



# Nichols College Sexual Misconduct Policy

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## **I. Purpose and Scope of Policy<sup>1</sup>**

### **A. Statement of Institutional Values**

Sexual misconduct of any form is a violation of the rights and dignity of those subjected to the misconduct. When any member of our community engages in an act of sexual misconduct, that person exhibits a fundamental failure to act with integrity and to recognize and respect the intrinsic worth of another. Acts of sexual misconduct, as defined in section IV of this Policy, are contrary to the College's educational mission and values, are harmful to others, and will not be tolerated at Nichols College ("Nichols" or the "College").

All members of the Nichols community should be free from sexual misconduct in the classroom; the social, recreational and residential environment; and the workplace. The College seeks to foster a climate free from sexual misconduct through a coordinated education and prevention program, the promulgation of clear and effective policies, as well as investigative and grievance procedures that are prompt, equitable, and accessible to all. In response to any reported sexual misconduct, Nichols will take all appropriate steps to eliminate the misconduct, prevent its recurrence and address its effects.

In order to promote a culture where members of the College community respect themselves and one another, and to provide for the safety and security of our community, the College requires all community members to take action to prevent acts of sexual misconduct. Creating a safe campus environment is the responsibility of all members of the College community, both individually and collectively.

The College will actively educate the College community, respond to all allegations promptly, provide interim measures to address safety and emotional well-being, and act in a manner that recognizes the dignity of the individuals involved.

In order to achieve equitable results, the College will carefully review and/or investigate all reports and complaints of sexual misconduct with an earnest intent to understand the perspective and experiences of each individual involved, and provide for fair and impartial evaluation and resolution. See the Nichols Process for Resolving Complaints of Sexual Misconduct at Appendices A and B.

### **B. Purpose of Policy**

The purpose of this policy is to provide the Nichols community with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions of prohibited conduct. The policy applies to all College community members, including students, faculty, and staff. It is intended to protect and guide students, faculty and staff who have been affected by sexual misconduct, whether as a Reporting Party, a Respondent, or a third party.

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<sup>1</sup> Nichols reserves the right to amend or modify this policy depending on the circumstances. This includes, but is not limited to, the College's right to modify this policy in unusual circumstances such as when a Reporting Party withdraws a complaint or a Respondent admits responsibility.

When used in this policy, a “Reporting Party” refers to the individual who believes herself, himself or their self to have been the subject of sexual misconduct. A “Respondent” refers to the individual who has been accused of sexual misconduct. A “Third Party” refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else. “Employee” generally refers to both staff and faculty members, unless otherwise specified. A “report” refers to any incident or concern regarding sexual misconduct that is reported to someone designated by the College as a campus security authority (“CSA”) under the Clery Act<sup>2</sup>, a “Responsible Employee” under Title IX, or any other individual designated as a “Mandatory Reporter.”

The College defines “Responsible Employees” to include supervisors and officials with significant responsibility for student and campus activities including but not limited to student housing, discipline and campus security.

All College community members, other than those subject to confidentiality obligations imposed by law, are “Mandatory Reporters” who are required to report allegations of sexual misconduct and violations of this policy.

***Anyone who has any questions regarding their obligations should reach out to the College’s Title IX Coordinator for clarification.***

A “complaint” is an allegation of sexual misconduct filed against a student, faculty, or staff member that initiates the appropriate investigative and disciplinary processes. A “College community member” includes students, employees, visitors, and independent contractors.

In addition to defining sexual harassment and the forms of sexual misconduct that violate the standards of our community, this policy will also:

- Identify resources and support for all College community members;
- Identify the Nichols Title IX Coordinator, Deputy IX Coordinators, and the Title IX Compliance Team (“Title IX Team”) and their roles;
- Provide information about where a College community member can obtain support or access resources in a confidential manner;
- Provide information about how a College community member can make a report or complaint on-campus or off-campus; and,
- Provide information about how a report or complaint against a College community member will be investigated, evaluated and resolved. See Appendix A: Process for Resolving Complaints of Sexual Misconduct Against a Nichols Student and Appendix B: Process for Resolving Complaints of Sexual Misconduct Against a Staff Employee or a Faculty Member.

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<sup>2</sup> In accordance with the Clery Act, the College defines a CSA to include any member of the Nichols Department of Public Safety; any individual who has responsibility for campus security, but who is not a member of the Nichols Department of Public Safety; any individual identified by the College as someone to whom a crime should be reported; and any College official who has significant responsibility for student and campus activities.

### **C. Scope**

As stated above, this policy applies to all College community members, including students, employees, visitors, and independent contractors. Any individual, whether or not affiliated with Nichols, may make a report under this Policy alleging that a College community member has violated this Policy. When used in this policy, “employee” generally refers to both staff and faculty members. However, different complaint processes will apply depending on the role of the Respondent (student, non-faculty employees, and faculty members). See Appendices A and B. Vendors, independent contractors, visitors, and others who conduct business with the College or on College property are also expected to comply with this policy.

All College community members are responsible for their actions and behavior, both on campus and off campus. Members of the Nichols community have a responsibility to adhere to College policies and local, state, and federal law. Therefore, this policy applies both to on-campus and off-campus conduct, including, but not limited to, off-campus conduct that has an actual or potential adverse impact on any member of the College community or the College.

The College will provide resource options and respond promptly and equitably to all allegations of sexual misconduct involving a College community member. The College will engage in a Title IX review during which it is committed to maintaining fairness for all parties and balancing the needs and interests of individuals with the safety of the community.

### **D. Coordination with Non-Discrimination Policy**

Nichols recognizes that harassment related to an individual’s sex, sexual orientation, gender identity or gender expression (hereinafter collectively “gender related status”) can occur in conjunction with misconduct related to an individual’s race, color, ethnicity, national origin, religion, age, disability, or any other legally protected characteristics (“protected characteristics”). Targeting individuals on the basis of any protected characteristics violates Nichols’ community standards and College Policy. When misconduct relates to both a person’s gender related status, and other protected characteristics, the College will coordinate the investigation and resolution efforts to address any and all harassment and discrimination. Please also see Nichols’ separate Policy Against Discrimination, Harassment and Retaliation at <http://go.nichols.edu/policies>

## **II. Notice of Non-Discrimination**

Nichols is committed to establishing and maintaining an environment free of all forms of harassment and discrimination for all College community members.

Nichols College does not discriminate on the basis of race, color, ethnicity, national origin, sex, sexual orientation, gender identity or expression, disability, or age in its programs or activities. The following individuals have been designated by Nichols to respond to inquiries regarding the non-discrimination policies:

**Title IX Coordinator**

**Pamela J. (“PJ”) Boggio**

*Vice President of Student Affairs/Dean of Students*

121 Center Road

Dudley, MA 01571-5000

508-213-2480

[Pamela.boggio@nichols.edu](mailto:Pamela.boggio@nichols.edu)

**Deputy Title IX Coordinator**

**Marney Buss**

*Assistant Dean of Students*

121 Center Road

Dudley, MA 01571-5000

508-213-2101

[Marney.buss@nichols.edu](mailto:Marney.buss@nichols.edu)

**Deputy Title IX Coordinator**

**Jessica Ryan**

*Director of Community Standards*

121 Center Road

Dudley, MA 01571-5000

508-213-2027

[Jessica.Ryan@nichols.edu](mailto:Jessica.Ryan@nichols.edu)

***The above individuals should be contacted regarding gender discrimination and violations under this policy, but can also be contacted regarding other forms of discrimination relating to any other protected characteristic such as race, color, ethnicity, national age or disability.***

Please also see Nichols’ separate Policy Against Discrimination, Harassment and Retaliation at <http://go.nichols.edu/policies> .

Sexual misconduct, including sexual harassment as defined in this policy, is a form of sex discrimination that unjustly deprives a person of equal treatment. It is prohibited by Title IX, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act, Massachusetts General Laws Chapter 151B, Massachusetts Fair Education Practices Act, Massachusetts General Laws 151 C, Section 2(g), and other applicable state and federal statutes.

This policy prohibits sexual misconduct committed by any College community members, regardless of their gender related status. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

For assistance related to civil rights, students may visit the Department of Education, Office for Civil Rights (“OCR”) website at <http://wcicrobcolpOted.gov/CFAPPS/OCR/contactus.cfm> which provides information regarding the address and phone number of the OCR office that serves your area, or call 1-800-421-3481.

### **III. College Statement on Privacy**

Nichols is committed to maintaining the privacy of all individuals involved in a report of sexual misconduct. In any review of a report or complaint of sexual misconduct, every effort will be made to protect the privacy and interests of the individuals involved in a manner consistent with the College’s need to thoroughly review the report. Such a review is essential to protecting the safety of the Reporting Party, the Respondent, and the broader campus community and to maintaining an environment free from sexual discrimination.

At all times, the privacy of the parties will be respected and safeguarded. Information related to a report of misconduct will be shared only with those College employees who “need to know” in order to assist in the investigation and/or resolution of the complaint.

If a member of the College community wishes to obtain confidential assistance through on-campus or off-campus resources without making a report to the College, the College has identified and has made Confidential Resources available on-campus. See Resources at Part V, Section C. In sum, if a Reporting Party requests that her/his identity remain confidential, the College will balance this request with its responsibility to provide a safe and non-discriminatory environment for all College community members including the Reporting Party, its ability to conduct an investigation if confidentiality is maintained and its responsibility under certain requirements imposed by state and federal law. The College will seek to respect the request of the Reporting Party and where it cannot do so, it will consult with the Reporting Party and keep her/him informed about the chosen course of action.

If the College concludes that a report of sexual misconduct represents an immediate threat to the College campus community, the College will issue a timely notice of the conduct to the College community if deemed appropriate and necessary to protect the health or safety of the campus community. This notice will not contain any biographical or other identifying information of the Reporting Party.

All investigative and sanction proceedings, and notices or statements issued by the College will comply with the requirements of the Clery Act, Title IX, and College policy. No information shall be released from such proceedings by the College except as required or permitted by law or College policy.

### **IV. Prohibited Conduct and Definitions**

Nichols prohibits all forms of sexual misconduct. Sexual misconduct is a broad term that includes but is not limited to sexual assault, sexual harassment, sexual violence, sexual exploitation, stalking, relationship violence, cyber-stalking, bullying and cyber-bullying, aiding or facilitating the commission of a violation, and retaliation.

Consistent with the values of an educational and employment environment free from harassment based on sex, the College also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex, gender identity, gender expression or sex-stereotyping, even if those acts do not involve conduct of a sexual nature, and regardless of whether the gender-based harassment rises to the level of violating the law.

#### **A. Definition of Sexual Harassment**

Sexual harassment consists of two basic types:

1. **Intimidating, Hostile, or Demeaning Environment** - Any unwelcome action, verbal expression, usually repeated or persistent, or series of actions or expressions that have either the intent, or are reasonably perceived as having the effect, of creating an intimidating, hostile, or demeaning educational, employment, or living environment for a student or College employee, either by being sexual in nature or by focusing on a person's gender, sexual orientation, gender identity, or gender expression. An intimidating, hostile, or demeaning environment is defined as one that is so severe, pervasive, or objectively offensive that it interferes with a person's ability to learn, exist in living conditions, work (if employed by the College), or have access and opportunity to participate in all and any aspect of campus life.

A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical.

2. **Quid Pro Quo Harassment** - Any action in which submission to conduct of a sexual nature is made either explicitly or implicitly a term or condition of an individual's education, grades, recommendations, or extra-curricular or employment opportunities.

In either type of sexual harassment noted in 1) or 2) above, the effect will be evaluated based on the standard of a reasonable person in the position of the Reporting Party.

#### **B. Forms of Prohibited Sexual Harassment**

In some cases, sexual harassment is obvious and may involve an overt action, a threat or reprisal. In other instances, sexual harassment is subtle and indirect, with a coercive aspect that is unstated.

Sexual harassment can take many forms:

- It can occur between persons of equal power status (e.g., student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff) or between persons of unequal power status (e.g., supervisor to subordinate,



faculty member to student, coach to student-athlete, student leader to first-year student). Although sexual harassment often occurs in the context of an exploitation of power by the individual with the greater power, a person who appears to have less power in a relationship can also commit sexual harassment (e.g., student harassing faculty member)

- It can be committed by an individual or may be a result of the collective actions of an organization or group.
- It can be committed against an individual, an organization or a group.
- It can be committed by an acquaintance, a stranger, or someone with whom the Reporting Party has a personal, intimate or sexual relationship.
- It can occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- It does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- Examples of behavior that might be considered harassment include, but are not limited to:
  - Unwanted sexual innuendo, propositions, sexual attention or suggestive comments and gestures; humor and jokes about sex or gender-specific traits; sexual slurs or derogatory language directed at another person's sexuality, gender, gender identity, sexual orientation or gender expression; insults and threats based on sex, gender, gender identity, sexual orientation or gender expression; and other oral, written or electronic communications of a sexual nature that an individual communicates is unwanted and unwelcome;
  - Written graffiti or the display or distribution of sexually explicit drawings, pictures, or written materials; sexually charged name-calling; sexual rumors or ratings of sexual activity/performance; or the circulation, display, or creation of e-mails or Web sites of a sexual nature.
  - Display or circulation of written materials or pictures degrading to an individual(s) or gender group where such display is not directly related to an educational/pedagogical, artistic, or work goal. When an instructor determines it is necessary to include such materials in classroom instruction, discussion, or required studies/reading, it is expected that the instructor will offer prior warnings concerning the intent to display or introduce such explicit materials. Instructors are encouraged to attempt to accommodate individuals who find such materials upsetting or triggering by allowing for alternative means of fulfilling course requirements.
  - Unwelcome and objectively inappropriate physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;
  - Undue and unwanted attention, such as repeated flirting, objectively inappropriate or repetitive compliments about clothing or physical attributes, staring, or making sexually oriented gestures;
  - Physical coercion or pressure of an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;

- Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex, gender identity, sexual orientation or gender expression;
- Use of a position of power or authority to: (1) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment; or (2) promise rewards in return for sexual favors;
- Abusive, disruptive or harassing behavior, whether verbal or physical, which endangers another's mental or physical health, including but not limited to threats, acts of violence, or assault based on gender related status and/or in the context of intimate partner violence;
- Demeaning verbal or other expressive behavior of a sexual or gendered nature in instructional settings; and
- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of actual or perceived gender related status of the harasser or her/his/their target.

### **C. Additional Forms of Prohibited Sexual Misconduct**

Sexual misconduct may vary in its severity and includes a range of behaviors. The following descriptions represent sexual behaviors that violate Nichols' community standards and another person's rights, dignity and integrity.

- **Sexual Violence:** Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. This includes rape, sexual assault, battery and sexual coercion. Sexual violence may involve individuals who are known to one another or have an intimate and/or sexual relationship (relationship violence), or may involve individuals not known to one another. Examples include, but are not limited to:
  - Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
  - Having or attempting to have sexual contact of any kind with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.
- **Relationship violence including domestic and dating violence:** Relationship violence is any intentionally violent or controlling behavior by a person who is currently or was previously in a relationship with the victim. Relationship violence includes actual or threatened physical injury, sexual assault, psychological abuse, economic control, and/or progressive social isolation.

Relationship violence occurs in all types of relationships. Relationship violence can include, but is not limited to:

- physical or emotional abuse
  - controlling/possessive behavior
  - making you feel like you are walking on eggshells; you have to call your friends in secret; you must dress a certain way
- Sexual Exploitation: An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even if the behavior does not constitute another sexual misconduct offense. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:
    - Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
    - Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
    - Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, sexual intercourse/penetration, or in a state of undress, without their knowledge or consent. Even if a person consented to the sexual activity or intercourse/penetration, photographing or taping someone without their knowledge goes beyond the boundaries of that consent. The dissemination of photographs or video/audio of someone involved in sexual activity, intercourse/penetration, or in a state of undress, without their knowledge or consent constitutes a separate and additional act of sexual exploitation;
    - Voyeurism, which is the act of observing someone involved in sexual contact/activity or in a state of undress, without their knowledge or consent.
    - Inducing incapacitation, including by providing someone with alcohol or drugs, with or without that person's knowledge, for the purpose of making another person vulnerable to non-consensual sexual activity.
    - Stalking: A course of conduct involving more than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an

intimate or sexual relationship, or may involve individuals not known to one another.

- Aiding or Facilitating Sexual Misconduct: Promoting or encouraging the commission of any behavior prohibited under this policy. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so. Actions that can be taken to prevent sexual misconduct may include direct intervention, calling Public Safety or local law enforcement, contacting a Responsible Employee or CSA or seeking assistance from another person in authority.
- Retaliation: Acting or attempting to retaliate or seek retribution against a Reporting Party, Respondent, or any individual or group of individuals involved in the investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Reporting Party. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in print or verbally with intent to harm their reputation.

#### **D. Statement on Consent, Coercion, Incapacitation, and Alcohol**

Consent to engage in sexual activity must be knowing and voluntary and must exist from the beginning to the end of each instance of sexual activity and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to any other forms of sexual contact. Further, consent to engage in a particular sexual act at any given time is not indefinite or ongoing consent to engage in that same act, or any other sexual act, on other occasions. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in sexual activity each time such activity occurs.

Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Relying on non-verbal communication can lead to misunderstandings.

Consent may not be inferred from silence, passivity, lack of resistance or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. In the absence of an outward demonstration, consent does not exist.

Consent cannot be obtained from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact. Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm, severe and/or pervasive emotional intimidation, which places an individual in fear of immediate or future 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. If sexual acts were preceded by threats or coercion, there is no consent.

Consent may be withdrawn by either party at any time. Withdrawal of consent must also be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

A lack of consent may be indicated in a variety of ways. First, a verbal - “no” - even if it sounds indecisive or insincere, must be accepted as a lack of consent. Next, if consent is requested verbally, the absence of any explicit affirmative verbal response constitutes lack of consent. In addition, if at any time a person’s words, actions, or demeanor suggest that she/he/they are hesitant, confused or uncertain about engaging in sexual activity, the parties should stop and obtain verbal consent before continuing sexual activity.

Certain individuals are not legally able to consent to sexual activity, because of their age or mental limitations, regardless of whether their words or actions indicate such consent. Members of the Nichols community are expected to know, and comply with the statutory age of consent and any other applicable laws regarding sexual activity in any and all jurisdictions where they may reside or travel. For example, in the state of Massachusetts, consent to sexual acts cannot be legally given by minors under the age of 16. Engaging in sex with a minor is a criminal act punishable by a substantial prison sentence which can be up to and including life, and all members of the community must not engage in any sexual activity with minors and must comply with their legal obligation to report any knowledge of child abuse.

An individual is considered legally incapacitated and unable to consent to sexual activity if she/he/they is not able to make rational, reasonable judgments and therefore is incapable of giving consent. Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if she/he/they demonstrate that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication.

Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason. An individual may experience a blackout state in which she/he/they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication. The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

Alcohol or drugs impair a person’s decision-making capacity, awareness of the consequences, and ability to make informed judgments. However, being intoxicated or impaired by drugs or alcohol is never an excuse to engage in sexual misconduct and does not excuse one from the responsibility to obtain consent. As stated above, even if a Respondent is intoxicated she/he/they will be found responsible for sexual misconduct if she/he/they engages in sexual activity with another person who did not consent to the sexual activity.

In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that he/she/they have consent from his/her or their partner(s). Consent to some form of sexual activity does not necessarily mean consent to other forms of sexual activity. Mutually understandable consent must be obtained by the initiator at every stage of sexual interaction. Consent is mutually understandable when a reasonable person would consider the words and/or actions of the parties to have expressed a mutually understandable agreement between them to do the same thing, in the same way, at the same time, with one another.

## **V. Reporting**

### **A. Who in the Nichols College Community Must Report Sexual Misconduct Once They Become Aware of It?**

All members of the community (including faculty, staff and students) are *required* to inform the College if they believe another member of the community has engaged in discrimination or harassment on the basis of any legally protected characteristic, including but not limited to sex. Sexual assault and misconduct is a form of sex discrimination. Thus, if any member of the community learns that another member of the community has engaged in sexual misconduct, they must report that information, as further set forth below in more detail. See also Nichols' Policy Against Discrimination, Harassment and Retaliation at <http://go.nichols.edu/policies> .

In accordance with federal law, Nichols has designated certain employees, including student employees, who are responsible for student welfare as campus security authorities (“CSAs”) under the Clery Act, and has similarly designated certain employees as Responsible Employees under Title IX. Many individuals will fall under both designations. Any employee designated as a CSA and/or a Responsible Employee is required by federal law to share any report of rape, sexual assault, or sexual misconduct of which they become aware that involves any member of the College community—regardless of whether the person who committed the sexual misconduct was also a member of the Nichols community—with the Title IX Coordinator, a Deputy Title IX Coordinator or another member of the Title IX Compliance Team. Similarly, Nichols College deems all employees, not subject to legal confidentiality restrictions, to be Mandatory Reporters who must also report to the Title IX Coordinator, or a Deputy Title IX Coordinator.

If a member of the community wishes to discuss a matter of sexual misconduct in confidence, see Part V, Section C for Confidential Reporting.

### **B. Emergency/Immediate Reporting Options and Campus and Community Resources**

If you have been the victim of rape or sexual assault or other sexual misconduct, the College strongly recommends seeking assistance as soon as possible through one or more of the following options:

## 1. Emergency/Immediate Reporting Options

Call 911 for on-campus emergencies including situations where you are feeling unsafe and wish to reach local law enforcement or emergency medical care (including an ambulance).

Call the Nichols Department of Public Safety (“Public Safety”) at 508-213-2298. Nichols Public Safety officers are on duty at Nichols 24/7, every day of the year. Nichols Public Safety officers are dedicated to maintaining a safe and respectful environment.

Nichols also falls under the jurisdiction of the Dudley Policy Department (DPD). Public Safety maintains a strong and coordinated working relationship with the DPD. Specifically as to allegations of sexual assault, and other gender related crimes Nichols College strongly advocates for the involvement of the DPD.

Public Safety will also assist any Nichols community member in getting to a safe place and if the survivor wishes, will arrange transportation to a hospital or other medical provider.

If you wish to file a police report with local law enforcement, Public Safety will assist you in doing so, by contacting the police department of the local jurisdiction where the crime occurred and facilitating their meeting with you on Nichols’ campus, if possible, if you prefer not to travel to a local precinct. However, contacting Public Safety does not obligate you to file a criminal police report with the local police or a criminal complaint.

Public Safety can put you in touch with various resources to assist survivors as well. See Additional College and Community Resources at Part V, Sections V.B.3 and 4 below.

Please also consult the Information and Resources for Victims of Sexual Misconduct document for additional information concerning available advocacy and medical resources available. This information is available on the College’s website at <http://go.nichols.edu/policies>.

The College encourages individuals who have experienced an incident of sexual misconduct, including rape or sexual assault, to seek assistance from a medical provider and/or law enforcement as soon as possible after the incident. This is the best option to ensure preservation of evidence, effective medical care, and to begin a timely investigation.

A medical provider can provide emergency and/or follow-up medical services, and the ability to discuss any health care concerns related to the incident in a confidential medical setting may bring peace of mind. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (sexually transmitted infection or pregnancy) and second, to properly collect and preserve evidence, for potential future criminal prosecution. There is a limited window of time following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and will preserve the options to seek resolution through the criminal justice system. It should be noted that Massachusetts law requires medical personnel to report all cases of rape and sexual abuse where the survivor seeks medical treatment. This report does not include the victims’ name, address or other identifying information. See Part V,

Section C on Confidential Resources. However, individuals should file a complaint and seek assistance from Nichols regardless of whether they have reported an incident to law enforcement or sought medical attention after an incident.

## 2. Additional Non-Emergency Reporting Options and Resources

All members of the community may report an incident of sexual misconduct to the College's Title IX Coordinator or other member of the Title IX team, either directly, or by making a report to any CSA or Responsible Employee. The Title IX Coordinator will investigate the report, and take necessary measures to ensure community and Reporting Party's safety.

The College recognizes that a student or employee may choose to report non-emergency sexual misconduct to any trusted employee of the College. For example, a student may choose to confide in a Resident Assistant or Area Coordinator, a faculty or staff advisor, or a coach, all of whom are CSAs and Responsible Employees who must report the incident to the College's Title IX Coordinator under this policy. All members of the community are required to report knowledge of sexual misconduct affecting a community member to the College so that the College can take steps to support that individual's well-being and enhance the safety and security of the community and respond in a prompt manner. However, to enable the College to respond to all reports in a prompt and equitable manner, the College encourages all individuals to directly report any incident of sexual misconduct to the Title IX Coordinator or a member of the Title IX Compliance Team (Title IX Team).

See Appendix C for contact information for the Title IX Coordinator and other Title IX Team members.

## 3. Additional College Resources

The College offers resources that can provide crisis intervention services, counseling, academic support, housing support and medical services to all Nichols community members. Such services include the following:

### Campus Resources:

College Health Services: 508-213-2238

Counseling Services: 508-213-2108

Housing & Residence Life 508-213-2480

Student Life Office 508-213-2216

Human Resources: 508-213-2111

Nichols Counseling Services provides confidential counseling support for students and will also assist any member of the community with referrals upon request. Contact information for Nichols Counseling Services is as follows:



**Director of Counseling Services**

**Kate Logan**

*Counseling Services*

508-213-2108

[kate.logan@nichols.edu](mailto:kate.logan@nichols.edu)

**Counselor**

**Brittany Henderson**

*Counseling Services*

508-213-2338

[brittany.henderson@nichols.edu](mailto:brittany.henderson@nichols.edu)

Employees (staff and faculty) can access medical, counseling, and other forms of support through a third party provided Employee Assistance Program (EAP). The EAP's counseling, referral and treatment is completely confidential for Nichols' employees and members of their immediate family. Nichols' EAP administrator, Employee Connect, can be reached 24 hours a day at (888) 628-4824 or by visiting [www.lincoln4benefits.com](http://www.lincoln4benefits.com) or [www.guidanceresources.com](http://www.guidanceresources.com). For more information about this program, please refer to the Employee Handbook, <https://my.nichols.edu/administration/policies/Documents/EmployeeHandbook.pdf>

In addition, the College will provide Interim Measures, including but not limited to no-contact orders, academic, employment or residence modifications (See Part V, Section J: Interim Measures).

4. Community Resources:

Dudley Police Department 508-943-4411 "press 3" to reach an officer  
District Attorney's Office: 508-755-8601  
DA's Office:Victim/Witness Advocates: 508-792-0214 Mon- Fri during business hours

Legal Aid Bureau: 508-752-3718 (Mon – Fri 9am – 5 pm)

Pathways For Change, Inc. <http://centralmasspfc.org/>  
Hotline # 1-800-870-5905 (Confidential/24 hr support)  
TTY # 888-887-7130  
Video Phone # 508.502.7681

Daybreak Resource for Women <http://www.ywcacentralmass.org/domestic-violence/>  
And Children – Dom.Violence Agency  
Hotline # 508-755-9030 (24 hours)

**General Victim Services Referral:**

Spanish Helpline 1-800-223-5001  
Mass 211 Helpline 877-211-6277 (Can help find local emer resources)

Pathways For Change, Inc <http://centralmasspfc.org/>  
Hotline # 1-800-870-5905 (Confidential/24 hr support)

TTY # 888-887-7130  
Video Phone # 508.502.7681

Wayside Trauma  
Intervention Services  
(Milford, MA) 1-800-511-5070 (Rape Crisis Number – 24 hrs)

United States  
National Rape Crisis  
Center Helpline: 1-800-841-8371 (24 hours)

Massachusetts Commission against Discrimination (MCAD)  
John McCormack building  
One Ashburton Place  
Sixth floor, Room 601  
Boston, MA 02108  
617-994-6000

The MCAD prohibits all forms of discrimination and sexual harassment in the workplace. The statute of limitations for filing a complaint is 300 days from the last date of discrimination.

Equal Employment Opportunity Commission (EEOC)  
JFK Federal building  
475 Government Center  
Boston, MA 02203  
800-669-4000

The EEOC prohibits all forms of discrimination and sexual harassment in the workplace. The statute of limitations for filing a complaint is 300 days from the last date of discrimination.

U.S. Department of Education, Office for Civil Rights (OCR)  
5 Post Office Square, 8th floor  
Boston, MA 02109-3921  
617-289-0111

While OCR complaints should generally be filed within 180 days of the last date of the alleged discrimination, OCR may extend this filing deadline in a variety of circumstances.

### **C. Confidential Resources and Support**

The College recognizes that there are often barriers to reporting for survivors of sexual assault and other violations of this policy. For those individuals who do not want to make a report to someone who is required to share detailed information about their report with the College's Title IX Coordinator, the College offers confidential resources. Individuals seeking to talk to someone at the College concerning an incident of sexual misconduct, without making a

report to the College or triggering any investigation or action by the College, may utilize confidential resources.

These resources are subject to a legal confidentiality obligation that prohibits the release of information without that individual's express consent. If someone makes a report of sexual misconduct to a College confidential resource, that person/resource will not disclose to College officials any identifying information about the Reporting Party and Respondent, but will provide the Title IX Coordinator with a statistical 'tracking form' that includes limited non-identifying information about the incident to permit the College to determine if the incident should be reported among the crime statistics the College is required by federal law (the Clery Act) to report each year.

Ordinarily, reports made to individuals at the College designated as "confidential resources" will not be shared with law enforcement or any state agencies. However, there are limited exceptions to a confidential resource's legal ability to keep a report of sexual abuse confidential. For example, Massachusetts law requires the reporting of abuse of minors (under the age of 18). In addition, if someone discloses to a confidential resource information suggesting they or someone else presents an imminent threat or danger to harm themselves or others, confidentiality cannot be maintained. In addition, Massachusetts General Laws chapter 112, §12A 1/2 requires medical personnel to report to the Commonwealth and the police in the town where the rape or sexual assault occurred data concerning any and all cases of rape and sexual abuse where the survivor seeks medical treatment. However, the data that must be reported does not include the survivor's name, address or other identifying information.

The following Nichols College and community resources are confidential, subject to Massachusetts law:

**Director of Counseling Services**

**Kate Logan**

*Counseling Services*

508-213-2108

[kate.logan@nichols.edu](mailto:kate.logan@nichols.edu)

**Counselor**

**Brittany Henderson**

*Counseling Services*

508-213-2338

[brittany.henderson@nichols.edu](mailto:brittany.henderson@nichols.edu)

Pathways For Change, Inc

Hotline #

TTY #

Video Phone #

<http://centralmasspfc.org/>

1-800-870-5905 (Confidential/24 hr support)

888-887-7130

508.502.7681

#### **D. Anonymous Reporting**

Any individual may also make an anonymous report to the College concerning an act of sexual misconduct committed by a member of the Nichols community. Any individual may report an incident to the Title IX Coordinator anonymously, without disclosing her/his/their name, identifying the Respondent or requesting any action. Depending on the level of information provided to the Title IX Coordinator about the incident or the individuals involved, the College's ability to respond to an anonymous report may be limited.

Anonymous Reports may be made to the Title IX Coordinator by submitting an online report located at <http://go.nichols.edu/policies> - there will be an option for the report to be submitted anonymously here.

#### **E. Time Frame for Reporting**

Individuals are encouraged to report sexual misconduct as soon as possible in order to maximize the College's and/or law enforcement's ability to respond promptly and equitably. The College does not limit the timeframe for reporting an incident, and upon receipt of any report, regardless of when the incident occurred, the College will conduct a Title IX review to determine the level of investigation and/or any safety measures necessary to maintain the community's safety. However, the College will not be able to impose disciplinary sanctions against an individual who is no longer affiliated with the College.

#### **F. Coordination with Law Enforcement**

The College encourages Reporting Parties to pursue criminal action for incidents of sexual misconduct when the incident constitutes a crime under the law of the jurisdiction where the incident occurred. To the extent permitted by law, the College will also assist a Reporting Party in making a criminal report and will cooperate with law enforcement agencies if a Reporting Party decides to pursue the criminal process.

The College's definitions of sexual misconduct, and its process and standard of proof for finding a Respondent responsible for sexual misconduct differ from those used in criminal prosecutions. Thus, a Reporting Party may reasonably seek resolution through the College's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Law enforcement's determination whether or not to prosecute a Respondent is not determinative of whether Nichols will conduct a Title IX investigation or conclude that a member of the community has committed sexual misconduct in violation of College policy. However, any criminal disposition related to the Title IX complaint will be taken into consideration in a Title IX investigation. Proceedings under the College's Sexual Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. However, the College will, to the extent possible consistent with its obligations to promptly address a Sexual Misconduct complaint, cooperatively work with and coordinate with local law enforcement officers and the prosecutor's office. For example, the College will comply with law enforcement agency requests for cooperation and such cooperation may require the College to temporarily suspend the fact-finding portion of investigations while the law enforcement agency gathers evidence. In such cases, the College will promptly resume

its investigation as soon as notified by the law enforcement agency that it has completed its evidence gathering process or within a reasonable amount of time.

#### **G. Amnesty for Students Who Report Sexual Misconduct**

Nichols College encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting an incident of sexual misconduct (“an incident”) transparent and straightforward. The College recognizes that a student who has been drinking or using drugs at the time of an incident also may be hesitant to make a report because of potential disciplinary consequences for her/his/their own conduct. Thus, a student who reports sexual misconduct, either as a Reporting Party or a third party witness, will not be subject to disciplinary action by the College for her/his/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. The amnesty policy applies to the College’s student conduct process which addresses student misconduct other than sexual misconduct subject to this Policy.

#### **H. Bystander Intervention**

Nichols College expects all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention (if it is safe to do so), calling law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the College and protected from retaliation.

#### **I. Statement Against Retaliation**

It is a violation of College policy to retaliate in any way against an individual or a group because the individual or group of individuals reported an allegation of sexual misconduct.

The College recognizes that retaliation can take many forms, may be committed by an individual or a group against an individual or a group, and that a Respondent can also be the subject of retaliation by the Reporting Party or a third party. The College will take immediate and responsive action to any report of retaliation and may pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

#### **J. Interim Measures**

Upon receipt of a report, the College will provide interim support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational and work environment. The College will determine the necessity and scope of any interim measures. Even when a Reporting Party or Respondent does not specifically request that protective action be taken, the College may choose to impose interim measures at its discretion to ensure the safety of any individual, the broader College community or the integrity of the investigative process.

Students seeking such assistance should speak with the Title IX Coordinator or other member of the Title IX Team who will coordinate such requests on the behalf of the student. The College will maintain contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take prompt and responsive action to enforce measures previously ordered or implemented by the College.

The College may impose any remedy that can be tailored to the involved parties to achieve the goals of this policy, even if not specifically listed here. The range of interim measures may include:

- No Contact Order: Any party involved in an investigation (Reporting Party, Respondent or witness) may request, or the College may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications. In some cases, an individual may also wish to consider an Abuse Prevention Order or a Harassment Prevention Order from the local courts. This is a civil proceeding independent of the College. If a court order is issued the College will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The College may also limit an individual or organization's access to certain College facilities or activities as part of the no contact order.
- Academic, Employment or Residence Modifications: Any party involved in an investigation (Reporting Party or Respondent or witness) may request an academic or employment accommodation or a change in residence after a report of sexual misconduct. An individual who requests assistance in changing their academic or living situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. These may include:
  - Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via Skype or other alternative means, providing an academic tutor, or extending deadlines for assignments;
  - Change of residence hall assignment;
  - Change in work assignment or schedule;
  - Providing an escort to ensure safe movement between classes and activities.
  - In certain instances, it may be appropriate to make academic, employment or residence modifications that affect the Respondent.
- Emotional Support: The College provides counseling services to students through Nichols' Mental Health Services and will assist any member of the community by providing a referral to off campus mental health providers. Additional resources detailed in the Campus and Community Resources section of this policy also are available to members of the campus community.

- Interim Separation: Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the College may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

*The Title IX Coordinator retains broad discretion in determining interim measures, and such interim measures are not subject to challenge or appeal of any kind.*

## **VI. Complaint Process**

### **A. Role of the Title IX Coordinator**

The College has appointed Pamela J. (“PJ”) Boggio, Dean of Students, to serve as the Title IX Coordinator. In her role as Title IX Coordinator, and a member of the Title IX Team, Ms. Boggio oversees the College’s centralized review, investigation and resolution process for reports of sexual misconduct. She also coordinates the College’s compliance with Title IX. Ms. Boggio is supported by Deputy Title IX Coordinators Jessica Ryan, Director of Community Standards and Marney Buss, Assistant Dean of Students as well as a Title IX Compliance Team made up of trained faculty and staff members.

The duties and responsibilities of the Title IX and Deputy Title IX Coordinators include training, education and climate checks as well as the oversight of procedures that promptly and equitably eliminate sexual harassment, prevent its recurrence and address its effects on individuals and our community. The Title IX and Deputy Title IX Coordinators will:

- Oversee the investigation and resolution of all reports of sexual misconduct with violations being referred to an Investigation Team as detailed below;
- Meet with any individual, whether a Reporting Party, a Respondent, or a third party, to discuss interim measures, resources, and procedural options on and off campus;
- Ensure prompt and equitable resolutions that comply with all requirements and timeframes specified in the complaint procedures;
- Conduct on-going and annual climate checks, tracking, and monitoring of sexual misconduct allegations on campus; and,
- Coordinate all training, education and prevention efforts.

The Title IX Coordinator, Deputy Title IX Coordinators, and other members of the Investigation Team meet on a regular basis throughout the academic year. The Investigation Team is designed to ensure consistent application of this policy to all individuals and to enable the College to respond promptly and equitably to eliminate sexual misconduct, prevent its recurrence and address its effects. The Investigation Team coordinates the review, investigation and resolution of reports of sexual misconduct and ensures that appropriate interim measures are implemented.

The Investigation Team oversees the resolution of reported misconduct through the College's complaint processes. As stated above, the complaint resolution process will be determined by the status of the Respondent:

- Complaints against students will be resolved by the Process for Resolving Complaints of Sexual Misconduct Against Nichols Students, attached hereto as Appendix A.
- Complaints against employees will be resolved by the Process for Resolving Complaints of Sexual Misconduct Against Nichols Staff Employees and Faculty Members, attached hereto as Appendix B.
- Each process is guided by the same principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Reporting Parties or Respondents, to provide guidance throughout the investigation and resolution of the complaint.
- The Investigation Team is further charged with assessing College policies and procedures for responding to reports of sexual misconduct, for compliance with best practices, and proposing and implementing changes when warranted. Contact information for the Title IX and Deputy Title IX Coordinators and the Investigation Team is attached in Appendix C.

#### **B. Time Frame for Resolution**

The investigation and resolution of all reports of sexual misconduct will generally be completed within 60 to 90 days. Extenuating circumstances, including, but not limited to, the complexity and severity of a complaint may arise that require the complaint process to extend beyond 60 to 90 days. In general, a Reporting Party and Respondent can expect to receive periodic updates from the Title IX Coordinator and/or other member of the Investigation Team as to the status of the review or investigation.

In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the need for additional time and best efforts will be made to complete the process in a timely manner.



## **APPENDIX A: Process for Resolving Complaints of Sexual Misconduct Against Nichols Students**

The College will determine whether a student is responsible for sexual misconduct, as it is defined in the Nichols College Sexual Misconduct Policy, and what if any safety measures and/or disciplinary sanctions are appropriate, in accordance with the procedures described below. Reports that a Nichols faculty member, staff member or third party has violated the College's Sexual Misconduct Policy are reviewed in accordance with the Process for Resolving Complaints of Sexual Misconduct Against Nichols Faculty, Staff, and Nichols-Affiliated Third Parties. See Appendix B to Nichols College Sexual Misconduct Policy.

### **I. Initiating an Investigation**

#### **A. Formal Complaint**

Any individual may initiate a formal investigation by Nichols College of a student member of the community for violation of the Nichols College Sexual Misconduct Policy by submitting in writing to the Title IX Coordinator or a Deputy Title IX Coordinator, a formal complaint that includes the following information:

1. The name of the student respondent ("Respondent"), or if his/her name is unknown, information sufficient to allow the College to identify the Respondent, such as his/her photograph;
2. A statement explaining the nature and circumstances of the complaint including a list of possible witnesses; and
3. The names, addresses and telephone numbers of those filing the complaint. The Complaint must be signed by the individual initiating the complaint ("Reporting Party").

Complaints can be submitted by submitting a written statement to 301 Fels – the Student Life Suite attention PJ Boggio – Dean of Students or by using the online form available at <http://go.nichols.edu/policies>. Complaints will be investigated/adjudicated **pursuant to a preponderance of evidence standard of proof**, as to whether the Respondent violated any provisions of the Sexual Misconduct Policy.

If a Reporting Party withdraws her/his/their complaint, the Title IX Coordinator will assess whether sufficient evidence of sexual misconduct exists to support completing an investigation. Among the factors the Title IX Coordinator will consider in making this determination is whether prior complaints by the Reporting Party or others have been made against the Respondent. The College's decision to proceed in investigating a student member of the community when the Reporting Party has withdrawn the complaint shall be made by the Title IX Coordinator in his or her sole discretion, but will take the Reporting Party's wishes into consideration. If the Title IX Coordinator determines that no action will be taken against the Respondent because the Reporting Party has withdrawn her/his/their complaint, a file concerning the withdrawn complaint will be maintained by the Title IX Coordinator, so that the matter can be re-opened if, among other things, the Reporting Party later decides to reinitiate the complaint,

or if independent evidence of sexual misconduct by the Respondent comes to the College's attention, which the Title IX Coordinator determines warrants re-opening the investigation. If a Respondent admits to a violation, the Title IX Coordinator in his or her discretion may forego an investigation and refer the matter directly to the sanction process, described below in Part II, Section C of this Appendix.

### **B. Timeframe for Filing a Formal Complaint**

The College does not limit the timeframe for filing a complaint. However, Reporting Parties are encouraged to file as soon as possible in order to maximize the College's ability to investigate and come to an appropriate resolution. The College will not be able to pursue disciplinary action against a Respondent who is no longer affiliated with the College.

### **C. Incomplete and Unofficial Reports**

Any individual may also report a sexual misconduct incident involving a student member of the community by bringing the report to the attention of the Title IX Coordinator, or any employee who has been designated by the College as a CSA or Responsible Person including but not limited to, verbal, anonymous or informal reports.

When the Title IX Coordinator receives a report that a Nichols student has engaged in sexual misconduct, but the report does not meet the requirements of a formal complaint, the College's Title IX Coordinator or designee, alone, or in coordination with the Investigation Team, will determine what steps should be taken to gather additional information. Thereafter, the Title IX Coordinator will direct the gathering of the additional information.

Once all available additional information has been obtained, it will be evaluated by the Title IX Coordinator who will decide whether a formal complaint is warranted. If a decision is made to proceed with a formal complaint, a college administrator will serve as the Reporting Party. In making this decision, the Title IX Coordinator will consider the wishes of the Reporting Party as well as the risk that declining to investigate might jeopardize the safety of the Reporting Party or any member(s) of the Nichols community.

### **D. Interim Measures**

Upon receipt of a formal complaint or an incomplete or unofficial report, the Title IX Coordinator, independently or in consultation with the Investigation Team, shall put interim measures in place, if warranted and appropriate. Interim measures may include, but are not limited to, no-contact orders, suspensions, and academic, residence, and work place accommodations. Any member of the community who is involved in a Title IX investigation (Reporting Party, Respondent and/or witnesses) may request interim measures, either by making a direct request to the Title IX Coordinator, or another member of the Title IX Team. In addition, the Title IX Coordinator may impose interim measures independently, absent any request, if he/she/they deems doing so in the best interest of the community.

## II. Investigation and Findings Process

### A. Initial Determination as to Whether a Title IX Sexual Misconduct Investigation Will Occur

Upon receipt of a formal complaint or an incomplete or unofficial report concerning a potential violation of this policy, the Title IX Coordinator, alone, or in coordination with the Title IX Team, shall make an initial assessment as to what level of a Title IX Sexual Misconduct investigation is warranted. If it is determined that a formal complaint or an incomplete or unofficial report alleges prohibited conduct under this Sexual Misconduct Policy, the Title IX Coordinator will commence the Investigation and Determination Process detailed below.

If it is determined that the formal complaint or an incomplete or unofficial report does not allege prohibited conduct under this Sexual Misconduct Policy, the Title IX Coordinator may either dismiss the allegations or refer the matter for investigation under the Nichols' separate Policy Against Discrimination, Harassment and Retaliation at <http://go.nichols.edu/policies>. The referral of an investigation to be handled under the Nichols' separate Policy Against Discrimination, Harassment and Retaliation does not constitute any substantive determination of the character of a reported event. The College reserves the right to later initiate an investigation under this Sexual Misconduct Policy depending on facts and circumstances revealed during the separate investigation.

### B. Investigation and Determination Process

Where the Title IX Coordinator determines that a particular complaint constitutes a potential violation, the Title IX Coordinator shall convene the Investigation Team to make (i) findings of fact; (ii) conclusions as to whether the Respondent violated any provisions of the Nichols College Sexual Misconduct Policy; and (iii) appropriate sanctions if a violation is found. **The standard of proof shall be by a preponderance of the evidence.** The Investigation Team shall be comprised of three members of the Investigation Team and all members shall be trained in investigation and Title IX compliance.

1. Title IX Coordinator's Initial Meeting with Reporting Party and Respondent

Where there is an alleged violation, the Title IX Coordinator will meet with the Reporting Party and Respondent separately and take the following initial steps:

- i. Provide each with written notification of the allegations of misconduct under investigation, which shall include, to the extent then known, a reference to any specific provisions of the Nichols College Sexual Misconduct Policy allegedly violated;
- ii. Inform each that an Investigation Team will be convened in order to investigate the complaint;
- iii. Identify the members of the Investigation Team to the extent known (If not yet known during the initial meeting, the Title IX

Coordinator shall promptly inform Reporting Party and Respondent when known);

- iv. Advise each that any behavior that can be construed as retaliation against the Reporting Party, Respondent, or witnesses will be subject to immediate disciplinary action up to and including suspension or dismissal from the College;
- v. Provide each with a copy of the Nichols College Sexual Misconduct Policy and advise each to read it carefully;
- vi. Provide each with a copy of this Appendix A (Process for Resolving Complaints of Sexual Misconduct Against Nichols Students) and advise each to read it carefully;
- vii. Advise each that they may speak to the Title IX Coordinator at any time before or during the Investigation Team proceedings if they have questions about the Nichols College Sexual Misconduct Policy or the Investigation and Determination Process;
- viii. Advise each that they may have one advisor or one attorney present when they meet with the Investigation Team. Nichols will not supply any individual involved in a investigation with an attorney or pay for him or her to retain an attorney. Any advisor or attorney who accompanies a Reporting Party or Respondent to a meeting of the Investigation Team may attend that meeting solely for consultation purposes and may not pose or answer questions. If a Respondent, or a Reporting Party who is a member of the Nichols community does not have an advisor, Nichols will provide them with a list of Nichols faculty or staff who have volunteered to act as an advisor to parties involved in the investigative process;
- ix. Advise each that each will be permitted to submit a list of witnesses to the Investigation Team and a timeframe for doing so;
- x. Advise each that each will be permitted to submit relevant documentary evidence to the Investigation Team (e.g., texts, e-mails, social media, notes, photographs, etc.);
- xi. Advise each of confidential resources, including advocates, health care providers, and counseling services, on campus and in the local community;
- xii. Advise each of the importance of preservation of evidence (e.g., texts, e-mails, social media, notes, photographs, etc.);

- xiii. Advise each of their option to request that the College take steps to prevent unnecessary or unwelcome contact or communication with another member of the Nichols community;
- xiv. Advise the Reporting Party of her/his/their option to pursue a criminal action against the Respondent working with local police in addition to pursuing remedies and/or sanctions through College processes;
- xv. Advise the Reporting Party that the Nichols Department of Public Safety and/or other community members are available to assist them in contacting and communicating with local police, or in seeking court orders of protection/restraining orders.
- xvi. Advise the Reporting Party and Respondent that in many cases involving alleged sexual misconduct, mediation is never appropriate.
- xvii. Advise the Reporting Party and Respondent of their rights and roles during the investigative process.

## 2. Testimony from the Parties during the Investigative process

The Investigation Team shall hear testimony from both the Reporting Party and Respondent. A report is then generated as a summation of the testimony given and both the Reporting Party and Respondent are entitled to view the generated report. Each party is allowed to submit a list of witnesses and applicable questions that the Investigation Team will ask of witnesses and of each party. While each party is entitled to view the other's report, neither that party nor that party's representative/attorney is entitled to cross-examine the other party directly. All questions will be asked by the Investigation Team.

## 3. Third Party Witnesses and Other Evidence Reviewed

The Investigation Team may ask the parties and witnesses for names, addresses, and other contact information (e.g., phone numbers and/or e-mail addresses) of other witnesses. The Investigative Team may also call third party witnesses for their testimony. Both the Reporting Party and Respondent have the right to be notified of such third party testimony.

The Investigation Team shall review any documentary evidence submitted by the Reporting Party, Respondent or third party witnesses (e.g., texts, e-mails, social media, notes, photographs, etc.). The Investigation Team shall describe their determinations concerning the relevance of the documentary evidence in the written report, and append (and redact, if necessary) submitted evidence, as appropriate.

The Investigative Team shall gather and assess any other relevant evidence available to the College (e.g., additional witnesses not identified by the parties, security camera footage, Respondent's disciplinary history, expert review of medical records).

The Investigative Team shall review College records to assess whether any prior allegations have been made against the Respondent that relate to the subject of the complaint. The Respondent will be provided with a copy of any prior disciplinary record that relates to the subject of the complaint.

After conducting all interviews, reviewing all documentary evidence and other relevant evidence, the Investigation Team will, if necessary and when possible, conduct follow-up interviews with the Reporting Party and Respondent.

### 3. Interim Measures

As a part of this investigative process, the Investigation Team shall assess if interim measures not already implemented are appropriate and, if so, work with the Title IX Coordinator to ensure they are in place.

### 4. Investigation Team's Evidentiary Standards

Evidence concerning the Reporting Party's sexual history with individuals other than the Respondent shall not be considered at the hearing. Further, evidence of prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

### 5. Investigation Team's Altering of the Process

While the above constitutes the general guidelines as to how a Investigation will take place, the Investigation Team reserves the right to alter the process, including but not limited to, reviewing evidence and/or interviewing witnesses in a different order than detailed above. All members of the Investigation Team shall be trained in Title IX compliance prior to sitting on the Investigation Team and shall participate in annual training.

### 6. Drafting of the Report

At the conclusion of the investigation, but before any findings are reached by the Investigation Team, the Investigation Team shall meet and confer regarding the investigation. One member of the Investigation Team, typically a Title IX Deputy Coordinator, shall be designated to draft a written report (with a summary of evidence and attachments, but without findings). The Investigation Team will then meet again to review the written report as a group and draft edits as necessary. The Investigation Team shall then submit their draft written report (with a summary of evidence and attachments, but without findings) to the Title IX Coordinator for review. The Title IX Coordinator may suggest additional clarification or the gathering of additional evidence, as appropriate.

The Title IX Coordinator shall permit both the Reporting Party and Respondent and their respective advisors or attorneys to review a copy of the draft written report (still without findings, but as revised consistent with any suggestions from the Title IX Coordinator) under the supervision of a College employee in the Title IX Coordinator's office and then provide any clarifications or comments they may wish to offer.

Neither the Reporting Party nor the Respondent will be permitted to copy or remove the draft written report from the Title IX Coordinator's office. Relevant and clarifying comments provided by either party will be incorporated into the draft report by the Title IX Coordinator, and the Title IX Coordinator will note any significant deviations from previous statements. If the Reporting Party and/or Respondent identify additional relevant evidence, that evidence shall be gathered by the Investigation Team and included in the written report. Depending on the nature of the new evidence, it may be shared with the Reporting Party and the Respondent for comment.

The Investigation Team shall then revise their draft report to summarize all relevant evidence obtained during the investigation, and reach written conclusions using a preponderance of the evidence standard, as to whether the Respondent violated any provision(s) of the Nichols College Sexual Misconduct Policy. The Investigation Team will submit their revised draft investigation report including conclusions to the Title IX Coordinator.

The Investigation Team's conclusion(s) should be explained clearly and address each element necessary to establish whether the Respondent violated the Sexual Misconduct Policy so that the reader understands how the Investigation Team reached their conclusion in light of the available evidence and the standard of proof.

The Title IX Coordinator will then issue letters to the Reporting Party and Respondent informing them of the Investigation Team's findings concerning whether the Respondent violated any provision of the Nichols College Sexual Misconduct Policy. If a violation of College policy is found, the Title IX Coordinator shall also include in the letter the sanctions that were determined consistent with Part II, Section C below.

### **C. Sanctions Process**

The Title IX Coordinator shall, in consultation with the Team, make a sanction recommendation to the Investigation Team, who shall then make a sanction determination.

### **D. Appeal Process**

If the Respondent is found not responsible for any alleged misconduct, the Title IX Coordinator's letter to both parties will inform them of the Reporting Party's right to appeal that decision on the grounds of either: (a) a lack of fairness in the procedures or process used to investigate the complaint that may alter the outcome of the investigation; or (b) significant new information (previously unknown) that has been revealed or discovered which materially alter the facts of the matter and may alter the outcome of the investigation.

If the Respondent is found to have violated any provision of the College's Sexual Misconduct Policy, the letter will notify both parties of those findings and provide them with information relating to the sanctions process described in Part II, Section C above, and will inform the parties of the Respondent's right to appeal this decision on the grounds of either (a) a lack of fairness in the procedures or process used to investigate the complaint that may alter the outcome of the investigation or (b) significant new information (previously unknown) that has been revealed or discovered which materially alter the facts of the matter and may alter the outcome of the investigation. When a Respondent is found to have violated any provision of the

College's Sexual Misconduct Policy, both the Reporting Party and Respondent shall have the right to appeal based upon sanctions being inconsistent with level of offense.

Regardless of the findings, the Title IX Coordinator shall present both parties with equal but separate opportunities to review the Investigation Team's final report, with their advisor or attorney present, in the presence of the Title IX Coordinator or designee.

The Reporting Party shall have seven calendar days after receiving notice that the College found the Respondent has not violated Nichols College's Sexual Misconduct Policy to submit a written appeal. Appeals of determinations as to Violations shall be made to Appeals Administrator Ms. Kerry Calnan; Associate Professor of Accounting and Finance and Vice President of Innovation and Institutional Effectiveness.

Both the Reporting Party and the Respondent shall have seven days after receiving notice of the sanctions decision to submit a written appeal. Appeals of determinations as to violations shall be made to Ms. Kerry Calnan; Associate Professor of Accounting and Finance and Vice President of Innovation and Institutional Effectiveness via a email to [community.standards@nichols.edu](mailto:community.standards@nichols.edu) – attn: Kerry Calnan.

If an appeal is granted, the Appeal Administrator shall determine the next steps in his/her sole discretion. Next steps may include, but are not limited to, a remand to the Title IX Investigation Team for additional investigation or remand to the Title IX Coordinator for further consideration.

#### **E. Reservation of Rights**

Nichols College expressly reserves its right to bring charges against any student, under the Student Code of Conduct Process, for misconduct which does not constitute a violation of the Nichols College Sexual Misconduct Policy. When a student is alleged to have engaged in both sexual misconduct and other types of misconduct, the College will ordinarily complete process for investigating allegations of sexual misconduct prior to initiating charges that a student violated other college policies or provisions of the Student Code of Conduct. Information and evidence obtained by the College during an investigation may be considered as evidence in other College proceedings.

#### **F. Withdrawal of Respondent from Nichols College**

Ordinarily, no notation concerning charges of sexual misconduct will be placed on the Respondent's transcript unless the investigation is complete and the student has been found to have violated Nichols College's Sexual Misconduct Policy. However, if a Respondent withdraws from the College while an investigation is pending, and before any findings and conclusions have been made, the Respondent's transcript will reflect that the student withdrew pending an investigation of Student Code of Conduct charges. If a Respondent withdraws after an investigation found him or her responsible for sexual misconduct, but before a sanction decision was made by the College, the student's transcript will reflect that the student withdrew pending Student Code of Conduct sanctions.



In an effort to find resolution regardless of a student's enrollment status the College reserves the right to continue the Investigation even in the event that the Responding Party or the Reporting Party withdraws from the institution. The College reserves the right to amend or modify this process. This includes modifying the process in unusual circumstances including, but not limited to, when a Reporting Party withdraws a complaint or a Respondent admits responsibility.

## **APPENDIX B: Process for Resolving Complaints of Sexual Misconduct Against Nichols Faculty, Staff, and Nichols-Affiliated Third Parties**

The College will determine whether a member of the College’s faculty, staff, or third party affiliated with the College (“third party” or “third parties”) is responsible for sexual misconduct, as it is defined in the Nichols College Sexual Misconduct Policy, and what if any safety measures and/or disciplinary or employment actions by the College are appropriate, in accordance with the Process described below under most circumstances. This Process covers complaints or reports concerning conduct by Nichols faculty, staff, or third parties. Reports that a Nichols student has violated the College’s Sexual Misconduct Policy are reviewed in accordance with the Process for Resolving Complaints of Sexual Misconduct Against Nichols Students. See [Appendix A](#) to Nichols College Sexual Misconduct Policy.

### **I. Initiating an Investigation**

#### **A. Formal Complaint**

Any individual may initiate an investigation by Nichols College concerning whether a member of the College’s faculty, staff, or third party has violated the College’s Sexual Misconduct Policy by submitting in writing to the Title IX Coordinator or a Deputy Title IX Coordinator, a formal complaint that includes the following information:

1. The name of the faculty, staff, or third party respondent (“Respondent”), or if his/her name is unknown, information sufficient to allow the College to identify the Respondent, such as his/her photograph;
2. A statement explaining the nature and circumstances of the complaint including a list of possible witnesses; and
3. The names, addresses and telephone numbers of those filing the complaint. The Complaint must be signed by the individual initiating the complaint (“Reporting Party”).

Upon receipt of such a formal complaint, the Title IX Coordinator will provide a copy to the following College administrators, as applicable:

- Nichols College Faculty: An Assistant Dean for Academic Affairs. If the report involves the Assistant Dean for Academic Affairs, the formal complaint will be forwarded to an Associate Dean for Academic Affairs. If the report involves an Associate Dean for Academic Affairs, the formal complaint will be forwarded to the Provost/Chief Academic Officer.
- Nichols College Staff: The Director or Assistant Director for Human Resources. If the report involves the Director or Assistant Director of Human Resources, the formal complaint will be forwarded to the Vice President of Administration.
- Third Parties: The third party’s supervisor, dean, department head, or other appropriate official as determined in the discretion of the Title IX Coordinator in consultation with Human Resources.

The College administrators identified above are hereinafter referred to as the Reviewing Administrator.

The Title IX Coordinator, in consultation with the Reviewing Administrator and the Investigation Team will determine whether some or all of the allegations will be handled at Academic Affairs or department level, or whether the Title IX Coordinator will initiate an investigation.

If a Reporting Party withdraws her/his/their complaint, the Title IX Coordinator will assess, in consultation with the Reviewing Administrator, whether sufficient evidence of sexual misconduct exists to support completing an investigation. Among the factors the Title IX Coordinator will consider in making this determination is whether prior complaints by the Reporting Party or others have been made against the Respondent. The College's decision to proceed in investigating a Respondent when the Reporting Party has withdrawn the complaint shall be made by the Title IX Coordinator in his or her sole discretion, but will take the Reporting Party's wishes into consideration. If the Title IX Coordinator determines that no investigation will be initiated against the Respondent because the Reporting Party has withdrawn her/his/their complaint, a file concerning the withdrawn complaint will be maintained by the Title IX Coordinator, so that the matter can be re-opened if, among other things, the Reporting Party later decides to reinitiate the complaint, or if independent evidence of sexual misconduct by the Respondent comes to the College's attention, which the Title IX Coordinator determines warrants re-opening the investigation. If a Respondent admits to the conduct, and if the Title IX Coordinator determines that the conduct constitutes a violation, the Title IX Coordinator in his or her discretion may forego an investigation and refer the matter directly to the disciplinary process, described below in Part III.

#### **B. Timeframe for Filing a Formal Complaint:**

The College does not limit the timeframe for filing a complaint. However, Reporting Parties are encouraged to file as soon as possible in order to maximize the College's ability to investigate and come to an appropriate resolution. The College will not be able to pursue disciplinary action against a Respondent who is no longer affiliated with the College.

#### **C. Incomplete and Unofficial Reports**

Any individual may also report a sexual misconduct incident involving a member of the College's faculty, staff or third party by bringing the report to the attention of the Title IX Coordinator, any member of the Investigation Team, or any employee who has been designated by the College as a CSA or Responsible Person including but not limited to, verbal, anonymous or informal reports.

When the Title IX Coordinator receives a report that a member of the College's faculty, staff, or third party has engaged in sexual misconduct, but the report does not meet the requirements of a formal report, the College's Title IX Coordinator or designee, alone, or in coordination with the Investigation Team, will determine what steps should be taken to gather additional information. Thereafter, the Title IX Coordinator will direct the gathering of the additional information.

Once all available additional information has been obtained, it will be evaluated by the Title IX Coordinator who will decide whether a formal complaint is warranted in consultation with the Investigation Team and the Reviewing Administrator. If the decision is made to proceed with a formal complaint and investigation, a college administrator selected by the Title IX Coordinator will serve as the Reporting Party. In making this decision, the Title IX Coordinator will consider the wishes of the Reporting Party as well as the risk that declining to investigate might jeopardize the safety of the Reporting Party or any member(s) of the Nichols community.

#### **D. Interim Measures**

Upon receipt of a formal complaint or an incomplete or unofficial report, or at any time during a College investigation into a report of a violation of the Nichols Sexual Misconduct Policy, the Title IX Coordinator, in consultation with the Investigation Team, shall put interim measures in place, if warranted and appropriate. Interim measures may include, but are not limited to, no-contact orders, suspensions, and work place accommodations. Any member of the College community who is involved in an investigation (Reporting Party, Respondent and/or witnesses) may request interim measures, either by making a direct request to the Title IX Coordinator, or another member of the Investigation Team. In addition, the Title IX Coordinator may impose interim measures independently, absent any request, if he/she/they deems doing so in the best interest of the community. Any interim suspensions of employment will be paid time off.

## **II. Investigation and Findings Process**

### **A. Initial Determination as to Whether a Sexual Misconduct Investigation Will Occur**

Upon receipt of a formal complaint or an incomplete or unofficial report concerning a potential violation of this policy, in consultation with the Reviewing Administrator, the Title IX Coordinator shall make an initial assessment as to whether a Sexual Misconduct investigation is warranted. If it is determined that a formal complaint or an incomplete or unofficial report alleges prohibited conduct under this Sexual Misconduct Policy, the Title IX Coordinator will commence the Investigation Process detailed below.

If it is determined that the formal complaint or an incomplete or unofficial report does not allege prohibited conduct under this Sexual Misconduct Policy, the Title IX Coordinator may either dismiss the allegations or refer the matter for investigation under the Nichols' separate Policy Against Discrimination, Harassment and Retaliation at <http://go.nichols.edu/policies>. The referral of an investigation to be handled under the Nichols' separate Policy Against Discrimination, Harassment and Retaliation does not constitute any substantive determination of the character of a reported event. The College reserves the right to later initiate a separate investigation under this Sexual Misconduct Policy depending on facts and circumstances revealed during the separate investigation.

### **B. Investigation and Determination Process**

Where the Title IX Coordinator determines that a particular complaint constitutes a potential violation, the Title IX Coordinator shall convene the Investigation Team to make (i) findings of fact; (ii) conclusions as to whether the Respondent violated any provisions of the Nichols College Sexual Misconduct Policy; and (iii) appropriate sanctions if a violation is found. **The standard of proof shall be by a preponderance of the evidence.** The Investigation Team shall be comprised of three members of the Team and all members shall be trained in Title IX compliance.

1. Title IX Coordinator's Initial Meeting with Reporting Party and Respondent in an Investigation

Where there is an alleged violation, the Title IX Coordinator will meet with the Reporting Party and Respondent separately and take the following initial steps:

- i. Provide each with written notification of the allegations of misconduct under investigation, which shall include, to the extent then known, a reference to any specific provisions of the Nichols College Sexual Misconduct Policy allegedly violated;
- ii. Inform each that an Investigation Team will be convened in order to investigate the complaint;
- iii. Identify the members of the Investigation Team to the extent known (If not yet known during the initial meeting, the Title IX Coordinator shall promptly inform Reporting Party and Respondent when known);
- iv. Advise each that any behavior that can be construed as retaliation against the Reporting Party, Respondent, or witnesses will be subject to immediate disciplinary action up to and including suspension or dismissal from the College;
- v. Provide each with a copy of the Nichols College Sexual Misconduct Policy and advise each to read it carefully;
- vi. Provide each with a copy of this Appendix B (Process for Resolving Complaints of Sexual Misconduct Against Nichols Faculty, Staff and Nichols-Affiliated Third Parties) and advise each to read it carefully;
- vii. Advise each that they may speak to the Title IX Coordinator at any time before or during the Investigative proceedings if they have questions about the Nichols College Sexual Misconduct Policy or the Investigation and Determination Process;
- viii. Advise each that they may have one advisor or one attorney present when they meet with the Title IX Investigation Team. Nichols will not supply any individual involved in a investigation

with an attorney or pay for him or her to retain an attorney. Any advisor or attorney who accompanies a Reporting Party or Respondent to a meeting of the Investigation Team may attend that meeting solely for consultation purposes and may not pose or answer questions. If a Respondent, or a Reporting Party who is a member of the Nichols community does not have an advisor, Nichols will provide them with a list of Nichols faculty or staff who have volunteered to act as an advisor to parties involved in the investigative process;

- ix. Advise each that each will be permitted to submit a list of witnesses to the Investigation Team and a timeframe for doing so;
- x. Advise each that each will be permitted to submit relevant documentary evidence to the Investigation Team (e.g., texts, e-mails, social media, notes, photographs, etc.);
- xi. Advise each of confidential resources, including advocates, health care providers, and counseling services, on campus and in the local community;
- xii. Advise each of the importance of preservation of evidence (e.g., texts, e-mails, social media, notes, photographs, etc.);
- xiii. Advise each of their option to request that the College take steps to prevent unnecessary or unwelcome contact or communication with another member of the Nichols community;
- xiv. Advise the Reporting Party of her/his/their option to pursue a criminal action against the Respondent working with local police in addition to pursuing remedies and/or sanctions through College processes;
- xv. Advise the Reporting Party that the Nichols Department of Public Safety and/or Victim/Witness Advocates are available to assist them in contacting and communicating with local police, or in seeking court orders of protection/restraining orders.
- xvi. Advise the Reporting Party and Respondent that in cases involving alleged violations, mediation is never appropriate.
- xvii. Advise the Reporting Party and Respondent of their rights and roles during the Investigation.

## 2. Testimony from the Parties to the Investigation Team

The Investigation Team shall hear testimony from both the Reporting Party and Respondent. A report is then generated as a summation of the testimony given and both the

Reporting Party and Respondent are entitled to view the generated report. Each party is allowed to submit a list of witnesses and applicable questions that the Investigation Team will ask of witnesses and of each party. While each party is entitled to view the other's report, neither that party nor that party's representative/attorney is entitled to cross-examine the other party directly. Questions will only be asked by the Investigation Team.

### 3. Third Party Witnesses and Other Evidence Reviewed

The Investigation Team may ask the parties and witnesses for names, addresses, and other contact information (e.g., phone numbers and/or e-mail addresses) of other witnesses. The Title IX Investigation Team may also call third party witnesses before the Board for testimony. Both the Reporting Party and Respondent have the right to be notified of such third party testimony and to be present during such testimony.

The Investigation Team shall review any documentary evidence submitted by the Reporting Party, Respondent or third party witnesses (e.g., texts, e-mails, social media, notes, photographs, etc.). The Title IX Investigation Team shall describe their determinations concerning the relevance of the documentary evidence in the written report, and append (and redact, if necessary) submitted evidence, as appropriate.

The Investigation Team shall gather and assess any other relevant evidence available to the College (e.g., additional witnesses not identified by the parties, security camera footage, Respondent's disciplinary history, expert review of medical records).

The Investigation Team shall review College records to assess whether any prior allegations have been made against the Respondent that relate to the subject of the complaint. The Respondent will be provided with a copy of any prior disciplinary record that relates to the subject of the complaint.

After conducting all interviews, reviewing all documentary evidence and other relevant evidence, the Investigation Team will, if necessary and when possible, conduct follow-up interviews with the Reporting Party and Respondent.

### 4. Interim Measures

As a part of this investigative process, the Investigation Team shall assess if interim measures not already implemented are appropriate and, if so, work with the Title IX Coordinator to ensure they are in place.

### 5. Investigation Team Evidentiary Standards

Evidence concerning the Reporting Party's sexual history with individuals other than the Respondent shall not be considered at the hearing. Further, evidence of prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.

## 6. Investigation Team's Altering of the Process

While the above constitutes the general guidelines as to how an Investigation will take place, the Investigation Team reserves the right to alter the process, including but not limited to, reviewing evidence and/or interviewing witnesses in a different order than detailed above. All members of the Investigation Team shall be trained in Title IX compliance prior to sitting on the Investigation Team and shall participate in annual training.

## 7. Drafting of the Report

At the conclusion of the investigation/judicial conduct board process, but before any findings are reached by the Investigation Team, the Investigation Team shall meet and confer regarding the investigation. One member of the Investigation Team, typically a Title IX Deputy Coordinator, shall be designated to draft a written report (with a summary of evidence and attachments, but without findings). The Investigation Team will then meet again to review the written report as a group and draft edits as necessary. The Investigation Team shall then submit their draft written report (with a summary of evidence and attachments, but without findings) to the Title IX Coordinator for review. The Title IX Coordinator may suggest additional clarification or the gathering of additional evidence, as appropriate.

The Title IX Coordinator shall permit both the Reporting Party and Respondent and their respective advisors or attorneys to review a copy of the draft written report (still without findings, but as revised consistent with any suggestions from the Title IX Coordinator) under the supervision of a College employee in the Title IX Coordinator's office and then provide any clarifications or comments they may wish to offer.

Neither the Reporting Party nor the Respondent will be permitted to copy or remove the draft written report from the Title IX Coordinator's office. Relevant and clarifying comments provided by either party will be incorporated into the draft report by the Title IX Coordinator, and the Title IX Coordinator will note any significant deviations from previous statements. If the Reporting Party and/or Respondent identify additional relevant evidence, that evidence shall be gathered by the Judicial Conduct Board and included in the written report. Depending on the nature of the new evidence, it may be shared with the Reporting Party and the Respondent for comment.

The Investigation Team shall then revise their draft report to summarize all relevant evidence obtained during the investigation, and reach written conclusions using a preponderance of the evidence standard, as to whether the Respondent violated any provision(s) of the Nichols College Sexual Misconduct Policy.

The Investigation Team's conclusion(s) should be explained clearly and address each element necessary to establish whether the Respondent violated the Sexual Misconduct Policy so that the reader understands how the Investigation Team reached their conclusion in light of the available evidence and the standard of proof.

The Title IX Coordinator may offer feedback, if any, which may be incorporated into the final draft. The Investigation Team shall resubmit their final draft to the Title IX Coordinator.



The Title IX Coordinator shall notify the Reporting Party and the Respondent that a decision has been made and that they may review the report and findings within the next five days.

### **III. College Action Following Investigation Process**

When the investigation is concluded, the Title IX Coordinator will notify the applicable Reviewing Administrator.

The Reporting Party and the Respondent shall each have two calendar days from the date they review the Investigation Team's report and findings to submit a written impact statement to the Reviewing Administrator. The written impact statements are intended to be an opportunity for the Reporting Party and the Respondent to inform the Reviewing Administrator of relevant information which should be considered in determining the appropriate action(s) to be taken by the College, including, but not limited to, how this incident has affected them, and whether they believe any facts or mitigating circumstances warrant leniency or significant employment action.

The Reviewing Administrator shall consider the following documents: i) copy of the Investigation Team findings and conclusions; ii) a copy of any relevant portions of the Respondent's personnel record; and iii) a copy of any impact statements. The Reviewing Administrator may also consult with the Title IX Coordinator, members of the Investigation Team, or any other College employees he or she deems appropriate (e.g. an employee's supervisor) prior to deciding what actions, if any, will be taken by the College. The Reviewing Administrator will not challenge or re-examine the Investigation Team's findings of fact or responsibility, but will review solely the issue of what if any response by the College is most appropriate to achieve the College's goals of redressing the Respondent's misconduct and enhancing the safety of the community.

The Reviewing Administrator shall thereafter advise the Title IX Coordinator, and Respondent, in writing, of all actions the College has taken ("the disciplinary decision") and shall advise the Reporting Party in writing of the actions taken by the College that directly affect the Reporting Party, such as protective measures, suspension, or termination of Respondent's employment. This communication from the Reviewing Administrator shall also inform the Reporting Party and the Respondent of their rights of appeal as detailed in Part IV below. The Reviewing Administrator shall send this communication to the Reporting Party and the Respondent via certified mail, return receipt requested, and also by electronic mail (read receipt requested). Absent extenuating or unusual circumstances, the Reviewing Administrator will generally send this communication to the parties within five (5) business days after the date the parties' written impact statements are due.

Actions the College may take when a Respondent is found to have violated the College's Sexual Misconduct Policy may include, but are not limited to disciplinary actions such as: loss of College privileges, reprimand, change in work assignment or location, mandatory training, unpaid suspension, and termination of employment, contract, or other relationship with the College. Discipline will be imposed depending on the role of the Respondent and in accordance with other legal obligations in the College's relationship with the Respondent. ***Nothing in this policy shall alter an employee's status as an at-will employee, and the College may choose to terminate any employee at any time with or without cause in accordance with the law.***

#### **IV. Appeal Process**

If the Respondent is found not responsible for any alleged misconduct, the Reviewing Administrator's written communication to both parties will inform them of the Reporting Party's right to appeal that decision on the grounds of either: (a) a lack of fairness in the procedures or process used to investigate the complaint that may alter the outcome of the investigation; or (b) significant new information (previously unknown) that has been revealed or discovered which materially alter the facts of the matter and may alter the outcome of the investigation.

If the Respondent is found to have violated any provision of the College's Sexual Misconduct Policy, the letter will notify both parties of those findings and provide them with information relating to the sanctions process described in III above, and will inform the parties of the Respondent's right to appeal this decision on the grounds of either (a) a lack of fairness in the procedures or process used to investigate the complaint that may alter the outcome of the investigation; (b) significant new information (previously unknown) that has been revealed or discovered which materially alter the facts of the matter and may alter the outcome of the investigation; or (c) sanctions inconsistent with level of offense.

Both the Reporting Party and Respondent shall have seven calendar days after receiving the disciplinary decision from the Reviewing Administrator to submit a written appeal to the designated Appeals Administrator. The parties may appeal both the decision as to whether there has been a violation of the policy and/or any sanctions levied based on the standard above.

If an appeal is granted, the Appeals Administrator shall determine the next steps in his/her sole discretion. Next steps may include, but are not limited to, a remand to the Investigation Team for additional investigation, or remand to the Reviewing Administrator and Title IX Coordinator for further consideration. If an appeal is denied, the matter is concluded and neither party shall have any further redress.

#### **V. Reservation of Rights**

Nichols expressly reserves its right to impose disciplinary action against a member of the College's faculty, staff, or a third party for misconduct which does not constitute a violation of the Nichols College Sexual Misconduct Policy. When a member of the Nichols faculty or staff, or third party, is alleged to have engaged in both sexual misconduct and other types of misconduct, the College in its sole discretion will decide whether to complete the Title IX process for investigating allegations of sexual misconduct prior to imposing disciplinary action for other violations of other college policies. Information and evidence obtained by the College during an investigation may be reviewed as part of an assessment of other misconduct. Where a Respondent accused of sexual misconduct is an at-will employee, notwithstanding any provisions in this Process, the College expressly reserves its rights and discretion to discipline the employee, up to and including termination of employment, for any and all non-discriminatory reasons, including, but not limited to, the College's determination that the employee exercised poor judgment, behaved in a manner that does not reflect well on the College, or the College's assessment that the employee's continued employment no longer serves the best interests of the College.

Where a Respondent accused of sexual misconduct is employed pursuant to an individual contract, notwithstanding any provisions in this Process for Resolving Complaints Against Faculty Staff and Nichols-Affiliated Third Parties, the College expressly reserves any and all rights and discretion it has to discipline the employee, up to and including termination of employment, for non-discriminatory reasons permitted under the applicable individual contract.

Where a Respondent accused of sexual misconduct is the employee, agent, or representative of an entity with a contractual or other relationship with the College, notwithstanding any provisions in this Process for Resolving Complaints Against Faculty, Staff, and Nichols-Affiliated Third Parties, the College expressly reserves its rights and discretion under the contract or other relationship, up to and including the right to terminate such contractual or other relationship in accordance with the terms of the applicable contract or agreement.

**The College reserves the right to amend or modify this process. This includes modifying the process in unusual circumstances including, but not limited to, when a Reporting Party withdraws a complaint or a Respondent admits responsibility.**

## APPENDIX C: List of Team Members

### **Title IX Coordinator**

#### **Pamela J. Boggio**

*Dean of Students*

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Dudley, MA 01571-5000  
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### **Deputy Title IX Coordinator**

#### **Marney Buss**

*Assistant Dean of Students*

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### **Deputy Title IX Coordinator**

#### **Jessica Ryan**

*Director of Community Standards*

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### **Team Member – Staff**

#### **Darcy Vangel**

*Director of Human Resources*

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### **Team Member – Staff**

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*Area Coordinator*

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### **Team Member – Staff**

#### **Amanda Desai**

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### **Team Member – Staff**

#### **Beth Gionfriddo**

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### **Team Member – Staff**

#### **Eric Gobel**

*Director of Athletics – Coach*

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### **Team Member – Staff**

#### **Kristan Mallet**

*Assistant Athletics Director – Coach*

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### **Team Member – Staff**

#### **Rachel Ferreira**

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### **Team Member – Faculty**

#### **Prof. Brian McCoy**

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### **Team Member – Faculty**

#### **Prof. Boyd Brown**

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### **Team Member – Faculty**

#### **Prof. Charlyn (Charlie) Robert**

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**Team Member – Faculty**

**Janet Newman**

*Academic Advisor*

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**Team Member – Faculty**

**Kerry Calnan**

*MSA Director*

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**Team Member – Staff**

**Eric Streich**

*Public Safety Supervisor*

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