College recognizes, as stated in its Campus Communications statement, that freedom of expression, the right to agree and disagree, the spirit of inquiry, and the free exchange of thought are essential in an open society, and that as part of society, each institution of higher education must help maintain these rights for all who are part of its concern. Endicott presumes that all students and staff members who exercise their rights in these areas will do so with full responsibility. This responsibility extends to other individuals who may either agree or disagree and extends to the institution itself, its well-being, its physical property, and its reputation.

This recognition is therefore an important element in the objective "reasonable person" standard used in judging whether sexual harassment has occurred. This policy is meant neither to proscribe nor to inhibit discussion, in or out of the classroom, of complex, controversial or sensitive matters, when in the judgment of a reasonable person they arise appropriately and with respect for the dignity of others.

Endicott College also recognizes, however, that verbal conduct can be used specifically to intimidate or coerce and to inhibit genuine discourse, free inquiry and learning. Such abuses are unacceptable. If someone believes that another's speech or writing is offensive, wrong or hurtful, they are encouraged to express that judgment in the exercise of their own free speech or to seek redress under this policy or other College policies as appropriate.

### ***Non-Title IX Sexual Assault***

Sexual Assault (i.e., rape, fondling, incest or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the College in the United States, and attempts to commit such misconduct.

### ***Non-Title IX Domestic Violence***

Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the College in the United States on or after August 14, 2020.

### ***Non-Title IX Dating Violence***

Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the College in the United States on or after August 14, 2020.

### ***Non-Title IX Stalking***

Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the College in the United States on or after August 14, 2020, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the complainant on the basis of sex.

### ***Non-Title IX Sexual Exploitation***

Non-Title IX Sexual Exploitation occurs when one person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise fall within one of the other categories of Prohibited Conduct defined above. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy; prostituting another person; nonconsensual digital, video, or audio recording of nudity or sexual activity; unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity involving a member of the College community; engaging in voyeurism; going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex); knowingly exposing someone to or transmitting an STI, STD, or HIV to another person; intentionally or recklessly exposing one's genitals in nonconsensual circumstances; or, in circumstances that do not violate the prohibition of rape stated above, intentionally removing a condom without the knowledge of another person while engaged in penetrative sexual activity.

### ***Force, Coercion, Consent, and Incapacitation***

The following additional definitions of force, coercion, consent and incapacitation will be used when interpreting the term "consent" as used in the definitions of Prohibited Conduct stated above:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the

responsibility of each party to determine that the other has consented before engaging in a sexual activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent to a sexual activity can also be withdrawn once given; for purposes of this policy the withdrawal of consent should be communicated reasonably and clearly. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Endicott College to determine whether or not its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who they know, or who a reasonable, sober person should know, is incapable of giving consent.

It is a defense to an alleged violation of this policy that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person in the Respondent's position is both sober and exercising sound judgment. It is not a defense to an alleged violation of this policy if a Respondent failed, because of the Respondent's impairment, to appreciate that the Complainant was physically and/or mentally incapacitated.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent. Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, or a "blackout" state (i.e., alcohol-induced amnesia without objectively-observable indicators of incapacitation; in other words, if a reasonable person in the Respondent's position neither knew nor should have known that the Complainant was incapacitated, the Complainant would not be deemed incapacitated only because they are not able to remember some or all of the sexual activity in question).

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **17. Prohibited Retaliation**

Retaliation is also Prohibited Conduct within the scope of this policy. Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner

in an investigation, proceeding, or hearing regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Misconduct). Retaliation is strictly prohibited.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitute retaliation, as do any adverse action taken against a person because they have made a good faith report of Prohibited Conduct or participated in any proceeding under this policy. Retaliation may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under this policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this Policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

The College will not engage in, and will investigate and address, reports of retaliatory conduct. Retaliation under this Policy may be found whether or not the underlying complaint is ultimately found to have merit.

Any person who believes that they have been subjected to such retaliation should follow the complaint resolution procedures outlined in this Policy. Complaints of retaliation will be addressed through the procedures for Non-Title IX Misconduct outlined below.

## **18. Mandated Reporting**

All Endicott College employees (faculty, staff, administrators) who are not Confidential Resources identified immediately below are expected to report actual or suspected Prohibited Conduct or retaliation to appropriate officials immediately.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested that the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Endicott College for a Complainant or third party (including parents/guardians when appropriate):

### **a. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

## **b. Mandated Reporters and Formal Notice/Complaints**

All employees of Endicott College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures made in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from Endicott College.

Supportive measures may be offered as the result of such disclosures without formal Endicott College action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of Endicott College policy and can be subject to disciplinary action.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Endicott College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **19. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the College’s desire to promote campus safety and to comply with state and federal law.

The Title IX Coordinator has ultimate discretion over whether Endicott College will proceed when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment, which will consider factors such as, for example, whether available information suggests the presence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Endicott College may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Endicott College's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When Endicott College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that Endicott College's ability to remedy and respond to notice may be limited if the Complainant does not want Endicott College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing Endicott College's desire to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Endicott College to honor that request, Endicott College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant requests that the College take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Endicott College, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **20. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Endicott College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Endicott College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **21. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or that do not result in a policy violation determination.

Additionally, witnesses and parties who knowingly provide false evidence, intentionally tamper with or destroy evidence that they know is relevant to a proceeding under this policy, or deliberately mislead an official who is conducting an investigation, can be subject to discipline under Endicott College policy.

## **22. Amnesty for Complainants and Witnesses**

Endicott College encourages Complainants and witnesses to report misconduct and crimes. Sometimes, Complainants or witnesses are hesitant to report to Endicott College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as policies that prohibit underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to Endicott College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Endicott College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Campus Police). This should not be a concern and students should not hesitate to help others, because Endicott College maintains a policy of amnesty for students who offer help to others in need.

### **23. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty under the federal Clery Act to report the following for statistical reporting purposes:

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,<sup>8</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with Endicott’s Public Safety and Police Department regarding the type of incident and its general location (e.g., whether on or off-campus or in the surrounding area), for publication in the Annual Security Report and daily campus crime log. The Annual Security Report and daily crime log will not include specific addresses or other information that would identify a person reportedly subjected to a crime.

Campus Security Authorities include: student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **RESOLUTION PROCESS**

### **1. Applicability of Process**

Matters that involve allegations that an Endicott College student committed Title IX Sexual Harassment and/or Non-Title IX Misconduct will be addressed through the procedures specified below.

Matters that involve allegations that an Endicott College employee committed Title IX Sexual Harassment will be addressed through the procedures specified below, as will matters that involve allegations that an Endicott College employee committed both Title IX Sexual Harassment and Non-Title IX Misconduct in their interactions with or conduct toward a Complainant. By contrast, matters that involve allegations that

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<sup>8</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

an Endicott employee or other non-student Respondent committed Non-Title IX Misconduct but not Title IX Sexual Harassment will be referred to Human Resources, and will be addressed by Human Resources through Human Resources policies and procedures, and not by the procedures specified below. Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations or this policy.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through procedures described in the student, faculty, and staff handbooks.

## **2. Overview**

The parties to a complaint submitted under this policy will be provided with a copy of the College's policies regarding the submission and consideration of evidence that may be used during a hearing or disciplinary proceeding and shall have equal opportunity to present evidence and witnesses on their behalf during a hearing or disciplinary proceeding; provided, however, that each party shall be provided with timely and equal access to relevant evidence that shall be used in the determination of a disciplinary action.

The College's process is prompt, fair, and impartial from the initial investigation to the final result, in that it will be:

- Completed within reasonably prompt time frames as designated in the College's policies, which time frames may be extended for good cause and/or due to extenuating circumstances, with written notice to the complainant and the respondent of the delay and the reason for the delay;
- Conducted in a manner that is consistent with the College's policies and transparent to the complainant and the respondent, including timely notice of meetings at which the complainant or respondent may be present, and providing the complainant, the respondent, and appropriate College officials timely and equal access to any information that will be used during the College's process in accordance with the policies herein; and
- Conducted by officials who do not have a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent in a particular case.

## **3. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps Endicott College needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint and the Title IX Coordinator is not planning to do so; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

Endicott College uses the Formal Grievance Process to determine whether or not the policy has been violated.

## **4. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>9</sup> will engage in an initial assessment, typically within ten business days. The steps in an initial assessment can include:

- a. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - o If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates that that is necessary to promote the safety of the person or the campus community.
- b. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- c. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- d. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- e. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses their requests, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.

If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:

1. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
2. If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any, for Title IX purposes), assesses which other policies may apply and refers the matter for resolution under Process B if appropriate. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Endicott College’s authority to address a complaint with an appropriate process and remedies.

#### **a. Threat Assessment**

In many cases, the Title IX Coordinator may determine that a threat assessment should be conducted by the Title IX Coordinator and other appropriate College officials as part of the initial assessment. A threat assessment can aid in critical determinations, including:

- f. Whether emergency removal of a Respondent is necessary under the standards outlined above;
- g. Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
  - Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful; and/or
- h. Whether a Clery Act Timely Warning is necessary;
- i. Whether a No Trespass order or notice is appropriate.

#### **b. Dismissal (Mandatory and Discretionary)<sup>10</sup>**

Endicott College must dismiss a formal complaint or any allegations therein if, at any time during an

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<sup>9</sup> If circumstances require, the Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>10</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Endicott College (including buildings or property controlled by recognized student organizations), and/or Endicott College does not have control over the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant was not participating in or attempting to participate in an education program or activity of Endicott College.<sup>11</sup>

Endicott College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by Endicott College; or
- 3) Specific circumstances prevent Endicott College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- 4) The conduct alleged in the formal complaint would not constitute Non-Title IX Misconduct as defined above, even if proved.

Upon any dismissal for Title IX purposes, Endicott College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below.

A formal complaint or any allegations therein that is or are dismissed by the Title IX Coordinator for Title IX purposes may be investigated and resolved under the Non-Title IX Misconduct provisions of this policy, if appropriate, or may be referred for investigation and resolution through other College procedures as appropriate, at the discretion of the Title IX Coordinator.

## **5. Counterclaims**

Counterclaims will be processed using the procedures below. Investigation of such claims may, at the discretion of the Title IX Coordinator, take place after resolution of an initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as an initial allegation, at the discretion of the Title IX Coordinator.

## **6. Right to an Advisor**

Each party may be accompanied by and represented by an Advisor or support person of their choice, which may include an advocate or counsel, to meet with the College's investigator or other fact finder and may consult with an Advisor or support person, which may include an advocate, confidential resource provider or counsel, during any meetings, hearings and disciplinary proceeding. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is available and willing to serve in that role.

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<sup>11</sup> Such a Complainant will still be offered reasonably available supportive measures, but the formal grievance process is not applicable.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias or conflict of interest in their witness role will be explored by the hearing Decision-maker(s)(s).

#### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Endicott College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If a party chooses an Advisor from the pool available from Endicott College, the Advisor will be trained by Endicott College and be familiar with Endicott College's resolution process.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### **b. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews.

Endicott College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Endicott College is not obligated to provide an attorney.

#### **c. Advisors in Hearings/Endicott College-Appointed Advisor**

Under U.S. Department of Education Title IX regulations, the parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, Endicott College will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may decline this appointment and choose their own Advisor, but they may not proceed without an Advisor at a hearing. If the party's Advisor will not conduct questioning, Endicott College will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself.

Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s)(s) during the hearing.

#### **d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to understand their role and Endicott College's policies and procedures.

#### **e. Advisor Violations of Endicott College Policy**

All Advisors are subject to the same Endicott College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned not to do so. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **f. Sharing Information with the Advisor**

Endicott College expects that the parties may wish to have Endicott College share documentation and evidence related to the allegations with their Advisors. Endicott College will provide access to parties and their Advisors through a secure file sharing platform.

Endicott College also provides a consent form through which a party can authorize the College to share such information directly with their Advisor. A party must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Endicott College is able to share records with an Advisor.

#### **g. Privacy of Records Shared with an Advisor**

Advisors are expected to maintain the privacy of the records shared with them. █

#### **h. Expectations of an Advisor**

Endicott College generally expects an Advisor to adjust their schedule to allow them to attend Endicott College meetings when planned, but the College may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Endicott College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **j. Assistance in Securing an Advisor**

Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

## **7. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Endicott College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. Endicott College encourages parties to discuss any sharing of information with their Advisors before doing so.

#### **a. Informal Resolution**

Informal Resolution can include three different approaches:

- a. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- b. When the parties agree to resolve the matter through an alternate resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.
- c. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Endicott College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

Endicott College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

#### **b. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- a. The parties' amenability to Alternate Resolution;
- b. Likelihood of potential resolution, taking into account any power dynamics between the parties;
- c. The parties' motivation to participate;
- d. Civility of the parties;
- e. Results of a threat assessment/ongoing risk analysis;
- f. Disciplinary history;
- g. Whether an emergency removal is needed;
- h. Skill of the Alternate Resolution facilitator with this type of allegation;
- i. Complaint complexity;
- j. Emotional investment/capability of the parties;
- k. Rationality of the parties;
- l. Goals of the parties;
- m. Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or likely to be successful will be

made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.

Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Endicott College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Endicott College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions will be promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

### **d. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Endicott College. Negotiated Resolutions are not appealable.

## **8. Training**

Endicott College will ensure that its Title IX Coordinator, its Deputy Title IX Coordinators, its investigators, its Decision-maker(s), and any person who facilitates an informal resolution process have been trained on the definition of sexual harassment in the May 2020 Title IX regulations, 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, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The College will ensure, as appropriate given such individuals' roles, that they have been trained on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in the Title IX regulations. The College will also ensure that investigators have been trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in those regulations. Further, the College's impartial investigations, any hearings and resulting disciplinary proceedings, will be conducted by individuals who receive not less than annual training on issues relating to sexual misconduct, investigatory procedures and hearing procedures to protect the safety and rights of students and employees and promote accountability.

## **9. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- a. the identities of the parties involved in the incident, if known,
- b. the conduct allegedly constituting sexual harassment under § 106.30,
- c. the date, time and location, if known, of the alleged incident of sexual misconduct and a specific statement of which policies were allegedly violated and by what actions.
- d. a statement that the Respondent is presumed not responsible for the alleged conduct and that a
- e. determination regarding responsibility is made at the conclusion of the grievance process,
- f. notice of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
  - g. A statement about Endicott College's policy on retaliation,
  - h. Information about the privacy of the process,
  - i. Information on the ability for each party to have an Advisor throughout the process, the need for each party to have an Advisor of their choosing at any hearing, and suggestions for ways to identify an Advisor,
  - j. A statement informing the parties that Endicott College policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
  - k. Detail on how the party may request disability accommodations during the interview process,
  - l. A link to Endicott College's VAWA Brochure, which explains rights and options in accordance with Clery Act regulations,
  - m. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
  - n. An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, or emailed to the parties' Endicott College-issued email or designated accounts. Once, emailed and/or received in-person, notice will be presumed delivered.

## **10. Resolution Timeline**

Endicott College will make a good faith effort to complete the resolution process within a 90-day period. However, this duration may be extended for any reason deemed necessary by the Title IX Coordinator. S/he will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **11. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint an Investigator or Investigators, who may be College employees, independent contractors retained by the College, or a combination of both. Investigators are usually identified within seven (7) business days of a determination that an investigation should proceed.

## **12. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for Complainants or Respondents generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with The President of Endicott College or his/her designee.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained,

including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Endicott College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **13. Investigation Timeline**

Endicott College will make a good faith effort to complete the investigation phase as promptly as circumstances permit (ordinarily within 60 to 90 days), but the investigation phase in a given case may take less or more time than that depending on the nature, extent and complexity of the allegations, availability of parties and witnesses, police involvement, the need for language assistance, disability accommodations, etc. The Title IX Coordinator or designee will communicate regularly with the parties to update them on the progress and timing of the investigation phase.

### **14. Interactions with Law Enforcement and Other Proceedings**

Endicott College may delay the initiation of an investigation at the request of a law enforcement entity that is investigating a matter. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Endicott College will implement supportive measures as deemed appropriate.

Endicott College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **15. Steps in the Investigation Process**

Investigations involve interviews with all relevant parties and witnesses and obtaining available, relevant evidence.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and suggest witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- a. When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- b. Interview all available, relevant witnesses and conduct follow-up interviews as deemed necessary by the Investigator(s).
- c. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses (the Investigator(s) will decide in their discretion what if any such questions will be asked, and how).
- d. Provide regular status updates to the parties throughout the investigation.
- e. Write an investigation report that fairly summarizes relevant evidence; appendices including relevant physical or documentary evidence will be included.
- f. The Investigator(s) gather, assess, and synthesize evidence, but are not expected to engage in policy analysis during the process. They are also not expected to make recommendations for sanctions as part of their role.
- g. Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) access to a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct,

including evidence upon which Endicott College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence (the full ten days may be waived if both parties are in agreement to do so). Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- h. The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- i. The Investigator(s) will incorporate elements of the parties' written responses that they deem relevant into the final investigation report, include any additional relevant evidence, and will make any necessary revisions and finalize the report.
- j. The Investigator(s) will share the report with the Title IX Coordinator for their review.
- k. The Investigator will incorporate any relevant feedback, and then provide all parties and their Advisors access to a secured electronic transmission or hard copy of the final report at least ten (10) business days prior to a hearing (the full ten days may be waived if both parties are in agreement to do so). The parties will also be provided with access to any directly related evidence that was not included in the report.

## **16. Role and Participation of Witnesses in the Investigation**

Witness participation is voluntary, not mandatory. Individuals cannot be compelled to participate in an investigation, hearing, or other proceeding. Additionally, no adverse action (like academic penalties, job consequences, etc.) can be taken against someone solely for refusing to participate.

Interviews for parties and witnesses may be conducted in person or through remote meeting technologies such as Skype, Zoom, FaceTime, or WebEx. Endicott College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## **17. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

## **18. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a relevant pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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, 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.

## **19. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker from a pool of trained individuals. The Decision-maker may also Chair a hearing as a member of a three-person panel, at the discretion of the Title IX Coordinator." The Title IX Coordinator will advise the parties of the identity of the Decision-maker(s), and will permit the parties an opportunity to object (within two business days of notice) to the participation of the Decision-maker/panel on the grounds of bias or conflict of interest. The Title IX

Coordinator will decide whether to sustain such objections and appoint an alternate Decision-maker(s), or deny such objections and permit the initially-selected Decision-maker/panel to participate.

## **20. Hearing Decision-maker/panel Composition**

Endicott College will designate either a single Decision-maker or appoint a 3-person panel for which there will be one appointed Hearing Chair(s) to hear the case.

The Decision-maker/panel will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators may be witnesses in the hearing and therefore may not serve as Decision-maker(s). Those who are serving as Advisors for any party may not serve as Decision-maker/panel in that matter.

The Title IX Coordinator may not serve as a Decision-maker/panel in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Decision-maker/panel or designee.

## **21. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker/panel determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a relevant pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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, 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.

Previous disciplinary action of any kind involving the Respondent is not considered in making decisions regarding responsibility, but may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker/panel that would only be reviewed by the Decision-maker/panel if the Decision-maker/panel determines that the policy was violated, and only after such a determination is made.

After post-hearing deliberation, the Decision-maker/panel will render a determination based on the preponderance of the evidence; that is, whether it is more likely than not that the Respondent violated the policy.

## **22. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or designee will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumed delivered.

The notice will contain:

- a. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- b. A description of any technology that will be used to facilitate the hearing.
- c. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker/panel and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

- d. A list of all those who are expected to attend the hearing.
- e. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- f. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence.
- g. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present to pose any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Endicott College will appoint one. Each party must have an Advisor present. There are no exceptions.
- h. A copy or link to all of the materials provided to the Decision-maker/panel about the matter, unless they have been provided already.<sup>12</sup>
- i. An invitation to each party to submit to the Decision-maker/panel before the hearing an impact statement that the Decision-maker/panel will only review during any sanction determination.
- j. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- k. A notice as to whether parties can bring mobile phones/devices into the hearing, or leave them turned on during a hearing.

Hearings for possible violations that allegedly occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) that cannot be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed.

### **23. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **24. Pre-Hearing Preparation**

The Decision-maker/panel, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide to the parties and their Advisors: the names of persons who are expected to participate in the hearing; all pertinent documentary evidence; and the final investigation report. This will occur at least ten (10) business days prior to the hearing unless all parties request a reduced duration time (contingent on the availability of all pertinent documentary evidence; and the final investigation report).

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Decision-maker/panel assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Decision-maker/panel do not assent to the admission of evidence newly offered at the hearing, the Decision-maker/panel may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence, decide in their discretion that the evidence will not be considered. The Decision-maker/panel will determine in their discretion whether certain information is or is not new evidence.

The Title IX Coordinator will give the Decision-maker/panel a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing unless a reduced duration is agreed upon by all parties. Any Decision-maker/panel who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker/panel is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

<sup>12</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Decision-maker/panel at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker/panel or designee.

### **25. Pre-Hearing Meetings**

The Decision-maker/panel may convene a pre-hearing meeting(s) with the parties and/or their Advisors to discuss issues that are likely to arise at the hearing.

The Decision-maker/panel, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

Any pre-hearing meeting(s) between the parties, their Advisors and the Decision-maker/panel will be recorded.

### **26. Hearing Procedures**

At the hearing, the Decision-maker/panel has the authority to hear and make determinations on all allegations of Prohibited Conduct and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the Prohibited Conduct, even though those collateral allegations may not specifically fall within the policy.

Participants at the hearing will usually include the Decision-maker/panel, a hearing facilitator (typically the Title IX Coordinator), the Investigator(s) who conducted the investigation, the parties (or no more than three (3) organizational representatives when an organization is the Respondent) advisors to the parties, any called witnesses, the Title IX Coordinator (who may also be serving the hearing facilitator) and anyone providing authorized accommodations or assistive services. On occasion, those training to fulfill any of the institutionally-led Title IX roles (such as a Decision Maker) may be invited to observe.

The Decision-maker/panel will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker/panel will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker/panel and the parties' Advisors, and will then be excused.

### **27. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the Title IX Coordinator may in their discretion decide that the allegations will be addressed jointly in one investigation and resolution process.

However, the Title IX Coordinator may decide that the investigation and/or hearings pertinent to each Respondent and/or Complainant will be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations regarding responsibility will be made for each Respondent with respect to each alleged policy violation.

### **28. The Order of the Hearing – Introductions and Explanation of Procedure**

The Decision-maker/panel will summarize the hearing procedures and introduce the participants.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **29. Investigator Presents the Final Investigation Report**

At the discretion of the Decision-maker/panel, the hearing may then proceed with the Investigator(s) presenting a summary of the final investigation report, including items that are contested and those that are not, who will be subject to questioning by the Decision-maker/panel and the parties (through their Advisors). The Decision-maker/panel will determine whether the Investigator(s) needs to be present for all or just some of the hearing.

### **30. Testimony and Questioning**

If the hearing begins with the Investigator(s) presenting their report and being questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker/panel. The parties/witnesses will submit to questioning by the Decision-maker/panel and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker/panel. The Advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision-maker/panel, the proceeding will pause to allow the Decision-maker/panel to consider it (and state or summarize it if it has not been stated aloud), and the Decision-maker/panel will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker/panel may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker/panel so chooses. The Decision-maker/panel will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker/panel will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker/panel will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker/panel has final say on all questions and determinations regarding relevance. The Decision-maker/panel may ask Advisors to frame or explain why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker/panel has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker/panel at the hearing, the Decision-maker/panel may elect to address those issues, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker/panel should not permit irrelevant questions that probe for bias.

### **31. Decision Not to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker/panel will determine in their discretion how much, if any, weight will be given to prior statements, documents or other information available from, regarding or produced by that party or witness.

The Decision-maker/panel may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If a party’s Advisor of choice refuses to comply with Endicott College’s established rules of decorum for the hearing, Endicott College may require the party to use a different Advisor. If an Endicott College-provided Advisor refuses to comply with the rules of decorum, Endicott College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **32. Recording Hearings**

Hearings (but not deliberations) are recorded by Endicott College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker/panel, the parties, their Advisors, and appropriate administrators of Endicott College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **33. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker/panel will deliberate after the hearing to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof will be used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker/panel may then consider the previously submitted party impact statements and any prior disciplinary history of the Respondent in determining appropriate sanction(s).

The Decision-maker/panel will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party. The Decision-maker/panel may – at their discretion – consider the statements, but they are not binding.

The Decision-maker/panel will review the statements and any pertinent conduct history provided by the appropriate administrator and determine a recommended appropriate sanction.

The Decision-maker/panel will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any recommended sanctions.

### **34. Notice of Outcome**

The Title IX Coordinator will work with the Decision-maker/panel to prepare a Notice of Outcome. The Notice of Outcome will be provided simultaneously to the parties not later than seven (7) calendar days after a final determination of a complaint, not including any time for appeal, unless good cause for additional time is shown; provisions regarding timing in the event of an appeal are explained below.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Endicott College records, or emailed to the parties' Endicott College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumed delivered.

The Notice of Outcome will articulate the specific policy reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Endicott College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Endicott College is permitted to share such information under state or federal law; any sanctions issued which Endicott College is permitted to share according to state or federal law; whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant (information about any such remedies will only be provided to a Respondent to the extent necessary to effectuate the remedies; such as, for example, notice that a no contact order or no trespass order was issued to the Respondent as a remedy for the Complainant).

The Notice of Outcome will also include information on when the results are considered by Endicott College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for

any available appeal options.

### **35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The Respondent's disciplinary history
- The nature, severity of, and circumstances surrounding the violation(s)
- The need for sanctions/responsive actions to bring an end to the Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of Prohibited Conduct
- The need to remedy the effects of the Prohibited Conduct on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

- Reprimand: An official written reprimand for violation of specified regulations.
- Probation: A period of time in which a student is expected to demonstrate positive behavioral change. Violations of the terms of student conduct probation, or any other violation of this Code during the period of probation, may result in further sanctions, including eviction from residence, suspension, or expulsion from the College.
- Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this policy.
- Denial of Access to Specific Areas: Ban from certain non-academic area(s) for a specified length of time.
- Relocation or Removal from Residence: Suspension or termination of the residence hall agreement and exclusion from visiting within certain or all residential facilities, as set forth in the notice of relocation or removal, for a specified period of time. A student who is removed from his or her residence arrangement is not entitled to a refund of room fees.
- Revocation of Privileges: Restrictions placed on activities and/or use of College services and facilities for a specified period of time.
- Parental/Guardian Notification: The College reserves the right to notify the student's parent or guardian in various situations it deems appropriate. The parent or guardian may be notified by telephone in emergency situations and in either writing or by telephone in disciplinary matters to the full extent permitted by law. Letters sent home are for informational purposes, with the belief that parents, students, and College administrators are all part of the educational development process. A student may be asked to notify a parent or guardian about policy violation(s) as well as sanctions imposed with a request that a parent or guardian contact the Title IX office or designee to discuss the situation.
- Required Counseling: A mandate to meet with and engage in either Endicott College-sponsored or external counseling to better comprehend the misconduct and its effects.
- Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Endicott College.
- Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Endicott College-sponsored events.
- Withholding Diploma: Endicott College may withhold a student's diploma for a specified period of time

and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.

- Revocation of Degree: Endicott College reserves the right to revoke a degree previously awarded from Endicott College for fraud, misrepresentation, and/or other violation of Endicott College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- Other Actions: In addition to or in place of the above sanctions, Endicott College may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan (PIP)
- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Denial of Pay Increase
- Demotion
- Transfer
- Reassignment
- Delay of tenure track progress
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Endicott College may assign any other responsive actions as deemed appropriate.

### **36. Withdrawal or Resignation While Charges Pending**

a. Students. Should a student Respondent permanently withdraw from the College during a Title IX grievance proceeding, the resolution process may end. However, the circumstance still provides the Title IX Coordinator with the discretion to continue on with the process regardless of the Respondent's participation.

However, Endicott College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Prohibited Conduct. A student who withdraws or leaves while the process is pending may not return to Endicott College. Such exclusion applies to all premises owned, occupied or controlled by Endicott College. A hold will be placed on their ability to be readmitted. They may also be barred from Endicott College property and/or events.

If the student Respondent only takes a leave of absence for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Endicott College unless and until any resulting sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process will end, as Endicott College would no longer have disciplinary jurisdiction over the resigned employee.

An employee who resigns with unresolved allegations pending is not eligible for rehire with Endicott College, and the records retained by the Title IX Coordinator and/or Human Resources will reflect that status.

### **37. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within seven (7) calendar days of the delivery of the Notice of Outcome.

### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker/panel had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Both parties shall be provided with an equal opportunity to appeal decisions on these grounds.

### **b. Appeal Process**

In most cases, the Title IX Coordinator will appoint a single Appeals Officer. If, however, the grounds for appeal include a claim that the Title IX Coordinator had a conflict of interest or bias as described above, the Appeals Officer will be appointed by the President or designee. The parties will be given notice of the identity of the Appeals Officer and will have three (3) business days to raise any objections. Objections will be considered and decided by the appointing official, who will, if necessary, repeat this process until a final Appeals Officer is selected to decide the appeal(s).

The Title IX Coordinator will notify the other party and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker/panel, when an appeal has been filed.

The other party and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker/panel will be mailed, emailed, and/or provided a hard copy of the appeal and then will be given seven (7) business days to submit a response to the portion of the appeal that involves them. The Title IX Coordinator may also submit a response if the appeal involves them. All responses will be forwarded by the Appeals Officer to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal within seven (7) business days of when the other party's appeal was provided to them, by filing a written appeal to the Title IX Coordinator. Any such new ground of appeal will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker/panel, as necessary, who will submit their responses in seven (7) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeals Officer will collect any additional information needed and all documentation regarding the appeal and will render a decision in no more than fourteen (10) business days, barring extenuating circumstances. All decisions will apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each ground raised and the rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal raised, any specific instructions for remand or reconsideration, and any sanctions that may result which Endicott College is permitted to share according to state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Endicott College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumed delivered.

### **c. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the original Decision-maker/panel's decision will ordinarily be stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. However, if any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so will be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, Endicott College may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

#### **b. Appeal Considerations**

- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker/panel for reconsideration. Other appeals may be remanded at the discretion of the Appeals Officer, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker/panel (as in cases of bias), the Appeals Officer may order a new investigation with new a new Investigators or new Investigators, or a new hearing with a new Decision-maker/panel.
- The results of a new hearing can be appealed on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Endicott College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop Prohibited Conduct, remedy its effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- a. Referral to counseling and health services
- b. Education for the individual and/or the community
- c. Permanent alteration of housing assignments
- d. Permanent alteration of work arrangements for employees
- e. Provision of campus safety escorts
- f. Climate surveys
- g. Policy modification and/or training
- h. Provision of transportation accommodations
- i. Implementation of long-term contact limitations between the parties
- j. Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures (e.g., no-contact orders) may also be provided even if no policy violation is found.

Endicott College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Endicott College's ability to provide such services.

### **39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker/panel (including the Appeals Officer).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Endicott College.

Suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **40. Recordkeeping**

Endicott College will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of a hearing required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Endicott College's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-maker(s), and any person who facilitates an Informal Resolution process. Endicott College will make these training materials publicly available on Endicott College's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to Endicott College's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Endicott College will also maintain any and all records in accordance with state and federal laws.

#### **41. Disabilities Accommodations in the Resolution Process**

Endicott College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Endicott College's resolution process.

Any student needing such accommodations or support should contact the Assistant Dean for Accessibility Services, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator will determine which accommodations are appropriate and necessary for full participation in the process.

Any employee needing such accommodations or support should contact the Associate Vice President, Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This policy and procedures supersede any previous policies addressing sexual harassment, sexual misconduct and/or retaliation under Title IX or otherwise and will be reviewed and updated annually by the Title IX Coordinator. Endicott College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

**This Policy is effective August 1, 2025.**