

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

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 students will be resolved according to the procedures outlined in this Policy. Reports alleging such conduct committed by employees of the College will be resolved consistent with the procedures outlined in the faculty and staff handbooks 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 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 students who wish to report sexual misconduct, or seek emotional support or medical care. The following resources are completely confidential under most circumstances:

**Counseling Center:** In an emergency, contact Campus Safety at 978-232-2222 to put you in contact with the Counselor on call. During office hours (9 a.m. –5 p.m. Monday–Friday), you may contact the Counseling Center at 978-232-2106.

**College Chaplain:** Gail Cantor 978-232-2163 or [gcantor@endicott.edu](mailto:gcantor@endicott.edu).

**Endicott College Health Center:** 978-232-2104

**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:**

**Endicott College Public Safety & Police**

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 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, residence, and academic modifications. The College may limit a student's or organization's access to certain College facilities or activities pending resolution of the matter. The College may impose an interim suspension of the Respondent pending the resolution of an alleged violation when the College determines that it is necessary in order to protect the safety and wellbeing of members of the College community.

## **3. 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.

### **DISCIPLINARY PROCEEDINGS**

**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 Sex Discrimination (including sexual misconduct), Relationship Violence or Stalking, and
3. The date, approximate time and location of the alleged violation, if known.

The College reserves the right to investigate and take action with regard to information brought to its attention regardless of the wishes of the parties or whether any complaint is filed.

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.

If the Title IX Coordinator finds that the misconduct alleged in the Complaint is sufficient to state a violation of this policy, and if the Complainant wishes to pursue a formal resolution, or if the College, based on the nature of the alleged policy violation and potential risk to the community decides to pursue a formal resolution, the Title IX Coordinator will direct at least one trained investigator to conduct a preliminary assessment of the reported misconduct. In some cases the investigator will be a trained staff member of the College, and in other cases an outside investigator hired by the College and familiar with Endicott's policies and procedures will be used. This determination will be made based on the nature of the complaint and at the discretion of the Title IX Coordinator. If the assigned investigator determines that the allegation warrants further review, the investigator will conduct a full, thorough, prompt, fair, and impartial investigation. All investigators receive regular and ongoing training on issues related to sexual misconduct and relationship violence. These procedures have been developed to conduct an investigation that is fair and impartial, to provide all involved parties with notice and a meaningful opportunity to be heard, and to protect the safety of the Complainant and Respondent, and the College community at large.

### **Overview of Investigation**

During the investigation, the Complainant and Respondent will have an equal opportunity to participate, including the opportunity (1) to be heard by providing written statements, providing verbal statements, and responding to questions from the investigator(s); (2) to submit information and corroborating evidence; (3) to identify witnesses who may have relevant information about the reported conduct; (4) to submit questions that they believe should be directed by the investigator to each other or to any witness; and (5) to respond to the facts and statements gathered during the investigation. The investigator will notify and seek to meet separately with the Complainant, the Respondent, and any witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, video, and medical records (subject to the consent of the applicable party). The investigator has the discretion to determine the relevance of any witness or proffered evidence and to include or exclude certain types of evidence in preparing the draft and final investigative reports.

### **Participation of Advisor in the Investigation and Resolution Process**

The Complainant and Respondent are entitled to an advisor of their choice to guide and accompany them throughout the investigation and resolution process. The advisor may be a friend, mentor, family member, attorney, or any other support person a party chooses to advise them. People who may be called as witnesses in the investigation may not serve as advisors. The College can help identify Endicott College staff or faculty to serve as advisors, if requested. The role of the advisor shall be limited to support and consultation; the advisor may not speak during any proceeding except privately to the student he or she is advising, nor shall the advisor question or address witnesses.

While the exact order and number of meetings will vary depending on the unique facts and circumstances in each case, the investigation will typically involve an initial meeting with the Complainant; a notice letter sent to the Respondent; a first interview with the Complainant to discuss the specifics of the allegation or review a written statement; a first interview with the Respondent to discuss the specifics of the allegation or review a written statement; a second interview with each party to review what the other has revealed in their first interview and/or to share their written statement; interviews of witnesses identified by either party or the investigator; collection of any relevant information; potentially a third interview with each party to review information shared by the other during their second interview, witness statements, and information collected. At the conclusion of the investigation, the investigator will prepare a draft investigation report summarizing the information gathered. The Complainant and Respondent will have an opportunity to review the draft investigation report and to submit additional comments and information to the Investigator. The investigator will designate a reasonable time for this review and response by the parties. The investigator will then prepare a final investigative report, which will include a summary of the relevant evidence and recommendation as to whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility for a violation of Endicott policy. In reaching this finding, the investigator will consult with the Title IX Coordinator.

**The Complainant and Respondent will have an opportunity to view the final report and related documents in person in College offices, but in general, copies of the report will not be distributed.**

The investigator will present the final investigation report with the recommended findings to the Vice President of Student Affairs (or designee) for review and determination. The purpose of this review is to provide an independent review of the report from someone who is trained in these issues but has not been involved in the case. The review will evaluate the report for completeness, ensure there is no bias, and that the recommendation is supported by the facts of the case. At the conclusion of this review, the Vice President of Student Affairs (or designee) will either agree with the investigator's recommendation or direct the investigator to pursue additional lines of inquiry,

make revisions, or other suggestions that are materially relevant to the recommendation or facts necessary to make a recommendation. The Vice President of Student Affairs or designee will then make the final determination and communication regarding the findings and any sanctions, if applicable. In any case, both the Complainant and the Respondent will be notified in writing of the outcome of the investigation and the sanction imposed, as well as any amendments/changes from an appeal.

### **Informal Resolution**

The College may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution if all of the following are met:

1. All parties voluntarily agree to participate in an informal resolution, without a full investigation and adjudication, with the understanding that informal resolution may be ended and formal process invoked at any time prior to conclusion;
2. All Parties have received full disclosure of the allegation and their options for a formal resolution; and
3. The College determines that the particular Title IX complaint is appropriate for such a process.

### **Acceptance of Responsibility**

If a complaint is not addressed through Informal Resolution, and the Respondent chooses to accept responsibility for the alleged violation(s), the Respondent will provide the Investigator with a written statement identifying the specific violation(s) and/or conduct to which the Respondent admits. The Investigator will share the Respondent's statement with the Complainant and the Vice President of Student Affairs (or designee). Sanctions and any accountability plan requirements will be determined by the Vice President of Student Affairs (or designee).

### **SANCTIONS**

The Vice President of Student Affairs (or designee) will impose at least one of the sanctions listed below for any Respondent found responsible of a violation of this Policy. Respondent may also be subject to an accountability plan, as described below.

#### **Sanctions:**

- a. Letter of Censure: official disciplinary action conveying to the student that the student's behavior was unacceptable and that any future prohibited conduct may result in more severe disciplinary actions, including disciplinary probation, suspension or expulsion.
- b. Disciplinary Probation: pre-suspension period in which the student's behavior is under College review, conveying that the student's behavior was unacceptable and that any future prohibited conduct may result in more severe disciplinary action, including Suspension or Expulsion.
- c. Suspension: separation from the University for a period no less than the remainder of the current semester and not more than seven semesters. Suspension may be effective immediately or deferred until the end of the current semester. During the period of suspension, Respondent is not permitted on campus without the written permission of the Vice President of Student Affairs.
- d. Expulsion: permanent separation from the College effective immediately.
- e. Degree Revocation: revocation of any degree awarded for a student who is found responsible for prohibited conduct but has already received a degree. Revocation of a degree requires approval of the President of the College.

**Accountability Plan:** In addition to the above sanctions, the Vice President of Student Affairs (or designee) may impose an accountability plan, including but not limited to terms such as:

- A. restitution for loss, damage, or actual expenses incurred as a result of the Respondent's behavior;
- B. volunteer service as a corrective measure or learning experience;
- C. online tutorials designed to educate the Respondent on a particular topic that is relevant to the prohibited conduct and/or designed to improve the Respondent's decision making;
- D. participation in educational programming, including alcohol and other drug evaluations, assessment or reflection activities;

- E. restriction on or prohibition against participation in student activities and/or eligibility to represent the College in any official function or leadership position (e.g., athletics, student leadership positions, or elected office in any recognized student organization);
- F. change in housing assignment or academic schedule;
- G. loss of privileges, including housing, organization participation, or event attendance;
- H. restriction of contact with other specified members of the College community; or
- I. any other measure determined appropriate by the Vice President of Student Affairs or designee.

## **APPEALS**

In any case, both the Complainant and Respondent will have the right to appeal the decision based on the following:

1. Significant procedural error that changes the finding of fact; or
2. New evidence that significantly alters the findings, which was previously unknown to the appealing party, has been discovered and is available during the appeal process.

A letter of appeal setting forth the basis for an appeal on either of the grounds above should be submitted to the Office of the Vice President of Student Affairs by the student within three business days of the receipt of the determination. An Appellate Officer will be assigned by the Vice President of Student Affairs who may affirm, reverse, or modify the outcomes.

One appeal is permitted on the grounds set forth above. The decision on the appeal is final and shall be conveyed in writing to both parties. The imposition of sanctions may be deferred while the appeal process is pending at the discretion of the Vice President of Student Affairs.