

# Endicott College Sex Discrimination, Sexual Misconduct and Relationship Violence Policy and Procedures for Resolving Complaints against Employees

Endicott College is committed to providing an environment in which members of its community can pursue their academic and professional activities. This environment cannot thrive unless each member of the College community is valued as an individual and treated respectfully. Sex Discrimination (which includes Sexual Misconduct), Relationship Violence, and Stalking are antithetical to the standards and values of Endicott College, violate College policy and in some instances state and federal law, and will not be tolerated. Disciplinary sanctions for any member of the Endicott College community engaging in such conduct may include suspension or dismissal from the College, termination of employment, and referral for criminal investigation and prosecution by local law enforcement. The College will investigate all reports of violations of this policy in an impartial, prompt, and equitable manner. The College will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the reporting party and others as appropriate.

## Notice of Non-Discrimination

Endicott College 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. SS 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 nondiscrimination, 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. Reports alleging such conduct committed by employees (including faculty and staff) of the College will be resolved consistent with the procedures outlined in this Policy. Reports alleging such conduct committed by students of the College will be resolved consistent with the procedures outlined in the Student Handbook and policies.

## 1. Definitions

**Sex Discrimination:** Sex Discrimination occurs when someone is treated adversely because of, or on the basis of, their sex or gender. It is important to understand that Sex Discrimination includes sexual harassment, sexual assault, and other forms of misconduct as discussed below. Sex Discrimination also includes discrimination or harassment of a person based on the person's nonconformity with gender stereotypes.

**Sexual Harassment:** Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, or written or electronic communication of an intimidating, hostile, or offensive sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; or
2. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; or
3. Such conduct has the effect of substantially interfering with an individual's academic or job performance or creating a hostile, intimidating, or offensive employment, educational, or living environment for the person as a student and/or employee.

A hostile environment is created when sexual harassment is:

- Sufficiently severe; or
- Persistent or pervasive, and objectively offensive.

Examples of conduct which may constitute sexual harassment include but are not limited to: conditioning a promotion, pay raise, or course grade upon the receipt of sexual favors; unwelcome hugging, kissing, embracing, patting, pinching, or any other unwelcome touching; leering; persistent unwelcome social invitations; use of vulgar language of a sexual nature; graphic comments about a person's body; displaying sexually explicit pictures or other materials; making sexually suggestive comments or telling sexually suggestive or "dirty" jokes or stories; asking an employee or student questions about their sex life; and/or continuing to engage in any such behavior if it is known or should be known that the behavior is unwelcome.

**Nonconsensual Sexual Contact:** Nonconsensual sexual contact is defined as any intentional sexual touching, however slight, with any body part or object by a person upon another person that is without consent and/or by force.

Examples of sexual contact include, but are not limited to: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner.

**Nonconsensual Sexual Intercourse:** Nonconsensual sexual intercourse is defined as any sexual intercourse, however slight, with any body part or object, by a person upon another person that is without consent and/or by force.

Examples of sexual intercourse include, but are not limited to: vaginal or anal penetration by a penis, finger, tongue, or any other body part or object, and/or oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

**Sexual Exploitation:** Sexual Exploitation occurs when one person takes nonconsensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: invasion of sexual privacy; prostituting another person; nonconsensual digital, video, or audio recording of nudity or sexual activity; unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity; engaging in voyeurism; going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex); knowingly exposing someone to or transmitting an STI, STD, or HIV to another person; intentionally or recklessly exposing one's genitals in nonconsensual circumstances.

**Relationship (Dating and Domestic) Violence:** Relationship violence is abuse, violence, or intentionally controlling behavior between partners or former partners involving one or more of the following elements: (i) battering that causes bodily injury; (ii) purposely or knowingly causing reasonable apprehension of bodily injury; (iii) emotional abuse creating apprehension of bodily injury or property damage; (iv) repeated telephonic, electronic, or other forms of communication - anonymously or directly - made with the intent to intimidate, terrify, harass, or threaten. Relationship violence can occur in all types of relationships (e.g., heterosexual, same sex, or any other type of relationship). Relationship violence may constitute a violation of this policy when it involves an Endicott College student or employee, and the conduct is gender-based.

**Stalking:** Stalking is defined as the following behavior:

1. Willfully and maliciously engaging in conduct that seriously alarms or annoys a specific person and would cause reasonable person to suffer substantial emotional distress; and
2. Making threats with the intent to the place person in fear of death or bodily injury. The threatening conduct may be written or verbal and includes mail, phone calls, email and other internet communications, text messages, and other instant messages.

**Retaliation:** Retaliation is an adverse action or attempt to seek retribution against the Complainant, or any or person or group of persons involved in the investigation and/or resolution of a sexual misconduct complaint. Retaliation can be committed by any person or group of persons, not just a Respondent. Retaliation may include continued abuse or violence, other forms of harassment, and slander and libel. It is a violation of Massachusetts and federal law and a violation of this policy to retaliate against a person for filing a complaint of sexual misconduct or for cooperating in a sexual misconduct investigation. Any person who retaliates against a person who has reported sexual misconduct, filed a sexual misconduct complaint, or participated in a sexual misconduct investigation is subject to disciplinary action up to and including expulsion or termination by the College.

## Other Definitions

**Consent:** Consent is permission to engage in sexual activity. Consent must be informed and voluntary, and can be withdrawn at any time. Consent can be given by word or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity. There is no consent when there is force expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing or future consent with that person or consent to that same sexual activity with another person. If a person is mentally or physically incapacitated or impaired such that they are unable to understand the fact, nature, or extent of the sexual interaction, there is no consent. This includes impairment or incapacitation due to the consumption of alcohol or drugs that meets this standard, or being asleep or otherwise unconscious. In the state of Massachusetts, consent can never be given by a minor under the age of sixteen.

**Effect of alcohol and other drugs on consent:** Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol and other drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone has consented to sexual activity after having consumed alcohol or other drugs, the College will examine the issue from the perspective of a reasonable person. Specifically, the College will consider whether the Respondent reasonably should have known about the impact of alcohol and other drugs on the Complainant's ability to give consent.

**Incapacitation:** An individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Someone who is drunk or intoxicated is not necessarily incapacitated. Individuals who are asleep, unresponsive, or unconscious are incapacitated and therefore unable to give consent.

**Coercion:** Coercion is the use of expressed or implied threats, intimidation, or physical force which places an individual in fear of immediate harm or physical injury, or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion also includes administering a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.

**Complainant:** The Complainant is a person who alleges that they are the victim of a violation of Endicott College policy.

**Respondent:** The Respondent is a person who has been accused of an alleged violation of Endicott College policy.

## 2. Reporting Sex Discrimination, Sexual Misconduct and Relationship Violence

All members of the Endicott College community who experience, witness, or hear about an incident of sex discrimination, sexual misconduct or relationship violence are encouraged to immediately report the incident to the Endicott College Public Safety Department, the Title IX Coordinator, or any of the Deputy Title IX Coordinators listed below. Students are also encouraged to report any incident to any Residence Director, Resident Assistant, or other Student Affairs personnel.

### Privacy and Confidentiality

Endicott values the privacy of its students, employees, and other community members. Endicott wants all community members to seek the assistance they need without fear that the information they provide will be shared more broadly than they would like. Federal and state laws, however, impose reporting obligations on certain College employees that require them to disclose information from a report of sexual misconduct with those College employees responsible for responding to such a report.

Even when College employees have an obligation to report to others, which means their office is described as "non-confidential" below, they will protect and respect an individual's privacy to the greatest extent possible and share information only on a need-to-know basis.

There are several confidential resources available to individuals who wish to report sexual misconduct, or seek emotional support or medical care. The following resources are completely confidential under most circumstances:

**Employee Assistance Plan for Employees:**

Licensed professional counselors are available 24 hours a day, seven days a week at: **1-800-964-3577**. This program is offered through the Harford Insurance Company. There is no charge to staff or faculty members for its use.

**College Chaplain:** For alleged victims and respondents, Gail Cantor 978-232-2163 or [gcantor@endicott.edu](mailto:gcantor@endicott.edu).

**North Shore Rape Crisis Center (24 hour hotline):** 800-922-8772

**Other Reporting Resources (Non-Confidential):**

**POLICE:** Report an incident to the police by calling Endicott College Public Safety & Police at 978-232-2222 or Beverly Police at 978-921-6040.

**Title IX Coordinator:**

Carrie Nelson, Assistant Vice President of Human Resources, 978-232-2086 or [cnelson@endicott.edu](mailto:cnelson@endicott.edu)  
Endicott College, 376 Hale Street, Beverly, MA 01915

**Deputy Title IX Coordinators:**

**Public Safety**

Kerry Ramsdell, Police Captain, 978-232-2225 or [kramsdell@endicott.edu](mailto:kramsdell@endicott.edu) Endicott College, 376 Hale Street, Beverly, MA 01915

**Student Affairs**

Caraline Moholland, Assistant Director of Student Conduct, 978-232-2142 or [cmoholla@endicott.edu](mailto:cmoholla@endicott.edu)  
Endicott College, 376 Hale Street, Beverly, MA 01915

**Athletics**

Sean Quirk, Associate Athletic Director, 978-232-2010 or [squirk@mail.endicott.edu](mailto:squirk@mail.endicott.edu) Endicott College, 376 Hale Street, Beverly MA 01915

**Undergraduate Academics**

Aileen Torrance, Assistant Dean, School of Business, 978-232-2154 or [atorranc@endicott.edu](mailto:atorranc@endicott.edu)  
Endicott College, 376 Hale Street, Beverly, MA 01915

**Graduate Academics**

Chrystal Porter, Associate Provost, Van Loan School at Endicott College, 978-232-2817 or [cporter@endicott.edu](mailto:cporter@endicott.edu)  
Endicott College, 376 Hale Street, Beverly, MA 01915

**CONTACT INFORMATION FOR OUTSIDE GOVERNMENT AGENCIES**

Individuals who believe that they have been subjected to sex discrimination, sexual harassment, sexual misconduct, or other acts of unlawful harassment, discrimination, or retaliation may contact the government agencies set forth below and use the complaint procedures established by those agencies to file a complaint (using the College's complaint process does not prohibit an individual from filing a complaint with these agencies).

The United States Equal Employment Opportunity Commission ("EEOC")  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
617-565-3200; 800-669-4000

Massachusetts Commission against Discrimination ("MCAD")  
One Ashburton Place, Sixth Floor, Room 601  
Boston, MA 02108  
617-994-6000

Office of Civil Rights ("OCR")  
U.S. Department of Education  
8th Floor, 5 Post Office Square  
Boston, MA 02109-0111

If an individual requests that a report of sexual misconduct remain confidential, the College will make all reasonable efforts to protect the privacy of the parties and the information involved in a sexual misconduct matter. However, information regarding alleged sexual misconduct must be handled in accordance with applicable state and federal laws. Individuals should understand, for example, that under conditions of potential imminent harm to the community, the College may be required by law to inform law enforcement and the community.

The Complainant's request that the College treat information regarding alleged sexual misconduct as confidential may limit the College's ability to investigate and take reasonable action in response to a report of misconduct. In such cases, the College will evaluate the request(s) that a report remain confidential in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment.

Even if the College cannot take disciplinary action against the Respondent because of the request for confidentiality, the College will nevertheless take prompt and effective action to limit the effects of the alleged sexual misconduct and to prevent its recurrence to the extent warranted and practicable.

Victims of sexual misconduct and relationship violence have other reporting options, which they can pursue regardless of whether or not they choose to invoke the College disciplinary processes described in this policy. Victims can pursue criminal charges through Public Safety at 978-232-2222 or through the Beverly Police Department at 978-921-6040. The College does not wait for the conclusion of a criminal investigation to begin the investigation of complaint of sexual assault or violence. The College will take immediate steps to protect the alleged victim in the educational setting and prevent recurrent forms of sexual harassment and assault.

### **Interim Measures**

During any investigation and prior to a final determination, the Title IX Coordinator may take appropriate interim measures to protect the Complainant. These measures may include, but are not limited to, the imposition of a no-contact order and/or employment, transportation, and residence modifications. The Title IX Coordinator may limit a Respondent's access to certain facilities or activities pending resolution of the matter if they determine in their sole discretion that the action is necessary in order to protect the safety and well-being of members of the Endicott Community.

### **Investigation and Resolution Process**

The College will provide adequate, reliable and impartial investigation of complaints of misconduct under this policy to the extent appropriate and possible. All parties have an interest in the speedy resolution of an allegation of sexual misconduct or relationship violence. The College will make all reasonable efforts to complete the investigation and communicate its findings in a prompt time frame, usually within sixty days. However, the College cannot control all factors that might contribute to a delay in the process. Status updates during the investigation process will be provided as appropriate. The investigation process is outlined in this section.

## **RESOLUTION**

**Complaint:** To initiate an investigation, the Complainant must submit a statement to the Title IX Coordinator that contains:

1. The name of the Respondent, if known;
2. A description of the alleged violation, and
3. The date, approximate time and location of the alleged violation, if known.

### **Preliminary Investigation**

Reports concerning faculty and staff respondents will be preliminarily assessed by the Title IX Coordinator to determine whether a formal investigation is warranted. After reviewing the information received, the Title IX coordinator will: (1) identify what, if any, portions of the misconduct policy were allegedly violated; (2) meet the complainant, if feasible, to inquire about and finalize the complaint; and (3) determine if there is cause to proceed with a formal investigation.

If the Title IX Coordinator determines that there is no reasonable cause to pursue a complaint (e.g., if the information received does not present any potential violation of the policy, or if it is so vague or incomplete that no other investigation is possible), the matter will be closed without initiating a Title IX investigation and that decision will be communicated to the reporting party.

If the Title IX Coordinator determines that there is reasonable cause to pursue the complaint, a formal investigation will be initiated, as follows:

- The Title IX Coordinator will provide the Complainant with a copy of this Policy, review procedures and inform the Complainant of available resources, support services and options, including the option to be assisted by an advisor of choice.
- The Title IX Coordinator will contact the Respondent in writing to notify the Respondent that a complaint has been filed, provide notice of the allegations and advise that these allegations will be investigated. The Title IX Coordinator will meet with the Respondent to review the allegations in greater detail, provide a copy of this Policy, review procedures, and inform the Respondent of available resources, support services and options, including the option to be assisted by an advisor of choice.

### **Informal Resolution**

Either the Complainant or Respondent may request an informal resolution by providing written notice to the Title IX Coordinator. An informal resolution may be pursued if: (1) the parties both agree to voluntarily participate in the process; (2) both parties are informed of all allegations and the parties' options for a formal resolution; and (3) the College must deem the matter appropriate for informal resolution. The goal of informal resolution is to provide a forum where the Complainant and Respondent can, with the aid of a representative from Human Resources or designee office, come to a mutually agreed upon resolution. If a mutually agreed upon resolution is not reached, either of the parties may invoke the formal resolution process.

### **Formal Resolution**

Either the Complainant or the Respondent may invoke the formal resolution process by providing written notification to the Title IX Coordinator. The College may also, either before or after conducting an Investigation, independently invoke the formal resolution process as it deems appropriate.

Endicott will assign an appropriately trained investigator to investigate the discriminatory conduct at issue. Although each investigation will vary based on allegations, scope and other factors, the Complainant and Respondent in each case will be permitted to describe their allegations in support of or in response to the complaint, suggest witnesses to be interviewed, and present evidence. The statements of the parties and witnesses, including any documentation that is relevant to the investigation, as determined relevant and appropriate by the investigator, will be considered by the investigator. Interviews will be the primary method of collecting information as part of the fact-finding investigation. It is the responsibility of the investigator, not the parties, to gather the evidence relevant to the complaint and the actions raised in the party's statements, to the extent reasonably possible.

Once all the facts and evidence are gathered from all parties, and the investigator concludes that the fact finding is over, the investigator will make a determination, based on preponderance of the evidence, whether a violation of this policy occurred. This means that the investigator will decide whether it is more likely than not, based upon the information available, that the Respondent is responsible for the alleged violation.

If the Investigator determines that the Respondent is responsible for a violation of this Policy, the Investigator will recommend to the appropriate supervisor disciplinary and corrective actions. The recommendation is based upon a number of factors, including: the nature of the violation, the harm suffered by the alleged victim; any ongoing risk to either the alleged victim or the community posed by the Respondent, the impact of the violation on the College community; any previous conduct violations and any mitigating or aggravating circumstances.

Typically, the appropriate supervisor, in consultation with Human Resources and the Title IX Coordinator, will impose appropriate disciplinary and corrective actions. Disciplinary sanctions may range from a written warning to termination of employment. They may also include any educational, remedial or corrective actions as warranted.

### **Retaliation Prohibited**

Any member of the College community has the right to raise concerns about or file a good faith complaint of discrimination without fear of retaliation. It is unlawful and it is a violation of College policy to retaliate against an individual for filing a complaint of discrimination or for cooperating in a discrimination investigation. Any person who retaliates against an individual reporting discrimination, filing a discrimination complaint or participating in a discrimination investigation is subject to disciplinary action up to and including termination by the College.

If you have any question about this process and/or would like to request an interim measure or other support, please contact Title IX Coordinator, Sally Arnold at [sarnold@endicott.edu](mailto:sarnold@endicott.edu) or by 978-232-2041.