

# Nichols College Sexual Misconduct Policy

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## **I. PURPOSE AND SCOPE OF POLICY<sup>1</sup>**

Sexual misconduct of any form is a violation of the rights and dignity of those subjected to the misconduct. Acts of sexual misconduct, as defined in section III of this Policy, are contrary to the College's educational mission and values, are harmful to others, and will not be tolerated at Nichols College ("Nichols" or the "College").

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

Creating a safe campus environment is the responsibility of all members of the College community, both individually and collectively.

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

The purpose of this policy is to provide the Nichols community with a clear set of standards and expectations, including common understandings of definitions and key concepts and descriptions of prohibited conduct. The policy applies to all College community members, including students, faculty, and staff.

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

- Identify resources and support for all College community members;
- Identify the Nichols Title IX Coordinator;
- Provide information about where a College community member can obtain support or access resources in a confidential manner;
- Provide information about how a College community member can make a report or complaint on-campus or off-campus; and,
- Provide information about how a report or complaint against a College community member will be investigated, evaluated and resolved.

### **A. SCOPE**

As stated above, this policy applies to all College community members, including students, employees, visitors, and independent contractors. Any individual, whether or not affiliated with Nichols, may make a report under this Policy alleging that a College community member has violated this Policy. Different grievance procedures will apply depending on the role of the Respondent (student, non-faculty employees, faculty

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<sup>1</sup> Nichols reserves the right to amend or modify this policy depending on the circumstances.

members, vendors, independent contractors, visitors, and others who conduct business with the College or on College property).

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

The College will provide resource options and respond promptly and equitably to all allegations of sexual misconduct involving a College community member.

The scope of this Policy is intentionally broader than the scope of the College's Title IX Sexual Harassment Policy, which applies only to a narrow category of cases. 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. Otherwise, the procedures in the College's Sexual Misconduct Policy will apply.

## **B. COORDINATION WITH NON-DISCRIMINATION POLICY**

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

## **II. NOTICE OF NON-DISCRIMINATION**

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

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

**Title IX Coordinator  
Jessica Ryan**

*Assistant Dean of Student Life*  
Fels Student Center, Suite 301  
121 Center Road  
Dudley, MA 01571-5000  
508-213-2027  
[Jessica.Ryan@nichols.edu](mailto:Jessica.Ryan@nichols.edu)

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

### III. PROHIBITED CONDUCT AND DEFINITIONS

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

**Advisor**-a person chosen by a party or appointed by the College to accompany the party to meetings related to the resolution process, and to advise the party on that process.

**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).

**Consent** - means 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.

Consent cannot exist:

- 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/or

- 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.

***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 the alleged conduct did or did not violate policy.

***Finding***- A conclusion by preponderance of the evidence standard of proof 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 College investigate and/or address 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 legal requirements.

**Decision Maker-** The person(s) who have the ability to render or recommend a decision on behalf of College, including determining whether a violation has occurred, and determining appropriate sanctions, when applicable.

**Impacted Party-** 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 prior to filing a Formal Complaint or if they opt not to file a Formal Complaint.

**Incapacitation (or incapacity)-** means a 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 a violation of this Policy.

**Informal Resolution Process-** A process intended to allow the Complainant and the Respondent to reach a mutually-agreeable resolution apart from the 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.

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

**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.

**Report-** means information shared with the College's Title IX Coordinator about one or more incidents of Prohibited Conduct which have occurred (or is continuing to occur) and which:

- has impacted (or continues to impact) one or more members of the College Community; and/or
- was or is committed by one or more members of the College Community; and/or
- occurred or is occurring on property owned or controlled by the College or within the College's Programs or Activities.

In contrast with a Formal Complaint, a Report does not need to be signed and does not necessarily request that the College initiates an investigation.

**Reporter-** means a person who shares information with the College's Title IX Coordinator about one or more incidents of Prohibited Conduct. The Reporter may be the person who is the alleged victim of Prohibited Conduct (Impacted Party or Complainant), or the Reporter may be a third-party, such as a witness or Mandated Reporter.

**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.

**Retaliation-** 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.

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

**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.

**Sexual Exploitation**- means an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even if the behavior does not constitute another sexual misconduct offense. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, sexual intercourse/penetration, or in a state of undress, without their knowledge or consent. Even if a person consented to the sexual activity or intercourse/penetration, photographing or taping someone without their knowledge goes beyond the boundaries of that consent. The dissemination of photographs or video/audio of someone involved in sexual activity, intercourse/penetration, or in a state of undress, without their knowledge or consent constitutes a separate and additional act of sexual exploitation;
- Voyeurism, which is the act of observing someone involved in sexual contact/activity or in a state of undress, without their knowledge or consent.
- Inducing incapacitation, including by providing someone with alcohol or drugs, with or without that person's knowledge, for the purpose of making another person vulnerable to non-consensual sexual activity.

**Sexual Harassment**- means conduct on the basis of sex that satisfies one or more of the following:

- 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 (also called "Quid Pro Quo Sexual Harassment"); or
- 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 (also called "Hostile Environment Sexual Harassment").

**Stalking**- means 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.

**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, including but not limited to a Deputy Title IX Coordinator, for specific tasks.

**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.

#### IV. REPORTING

The College encourages everyone to report concerns about possible Sexual Misconduct to the College's Title IX Coordinator. Sharing such concerns enables the College to offer support to impacted parties and protects the community from continuance of the alleged misconduct. This Policy distinguishes the action of filing a Report from filing a Formal Complaint. Thus, information shared about suspected Sexual Misconduct does not automatically trigger formal action or an investigation, as discussed below. Importantly, a person does not need to be directly impacted by Sexual Misconduct in order to make a report. Rather, anyone who observes or otherwise learns about concerns regarding Sexual Misconduct is encouraged to report.

Some forms of Sexual Misconduct may also constitute crimes. The College also strongly encourages any individual who experiences, witnesses, or learns of possible criminal conduct to report them to the Nichols College Department of Public Safety or local law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence.

##### A. HOW TO MAKE A REPORT

**To report in person during business hours or by mail:**

Please contact Title IX Coordinator Jessica Ryan in the Fels Student Center, Suite 301, located at 121 Center Road, Dudley, MA 01571

**To report by phone or email:**

Please call Title IX Coordinator Jessica Ryan at 508-213-2027 or email Jessica.Ryan@nichols.edu

**To report online, including anonymously:**

Please go to [nichols.edu/student-life/campus-policies](http://nichols.edu/student-life/campus-policies) and click the link for the Incident Reporting Form

**To report possible criminal conduct:**

Please call Nichols College Department of Public Safety at 508-213-2298

**B. EMPLOYEE REPORTING EXPECTATIONS**

All employees who are not expressly designated as Confidential Resources are considered to be Mandatory Reporters. Mandatory Reporters are required to immediately report incidents of Sexual Misconduct to the Title IX Coordinator.

- A. 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.
- B. In non-emergency situations, employees (other than Confidential Resources) must promptly report suspected violations of this Policy to the Title IX Coordinator Jessica Ryan via one of the following means:
  - Email: Jessica.Ryan@nichols.edu
  - Telephone: 508-213-2027
  - In-Person: Fels Student Center, Suite 301, 121 Center Road, Dudley, MA 01571
  - Online: go to [nichols.edu/student-life/campus-policies](http://nichols.edu/student-life/campus-policies) and click the link for the Incident Reporting Form

**C. CONFIDENTIAL RESOURCES**

If a student or employee wants to speak with a confidential resource, trained staff are available on and off-campus. Help and support is available to those who want to talk in detail about an incident but are not sure if they are ready or interested in reporting to the College or law enforcement.

Information shared with Confidential Resources (including information about whether an individual has received services) will only 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).

Information that is shared with a Confidential Resource does not constitute a Report or notice to the College of concerns of sexual misconduct.

**On-Campus Confidential Resources include:**

- Nichols College Health Services: 508-213-2238 [counseling@nichols.edu](mailto:counseling@nichols.edu)
- Nichols Counseling Center: 508-213-2108 [health.services@nichols.edu](mailto:health.services@nichols.edu)

**Off-Campus Confidential Resources include:**

- Pathways for Change a locally based agency which provides free, confidential services to sexual assault victims, their friends, and families. It also operates a 24-hour, free, confidential hotline that provides victims of sexual assault with telephone counseling and personal support:

588 Main Street Worcester MA 01608  
24/7 Hotline (800) 870-5905  
Office (508) 852-7600

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

**D. ANONYMOUS REPORTING**

If an individual wishes to make a report to the College but remain anonymous in doing so, 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.

**An Impacted Party 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.

Impacted Parties/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.

Employees who are Mandatory Reporters cannot fulfill their obligation of reporting to the College by reporting anonymously.

#### **E. TIMELINESS OF REPORT**

Impacted Parties/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.

#### **F. AMNESTY**

The Nichols Community encourages the reporting of misconduct and crimes by Impacted Parties/Complainants and witnesses. Sometimes, Impacted Parties/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.

#### **G. HOW TO FILE A COMPLAINT**

If an Impacted Party wishes to pursue investigation or other resolution of an alleged incident of Sexual Misconduct, they must file a Formal Complaint (at which time the Impacted Party will be referred to as the Complainant). The filing of a Formal Complaint means that the individual is asking the Title IX Coordinator to take further

steps, such as initiating an investigation and resolution process, which may include Informal Resolution or a Hearing.

An Impacted Party/Complainant can obtain a copy of a Formal Complaint Form by contacting the Title IX Coordinator by one of the following means:

- Email: [Jessica.Ryan@nichols.edu](mailto:Jessica.Ryan@nichols.edu);
- Telephone: 508-213-2027; or
- In-Person: Fels Student Center, Suite 301, 121 Center Road, Dudley, MA 01571.

Formal Complaints must be in writing and should include all information that the Complainant believes to be relevant (e.g., time, location and nature of incident, names of individuals involved in or witnesses to the incident, names of other persons affected by the incident, etc.) **plus** a request for the College to investigate and/or initiate a resolution process, whether Formal or Informal. A Formal Title IX Complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the contact information below.

**To file a complaint by mail or in person during business hours:**

Please contact Title IX Coordinator Jessica Ryan at Fels Student Center, Suite 301, 121 Center Road, Dudley, MA 01571-5000

**To file a complaint by email:**

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

A Formal Title IX Complaint also must be signed by the Complainant. An electronic signature or email from an individual account that serves to identify the Complainant, not just a hard signature, is acceptable.

An Impacted Party cannot file a Formal Complaint anonymously.

The Title IX Coordinator will endeavor to honor the wishes of the Impacted Party or Complainant. 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, even if a formal complaint has been withdrawn, in limited circumstances. 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.

## **V. HOW THE COLLEGE RESPONDS TO REPORTS**

Upon receipt of a report of possible Sexual Misconduct, the Title IX Coordinator will promptly contact the Impacted Party to discuss options for support, resources, and

options for resolution. The Title IX Coordinator will also perform an initial assessment of the report to determine which if any further actions may be indicated or required.

## **A. 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. A party does not need to file a Formal Complaint in order to access Supportive Measures.

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 of a report or a complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Impacted Party/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 Impacted Party/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.

Examples of potential Supportive Measure may include, but are not limited to:

1. Referral to counseling, medical, and/or other healthcare services;
2. Referral to community-based service providers;
3. Student financial aid counseling;
4. Education to the institutional community or community subgroup(s);
5. Altering campus housing assignment(s);
6. Altering work arrangements for employees or student-employees;
7. Safety planning;
8. Providing campus safety escorts;
9. Providing transportation accommodations;
10. Implementing contact limitations (no contact directives) between the parties;
11. Academic support, extensions of deadlines, or other course/program-related adjustments;
12. No Trespass Orders;
13. Timely warnings;
14. Class schedule modifications, withdrawals, or leaves of absence;
15. Increased security and monitoring of certain areas of the campus;

16. Any other actions deemed appropriate by the Title IX Coordinator.

Supportive Measures are available to an Impacted Party or Complainant, Respondent, Witness, and others who may have been impacted by Sexual Misconduct and/or who have participated in an Investigation and/or Resolution of a Complaint.

## B. RESOURCES

The Title IX Coordinator will make parties aware of the resources available to them. The resources described below are also available in Appendix B hereto.

In the event of an emergency, the highest priority should be to get to a safe place if possible. Consider contacting law enforcement and/or seeking medical attention. **The quickest way to access law enforcement and/or medical resources is by dialing “911”.** Additionally, you may consider contacting one or more of the resources below:

Organization	Phone Number	Address	Type	24/7 Response?	On-Campus?
Dudley Police Department	508-943-4411; “press 3”	Dudley Town Hall 71 W Main St, Dudley, MA 01571	Law Enforcement	Yes	No
Nichols College Department of Public Safety	508-213-2298	Lower Daniels 121 Center Road Dudley, MA 01571	Law Enforcement	Yes	Yes
<b>UMass Memorial Health-Harrington*</b> <i>(Designated SANE Site)</i>	508-765-9771	100 South Street Southbridge, MA 01550	Medical	Yes	No
<b>Nichols College Health Services*</b>	508-213-2238	South Hall 121 Center Road Dudley, MA 01571	Medical	No	Yes
<b>Pathways for Change*</b>	1-800-870-5905	588 Main Street Worcester, MA 01608	Support, Resources & Information	Yes 1-800-870-5905	No
Nichols College Title IX Coordinator	508-213-2027	Fels Student Center Suite 301, 121 Center Road, Dudley, MA 01571	Support, Resources & Information	No	Yes
<b>Nichols College Counseling Services*</b>	508-213-2108	South Hall (Back Entrance) 121 Center Road, Dudley, MA 01571	Counseling & Mental Health Care	Yes 1-833-434 - 1217	Yes
<b>Employee Connect*</b> (Nichols College Employee Assistance Program or EAP)	1-888-628-4824	lincoln4benefits.com	Counseling & Referrals	Yes 1-888-628-4824	No



Individuals who have been impacted by Sexual Misconduct are encouraged to seek medical attention as soon as possible after the assault to ensure their physical well-being. Even if there is no obvious, external physical injury, medical providers can test for sexually transmitted diseases, pregnancy and internal trauma. If needed, Nichols College can provide transportation and assistance to the local hospital, UMass Memorial Health- Harrington, which is a designated SANE Site, meaning that Sexual Assault Nurse Examiner Services will be available.

Individuals who have been impacted by Sexual Misconduct are encouraged to try to preserve physical evidence, which is important to the successful criminal prosecution of offenders. In order to preserve evidence of sexual assault, survivors should not shower, douche or change clothes or bedding before seeking medical attention. All clothing items should be placed in a paper bag and taken to the hospital. Also, if oral contact was made, survivors are asked not to brush their teeth, smoke or eat. Evidence can be collected at area hospitals, including UMass Memorial Health- Harrington, 508-765-9771. In instances of physical or sexual assault, consider taking photographs of injuries or asking someone else to do so.

Nichols College students and employees have the following rights:

- to notify or decline to notify law enforcement, including campus, state or local police;
- to receive assistance from Nichols College officials, including the Title IX Coordinator, in making such notification;
- to seek a court-issued protective order or an institutional no-contact order against an alleged perpetrator of sexual misconduct;
- to pursue Nichols College's processes for investigation and resolution concurrently with, prior to, or after pursuing any external processes, including criminal and civil processes.

The resources designated in the chart above with an asterisk (\*) are considered to be Confidential Resources for Nichols College students and employees. 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.

Nichols College students and employees may report any concerns about sexual misconduct, regardless of where they occurred or when, to the Title IX Coordinator. The Title IX Coordinator is not a Confidential Resource. However, the Title IX Coordinator involved in the investigation and adjudication of sexual misconduct complaints 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.

When information is shared with the Department of Public Safety that could constitute 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.

### **C. OPTIONS FOR RESOLUTION**

A complainant, respondent, or witness has many options, including counseling and support services.

After a Report is made, an Impacted Party may:

- Request supportive measures from the Title IX Coordinator;
- File a formal complaint with the Title IX Coordinator, thereby invoking the internal grievance process;
- Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence; and/or
- Contact local law enforcement to file a criminal complaint. At the Impacted Party's request, the Title IX Coordinator will assist in contacting local law enforcement and will cooperate with law enforcement agencies if an Impacted Party decides to pursue a criminal process.

An Impacted Party may pursue some or all of these steps at the same time. When initiating any of the above, an Impacted Party 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, Impacted Parties and other Reporters are encouraged to consult a Confidential Resource.

Note that Nichols College's ability to remedy and respond may be limited if the Impacted Party does not wish to proceed with an Investigation and/or Resolution Process. The goal is to provide the Impacted Party with as much control over the process as possible, while balancing Nichols' responsibility to protect the larger community. In cases where the Impacted Party requests that no formal action be taken, Nichols College will honor that request (as circumstances allow) by offering Supportive Measures. If the Impacted Party elects to take no action, they can change that decision and pursue a

Formal Complaint at a later date. Please consider that delays may cause limitations in relation to access to evidence and affiliate status of the Respondent.

#### **D. INITIAL ASSESSMENT BY THE TITLE IX COORDINATOR**

The Title IX Coordinator will also perform an initial assessment of each Report/Complaint to determine which if any further actions may be indicated or required.

This assessment may include, but is not limited to:

- a determination of whether the Report or Complaint alleges a potential violation of the Title IX Sexual Harassment Policy, Sexual Misconduct Policy, and/or other Nichols College Policies;
- a determination of whether there exists an immediate, ongoing threat to the safety and wellbeing of the Nichols community, such that the College must take action, including but not limited to: emergency removal of a Respondent; issuance of a timely warning; and/or Title IX Coordinator should pursue a formal complaint absent a willing Complainant; and
- a review of actions available for the College to stop, prevent and remediate any instances of Sexual Misconduct, for example, through training, education and/or awareness programs.

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, even if a formal complaint has been withdrawn, in limited circumstances. 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.

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

#### **VI. PROCEDURES FOR RESOLVING COMPLAINTS**

**A. TITLE IX REVIEW, DISMISSAL, &/OR  
CONSOLIDATION OF COMPLAINTS**

As noted above, the Title IX Coordinator will perform an assessment of each Complaint in order to determine whether the Complaint alleges a potential violation of the Title IX Sexual Harassment Policy, Sexual Misconduct Policy, and/or other Nichols College Policies.

At any time prior to the issuance of a final determination, the Title IX Coordinator may dismiss a formal complaint if any of the following grounds are met:

- 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.

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.

The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of sexual misconduct 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.

**B. EMERGENCY REMOVAL OF RESPONDENT**

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 written notice of the action and the option to meet with the Title IX Coordinator.

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.

If the Respondent is a non-student employee, the Respondent may be placed on administrative leave during the pendency of the investigation and grievance process.

### **C. PRINCIPLES APPLICABLE TO ALL ASPECTS OF GRIEVANCE PROCEDURES**

1. The College is committed to providing a prompt and impartial investigation and resolution of all formal complaints alleging violations of this policy.
2. During the grievance process, both parties (complainant and respondent) have equal rights to participate.
3. 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 required by federal regulations.
4. Parties will be notified at the appropriate junctures of the identities of the individuals serving as Investigator(s), Decision Maker and Appeal Officer. 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 Title IX Coordinator will ensure that the pertinent individual(s) will not participate in the case.

5. 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.
6. 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.
7. 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.
8. 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. Deliberately providing false information under this policy is a serious offense and will be subject to the appropriate disciplinary action.
9. The complainant's sexual 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.
10. 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.
11. 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.

#### **D. ADVISORS**

The parties may each have an Advisor of their choice present with them for all meetings, including interviews within the investigation and resolution process, if they so choose. 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.

If a party wishes, the Title IX Coordinator will 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 during the investigation and/or resolution of a Complaint or Complaints made under the Sexual Misconduct Policy.

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.

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 College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s).

The parties are expected to ask and respond to questions on their own behalf throughout the investigation and adjudication phases 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.

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. Alternatively, the Title IX Coordinator can provide a consent

form authorizing 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 elects to change their Advisor at any point in the process, the party must either share the information directly with their new Advisor, or authorize the Title IX Coordinator to do so, as described above.

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 College.

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings upon request 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.

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).

## **E. INFORMAL RESOLUTION**

The College permits informal resolution processes in appropriate cases in which a formal complaint has been filed with the Title IX Coordinator where the Title IX Coordinator approves informal resolution and both parties consent to pursue informal resolution in writing. 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 College community members in a forum that is separate and distinct from the College's formal grievance processes under the Title IX Sexual Harassment policy. The purposes of the informal resolution process are to: (1) address the conduct which has been reported by the complainant and (2) 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 or designee may facilitate the informal resolution process any time prior to a determination regarding responsibility for violation of policy. 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 that are the subject of the complaint;
- 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);
- any potential consequences resulting from participating in the informal resolution process (including the records that will be maintained or could be shared).

At any time prior to reaching an Informal Resolution Agreement, 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.

## **E. FORMAL RESOLUTION**

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 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 resolution of the Complaint, comply with a request by external law enforcement, accommodate the absence of a party, advisor, or witness, or for other legitimate reasons, including the complexity of the investigation; the severity and extent of the alleged misconduct; and/or College breaks, holidays and/or closures. 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 and/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.

## **1. INVESTIGATION**

Upon receipt of a Formal Complaint, the Title IX Coordinator will perform an initial assessment, as described above. If the Title IX Coordinator determines (1) that the matter falls properly under this Policy and (2) that an investigation is appropriate, the Title IX Coordinator will refer the matter for investigation. The parties will be informed in writing of the initiation of the investigation.

If at any point prior to the final resolution, the Respondent voluntarily admits to a violation in writing, the Title IX Coordinator in his or her discretion may forego an investigation and refer the matter directly to the sanctioning process, described below.

### **a. NOTICE OF INVESTIGATION**

The parties will each receive a written notice of an investigation (“Notice of Investigation”), which will include the following:

- 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 advisor 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 investigator(s) will collect information from each party and other relevant sources. The Complainant and the Respondent are not restricted from gathering and presenting relevant evidence. The investigator(s) are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses (including expert witnesses if applicable); 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 investigator(s) during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence maybe excluded from consideration by the Decision Maker. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigator(s) 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.

Interviews for parties and witnesses may be conducted in person or through remote meeting technologies.

Investigator(s) will gather, assess, and synthesize information provide throughout the course of their meetings and notes will be taken. 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 Investigator(s) 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 Investigator(s) obtain that party's voluntary, written consent to do so.

The Investigator(s) 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 Investigator(s) have completed any witness interviews and any gathering of evidence, the Investigator(s) 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 and/or summaries of party and witness interviews and other collected documents and evidence. The Investigator(s) will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their advisor in electronic form or hard copy. Any and all information relied on in adjudicating the matter will be provided to the parties and their advisors.

Within ten (10) business days of receiving the case file, each party may respond in writing, which may include a request that the Investigator(s) collect additional evidence. The Investigator(s) will consider the parties' written responses, if any, before finalizing an investigative report. If the Investigator(s) believe that further information is needed following receipt of any responses from the parties, the Investigator(s) will pursue any additional investigative steps as needed. The parties and their advisors 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 the investigation, the Investigator(s) will create a written investigative report that fairly summarizes all relevant evidence.

At least ten (10) business days prior to referral for resolution, the investigative report will be provided to the parties and their advisors 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 advisors will be provided with the other party's written response to the investigative report, if any, in electronic format. After receiving any responses from the Complainant or Respondent, the investigator may gather more

information or ask additional questions of the Complainant, Respondent and witnesses, as needed.

## **2. RESOLUTION OF COMPLAINT**

Once the final investigation report is shared with the parties, the Title IX Coordinator or their designee will serve as Decision Maker. The Decision Maker will be provided with the case file, investigative report, and any responses to the investigative report. The Decision Maker shall review the case file (including the parties' responses) and consider all relevant evidence. The Decision Maker will then determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If the Decision Maker finds the Respondent responsible for violating College policy/ies, the Decision Maker will also determine appropriate sanctions and remedies as discussed further below.

### **a. WRITTEN DETERMINATION**

Following an objective review and evaluation of all admissible and relevant evidence related to the allegations, the Decision Maker will make findings of fact and a determination of responsibility with respect to each allegation using the Preponderance of the Evidence standard.

The Decision Maker will prepare a written determination regarding the findings of fact and the determination regarding responsibility for each allegation. 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.

Typically, the written determination will be issued within 30 business days of the hearing, though this timeline may be extended for good cause and with notice to the parties.

The written determination will include:

- The allegations constituting sexual misconduct;
- A description of the procedural steps taken during the grievance process;
- Finding of facts supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for the result of each allegation including findings, sanctions, and remedies; and
- Procedures for appeal.

The parties and their advisors will simultaneously be provided with the written determination via electronic format. Once mailed, emailed, and/or received in-person, notice will be presumed delivered.

### **b. SANCTIONS AND REMEDIES**

If a Student Respondent is found to have violated this policy, before finalizing the written determination, the Decision Maker will issue appropriate sanctions and recommend remedies to restore or preserve access to the College's education programs or activities. Sanctions being imposed will be included in the written determination.

If a Faculty, Staff, or other Third-Party Respondent is found to have violated this policy, the Decision Maker will consult about what sanctions if any are warranted with appropriate employee(s) of Nichols College, such as the HR representative, supervisor, and/or College Leadership (e.g., Associate Dean, Provost, Vice President, President). The consulting employee(s) are referred to collectively as the Reviewing Administrator(s). To that end, the Decision Maker share relevant information and documentation with the Reviewing Administrator(s), including but not limited to: the case file, investigative report, any responses to the investigative report, as well as the Decision Maker's findings and conclusions, and a copy of any relevant portions of the Respondent's personnel record. The Reviewing Administrator(s) will not challenge or re-examine the Decision Maker's findings of fact or responsibility, but will review solely the issue of what if any response by the College is most appropriate to achieve the College's goals of redressing the Respondent's misconduct and enhancing the safety of the community. Sanctions being imposed will be included in the written determination. The Decision Maker will also recommend the Decision Maker will issue appropriate sanctions and recommend remedies to restore or preserve access to the College's education programs or activities.

***Nothing in this policy shall alter an employee's status as an at-will employee, and the College may choose to terminate any employee at any time with or without cause in accordance with the law.***

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

### **3. APPEAL**

Either party may file a request for an appeal at the following points in the grievance procedure:

1. The dismissal of a Formal Complaint in whole or in part;
2. The issuance of the written determination after the conclusion of the hearing.

Any appeal must be submitted within seven (7) business days of the delivery of the notice of dismissal of the complaint or the issuance of the written determination. The appeal must be submitted in writing to the Title IX Coordinator via electronic mail to Jessica.Ryan@nichols.edu or by dropping off a printed copy at the Title IX office located at Fels Student Center, Suite 301, 121 Center Road, Dudley, MA 01571.

The written appeal must identify at least one of the following grounds as a basis for an appeal.

Grounds for appeal are limited to the following:

1. Procedural irregularity that affected the outcome;
2. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome;
3. The Title IX Coordinator, investigator, or decision-maker had a general or specific conflict of interest or bias against the Complainant or Respondent that affected the outcome.

The parties will be notified in writing when an appeal is submitted. The non-appealing party will receive an equal opportunity to submit a written statement in support of, or challenging, the outcome. If the non-appealing party wishes to submit a written statement, that party shall do so within five (5) business days of receiving written notification of the appeal.

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

All appeals will be reviewed by the Vice President of Student Affairs or their designee. Appeals will not be reviewed by the same person who served as Title IX Coordinator, investigator(s), or the Hearing Officer.

The parties will simultaneously receive written decision regarding the appeal describing the results of the appeal and the rationale for each result. If an appeal is denied, the matter shall be considered final. The target time frame for completing an appeal process, from receipt of the appeal until the appeal decision, is thirty (30) days from receipt of the appeal documents from the Parties, although this period may be extended for good cause.

## **VII. RECORD RETENTION**

Consistent with applicable laws and regulations, Nichols College will maintain the following records for a period of at least seven (7) years:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio recording or transcript; any disciplinary sanctions

and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.

- Any supportive measures taken in response to a report or formal complaint of sexual harassment. If a Complainant was not provided supportive measures, a rationale will be provided as to why supportive measures were not provided.
- All materials used to train Title IX Coordinators, Investigators, Decision-makers and facilitators of informal resolution processes. Nichols College will make its training material available on its website.

#### **VIII. 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: RESOURCES

In the event of an emergency, the highest priority should be to get to a safe place if possible. Consider contacting law enforcement and/or seeking medical attention. **The quickest way to access law enforcement and/or medical resources is by dialing “911”.** Additionally, you may consider contacting one or more of the resources below:

Organization	Phone Number	Address	Type	24/7 Response?	On-Campus?
Dudley Police Department	508-943-4411; “press 3”	Dudley Town Hall 71 W Main St, Dudley, MA 01571	Law Enforcement	Yes	No
Nichols College Department of Public Safety	508-213-2298	Lower Daniels 121 Center Road Dudley, MA 01571	Law Enforcement	Yes	Yes
<b>UMass Memorial Health-Harrington*</b> <i>(Designated SANE Site)</i>	508-765-9771	100 South Street Southbridge, MA 01550	Medical	Yes	No
<b>Nichols College Health Services*</b>	508-213-2238	South Hall 121 Center Road Dudley, MA 01571	Medical	No	Yes
<b>Pathways for Change*</b>	1-800-870-5905	588 Main Street Worcester, MA 01608	Support, Resources & Information	Yes 1-800-870-5905	No
Nichols College Title IX Coordinator	508-213-2027	Fels Student Center Suite 301, 121 Center Road, Dudley, MA 01571	Support, Resources & Information	No	Yes
<b>Nichols College Counseling Services*</b>	508-213-2108	South Hall (Back Entrance) 121 Center Road, Dudley, MA 01571	Counseling & Mental Health Care	Yes 1-833-434 - 1217	Yes
<b>Employee Connect*</b> (Nichols College Employee Assistance Program or EAP)	1-888-628-4824	lincoln4benefits.com	Counseling & Referrals	Yes 1-888-628-4824	No

Individuals who have been impacted by Sexual Misconduct are encouraged to seek medical attention as soon as possible after the assault to ensure their physical well-being. Even if there is no obvious, external physical injury, medical providers can test for sexually transmitted diseases, pregnancy and internal trauma. If needed, Nichols College can provide transportation and assistance to the local hospital, UMass Memorial Health- Harrington, which is a designated SANE Site, meaning that Sexual Assault Nurse Examiner Services will be available.

Individuals who have been impacted by Sexual Misconduct are encouraged to try to preserve physical evidence, which is important to the successful criminal prosecution of offenders. In order to preserve evidence of sexual assault, survivors should not shower,

douche or change clothes or bedding before seeking medical attention. All clothing items should be placed in a paper bag and taken to the hospital. Also, if oral contact was made, survivors are asked not to brush their teeth, smoke or eat. Evidence can be collected at area hospitals, including UMass Memorial Health- Harrington, 508-765-9771. In instances of physical or sexual assault, consider taking photographs of injuries or asking someone else to do so.

Nichols College students and employees have the following rights:

- to notify or decline to notify law enforcement, including campus, state or local police;
- to receive assistance from Nichols College officials, including the Title IX Coordinator, in making such notification;
- to seek a court-issued protective order or an institutional no-contact order against an alleged perpetrator of sexual misconduct;
- to pursue Nichols College's processes for investigation and resolution concurrently with, prior to, or after pursuing any external processes, including criminal and civil processes.

The resources designated in the chart above with an asterisk (\*) are considered to be Confidential Resources for Nichols College students and employees. 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.

Nichols College students and employees may report any concerns about sexual misconduct, regardless of where they occurred or when, to the Title IX Coordinator. The Title IX Coordinator is not a Confidential Resource. However, the Title IX Coordinator involved in the investigation and adjudication of sexual misconduct complaints 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.

When information is shared with the Department of Public Safety that could constitute 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.

## **APPENDIX B: INFORMAL RESOLUTION**

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. Informal Resolution can be facilitated by the Title IX Coordinator or another trained, third-party facilitator. The purposes of the informal resolution process are to: (1) address the conduct which has been reported by the complainant and (2) 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 College may offer the Informal Resolution process only under the following circumstances:

- A Formal Complaint has been filed by the Complainant;
- The College Title IX Coordinator has determined, through an Initial Assessment, 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.

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.
- 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.
- Parties may be accompanied by an Advisor or Support Person of their choosing to any meeting related to the Informal Resolution process. However,

the Advisor/Support Person may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as an Advisor/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 an Advisor/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 legal 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 or designee 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.
- Results of Complaints resolved by Informal Resolution (e.g., a signed Informal Resolution Agreement) are not appealable.
- Parties who participate in the Informal Resolution process are protected by College prohibitions on retaliation.

### **INITIATION OF THE INFORMAL RESOLUTION PROCESS**

After filing a Formal Complaint, a Complainant may request to engage in the Informal Resolution process in writing to the Title IX Coordinator.

The Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the 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 Directive 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 in matters involving faculty and staff members is in accordance with College employment practices.

If the Title IX Coordinator determines that a case is not appropriate for the Informal Resolution process, the Title IX Coordinator will inform the Complainant that the Informal Resolution process is unavailable for this case.

If the Formal Grievance process has already begun, either party may seek to initiate the Informal Resolution process at any time prior to a determination regarding responsibility for violation of policy. If both parties agree to participate in the Informal Resolution process and the 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 through the Informal Resolution process, the Formal Grievance process will be resumed.

### **POTENTIAL OUTCOMES OF THE INFORMAL RESOLUTION PROCESS**

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

- No Contact Directive or similar agreement that the Complainant and Respondent will engage with one another only in limited and specific circumstances;
- Restrictions on the Respondent from participation in particular organizations, events or activities;
- Changes to on-campus housing, employment, or course schedules, subject to availability;
- A written apology by the Respondent;
- Restorative and/or educational conversation between the parties facilitated by the Title IX Coordinator or a trained designee;
- Completion of an educational intervention and/or project by Respondent; and/or
- Other measures deemed appropriate by the Title IX Coordinator.

### **RECORDS RELATING TO THE INFORMAL RESOLUTION PROCESS**

Records relating to the Informal Resolution process will be maintained for at least seven (7) years, consistent with applicable laws and regulations. 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 process(es) 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 signed, 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.

## **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. If additional time is required to complete the Informal Resolution process, the parties will be notified by the Title IX Coordinator.

## **APPENDIX C: RANGE OF SANCTIONS AND REMEDIES UNDER THIS POLICY**

### **DISCIPLINARY SANCTIONS**

Members of the College community may be subject to disciplinary sanctions for violating this policy. Sanctions are defined under this Policy as consequences imposed by the College on a Respondent who is found to have violated this policy. Factors that may be considered when determining responsive action may include, but are not limited to:

- The nature, severity and circumstances of the violation(s)
- The Respondent's disciplinary history
- The need/likelihood for the sanction to stop sexual harassment from reoccurring and remedy its effects
- The impact on the parties
- Any other information deemed relevant by the decision-maker.

The sanctions will be implemented as soon as feasible, either upon the outcome of any appeal or the expiration window to appeal with an appeal being requested. The sanctions described in this policy or in any Nichols College policy are not exclusive of, and may be in addition to, other action being taken or sanctions imposed by external authorities.

### **SANCTIONS APPLICABLE TO STUDENTS**

For students, possible disciplinary sanctions shall be consistent with and within the range prescribed in the Student Code of Conduct. Such sanctions range from a warning, probation, residence hall suspension or removal, suspension, expulsion, revocation of admission or degree, and withholding of a degree. More than one of the Code's sanctions may be imposed for any single violation.

### **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.

### **REMEDIES**

Remedies are defined under this Policy as 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. The Title IX



Coordinator is responsible for effective implementation of any remedies. Examples of Remedies may include, but are not limited to, the following:

1. Referral to counseling, medical, and/or other healthcare services;
2. Referral to community-based service providers;
3. Student financial aid counseling;
4. Education to the institutional community or community subgroup(s);
5. Altering campus housing assignment(s);
6. Altering work arrangements for employees or student-employees;
7. Safety planning;
8. Providing campus safety escorts;
9. Providing transportation accommodations;
10. Implementing contact limitations (no contact directives) between the parties;
11. Academic support, extensions of deadlines, or other course/program-related adjustments;
12. No Trespass Orders;
13. Class schedule modifications, withdrawals, or leaves of absence;
14. Increased security and monitoring of certain areas of the campus;
15. Any other actions deemed appropriate by the Title IX Coordinator.

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