



Nichols College

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Nichols College Title IX Sexual Harassment Policy

Last Revised: August 14, 2020

Nichols College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Nichols has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation. This Title IX Sexual Harassment Policy is based on regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972, and the 2020 Final Federal Regulations.

In order to address incidents of sexual misconduct that do not fall within the definition of this Title IX Sexual Harassment Policy, the College has two policies that address sexual misconduct: (1) this policy and (2) the Nichols College Sexual Misconduct policy. If the allegations forming the basis of a Formal Complaint (defined below), if substantiated, would constitute prohibited conduct under both policies, then the Grievance Process set forth in this Nichols College Title IX Sexual Harassment Policy will be applied in the investigation and adjudication of all of the allegations.

The Nichols Sexual Misconduct policy applies only to certain conduct, as defined under that policy. Specifically, the Nichols College Sexual Misconduct policy applies to forms of sexual misconduct that do not fall under the scope of the Nichols College Title IX Sexual Harassment policy, including Sexual Exploitation, Improper Conduct related to Sex, and College Sexual Harassment (not falling under Title IX). The Nichols College Sexual Misconduct policy also applies to certain contact that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Sexual Harassment policy), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements (Described further).

The College will respond to reports or Formal Complaints of conduct prohibited under this policy with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in Nichols-related programs or activities.

The College will not deprive an individual of rights guaranteed under federal and state law (or federal and state anti-discrimination provisions; or federal and state law prohibiting discrimination on the basis of sex) when responding to any claim of Title IX Sexual Harassment.

- I. [The College Title IX Coordinator](#)
- II. [Terminology](#)
- III. [Prohibited Conduct](#)
- IV. [Assessment and Dismissal of Formal Complaints](#)
- V. [Confidentiality, Privacy, and Related Responsibilities](#)
- VI. [Options for Complainants, Respondents, and Other Reporting Individuals](#)
- VII. [Supportive Measures for Complainants and Respondents](#)
- VIII. [Emergency Removal](#)
- IX. [Informal Resolution Process](#)
- X. [Grievance Procedures for Title IX Sexual Harassment Complaints, In General](#)
- XI. [Investigation and Adjudication](#)
- XII. [Appeal](#)
- XIII. [Training](#)
- XIV. [Record Retention](#)
- XV. [Modification and Review of Policy](#)

[Appendix A: Law Enforcement and Confidential Resources](#)

[Appendix B: Informal Resolution Process](#)

[Appendix C: Range of Sanctions under this Policy](#)

I. The Title IX Coordinator

The Vice President for Student Affairs serves as the Title IX Coordinator and coordinates the College's compliance with Title IX and all College policies related to sexual misconduct.

The Title IX Coordinator will be informed of all reports or formal complaints of violations of this policy, and oversees the College's centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA). The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the College community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable College policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the College's administration of its own applicable policies, including this policy and the College Sexual Misconduct Policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and

- Responding to any report or formal complaint regarding conduct that violates this policy. For any report of which the College has actual knowledge and any formal complaint, the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Title IX Coordinator

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II. Terminology

The following definitions clarify key terminology as used in this policy.

Advisor-a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

Business Days/hours- Monday through Friday 8:30am-4:30pm during normal operations

Complainant- an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Confidential Resource- means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).

Directly Related Evidence- evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

Education program or activity- any location, event, or circumstance where Nichols College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs. Also to include any building owned or controlled by the College.

Final Determination- A conclusion made by preponderance of the evidence standard of proof (See Preponderance of the Evidence in this terminology section) that the alleged conduct did or did not violate policy.

Finding- A conclusion by preponderance of the evidence standard of proof (See Preponderance of the Evidence in this terminology section) that the conduct did or did not occur as alleged (as in a "finding of fact").

Formal Complaint- a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.

Formal Grievance Process- a method of formal resolution designated by the Title IX Coordinator or designee to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

Grievance Process Team- any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing Decision-maker- refers to those who have decision-making and sanctioning authority within the Nichols College's Formal Grievance process.

Investigator- the person or persons charged by the Title IX Coordinator with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Mandated Reporter- means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

Notice- means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority (see below) of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Official with Authority- means an employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the College.

Parties- includes the Complainant(s) and Respondent(s), collectively.

Process A- the Formal Grievance Process detailed throughout this policy and defined above.

Process B- the administrative resolution procedures detailed in the Nichols College Sexual Misconduct Policy that apply only when Process A does not, as determined by the Title IX Coordinator.

Recipient- means a postsecondary education program that is a recipient of federal funding.

Relevant Evidence- evidence that tends to prove or disprove an issue in the complaint.

Remedies- post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.

Respondent- an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Resolution- the result of an informal or Formal Grievance Process.

Sanction- a consequence imposed by the College on a Respondent who is found to have violated this policy.

Sexual Harassment- the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 17.b., for greater detail.

Title IX Coordinator- at least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

Title IX Team- refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Team.

Third party refers to any individual who is not a Nichols student, a faculty member, or a staff member (e.g., vendors, alumni/ae, or local residents).

Witness refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

III. Prohibited Conduct

This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the College's education program or activity, meaning a) locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and b) any building owned or controlled by a student organization that is officially recognized by the College; and

- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the College.

Allegations of sexual misconduct that do not fall under this policy because they do not constitute prohibited conduct as defined in this section may constitute violations of the Nichols College Sexual Misconduct Policy.

In determining whether alleged conduct violates this policy, the Title IX Coordinator will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this policy can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

Prohibited behaviors are:

- **Quid Pro Quo Sexual Harassment:** An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- **Title IX Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity;
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:
 - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the

victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

- **Domestic Violence:** A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this policy, an intimate partner is defined as an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.

- **Dating Violence:** Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- **Stalking:** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: *Course of conduct* means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- **Retaliation under this policy:** No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

The College retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Complaints alleging retaliation under this Title IX Sexual Harassment policy, including for the exercise of rights under this policy, must be filed in accordance with this policy and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the College and not otherwise subject to its policies, the Title IX Coordinator will process the complaint and take appropriate measures.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this policy; and charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

For purposes of this policy, consent is defined as follows:

- **Consent and Incapacitation.** The College considers consent as a voluntary, informed, un-coerced agreement through words or actions freely given, which could be reasonably interpreted as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one individual overcomes the physical limitations of another individual; and when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in an individual's manner of dress.

- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.

For purposes of this policy, **incapacitation** (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes Title IX Sexual Harassment as defined by this policy.

IV. Assessment and Dismissal of Formal Complaints

Upon receipt of a formal complaint, the Title IX Coordinator will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this policy. The Title IX Coordinator will seek to complete this initial assessment within ten (10) business days of receipt of the formal complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this policy, the Title IX Coordinator shall implement appropriate supportive measures. In addition, the Title IX Coordinator shall initiate an investigation of the allegations under this policy in a formal complaint, signed by the Complainant. However, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process, as described in section IV.
- If the allegations forming the basis of the formal complaint would not, if substantiated, constitute prohibited conduct as defined in this policy, the Title IX Coordinator shall dismiss the formal complaint from the Title IX Grievance Process (either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter to the Nichols College Sexual Misconduct process or to the Office of Community Standards for review; or, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process, as described in section IV.

In addition, at any time prior to the hearing, the Title IX Coordinator may dismiss a formal complaint if:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein.
- Upon dismissal, the Title IX Coordinator shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties via electronic format. Both parties will have equal right to appeal the dismissal through the appeal process described in section XII.

The determination regarding dismissal becomes final either on the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a Complainant cannot file a formal complaint under this policy concerning the same alleged conduct.

V. Confidentiality, Privacy, and Related Responsibilities

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. Privacy and confidentiality are related but distinct terms that are defined below.

In some circumstances, the reporting responsibilities of Nichols College employees, or the College's responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of Confidential Resources, if applicable, in determining their preferred course of action.

Requests for confidentiality or use of anonymous reporting through the online Reporting Form may limit the College's ability to conduct an investigation.

1. Confidentiality and Confidential Resources

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

Several campus professionals are designated Confidential Resources, to whom confidentiality attaches Confidential Resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of the Nichols College Title IX Sexual Harassment

Policy may be submitted to the Department of Public Safety for purposes of the anonymous statistical reporting under the Clery Act.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a Confidential Resource. See Appendix A for a complete list of Confidential Resources on campus.

In particular, any individual who may have been subjected to a violation of this policy, or who is considering making a report or formal complaint under this policy, is encouraged to contact the Title IX Coordinator.

In light of the College's obligation to respond promptly and effectively to individuals alleged to be victimized by Title IX Sexual Harassment, Nichols employees who are not designated as Confidential Resources are required to notify the Title IX Coordinator of suspected violations of this policy, and cannot guarantee the confidentiality of a report under this policy. See [section VI\(1\)](#).

2. Confidentiality Rights of Complainants and Respondents

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this policy without the relevant party's voluntary, written consent.

3. Privacy

The term "privacy" refers to the discretion that will be exercised by the College in the course of any investigation or grievance processes under this policy.

In all proceedings under this policy, the College will take into consideration the privacy of the parties to the extent possible.

In accordance with federal regulations, the College will keep confidential the identity of any individual who has made a report or formal complaint under this policy, including any complainant, any individual who has been reported to be the perpetrator, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act

(FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this policy.

Any additional disclosure by the College of information related to the report or formal complaint may be made if consistent with FERPA or the Title IX requirements. In addition, governmental agencies, such as National Science Foundation, may mandate certain reporting related to prohibited conduct under this policy involving Nichols employees or students.

4. Release of Information

If the Department of Public Safety becomes aware of a serious and continuing threat to the campus community, the Department of Public Safety may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. The Department of Public Safety may also publish a reported incident in the daily crime log or annual security report. In addition, the College may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The College will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

VI. Options for Complainants, Respondents, and Other Reporting Individuals

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement as well as contact information for Confidential Resources that are available to provide support to parties and witnesses are described in further detail in [Appendix A](#).

After consulting a Confidential Resource as appropriate, a complainant may:

- Request supportive measures from the Title IX Coordinator (see [section VII](#));
- File a formal complaint with the Title IX Coordinator, thereby invoking the internal grievance process (see [section II](#));
- Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence (see [Appendix A](#)); and/or
- Contact local law enforcement to file a criminal complaint (see [Appendix A](#)). At the complainant's request, the Title IX Coordinator will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue a criminal process.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during this decision-making process, complainants and other reporting individuals are encouraged to consult a Confidential Resource (see Appendix A).

1. Employees' Responsibility to Report

In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must immediately contact the Department of Public Safety by dialing 508-213-2298.

In non-emergency situations, employees (other than those formally designated as Confidential Resources under this policy (see [section V\(1\)](#)) must promptly report suspected violations of this policy to the Title IX Coordinator. Students are encouraged to report any suspected violation of this policy (after consulting a Confidential Resource as appropriate).

2. Anonymous Reporting

If a reporting individual makes an anonymous report, the Title IX Coordinator will consider how to proceed, taking into account the individual's articulated concerns; the best interests of the Nichols community; fair treatment of all individuals involved; and the College's obligations under Title IX.

A complainant cannot file a formal complaint anonymously.

Any individual may make an anonymous report concerning a violation of this policy through the Nichols College Incident Reporting Form, which can be made without disclosing the reporting individual's own name, identifying the respondent, or requesting any action. However, if the reporter provides limited information, the Title IX Coordinator may be limited in its ability to take action. A Nichols College Incident Reporting Form is not a Confidential Resource and making a report through this means may result in a review and/or investigation.

3. Timeliness of Report

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the College's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the respondent is no longer a student or employee at the time of the report or formal complaint, the College may not be in a position to gather evidence sufficient to reach a determination as to the formal complaint.

However, the Title IX Coordinator will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

4. Amnesty

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

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

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

VII. Supportive Measures

The Title IX Coordinator will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the Nichols College educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the Title IX Coordinator either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The Title IX Coordinator will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The Title IX Coordinator will act to ensure as minimal an academic or occupational impact on the parties as possible. The Title IX Coordinator will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact directives) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No Trespass Orders
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of No Contact Directives will be referred to the Office of Community Standards for enforcement.

VIII. Emergency Removal

The Title IX Coordinator can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title

IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for disciplinary action, which may include expulsion.

The Title IX Coordinator will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

IX. Informal Resolution Process

Subject to the consent of the parties and the approval of the Title IX Coordinator, the College permits informal resolution processes in cases in which a formal complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students in a forum that is separate and distinct from the College's formal grievance processes under the Title IX Sexual Harassment policy. The purpose of the informal resolution process is to address the conduct which has been reported by the complainant and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

The Title IX Coordinator may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX Sexual Harassment grievance process with respect to the formal complaint.

The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of Title IX Sexual Harassment. Similarly, the Title IX Coordinator will not require, encourage, or discourage the parties from participating in the informal resolution process. The Title IX Coordinator will not offer the informal resolution process unless a formal complaint is filed.

See Appendix B for additional information regarding the informal resolution process.

X. Grievance Procedures for Title IX Sexual Harassment Complaints, In General

The College is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this policy. During the grievance process, both parties (complainant and respondent) have equal rights to participate.

1. Conflict of Interest

All individuals who have responsibilities in administering the grievance process under this policy must be free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and will be trained as provided by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, Hearing Panel members, Sanction Officers, and Appeal Panel members. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has conflicting interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether or not the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator

concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

2. Responsibility to Review Reports and Formal Complaints

In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances (see [section X\(2\)](#)), even if a formal complaint has been withdrawn. The Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the College community, fair treatment of all individuals involved, and the College's obligations under Title IX.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

3. Presumption of Good Faith Reporting

The College presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

4. Presumption of Non-Responsibility

The respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

5. Honesty and Cooperation during Grievance Process

The College expects all members of the Nichols community to be honest and cooperative in their official dealings with the College under this policy. In this regard, individuals are expected to acknowledge requests from Nichols officials for information in a timely fashion and to make themselves available for meetings with Nichols officials or any officials acting on behalf of the College; any student or member of the faculty or staff who fails to do so may be subject to discipline. However, parties and witnesses may choose not to attend the hearing or may choose not to participate in cross examination at the hearing (see [section XI \(3\)\(b\)](#)).

6. Advisers

The parties may each have an Advisor¹ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.²

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Decision-maker(s). The Recipient may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

a. Who Can Serve as an Advisor

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

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

If the parties choose an Advisor from outside the pool of those identified by the Title IX Coordinator, the Advisor may not have been trained by the College and may not be familiar with Nichols policies and procedures.

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

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

¹ This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), but some Recipients do permit more than one. If the Recipient allows more than one Advisor for one party, they should do so for all parties.

² "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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

c. Advisors in Hearings/Nichols-Appointed Advisor

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the Title IX Coordinator will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the Title IX Coordinator will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

d. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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

e. Pre-Interview Meetings

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

f. Advisor Violations of Nichols Policy

All Advisors are subject to the same Nichols policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Recipient officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee³ during any meeting or proceeding and may not speak on behalf of the

³ Subject to the state law provisions or Recipient policy above.

advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

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

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

g. Sharing Information with the Advisor

The Title IX Coordinator expects that the parties may wish to have the Title IX Coordinator share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The Title IX Coordinator also provides a consent form that authorizes the Title IX Coordinator to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the Title IX Coordinator is able to share records with an Advisor. If a party requests that all communication be made through their attorney Advisor, the Recipient will comply with that request at the discretion of the Title IX Coordinator.

h. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Recipient. Recipient may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Recipient's privacy expectations.

i. Expectations of an Advisor

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

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

j. Expectations of the Parties with Respect to Advisors

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

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

k. Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

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

7. Prior Sexual Behavior

The complainant and/or respondent's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

8. Consolidation

The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of Title IX Sexual Harassment against more than one respondent, or by more than

one complainant against one or more respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.

9. Investigation of Allegations of Violations of Other College Policies

a. Allegations under the College Sexual Misconduct Policy

When an initial assessment or investigation under this policy identifies additional related possible violations of the Nichols College Sexual Misconduct policy by the same party(ies), the grievance process set forth in this Title IX Sexual Harassment policy and procedures will apply to all allegations. Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged prohibited conduct, and (b) the policy(ies) under which alleged prohibited conduct falls.

10. Procedures Where One Party Is a Member of the College Community and the Other Party Is a Non-Member of the College Community

When a third party, (i.e., a non-member of our College community, which could include, for example, alumni) is a party under this policy, the College will use disciplinary procedures that are generally consistent with the disciplinary procedures described in this policy, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and the like. In no case will a member of our community (i.e., current student, faculty member, or staff member) be afforded lesser rights or lesser opportunities to participate in the disciplinary proceeding than the non-member of the College community.

XI. Investigation and Adjudication

1. Timing

The College will seek to complete the investigation and adjudication within ninety (90) business days after the investigators' first interview of the complainant. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeal, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the

absence of a party, adviser, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The Title IX Coordinator will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with Nichols policy, the College will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

Although cooperation with law enforcement may require the College to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the College will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the complainant or respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

2. Investigation

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator will refer the matter for investigation.

a. Notice of Investigation

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this Title IX Sexual Harassment policy, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Title IX Sexual Harassment.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of College policy.

- Information regarding the applicable grievance procedures, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

b. Collection of Evidence

The investigators will collect information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigators are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigators during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Presiding Hearing Panelist (see [section IX\(3\)](#)), be excluded from consideration at the hearing. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigators will provide to a party written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate.

Parties will be interviewed separately and will be interviewed by the panel of investigators. The investigators will interview witnesses as necessary and may, at their discretion, delegate witness interviews to two investigators. The investigators will record all interviews or notes of the interviews will be taken by the investigators. Any other recording of interviews is prohibited, and violations may result in discipline.

In general, a party's medical and counseling records are confidential. The investigators will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigators obtain that party's voluntary, written consent to do so.

The investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege

(e.g., attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

c. Case File

After each party has been interviewed and had the opportunity to identify witnesses and other potentially relevant information and evidence, and the investigators have completed any witness interviews and any gathering of evidence, the investigators will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigators will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their adviser in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisers. The investigators will also provide an updated Notice of the Allegations, as appropriate.

Within ten (10) business days of receiving the case file, each party may respond in writing, which may include a request that the investigators collect additional evidence. If the investigators believe that further information is needed following receipt of any responses from the parties, the investigators will pursue any additional investigative steps as needed. The parties and their advisers will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigators, in electronic format or hard copy.

d. Investigative Report

Following their review of the parties' responses (if any) to the case file, the investigators will create a written investigative report that summarizes all relevant evidence; the report will not contain irrelevant information.

At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisers via electronic format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. The response may consist of a written statement not to exceed 2500 words. At least 48 hours prior to the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

3. Hearing

A panel of three individuals will hear every case. The Presiding Hearing Panelist will have absolute discretion with respect to administering the hearing. The Presiding Hearing Panelist will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The Presiding Hearing Panelist will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the Hearing Panel will be provided with the case file, investigative report, and any responses to the investigative report. All members of the Hearing Panel shall review the case file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the Presiding Hearing Panelist's adjudication of responsibility (as described in section XI(3)(e)).

At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the Presiding Hearing Panelist can determine their relevance. The Presiding Hearing Panelist has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the Presiding Hearing Panelist's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

a. Standard of Proof

The standard of proof under this policy is preponderance of the evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this policy.

b. Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing

In all proceedings under this policy, including at the hearing, the complainant, the respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the complainant, the respondent, or a witness informs the College that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the Title IX Coordinator.

Each party may make requests related to the format or the nature of their participation in the hearing. The Presiding Hearing Panelist will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the Hearing Panel and the parties to simultaneously see and hear the party answering questions. As appropriate and/or at the discretion of the Presiding Hearing Panelist, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

c. Case Presentation

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisers to conduct cross examination of the other party and/or of relevant witnesses. A typical hearing may include brief opening remarks by the Presiding Hearing Panelist; questions posed by the Hearing Panel to one or both of the parties; questions posed by the Hearing Panel to any relevant witnesses; and cross-examination by either party's adviser of the other party and relevant witnesses.

The parties' advisers will have the opportunity to cross examine the other party (and witnesses, if any). Such cross examination must be conducted directly, orally, and in real time by the party's adviser and never by a party personally. Only relevant cross examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's adviser, the Presiding Hearing Panelist must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Other Nichols administrators may attend the hearing at the request of or with the prior approval of the Presiding Hearing Panelist, but the parties will be notified in advance of anyone else who will be in attendance.

d. Record of Hearing

The College shall create an official record in the form of a recording or transcript of any live (or remote) hearing and make it available to the parties for inspection and review. Any other

record of the hearing or any other recording is prohibited, and violations may result in discipline.

e. Written Determination

Following the hearing, the Hearing Panel will consider all relevant evidence and deliberate regarding responsibility. The Presiding Hearing Panelist shall make a determination, by a preponderance of the evidence, whether the respondent has violated the policy. The Presiding Hearing Panelist shall write a written determination, which will contain: (1) the allegations potentially constituting Title IX sexual harassment; (2) a description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this policy to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed by the Sanction Officer if there has been a finding of responsibility (as described in section XI(4)), and whether any remedies designed to restore or preserve equal access to the College 's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties. Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Presiding Hearing Panelist for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination via electronic format.

4. Disciplinary Sanctions and Remedies (to be included in the Written Determination)

If a party is found to have violated this policy, before finalizing the written determination, the Presiding Hearing Panelist will refer the matter to the appropriate College official(s) to determine sanctions and remedies. Sanctions being imposed will be included in the written determination.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the College 's education program or activity. Specifically, sanctions will be set by the following Sanction Officers:

- If an **undergraduate student** is found responsible for violating the policy, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be provided to the dean of undergraduate students, who will determine sanctions and remedies in consultation with appropriate College administrators. In the event that the dean of undergraduate students is unavailable, an appropriately trained College official will serve as the substitute. Any sanctions and remedies will be included in the Presiding Hearing Panelist's written determination, and sanctions will be subject to appeal under this policy.
- If a **graduate student** is found responsible for violating the policy, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be provided to the Graduate Professional Studies Department, who will determine sanctions and remedies in consultation with appropriate College administrators. Any sanctions and remedies will be included in the Presiding Hearing Panelist's written determination, and sanctions will be subject to appeal under this policy.
- If a **faculty member or other individual appointed through the Office of the Dean of the Faculty** is found responsible, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be forwarded to the Academic Dean, who will determine sanctions and remedies in consultation with appropriate College administrators. Should the Academic Dean propose a sanction of suspension or dismissal, the dean will issue a recommendation, in accordance with applicable College policy. Any sanctions (and/or recommendation of sanctions) and remedies will be included in the Presiding Hearing Panelist's written determination, and sanctions (and/or recommended sanctions) will be subject to appeal under this policy.
- If a **staff member** is found responsible, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be forwarded to the Director of Human Resources, who will determine sanctions and remedies in consultation with appropriate College administrators. Any sanctions and remedies will be included in the Presiding Hearing Panelist's written determination, and sanctions will be subject to appeal under this policy.

See Appendix C for the range of sanctions under this policy.

XII. Appeal

Appeals under this policy will be heard by an appeal panel ("Appeal Panel") comprised of three individuals. The individuals shall be College administrators or faculty members. The Appeal Panel shall decide appeals by majority vote.

Both parties have equal rights to an impartial appeal at the following junctures:

- A. Upon the dismissal of a formal complaint or any allegations therein.

- B. Upon receiving the Presiding Hearing Panelist's written determination regarding responsibility and, when applicable, sanction and remedies.

Appeals may be submitted on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made which could affect the outcome of the matter; (3) the College Title IX Coordinator or their staff, investigator(s), any member of the Hearing Panel, or Sanction Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and/or (4) the sanctions (or recommended sanctions) are not commensurate with the violation.

To appeal, a party must electronically submit a written appeal statement to the associate secretary of the College within five (5) business days of receipt of the written determination or dismissal. The Appeal Panel Chair may deem a late submission reasonable only under extenuating circumstances, and the Appeal Panel Chair may decide in their sole discretion what constitutes valid extenuating circumstances. The appeal shall consist of a written statement not to exceed 2500 words, outlining the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response, not to exceed 2500 words, to the associate secretary of the College within five (5) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of College rules has occurred.

In deciding an appeal, the Appeal Panel may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Panel also may consider any other materials the College deems relevant and that have been shared with the parties.

The parties and their advisers will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Appeal Panel finds that the earlier decision should stand, the parties will be so informed, and the Title IX process is concluded.
- If the Appeal Panel finds that there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Presiding Hearing Panelist to determine appropriate further action.
- If the Appeal Panel finds that new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the

outcome of the matter, the matter will be remanded to the Presiding Hearing Panelist for appropriate further action.

- If the Appeal Panel finds that the College Title IX Coordinator or their staff, investigator(s), member of the Hearing Panel, or Sanction Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter, the Appeal Panel will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.
- If the Appeal Panel finds that the sanctions (or recommended sanctions) are not commensurate with the violation, the matter will be remanded to the Sanction Officer for reconsideration.

The Appeal Panel will seek to complete the appeal review within twenty (20) business days of receipt of the appealing party's written statement.

Unless further proceedings are necessary (as set forth in the Rules and Procedures of the Faculty, the determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed (at which point the Title IX Sexual Harassment grievance process is concluded), or if an appeal is not filed, the date on which an appeal would no longer be considered timely (at which point the Title IX Sexual Harassment grievance process is concluded).

XIII. Training

The College will provide appropriate training to College officials with responsibilities under this policy, including the Title IX Coordinator, investigators, Hearing Panel members, Sanction Officers, Appeal Panel members, and any individual who facilitates the informal resolution process. Such training will cover the definition of Title IX Sexual Harassment, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes under this policy, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The College will ensure that Hearing Panel members receive training on any technology to be used at a hearing and on issues of relevance of questions and evidence, including questions and evidence about the irrelevancy of complainant's sexual predisposition or prior sexual behavior. The College will ensure that investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant evidence. These training materials are publicly available on the College's Sexual Misconduct & Title IX website and will be made available for in-person review upon request. In addition, College officials with responsibilities under this policy will receive training related to intersectionality.

XIV. Record Retention

The College will maintain records of the following indefinitely:

- Each Title IX Sexual Harassment grievance process conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a hearing, any disciplinary sanction imposed on the respondent, and remedies provided to the complainant designed to restore or preserve access to the College 's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train College Title IX Coordinators, deputies, investigators, Hearing Panel members, Sanction Officers, Appeal Panel members, and any individual who facilitates the informal resolution process with regard to Title IX Sexual Harassment;
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX Sexual Harassment. In each instance, the College will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College 's educational and working program or activity. If the College does not provide a complainant with supportive measures, then the College will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XV. Modification and Review of Policy

Nichols College reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances.

At regular intervals, the College will review this policy to determine whether modifications should be made.

Appendix A: Law Enforcement and Confidential Resources

1. Emergency Resources and Law Enforcement

Emergency medical assistance and public safety/law enforcement assistance are available on campus. Individuals are encouraged (but not required) to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense. For more information about filing a criminal complaint with law enforcement, please contact:

Nichols College Department of Public Safety
508-213-2298

2. Confidential Resources

Information shared with Confidential Resources (including information about whether an individual has received services) will be disclosed to the Title IX Coordinator or any other individual only with the individual's express written permission, unless there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (e.g., if there is suspected abuse or neglect of a minor). For more information about confidentiality and Confidential Resources, see [section V](#).

Appendix B: Informal Resolution Process

The informal resolution process is a voluntary, remedies-based process designed to provide members of the Nichols College community with an option to resolve certain disputes with other members of the Nichols College community in a forum that is separate and distinct from the College's formal grievance processes under the Title IX Sexual Harassment Policy or the College Sexual Misconduct Policy. Subject to approval by the Title IX Coordinator (see below), the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee. The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

Prior to participating in the informal resolution process, parties will be notified in writing of the information contained in this Appendix B.

The following are features of the informal resolution process:

- Participation in the informal resolution process is completely voluntary.
- No party will be required to participate in the informal resolution process and the College will not require, encourage, or discourage the parties from participating in the informal resolution process.
- All parties must consent in writing to participation in the informal resolution process.
- The College may offer the informal resolution process only under the following circumstances:
 - A formal complaint (as defined in [section II](#)) has been filed by the complainant;
 - The College Title IX Coordinator has determined, through an initial assessment (see [section IV](#)), that the alleged conduct, if substantiated, would constitute Title IX Sexual Harassment or College Sexual Misconduct;

- The College Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the formal grievance process.
- Under the informal resolution process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record. If a formal complaint is filed against the respondent in a subsequent matter under the Title IX Sexual Harassment policy or the College Sexual Misconduct policy, the respondent's participation in a prior informal resolution process will not be considered relevant and will not be taken into account in the resolution of the subsequent complaint.
- Parties may be accompanied by a member of the College community who will serve as a support person to any meeting related to the informal resolution process. However, the College support person may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as a College support person is expected to make themselves available for meetings as scheduled by the College. The College (including any official acting on behalf of the College) has the right at all times to determine what constitutes appropriate behavior on the part of a College support person and to take appropriate steps to ensure compliance with this policy.
- Any agreements reached as part of the informal resolution process must be approved by the College Title IX Coordinator in order to ensure consistency with the College's federal obligations. If the College Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the College Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a formal grievance process based on the conduct alleged in the formal complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the College Title IX Coordinator will determine whether it is appropriate to proceed. For example, if both parties joined the same eating club subsequent to signing the agreement or participated in the same study abroad program, either party could request a supplemental agreement to address the changed circumstances, provided that both parties agreed to any such revisions. Under such circumstances, the above conditions would apply.

Initiation of the Informal Resolution Process

If the complainant files a formal complaint and requests to engage in the informal resolution process, the College Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the College Title IX Coordinator will consider the following factors:

- The disciplinary record (or past conduct) of the respondent relating to sexual misconduct, physical violence, failure to comply with a No Contact Order, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple victims and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether the circumstances warrant the College Title IX Coordinator filing a formal complaint (e.g., if there is sufficient evidence to proceed with an investigation/adjudication even absent participation by the complainant);
- Whether proceeding with the informal resolution process is in accordance with the principles and objectives of the College 's Title IX Sexual Harassment policy/College Sexual Misconduct policy, as determined by the College Title IX Coordinator; and/or
- Whether proceeding with the informal resolution process in matters involving faculty and staff members is in accordance with College employment practices.

If the College Title IX Coordinator determines that a case is not appropriate for the informal resolution process, the College Title IX Coordinator will inform the complainant that the informal resolution process is unavailable.

If the formal grievance process has already begun, either party may seek to initiate the informal resolution process up until five business days prior to the hearing. If both parties agree to participate in the informal resolution process and the College Title IX Coordinator approves of the informal resolution process, the formal grievance process will be adjourned while the informal resolution process is pending; if an agreement is not reached, the formal grievance process will be resumed.

Upon initiation of the informal resolution process, the College Title IX Coordinator will refer the matter to a trained informal resolution facilitator ("facilitator"). The facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

Potential Outcomes of the Informal Resolution Process

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Long-term extension of a mutual No Contact Order or No Communication Order;
- Imposition of a "skewed" No Contact Order, placing the burden on the respondent to limit the respondent's physical proximity to the complainant;
- Restrictions on the respondent from participation in particular organizations or events;
- Changes to on-campus housing, subject to availability;
- Provision to the respondent of an "impact statement" written by the complainant (describing the impact(s) that the respondent's conduct had on the complainant);

- Conversation between the parties facilitated by a trained individual appointed by the College Title IX Coordinator;
- Other measures deemed appropriate by the College Title IX Coordinator.

Failure to Comply with the Informal Resolution Agreement

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with the disciplinary procedures in applicable policy manuals.

Records Relating to the Informal Resolution Process

The records relating to the informal resolution process will be maintained in accordance with [section XIII](#).

Prior to participating in the informal resolution process, parties will be notified in writing that any information gathered in the informal resolution process may be used in the Title IX Sexual Harassment or College Sexual Misconduct formal grievance processes described in [section IX](#) if the informal resolution process ends prior to a written agreement being signed by the parties. However, the College will not draw any adverse inference based on a respondent's participation in the informal resolution process, nor will such participation be considered an admission by the respondent.

Even if the parties enter into a written informal resolution agreement, if information related to the violation of other College policies (i.e., policies other than the Title IX Sexual Harassment policy or the College Sexual Misconduct policy) comes to light through the informal resolution process, such information may be used in other College disciplinary processes, subject to the Amnesty policy described in [section VI\(4\)](#).

Retaliation

The protections against Retaliation described in [section III](#) apply to individuals participating in the informal resolution process. Disciplinary consequences may result for those found responsible for Retaliation.

Time Frame for the Informal Resolution Process

The time frame for completion of the informal resolution process may vary, but the College will seek to complete the informal resolution process within thirty (30) business days of completion of the initial assessment. Should the time period extend beyond this time frame, the parties will be notified.

Appendix C: Range of Sanctions under this Policy

Members of the College community may be subject to disciplinary sanctions for violating this policy.

Sanctions Applicable to Students

The sanctions for students are listed below.

1. **Written Warning.** An admonition that may be taken into account in judging the seriousness of any future violation.
2. **Probation.** A more serious admonition assigned for a definite amount of time. It implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or in especially serious cases, expulsion from the College. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction even if the probationary period has expired.

Probation appears on a student's permanent record at the College (but not on the transcript) and may be disclosed by the Office of the Dean of Undergraduate Students or the Office of the Dean of the Graduate School in response to requests for which the student has given permission or as otherwise legally required.

3. **Suspension.** Removal from membership in the College for a specified period of time. A suspension is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of Community Standards in response to requests for which the student has given permission or as otherwise legally required.

4. **Expulsion.** Permanent removal from membership in the College, without any opportunity for readmission to the community. Expulsion is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of the Dean of Undergraduate Students or the Office of the Dean of the Graduate School in response to requests for which the student has given permission or as otherwise legally required.

The following may accompany the preceding sanctions, as appropriate:

Housing Restrictions. When appropriate to the infraction, particularly in instances involving antisocial behavior having a serious impact on the residential community, removal from

Housing or Relocation within College housing may be added to any of the other sanctions listed above.

Restriction of Access to Space, Resources, and Activities. When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

Educational Programs. In addition to any of the sanctions listed above, a student may be required to participate in educational programs appropriate to the infraction.

Restitution. The sanction for willful or reckless damage or vandalism will ordinarily include restitution for replacement or repair.

Sanctions Applicable to Faculty and Staff Members

For violations of this policy by faculty or staff members, disciplinary sanctions may include (in accordance with the employment policies governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension (or recommendation for suspension), demotion, termination (or recommendation for termination) in accordance with applicable policies. The College may place a faculty or staff member on administrative leave during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Sanctions Applicable to Non-Members of the College Community

For violations of this policy by non-members of the College community, including alumni, disciplinary sanctions may include being temporarily or permanently No Trespass from the College or subject to other restrictions.