

Title IX Policy

Sexual Harassment, which includes Sexual Assault,
Dating Violence, Domestic Violence, Stalking, and Retaliation

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 sexual harassment based on a protected class; 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 sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that Endicott College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of 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 where 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 the standard of proof that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” 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* 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.
- *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.

¹ Not to be confused with those 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.

- *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.
- *Process A* means the Formal Grievance Process detailed below and defined above.
- *Process B* means any process designated by Endicott College to apply only when Process A does not, as determined by the Title IX Coordinator.
- *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.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 17.b. for greater detail.
- *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 sexual harassment and retaliation. 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 sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using Endicott College's "Process A" or "Process B," 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,² 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 sexual harassment, and retaliation prohibited under 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:

Steven R DiSalvo, President
Endicott College
376 Hale Street
Beverly, MA 01915
sdisalvo@endicott.edu
978.232.2000

² 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 or Deputy Title IX Coordinators 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 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
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

Please call Regional SANE Coordinator for Assistance:

Deb Perry, MSN, BN, SANE ~ 978-478-8138 ~ Deborah.Perry@state.ma.us

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- 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 institution within the local community or region 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 order¹ 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, provided that 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.

¹ 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.

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)
- 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

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

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 justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with 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. 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 may be permitted to participate in this meeting 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.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. 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.

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.

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.³ 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 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-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible 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.

³ 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.

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. Endicott College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Endicott College interest.

Regardless of where the conduct occurred, Endicott College will review notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

A substantial Endicott College interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Endicott College.

If the Respondent is unknown or is not a member of 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 as appropriate to protect the Complainant against third parties, 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 allege violations 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 notice/complaint is affected by significant time delay, Endicott College will typically apply the policy and misconduct definitions in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint, unless both parties consent to have the current policy and misconduct definitions (if different) used.

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.

Although Endicott College may not control websites, social media, and 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.

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

Endicott is committed to establishing an environment free from all forms of discrimination and harassment for all members of the Endicott community. The College prohibits discrimination against any person on the basis of race, color, religion, sex, age, national origin, physical or mental disability, sexual orientation, gender identity or expression, genetic information, military service, or because of marital, parental or veteran status, or any other protected class. Title IX of the Educational Amendments of 1972, 20 U.S.C. §§ 1681 et seq., prohibits discrimination on the basis of sex and gender in educational programs and activities operated by recipients of federal financial assistance, including employment by such institutions. Title VII of the Civil Rights Act of 1964 likewise prohibits discrimination in employment. It is important to understand that sex and gender discrimination includes sexual harassment, which encompasses sexual violence and other forms of sexual misconduct, as discussed below. The College complies with all federal and state laws regarding non-discrimination, including Title IX, and does not discriminate on the basis of sex or gender in its educational programs and activities, admissions, or employment. This policy sets forth the options and resources available to an individual making a report of Sex Discrimination (including Sexual Misconduct), Relationship Violence or Stalking. Other College policies and procedures will be used to address alleged discrimination that does not fall within the scope of this policy.

16. Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Massachusetts regard Sexual Harassment as an unlawful discriminatory practice.

Endicott College has adopted the following definition of Sexual Harassment.

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

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual and that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of Endicott College,
 - b. conditions⁴ the provision of an aid, benefit, or service of Endicott College,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to Endicott College's education program or activity.⁵

- 3) Sexual assault, defined as:
 - a) Sex Offenses, Forcible:
 - o Any sexual act⁶ directed against another person⁷,
 - o without the consent of the Complainant,
 - o including instances in which the Complainant is incapable of giving consent.
 - b) Sex Offenses, Non-forcible:
 - o Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,

⁴ Implicitly or explicitly.

⁵ "Unwelcomeness" is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁶ Sexual acts include:

Forcible Rape:

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

Forcible Sodomy:

- o Oral or anal sexual intercourse with another person,
- o forcibly,
- o and/or against that person's will (non-consensually), or
- o not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- o The use of an object or instrument to penetrate,
- o however slightly,
- o the genital or anal opening of the body of another person,
- o forcibly,
- o and/or against that person's will (non-consensually),
- o or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- o The touching of the private body parts of another person (buttocks, groin, breasts),
- o for the purpose of sexual gratification,
- o forcibly,
- o and/or against that person's will (non-consensually),
- o or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁷ This would include having another person touch you sexually, forcibly, or without their consent.

- 3) within the degrees wherein marriage is prohibited by Massachusetts law.
 - Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16.
- 4) Dating Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant'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—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Massachusetts, or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Massachusetts.

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
 - a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Endicott College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

c. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

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 or produce consent.

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 the 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 can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing or fondling) 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 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 is incapable of giving consent.

It is a defense to a sexual harassment policy violation 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 is both sober and exercising sound judgment. It is not a defense to a sexual harassment policy violation if a Respondent failed to appreciate that the Complainant was physically or mentally incapacitated because of the Respondent's impairment.

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).

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. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting another in making a report or in providing information relevant to an investigation, participating in an investigation of and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Endicott College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Endicott College and any member of Endicott College's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 under this policy and procedure.

Filing a complaint in response to a notification of charges against said person could be considered retaliatory if those charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within this policy. Therefore, Endicott College vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination that a Respondent is not responsible for misconduct, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

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 sexual harassment 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 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 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 Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a 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 for failure to comply.

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 proceeds 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 elects to 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 community 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 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,¹⁰ 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 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.

¹⁰ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT (KNOWN AS PROCESS “A”)

1. Overview

Endicott College will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator¹² or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If a dismissal occurs under Process A, please see the Student Handbook for a description of the procedures applicable to the resolution of such offenses, known as “Process B”

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.

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.

The parties to a complaint submitted under this policy shall 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

2. 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 initiates 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/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. If so, Endicott College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

¹² Anywhere this procedure indicates “Title IX Coordinator,” Endicott College may substitute an appropriate designee.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator¹³ will engage in an initial assessment, typically within ten business days. The steps in an initial assessment can include:

- 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.
 - 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.
- 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.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- 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:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - 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. 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:

- Whether emergency removal of a Respondent is necessary under the standards outlined above;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;

¹³ 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.

- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful; and/or
- Whether a Clery Act Timely Warning/Trespass order is needed.

b. Dismissal (Mandatory and Discretionary)¹⁴

Endicott College must dismiss a formal complaint or any allegations therein if, at any time during an investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute 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 is not participating in or attempting to participate in an education program or activity of Endicott College.¹⁵

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.

¹⁴ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

¹⁵ Such a Complainant will still be offered reasonably available supportive measures, but the formal grievance process is not applicable.

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.

4. Counterclaims

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

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

5. 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 eligible and available.¹⁷

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).

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.

¹⁷ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. 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 reject 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) 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 clarify and 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. Parties may share this information directly with their Advisor if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

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 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 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/>

6. 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:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- 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.
- 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:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a threat assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- 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, and 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.

7. Training

Endicott College will ensure that its Title IX Coordinator, its Deputy Title IX Coordinators, its investigators, its Decision-makers, 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.

8. 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:

-
- the identities of the parties involved in the incident, if known,
- the conduct allegedly constituting sexual harassment under § 106.30,
- 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.
- a statement that the Respondent is presumed not responsible for the alleged conduct and that a
- determination regarding responsibility is made at the conclusion of the grievance process,
- 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.
- A statement about Endicott College's policy on retaliation,
- Information about the privacy of the process,
- 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,
- A statement informing the parties that Endicott College policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to Endicott College's VAWA Brochure,
- 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
- 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.

9. 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.

10. 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.

11. 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.

12. Investigation Timeline

Endicott College will make a good faith effort to complete the investigation phase as promptly as circumstances permit (ordinarily within 90 business 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.

13. 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.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. 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):

- 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
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- 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 will decide in their discretion what if any such questions will be asked, and how)
- Provide regular status updates to the parties throughout the investigation
- Write an investigation report that fairly summarizes relevant evidence; appendices including relevant physical or documentary evidence will be included
- 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.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) 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 parties may elect to waive the full ten days. 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).
- 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.
- 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, make any necessary revisions, and finalize the report.

- The Investigator(s) will share the report with the Title IX Coordinator for their review.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Endicott College are expected to cooperate with and participate in Endicott College's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside Endicott College community are encouraged to cooperate with Endicott College investigations and to share what they know about a complaint.

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.

16. 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.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a 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.

18. 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, will advise the parties of the identity of the Decision-maker, and will permit the parties an opportunity to object (within two business days of notice) to the participation of the Decision-maker 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, or deny such objections and permit the initially-selected Decision-maker to participate.

19. Hearing Decision-maker Composition

Endicott College will designate a single Decision-maker. The single Decision-maker will also Chair the hearing.

The Decision-maker 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 will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker 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 or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker 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 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 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 that would only be reviewed by the Decision-maker if the Decision-maker determines that the policy was violated, and only after such a determination is made.

After post-hearing deliberation, the Decision-maker 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 as alleged.

21. 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:

- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- A description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker 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.
- A list of all those who will attend the hearing..
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence.
- 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 for 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.
- A copy or link to all of the materials provided to the Decision-maker about the matter, unless they have been provided already.¹⁸
- An invitation to each party to submit to the Decision-maker an impact statement pre-hearing that the Decision-maker will only review during any sanction determination.
- 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.
- 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 occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to 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

¹⁸ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

22. 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.

23. Pre-Hearing Preparation

The Decision-maker or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker 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 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.

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 at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-maker or designee.

24. Pre-Hearing Meetings

The Decision-maker 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, **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 will be recorded.

25. Hearing Procedures

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

Participants at the hearing will usually include the Decision-maker, any hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent) advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Decision-maker 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 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 and the parties' Advisors, and will then be excused.

26. 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 default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to 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.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Decision-maker 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.

¹⁹ Subject to Endicott College's Code of Organizational

28. Investigator Presents the Final Investigation Report

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

29. Testimony and Questioning

Once the Investigator(s) present their report and are 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. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, 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 upon request if agreed to by all parties and the Decision-maker), the proceeding will pause to allow the Decision-maker to consider it (and state it if it has not been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker 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 will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance. 1/18/20231/26/2023The Decision-maker 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 has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker 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 should not permit irrelevant questions that probe for bias.

30. Refusal 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 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 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.

31. 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(s), 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.

32. Deliberation, Decision-making, and Standard of Proof

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

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

The Decision-maker 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.

33. Notice of Outcome

The Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome. The Notice of Outcome will be provided simultaneously to the parties not later than 7 business 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(ies) 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.

34. Sanctions

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

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

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:

1. Reprimand: An official written reprimand for violation of specified regulations.
2. 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.
3. Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this policy.

4. Denial of Access to Specific Areas: Ban from certain non-academic area(s) for a specified length of time.
5. 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.
6. Revocation of Privileges: Restrictions placed on activities and/or use of College services and facilities for a specified period of time.
7. 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.
8. 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.
9. 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.
10. Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Endicott College-sponsored events.
11. 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.
12. 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.
13. 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

- Other Actions: In addition to or in place of the above sanctions/responsive actions, Endicott College may assign any other responsive actions as deemed appropriate.

35. Withdrawal or Resignation While Charges Pending

a. Students: Should a student decide to not participate in the resolution process, the process will proceed absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Endicott College, the resolution process will end, as Endicott College no longer has disciplinary jurisdiction over the withdrawn student.

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 sexual harassment and/or retaliation. 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 withdraws or takes a leave 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 all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process will end, as Endicott College no longer has 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.

36. 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) 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 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

The Title IX Coordinator will appoint an Appeal Decision-maker in most cases. 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 Appeal Decision-maker will be appointed by the President or designee. The parties will be given notice of the identity of the Appeal Decision-maker and will have three (3) business days to raise any objections to the appointed Appeal Decision-maker. Objections will be considered and decided by the appointing official, who will, if necessary, repeat this process until a final Appeal Decision-maker 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(s), when an appeal has been filed.

The other party and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker 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 Decision-maker 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, 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 Appeal Decision-maker will collect any additional information needed and all documentation regarding the appeal and will render a decision in no more than fourteen (14) 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 and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, 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'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

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker for reconsideration. Other appeals may be remanded at the discretion of the Appeal Decision-maker or, 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 (as in cases of bias), the appeal may order a new hearing with a new Decision-maker.
- 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.

37. 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 the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- 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 these services.

38. 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 (including the Appeal Decision-maker).

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.

39. 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-makers, 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.

40. 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.

41. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policies addressing harassment, sexual misconduct and/or retaliation under Title IX 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 January 22, 2023.